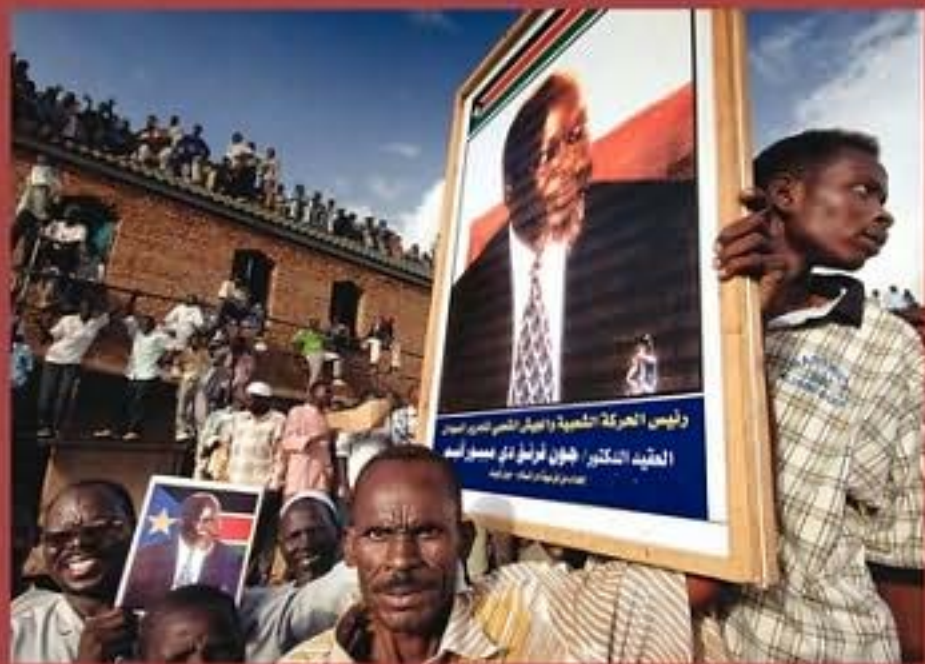


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# Peace as Governance

Power-Sharing, Armed Groups and  
Contemporary Peace Negotiations



Chandra Lekha Sriram



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# Peace as Governance

## Power-Sharing, Armed Groups and Contemporary Peace Negotiations

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*University of East London, UK*

palgrave  
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# Contents

<i>Abstract</i>	vi
<i>Acknowledgments</i>	vii
Introduction The Promise and Limits of Governance Incentives	1
Chapter 1 Conflict Resolution: Power-Sharing and Other Inclusion Strategies	12
Chapter 2 Peacebuilding and Conflict Resolution in Practice	44
Chapter 3 Sri Lanka: The Repeated Failure of Inclusion Incentives	72
Chapter 4 Sudan: The Dangerous Collateral Effects of Inclusion Incentives	107
Chapter 5 Colombia: The Limited Appeal of Inclusion Incentives	143
Conclusion The Need for More Nuanced Governance Incentives	181
<i>Selected Bibliography</i>	193
<i>Index</i>	202

# Abstract

In order to end armed conflict, and ensure that it does not recur, numerous tactics are used by national governments, the international community, and others engaged in conflict resolution. These tactics include amnesties, financial rewards, offers of inclusion in structures of power, and threats of reprisal and use of force, among myriad others. There is a thriving debate in the literature regarding the appropriate tactics and incentives for peace negotiations, as well as the peacebuilding processes promoted by the international community. One prominent critique is that of the so-called liberal peacebuilding consensus. The arguments developed in this volume support that critique, but question one of its prominent solutions: ‘institutionalization before liberalization’.

This book examines one key set of negotiation incentives used in peace agreements: inclusion of armed groups in structures of power. Though I loosely term these incentives as ‘power-sharing’, they are much broader than traditional power-sharing, and rely on explicit institutionalization of the state and the use of state institutions. These negotiation incentives can involve inclusion of previously excluded or outlawed groups as legitimate political parties, sharing of resources with such groups, inclusion of former combatants in reformed military or police forces, and offers of partial or complete autonomy. This approach is largely used to bring nonstate armed groups into negotiations, rather than as leverage on governments themselves. I argue that, not surprisingly, there is significant variance with respect to when and with which groups these tactics will work.

While the literature has begun to suggest that this approach primarily does not work when groups have economic rather than political agendas, I find that even groups with political agendas often reject inclusion offers in negotiations, and even if these groups seek inclusion as an explicit goal. Further, even if a group accepts such an incentive and signs an agreement, implementation may still prove challenging. In particular, power-sharing arrangements may simply import long-term habits of competition and conflict, and deep distrust, into nascent institutions that cannot manage conflict. This may provoke breakdown of agreements and even further conflict. The book is based on in-depth field research conducted in Sri Lanka, Sudan, and Colombia, as well as structured, focused case comparisons.

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Naturally, any errors are mine alone.



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# Introduction

## The Promise and Limits of Governance Incentives

This book offers a critical examination of the common contemporary peacemaking and peacebuilding strategy known as power-sharing. It is a broad strategy, comprising not only power-sharing as traditionally understood, but also other governance incentives commonly offered to induce armed groups to negotiate peace agreements, and to implement peace agreements, such as resource-sharing, inclusion in security structures, and territorial autonomy.<sup>1</sup> I argue that while these incentives often have appeal for armed groups, this appeal is often overrated, and may frequently generate institutional arrangements and political dynamics that are unstable in the medium to long term. A reevaluation of this strategy is sorely needed, as it is commonly deployed relatively uncritically, so integral is it to the so-called liberal peacebuilding consensus.<sup>2</sup> This consensus, as I discuss in Chapter 1, presumes that the ideal outcome of peacebuilding after armed conflict is a liberal, capitalist state. However, experience has shown democratization and marketization to be destabilizing. Building on this critique, I argue that power-sharing and similar incentives can often reify existing cleavages in societies, increasing rather than decreasing the risk of conflict. Specifically, power-sharing may import or embed social divisions that have the potential to become conflictual in new, weak, or dysfunctional institutions of governance that are not prepared to manage them.

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<sup>1</sup>This typology is not a novel one, but rather has been elaborated in Caroline A. Hartzell and Matthew Hoddie, *Crafting Peace: Power-Sharing Institutions and the Negotiated Settlement of Civil Wars* (Philadelphia: Penn State University Press, 2007).

<sup>2</sup>Roland Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge: Cambridge University Press, 2004); Mahmood Monshipouri, *Democratization, Liberalization, and Human Rights in the Third World* (Boulder: Lynne Rienner, 1995).

The inclusion of armed groups, whether rebel, military, paramilitary, or police, in peacemaking arrangements that allow them access to power, and offer them guarantees of security in the postconflict setting, is often used as a tool to lure them to negotiations. I argue that the success of these lures of participation will vary by context and group, which is perhaps not surprising but is important to understand so that rigid templates or formulas for peacemaking are not deployed. I further argue success will not depend, as has been suggested elsewhere, on the presence of economic resources alone; rather even groups that have no significant 'economic agenda' may nonetheless not be convinced to lay down arms through the prospect of governance. This may be the case even for those groups that purport to be fighting for access to power, or regional autonomy and self-governance.

This book examines the use of power-sharing incentives in three conflict settings: Sri Lanka, Colombia, and Sudan. The Sri Lankan and Colombian conflicts remain to be resolved, while Sudan is experiencing an uneasy peace. For Sri Lanka, negotiations with the Liberation Tigers of Tamil Eelam (LTTE) are examined; for Colombia, negotiations with the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia [FARC]) and the National Liberation Army (Ejército Liberación Nacional [ELN]); and for Sudan, the Sudanese People's Liberation Movement/Army (SPLM/A).

## **Background**

Since the end of the Cold War, an increasing number of conflicts have been resolved through negotiated settlement, rather than military victory. Following most if not all of these settlements, the international community, as well as the affected state and society, have engaged in what is now called peacebuilding, frequently led by the United Nations.<sup>3</sup> Many recent scholars have even begun to identify what they term a liberal peacebuilding consensus, for good or ill, that specifies a key set of activities as central to postconflict pacification. In particular, these analysts have singled out the emphasis on reconstructing government, especially in liberal democratic form, as problematic. This emphasis, even imposition, of a liberal model on a postconflict state, it has been

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<sup>3</sup>For trends in UN peacemaking activities, see Human Security Centre, *Human Security Report 2005* (Oxford: Oxford University Press, 2006), available at <http://www.humansecurityreport.info/figures/figure5.5.pdf>.

argued, is often a poor fit, unwelcome, and may even result in renewal of conflict. I seek to complement these lines of critique, but narrow the focus to the use of power-sharing mechanisms that include former combatants, as individuals and groups, in governance, security, and other institutional structures. These power-sharing mechanisms, which are also specifically institutional mechanisms, have been used with increasing frequency by mediators, as incentives for armed groups, and by peacebuilders, to encourage parties to continue implementation of peace agreements. Such measures have taken a firm place in the current toolbox for peacemaking and peacebuilding. Though this toolbox has been criticized as overly emphasizing a 'liberal' approach to peacebuilding, a critique with which I largely concur, the proposed resolution to that critique, 'institutionalization before liberalization', as I discuss in Chapter 1, has significant flaws as well.

I suggest that, to date, analysts may be drawing the wrong lessons from the putative successes of peacebuilding operations in the early 1990s, such as in El Salvador, where the former rebel group, the Farabundo Martí National Liberation Front (Frente Farabundo Martí para la Liberación Nacional [FMLN]), was successfully brought into the structures of power and transformed into a legitimate political party, with some of its members included in the reformed armed forces and police.<sup>4</sup> Many analysts, perhaps too optimistically, concluded that armed groups wanted a seat at the table and access to legitimation and political power, and that this would in many instances suffice to ensure their participation in negotiations and compliance with peace agreements.

Peace agreements have often thus included elaborate institutional arrangements, with power-sharing along one or more of four dimensions: economic, political, security, and territorial. I refer to all of these as power-sharing arrangements, even though they operate differently, as discussed in Chapter 1. These institutional arrangements are designed to generate incentives for armed groups to participate in negotiations and implement the agreements that they reach, in large part through alleviating security dilemmas. Institutional arrangements are also often developed to counter the weak, corrupt, or collapsed state structures at the root of many conflicts.<sup>5</sup> It is hoped that these new institutions

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<sup>4</sup>Chandra Lekha Sriram, *Confronting Past Human Rights Violations: Justice vs. Peace in Times of Transition* (London: Frank Cass, 2004), pp. 78–106, discusses the Salvadoran peace process.

<sup>5</sup>Robert I. Rotberg, ed., *State Failure and State Weakness in a Time of Terror* (Cambridge, Mass.: World Peace Foundation, 2003).

might lessen the incentives of all social forces to return to violent conflict. Statistical and comparative studies suggest that power-sharing along one or more of the previously mentioned four dimensions, particularly in tandem with third-party guarantees, strengthens the robustness of peace agreements. In particular, the literature broadly suggests that third-party guarantees are critical to the survival of peace agreements. However, peacebuilders often have little choice regarding the presence or absence of third-party guarantors, which depends on political interest and the will of states to act alone or through the UN.<sup>6</sup> Thus my focus on the relevance of the four types of power-sharing arrangements regardless of the presence or absence of such guarantors.

It is evident that power-sharing does not always offer a strong incentive for armed groups to cooperate, as demonstrated by the collapse of the 1999 Lomé peace accord in Sierra Leone. That accord had not only provided for a blanket amnesty for the Revolutionary United Front (RUF), headed by Foday Sankoh, but also offered Sankoh himself a place in the government and access to a key economic resource: diamonds. Sankoh was made a vice president, with control over the diamond mines, and another RUF leader, Johnny Paul Koroma, was made head of the government's Commission for the Consolidation of Peace. On the logic of the Salvadoran example and many others, those who negotiated the Lomé accord, and those who supported it internationally, reasoned that these were the incentives required to bring the RUF to the table and end the fighting. As is well known, fighting and serious human rights abuses resumed shortly after.<sup>7</sup>

The defection of the RUF might lead one to conclude that the problem for Sierra Leone, put simply, was that the country experienced a different type of war, a 'resource war'. On this logic, many contemporary wars are driven by predatory 'warlords' who have no interest in governing a country, participating in politics, providing services to the population, or even controlling territory beyond that in which resource wealth may be found. The expansive literature on natural resources

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<sup>6</sup>Caroline A. Hartzell, 'Explaining the Stability of Negotiated Settlements to Intra-state Wars', *Journal of Conflict Resolution* 43, no. 1 (February 1999), p. 17.

<sup>7</sup>William Reno, 'Sierra Leone: Warfare in a Post-State Society', in Rotberg, *State Failure and State Weakness*, p. 94.

and armed conflict often suggests that this is the case, although many scholars would of course not make such a simplistic argument.<sup>8</sup>

I argue that the situation is not so clear cut, for it is apparent that many conflicts are fought for territory or autonomy and governance, as well as resources. Further, I suggest that even in many conflicts that are not, or not solely, about resources, and even in those that are explicitly about autonomy, the incentives of participation in governance or other arenas of power may not always suffice. I seek to examine in greater detail why this is the case, and which incentives do matter, building directly on previous research into conflict transition and repression in countries such as El Salvador and Honduras, as well as more recent work on Sierra Leone.

### **Cases studies and methodology**

The cases I examine in detail constitute an important spectrum, if not the full one available, of types of conflict – ethnic, political/ideological, grievance, and resource – although conflicts are seldom driven by only one concern. While the LTTE has explicitly sought greater autonomy, and at times secession from Sri Lanka, offers of greater devolution of power to the north and east of the country, where most Tamils reside, have failed to promote a resolution to the conflict. In Colombia, the conflicts are over resources, but also over ideology and territory. The creation of *zonas de despeje*, in which the de facto control of rebel groups was acknowledged by the government, did little or nothing to ease the conflicts. Further, while in the past some armed groups have been legalized and become legitimate political parties, prospects for this to be repeated with the FARC or the ELN appear quite slim. Finally, in Sudan I examine the agreements between the government and the SPLM/A, and do not deal extensively with the violence perpetrated by the so-called *janjaweed* militias, in which the Sudanese government is implicated. The Comprehensive Peace Agreement (CPA) provided for the integration of the military forces of the government and SPLM/A; the exemption of the south, for which SPLM/A was fighting, from

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<sup>8</sup>See Mats Berdal and David M. Malone, eds, *The Political Economy of Armed Conflict: Economic Agendas in Civil Wars* (Boulder: Lynne Rienner, 2004). For a rejection of the distinction between new and old wars, see Stathis N. Kalyvas, “New” And “Old” Civil Wars: A Valid Distinction?, *World Politics* 54, no. 1 (October 2001), pp. 99–118.

extension of *sharia* law; and a future referendum on the independence of the south. However, despite its extensive use of inclusion incentives, implementation of the CPA has proven quite problematic.

The methodology of this research is explicitly that of structured, focused case comparison, supplemented by a larger qualitative comparison. The three cases examined in detail here are drawn from very different regions of the world – South America, South Asia, and Africa – and the groups in conflict have fought for some similar, but also some dissimilar, ends, ranging from religious freedom to autonomy to access to key resources. These case studies have been chosen to avoid selection on the dependent variable, representing the variations noted above, and there is wide variation among the cases in the degree of success in reaching or implementing peace agreements. I supplement these detailed examinations with a survey of relevant peace agreements, in Chapter 2, in order to consider the full array of available cases, including but going well beyond El Salvador and Sierra Leone. I examine each country's experience in some detail, with reference to insights that may be drawn from secondary literature and my own research. Cases selected for the larger comparison study are post-Cold War negotiated peace agreements that have included provisions for power-sharing along one or more of the four dimensions identified here. I deal only with cases where there has been a negotiating process and a resultant agreement, even if the agreement was exclusionary or reached in a situation where parties had unequal bargaining power. I do not, however, deal with cases of 'pacted' transitions such as those in Central Asia, or informal negotiating processes, because the terms of discussion and debate are often difficult or impossible to ascertain, and any institutional arrangements and power-sharing are not formalized.<sup>9</sup> Similarly I do not examine the many cases in which new power-sharing arrangements may have emerged from a military victory by a party to an internal armed conflict, or to an international one, such as the arrangements that were developed in Iraq and Afghanistan following US-led invasions. This is because, obviously, the critical decisions were taken without negotiations involving armed groups, and thus the importance of these incentives cannot be assessed.<sup>10</sup>

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<sup>9</sup>For a discussion of such pacted transitions, see Kathleen Collins, 'Clans, Pacts, and Politics in Central Asia', *Journal of Democracy* 13, no. 3 (2002), pp. 137–52.

<sup>10</sup>See, for example, Alexander Their and Jarat Chopra, 'The Road Ahead: Political and Institutional Reconstruction in Afghanistan', *Third World Quarterly* 23, no. 5 (2002), pp. 893–907.

I have chosen this approach because the overall universe of cases is too small to generate significant statistical findings: close examinations, or what Alexander George refers to as 'controlled comparisons', are far more illustrative, particularly if given context through the addition of a survey of the cases excluded.<sup>11</sup> The use of a few detailed case studies supplemented by a wider-scale qualitative or quantitative analysis is common in studies of peace negotiations and implementation precisely because it allows one both to discern general trends and to discuss in detail specific processes.<sup>12</sup> I utilize process tracing, which is of particular utility when one is examining a relatively small set of cases, as one not only can seek to identify the explanation for an ultimate outcome, but also can closely examine the choices of decisionmakers at intermediate steps, so as to construct a broader explanation of the decision process that leads to the ultimate outcome. In examining iterated negotiations over time and with several lead actors, this approach is a particularly fruitful one.<sup>13</sup>

Process tracing requires a close examination of the decisions of key players, and their public and private justifications for their decisions. The sources examined here include official records of negotiation processes, public negotiating positions and other public statements from governments and armed groups alike, newspaper accounts, analyses undertaken by nongovernmental organizations (NGOs), and secondary sources from other scholars. Many of these sources were obtained and examined in the countries under study. I also conducted structured interviews with relevant actors in each country, including government representatives, spokespersons for armed groups as well as members of

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<sup>11</sup>Alexander George, 'Case Studies and Theory Development: The Method of Structured, Focused Comparison', in Paul Gordon Lauren, ed., *Diplomacy: New Approaches in History, Theory, and Policy* (New York: Free Press, 1979), pp. 43–68; Stephen Van Evera, *Guide to Methods for Students of Political Science* (Cornell: Cornell University Press, 1997), pp. 56–8.

<sup>12</sup>Recent outstanding examples include Roland Paris, *At War's End: Building Peace After Civil Conflict* (Cambridge: Cambridge University Press, 2004); Barbara F. Walter, *Committing to Peace: The Successful Settlement of Civil Wars* (Princeton: Princeton University Press, 2002).

<sup>13</sup>Gary King, Robert O. Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton: Princeton University Press, 1994), pp. 226–7, citing Alexander L. George and Timothy J. McKeown, 'Case Studies and Theories of Organizational Decision Making', in *Advances in Information Processing in Organizations*, vol. 2 (1985), p. 35.



the political wings of the groups, UN staff, representatives of local and international NGOs, diplomats and representatives of bilateral donors, and local academics. Because it often proved difficult or impossible to obtain access to high-level members of armed groups, I used spokespersons and political actors with connections to those groups as proxies.

In analyzing these post-Cold War peace agreements that include at least one element of power-sharing, I utilize short comparative case studies to examine the relevant conflict, peace negotiations, agreements reached, and status of implementation. While this approach selects on one of my dependent variables (peace agreement completion), it does not select on the other (peace agreement implementation). Further, because the universe of possible peace negotiations and agreements is potentially quite large, but also hypothetical, it cannot be comprehensively summarized. An attempt to do so would face a significant 'dog that didn't bark' problem, in that I would miss important but secretive initial discussions that fail to reach fruition, or be compelled to engage in speculation about these. There are three reasons – substance, feasibility, and filling gaps in knowledge – that the analysis in Chapter 2 focuses only on agreements reached after the end of the Cold War. First, there has been much suggestion that the end of the Cold War fundamentally changed the nature not only of international politics, but also of conflict and conflict resolution. Many internal conflicts broke out following the collapse of the Soviet Union because a superpower patron no longer dominated the internal state politics. In some instances, groups and regions sought to secede, causing state disintegration, as in the case of the former Yugoslavia. In others, the withdrawal of interest in and influence over state regimes altered the balance of power internally, encouraging political opposition and rebellion. Yet simultaneously, the resolution of conflicts became possible with the decline of superpower manipulation of regimes, as in many countries in Central America, and with increased UN involvement in peacekeeping and peacemaking. The post-Cold War era saw a rapid rise in peace negotiations and agreements; while twice as many conflicts ended in victory compared to negotiated settlement during the Cold War, that number was reversed during the 1990s, and between 2000 and 2005 there were four times as many negotiated settlements as victories.<sup>14</sup> There was also

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<sup>14</sup>Human Security Centre, *Human Security Brief 2006* (Vancouver: University of British Columbia, 2006), p. 19.

a rise in agreements that sought to include one or more of the dimensions of power-sharing addressed here, a trend that increased over time.<sup>15</sup> Second, examining only post-Cold War pacts allows me to present each situation in sufficient detail, enabling a richer comparative analysis. Third, this limit on the analysis allows me to fill an important gap in the current literature, particularly the quantitative but also the qualitative literature. Many existing quantitative studies that examine conflict resolution, peace agreements, and power-sharing draw on datasets terminating in 1990, with just a few covering conflicts and processes beyond the early 1990s.<sup>16</sup> This is perhaps not surprising, given the amount of time that is required to assemble or update major datasets, but the result is a significant temporal gap. Major qualitative works on civil war termination, too, have not fully addressed the post-Cold War cases; most examine one or only a few cases, and even the excellent edited works that span more cases do not address all of them.<sup>17</sup>

The 25 cases examined in Chapter 2 are those for which, first, the peace agreement was reached between 1991 and January 2005 (the initiation of my analysis),<sup>18</sup> and second, the peace agreement has been characterized by at least one key study as involving at least one element of power-sharing (to avoid imposing my own bias regarding the

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<sup>15</sup>A draft UNDP survey showed that in peace agreements concluded between 1990 and 1998, about 20 percent had explicit political power-sharing provisions; in agreements concluded between 1999 and 2006, about 40 percent did. UNDP, 'Chart on the Inclusion of Statebuilding Policies on Peace Agreements Ending Intra-State Conflicts' (June 2006).

<sup>16</sup>These studies and their findings are examined in greater detail in Chapter 1, but a key example is the set and arguments used in Barbara F. Walter, 'Designing Transitions from Civil War: Demobilization, Democratization, and Commitments to Peace', *International Security* 24, no. 1 (Summer 1999), pp. 127–55, and Barbara F. Walter, 'The Critical Barrier to Civil War Settlement', *International Organization* 51, no. 3 (Summer 1997), pp. 335–64, the latter of which examines civil war data between 1940 and 1990.

<sup>17</sup>Examples of excellent comparative work on these issues include Philip G. Roeder and Donald Rothchild, eds, *Sustainable Peace: Power and Democracy After Civil Wars* (Ithaca: Cornell University Press, 2005); and Stephen John Stedman, Donald Rothchild, and Elizabeth Cousens, eds, *Ending Civil Wars: The Implementation of Peace Agreements* (Boulder: Lynne Rienner, 2002).

<sup>18</sup>I am currently undertaking follow-on research on the peace agreement reached in Nepal in November 2006, after the cut-off date for this study.

presence or absence of such elements).<sup>19</sup> Thus Chapter 2 contains studies of a number of countries for which I would have concluded that the incentives of interest were not genuinely present in the agreements reached. These studies have been included for the sake of completeness and to avoid skewing my analysis. Further, as the literature generally does not address cases up to January 2005, I utilized a study by the United Nations Development Programme (UNDP) that covers agreements through 2006.<sup>20</sup> There is a trade-off, of course, to covering 25 countries in a single chapter: the summaries and analyses that I provide can offer only general context and texture for understanding the various conflicts and peace processes.

This volume is explicitly designed to address the incentives that may bring armed groups into peace negotiations, and that may help to ensure long-term peace implementation. This is not meant to privilege the importance of such groups – over the government, civil society, international organizations, and regional organizations – in peace processes. Rather, it is a recognition that in many intractable conflicts, neither party will reach a decisive military victory, and thus that negotiated settlement is necessary. Further, in many instances, even weak armed groups may continue to wage war from areas inaccessible to state forces for a long time, and may return to conflict with relatively limited supplies. This capacity can make them particularly intransigent spoilers, although this is not to suggest that governments (or actors within governments) do not also seek to spoil agreements. Thus armed-group cooperation is clearly an essential component of peace agreements. Further, contemporary peace agreements often do involve extensive concessions to such groups, as provisions for power-sharing often seek to include members of armed groups rather than members of specific ethnic or other groups.

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<sup>19</sup>The major studies used, from which the cases are drawn, are: Hartzell, 'Explaining the Stability of Negotiated Settlements'; Caroline Hartzell, Matthew Hoddie, and Donald Rothchild, 'Stabilizing the Peace After Civil War: An Investigation of Some Key Variables', *International Organization* 55, no. 1 (Winter 2001), pp. 183–208; Roeder and Rothchild, *Sustainable Peace* and Barbara F. Walter, *Committing to Peace: The Successful Settlement of Civil Wars* (Princeton: Princeton University Press, 2002).

<sup>20</sup>UNDP, 'Chart on the Inclusion of Statebuilding Policies on Peace Agreements Ending Intra-State Conflicts' (June 2006).

## **Structure of the book**

Chapter 1 discusses the literature on peacemaking and peacebuilding as it relates to the subject of this volume: an analysis of the debates regarding the so-called liberal peacebuilding consensus and the use of power-sharing incentives – across four dimensions: economic, political, security, and territorial – to mitigate the risks of conflict. The chapter also considers the specific risks said to be created by ‘spoilers’, and the challenge of transforming even willing armed groups into peaceful political actors, and then closes with a critique of the ‘institutionalization before liberalization’ approach, of which power-sharing deals constitute a considerable element. Chapter 2, as mentioned, engages in a comparative examination of a range of post-Cold War peace agreements that have included or sought to include elements of power-sharing. Next, Chapters 3–5 examine three very different country experiences in depth: Sri Lanka, Sudan, and Colombia. Finally, the concluding chapter draws out lessons from the cases and experiences to date. I argue that power-sharing incentives, while often of some use in negotiating peace agreements, must be carefully honed to address the fears and interests of the armed groups themselves. Further, I argue that, in many instances, even well-designed incentives for peace agreements may prove problematic at the implementation stage, because the armed groups may experience great difficulty transforming themselves into political actors. Finally – in a critical new finding – I argue that rather than mitigating risks of conflict, the emphasis on inclusion of combatant parties may instead import conflict into institutions of governance that are ill-prepared to manage it. If this is indeed the case, the chances of dysfunctional state institutions, heightened distrust and cheating, and even breakdown of a peace agreement are significant, and there may be good reason to rethink the reliance on these incentives in peace agreements, or at least to develop a more refined understanding of where they will be of greater or lesser success.

# 1

## Conflict Resolution: Power-Sharing and Other Inclusion Strategies

This chapter considers contemporary theories and practice regarding the use of power-sharing and other inclusion incentives in peace agreements, and begins to identify gaps in the increasingly voluminous literature on peace implementation, though a detailed examination of all facets of peace negotiations and peacebuilding is beyond the scope of this volume.<sup>1</sup> The chapter then turns to the claim that power-sharing and inclusion strategies help convince armed groups to participate in peace negotiations, particularly when coupled with security guarantees from key external actors, and considers a key critique of the liberal peacebuilding consensus as an excessively Western, external imposition that does not function effectively in most postconflict situations. I suggest, in particular, that the focus of this liberal consensus on certain strategies of inclusion and governance is too narrow, and may fail to provide the correct leverage or incentives for armed groups. Further, I argue that this focus may be counterproductive, channeling existing conflicts and mistrust into institutions of governance.

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<sup>1</sup>For the wider literature, in addition to the many books and articles cited here, see Elizabeth Cousens and Chetan Kumar, with Karin Wermester, *Peacebuilding as Politics: Cultivating Peace in Fragile Societies* (Boulder: Lynne Rienner, 2000); Stephen John Stedman, Donald Rothchild, and Elizabeth Cousens, eds, *Ending Civil Wars: The Implementation of Peace Agreements* (Boulder: Lynne Rienner, 2002); Eva Bertram, 'Reinventing Governments: The Promise and Perils of United Nations Peace Building', *Journal of Conflict Resolution* 39, no. 3 (September 1995), pp. 387–418.

## Peace negotiation and peace implementation: the challenge of the security dilemma

While this volume focuses on inclusion of armed groups in power structures as a specific feature of peace negotiations, it is important to view power-sharing in context, to understand the impetus behind it and other incentives used to address security dilemmas and the vulnerability that groups may feel in disarming as part of the peace process. Power-sharing incentives are but one set of tools through which the international community and third-party mediators may facilitate negotiations. In addition, many studies have demonstrated that the presence of strong third-party guarantors in the peace process, to prevent cheating, is helpful,<sup>2</sup> and have also emphasized the importance of confidence-building measures, territorial autonomy, and security in general. I examine here an expansive version of power-sharing, one encompassing resource-sharing, territorial autonomy, and participation in security structures, as itself a confidence-building measure, it is only the presence or absence of third-party guarantors that needs to be addressed briefly.

First, it is important to understand why peace agreements are so difficult to achieve and implement: the negotiating parties fear for their own security, and require reassurances. It is argued that parties to internal armed conflicts often face a security dilemma similar to those that develop in interstate conflicts, arms races, and the like, according to international relations theory.<sup>3</sup> While the parties to an internal armed conflict might in principle become more secure by negotiating and disarming, each fears the defection of the others, and the high costs of being unprepared for surprise attacks. Yet negotiating and

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<sup>2</sup>See, generally, Barbara F. Walter, 'Designing Transitions from Civil War: Demobilization, Democratization, and Commitments to Peace', *International Security* 24, no. 1 (Summer 1999), pp. 127–55; Barbara F. Walter, 'The Critical Barrier to Civil War Settlement', *International Organization* 51, no. 3 (Summer 1997), pp. 335–64.

<sup>3</sup>Jack Snyder and Robert Jervis, 'Civil War and the Security Dilemma', in Barbara F. Walter and Jack Snyder, eds, *Civil Wars, Insecurity, and Intervention* (New York: Columbia University Press, 1999), pp. 15–37; Barry R. Posen, 'The Security Dilemma and Ethnic Conflict', *Survival* 35, no. 1 (Spring 1993), pp. 27–47. See also Caroline Hartzell, Matthew Hoddie, and Donald Rothchild, 'Stabilizing the Peace After Civil War: An Investigation of Some Key Variables', *International Organization* 55, no. 1 (Winter 2001), pp. 183–208; compare Alan Collins, 'The Ethnic Security Dilemma: Evidence from Malaysia', *Contemporary Southeast Asia* 20, no. 3 (December 1998), pp. 261–79.

implementing a peace agreement generally requires that one or more parties give up their means of self-defense, while still occupying the same territorial space as their adversaries.<sup>4</sup> As a result, it is argued, if each party fears being disadvantaged or even destroyed, it becomes very difficult to achieve agreement on sensitive security issues such as disarmament and, more generally, to achieve agreement on future power structures. This may particularly be the case for minority groups, who may have suffered significantly at the hands of the state and may fear ceding any self-protection, but it may also be true of weak states and leaders aware of their own illegitimacy.<sup>5</sup> It is for this reason, according to many scholars, that power-sharing and third-party guarantors are so important for peace processes, as they lessen the fear and costs of defection in the short term and institutionalize a balance among mistrustful parties in the longer term.<sup>6</sup>

Peace negotiations and agreements must thus address not only the original 'causes' of conflict, and grievances that may have developed over the course of the conflict, but also the acute security concerns of the key parties, particularly although not just nonstate armed groups.<sup>7</sup> While failure to alleviate security concerns is not the sole reason that peace negotiations and implementation may break down, it is a critical one, because according to peace agreements, parties that were previously at odds are expected not only to risk disarming, in whole or in part, and therefore risk their survival, but also to work together, or at least to peacefully coexist, in a postconflict (usually) unitary state. Such a state, which would typically satisfy the Weberian requirement of having a monopoly on the legitimate use of force, would also have primary decisionmaking power over the distribution of political and economic resources. Thus armed groups will want to ensure that their interests are protected and that the resources of the state are not used

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<sup>4</sup>Matthew Hoddie and Caroline Hartzell, 'Civil War Settlements and the Implementation of Military Power-Sharing Arrangements', *Journal of Peace Research* 40, no. 3 (May 2003), p. 315; Barbara Walter, 'Designing Transitions from Civil War', in Walter and Snyder, *Civil Wars, Insecurity, and Intervention*, pp. 38–69.

<sup>5</sup>Hartzell, Hoddie, and Rothchild, 'Stabilizing the Peace After Civil War', pp. 185–6.

<sup>6</sup>Barbara F. Walter, *Committing to Peace: The Successful Settlement of Civil Wars* (Princeton: Princeton University Press, 2002); Timothy D. Sisk, *Power Sharing and International Mediation in Ethnic Conflicts* (Washington, D.C.: US Institute of Peace, 1996).

<sup>7</sup>Walter, 'Designing Transitions from Civil War', *International Security*, p. 129; Walter, 'The Critical Barrier to Civil War Settlement', p. 340.

against them.<sup>8</sup> Such a state requires a government that can address a broad range of interests, and a stable security force that is not biased toward particular groups. Thus commitments to cooperate and disarm need to be credible. As we shall see, external guarantors and institutional design are thought to be credible because they can impose costs on possible defectors.<sup>9</sup>

The presence or absence of third-party guarantees, though they are not the primary focus here, is an important intervening factor in the success or failure of the arrangements examined in this volume. It is often argued that third-party guarantees are central to peace agreements and implementation, perhaps more so than power-sharing, although they are usually prescribed in tandem with the latter, because the security dilemma can be exacerbated by the presence of spoilers in peace processes. The nature and extent of third-party involvement can of course vary significantly, and can be categorized as involving three strategies: inducement, socialization, and coercion.<sup>10</sup> International guarantees might be fairly limited, involving observers who monitor and report on compliance and cheating, human rights abuses, and implementation of key aspects such as disarmament, demobilization, and reintegration (DDR) of former combatants. These are clearly important tools and may mitigate the security dilemma, as greater disclosure is expected to limit the risks of cheating, and the costs of complying when other parties do cheat. The presence of external monitoring and support may be particularly important in early stages of implementation, when a neutral government, as designed in the peace agreement, is not yet in place, consolidated, or strong enough to address violations by the parties. The monitoring and reporting of violations may help to alleviate concerns that parties may cheat (e.g., hide weapons or combatants during a DDR process, or secretly rearm or regroup) during the transitional phase. Monitoring and reporting helps to mitigate the

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<sup>8</sup>Caroline Hartzell, 'Explaining the Stability of Negotiated Settlements to Intra-state Wars', *Journal of Conflict Resolution* 43, no. 1 (February 1999), p. 5; Max Weber, 'Politics as a Vocation', in H. H. Gerth and C. Wright Mills, eds, *From Max Weber: Essays in Sociology* (London: Oxford University Press, 1946), p. 78.

<sup>9</sup>Naturally, as Barbara Walter points out, there are at least four other reasons that negotiations may break down, presumably even in the presence of guarantees: groups' inability to agree on settlement terms, stakes that cannot be divided, incomplete information, and irreversible commitments (as to nationalist followers). Walter, 'Designing Transitions from Civil War', *International Security*, pp. 131–3.

<sup>10</sup>Stephen John Stedman, 'Spoiler Problems in Peace Processes', *International Security* 22, no. 2 (1997), pp. 5–53.



problem of transparency and ensures that honest groups are not put at a severe disadvantage by those that do cheat.

However, monitoring and reporting may not suffice if the parties, or the new government, do not have the capacity to sanction violations of the peace agreement. Thus parties seek stronger security guarantees, such as third-party armed forces. These may be international, regional, or even one-state peacekeeping forces or military support, all of which themselves range in size and capacity. Parties may prefer a well-armed international force over a more lightly armed regional or third-party state force, or conversely, a well-armed third-party state guarantor to a lightly armed international force. Certainly, the failure of lightly armed forces such as those of the United Nations Assistance Mission in Sierra Leone (UNAMSIL), of whose peacekeepers the Revolutionary United Front (RUF) was able to take 500 hostage, suggests that mere size is not sufficient. Though 6000 troops were authorized for UNAMSIL, the force was unable to defend itself, and thus lost its peacekeeping credibility; this credibility was restored only by the arrival of a British force.<sup>11</sup> This incident demonstrates the limits of international intervention in constraining parties from the use of force. As Donald Horowitz observed: 'What stands out is just how ineffective the international community has been in imposing a modicum of civility on even those small states one might have thought it was in a position to coerce: Rwanda, Burundi, Somalia, Bosnia, etc.'<sup>12</sup> And even where a third party is effective, problems remain. The presence of a third-party guarantor may ensure compliance during a transitional period, but it may mask the real intent of parties who comply just to satisfy external actors. If this is the case, behavior is likely to change once external actors leave, and long-term implementation and peace consolidation may be less successful.<sup>13</sup>

Of course, reliance on strong third-party guarantees is not always an option, and parties to a conflict, as well as the mediators, may have little capacity to induce such guarantees. Further, it has been argued that in some instances third-party guarantees are not necessary, so long as the new postconflict political order offers protections that reassure groups facing a security dilemma. Mark Peceny and William Stanley,

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<sup>11</sup>And indeed, while UNAMSIL then expanded significantly, many in Sierra Leone were concerned not about the eventual departure of the UN force, but about the departure of British troops, who they believe offer greater stabilizing capability. Author interviews (Freetown, Sierra Leone, July 2004).

<sup>12</sup>Quoted in Sisk, *Power Sharing and International Mediation*, p. 87.

<sup>13</sup>Hoddie and Hartzell, 'Civil War Settlements', p. 316.

for example, argue that 'liberal social reconstruction' can ensure that cycles of mistrust are broken, and that this explains the relative success of some of the peace settlements in Central America in the early 1990s. They argue that such liberal reshaping can actually obviate the need not only for third-party guarantees, but also for any power-sharing arrangements.<sup>14</sup> I focus here, however, on the negotiation of power-sharing deals whether or not there are security guarantees.

In many instances, agreements will be negotiated and may even be implemented in the absence of third-party guarantees. Given the mistrust between the parties and the security dilemma described above, the agreement may be designed to lock in certain protections for each of the parties, particularly through power-sharing, which may help to support stable peacebuilding in its medium to long term. Though this power-sharing is often described only in its political dimensions – as sharing of access to political power through electoral arrangements, appointments, or secured civil service posts – I treat power-sharing as having four dimensions: security, territory, politics, and economics. Before addressing these dimensions, it is important to discuss the rationale for including power-sharing arrangements in peace agreements, and the purported process by which such institutional arrangements are to prevent conflict renewal.

### **Power-sharing as a solution to internal conflict**

Much has been written about the use of power-sharing as a tool to mitigate or prevent conflict in ethnic, plural, or divided societies. Indeed, Ted Gurr includes power- and resource-sharing as part of what he terms an emerging 'doctrine' in the international practice of managing conflicts. Such political arrangements are expected to ensure that grievances that could promote conflict are addressed through nonviolent means.<sup>15</sup>

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<sup>14</sup>Mark Peceny and William Stanley, 'Liberal Social Reconstruction and the Resolution of Civil Wars in Central America', *International Organization* 55, no. 1 (Winter 2001), pp. 149–82.

<sup>15</sup>Ted Robert Gurr, 'Attaining Peace in Divided Societies: Five Principles of Emerging Doctrine', *International Journal of World Peace* 19, no. 2 (June 2002), p. 28. The five principles deal with protecting individual and collective minority rights, democratic institutions, negotiation of autonomy or other self-determination demands, preventive action by the international community, and duty to intervene where conflict emerges. See also J. Kayode Fayemi, 'Pursuing Security in the Post-Conflict Phase: Reflections on Recent African Cases and Their Implications for Current and Future Peace Operations', in International IDEA, *Democracy, Conflict, and Human Security: Further Readings* (Stockholm, 2006), p. 171.

While power-sharing solutions and theories emerge from work on ethnically divided societies, in this volume I examine the use of power-sharing in both ethnic and non-ethnic conflicts. However, it is worthwhile to first examine the reasons why power-sharing is generally thought to be a useful tool in ethnic or identity conflicts.

The classic work examining the use of various power-sharing arrangements in plural societies is Arend Lijphart's *Democracy in Plural Societies*.<sup>16</sup> Though Lijphart's work focuses on mitigating tensions in democratic societies, his analysis remains salient even for societies that are at best attempting to democratize, but are still far from democratic. Consociational arrangements, it is argued, may help to mitigate ethnic tension and conflict in a manner that majoritarian democracy might not. Specifically, they are designed to include all major groups in a grand coalition, created by election through proportional representation. It is argued that such an arrangement, where decisions are taken by consensus, will help to prevent majorities from controlling minorities. Some statistical analysis supports the claim that democracy and proportional representation institutions reduce the likelihood of recurrence of civil war.<sup>17</sup>

Dealing with the demands of multiple rival groups is clearly a challenge in democratic societies, but is a far greater challenge where those groups have engaged in armed conflict. This is true whether the conflict is ethnic or non-ethnic. In the literature on the use of power-sharing in ethnic conflicts specifically, it is argued that there is a need to develop institutions that help generate broad-based coalitions that include all major ethnic groups. It is argued that institutions such as proportional electoral systems, autonomy, and federation might help to assuage the so-called security dilemma faced by groups, both opposition and government, in relinquishing their weapons and seeking peace. Peace processes and transitions are often more unstable and insecure than even the preceding periods of conflict, when fighting might have reached a stalemate. Instead, transitions may provoke the fears and insecurities that helped to spark and maintain conflict initially – the fear that if a party

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<sup>16</sup>Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven: Yale University Press, 1977).

<sup>17</sup>Bumba Mukherjee, 'Does Third-Party Enforcement or Domestic Institutions Promote Enduring Peace After Civil Wars: Policy Lessons from an Empirical Test', *Foreign Policy Analysis* 2, no. 4 (October 2006), pp. 405–30. See, generally, Ulrich Schneckener, 'Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict', *Journal of Peace Research* 39, no. 2 (March 2002), pp. 204–5.

makes any concessions, the adversary will take advantage of them. As a result, both governments and armed groups are often wary of making concessions, and in particular of laying down arms, unless they believe that their own interests will be protected in any new institutional arrangements. Parties thus need, and negotiations often result in, confidence-building measures such as power-sharing. In general, power-sharing is thought to offer parties institutionalized insurance that they will not face future policies that are discriminatory, retributive, or otherwise harmful to their interests.<sup>18</sup>

At the same time, it has increasingly been acknowledged that while these tools have their merits, they also have their limits, which I will elaborate upon throughout this volume. Further, there is more than one approach to power-sharing.<sup>19</sup> There is the consociational approach outlined by Lijphart above, which creates grand coalitions, with elite ethnic accommodation at the center and a high degree of group autonomy, and what Timothy Sisk refers to as the integrative approach, which seeks to pressure leaders to moderate their emphasis on ethnic themes. And as we shall see below, power-sharing in ethnic as well as non-ethnic conflict resolution might be delineated across four dimensions: security, territory, politics, and economics. The consociational and integrative approaches entail rather different institutional structures, and both have been tried in post-Cold War peacebuilding operations, so it is worth noting their key features.<sup>20</sup>

*Consociational approaches* may involve five types of practices: (1) territorial autonomy and confederal arrangements, (2) polycommunal ethnic federation, (3) group proportional representation in administration, and consensus decision rules, (4) proportional electoral system in a parliamentary framework, and (5) acknowledgment of group rights or corporate nonterritorial federalism.

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<sup>18</sup>These are not the only reasons put forth for institutional reform. A recent World Bank study concluded that improvement in institutions reduced the risk of civil war. See Simeon Djankov and Marta Reynal-Querol, 'The Causes of Civil War', WPS4254 (2007), available at <http://www.worldbank.org>.

<sup>19</sup>Sisk, *Power Sharing and International Mediation*.

<sup>20</sup>This summary is derived from *ibid.*, pp. x–xi, 47–69. Alternatively, Benjamin Reilly refers to these as consociational and preferential approaches. See Benjamin Reilly, 'Electoral Systems for Divided Societies', *Journal of Democracy* 13, no. 2 (April 2002), pp. 156–69.

*Integrative approaches* may involve five types of practices: (1) a mixed non-ethnic federal structure, (2) an inclusive, centralized unitary state, (3) majoritarian but non-ethnic decisionmaking bodies, (4) a semimajoritarian or semiproportional electoral system to encourage coalitions across divides, and (5) ethnicity-blind public policies.

While the consociational approach seeks to mitigate conflict by ensuring balancing among groups, which may remain relatively distinct, the integrative approach seeks to create structures that compel accommodation and compromise, and moderation by potential ethnic outbidders.

### **Power sharing as credible commitment or costly signaling**

At base, the challenge of negotiating peace agreements is one of building trust between or among wary warring parties. They not only fear for their own security and survival, but also are extremely distrustful of those they have fought for some time, particularly where negotiations have failed in the past, or where agreements have been reached but parties have reneged or cheated on commitments. Trust levels are likely to be even lower due to long-term grievances regarding unfair access to resources or power, or due to severe human rights abuses during the conflict. Not only will the fighting parties then view one another with deeper suspicion, but they will also experience difficulty 'selling' any agreement to constituents who likewise have reason to fear and mistrust their adversaries. In fact, reaching agreement may result in internal fracturing.<sup>21</sup> For this reason, mere gestures of goodwill are insufficient. Parties must undertake acts that demonstrate commitment to negotiation and implementation of a peace agreement; these are acts that parties would not undertake if they were not committed, and cost them goods such as security, so violations should be easily detectable. These acts are what James Fearon refers to in a different context as costly signaling through credible commitments.<sup>22</sup> They may be unilateral acts, such as declaration of a cease-fire or demobilization or disarmament of combatants. Or they may be interim steps taken during negotiations, as well as built into a final agreement. At each

<sup>21</sup>Hoddie and Hartzell, 'Civil War Settlements', p. 306.

<sup>22</sup>James D. Fearon, 'Signaling Foreign Policy Interests: Tying Hands Versus Sinking Costs', *Journal of Conflict Resolution* 41, no. 1 (1997), pp. 68–90.

stage, costs and signaling may be designed in a tit-for-tat fashion, to ensure that no single party takes risks that are greater than those taken by any other, and that any cheating may be quickly identified and punished. Ideally, as Matthew Hoddie and Caroline Hartzell argue, implementation of peace agreements offers such signaling, and helps to indicate long-term commitment to a peace process.<sup>23</sup> Of course, while actual implementation is certainly a strong signal of commitment to implementation, initiating it is still a risk to the parties. Thus, it is argued, there is a need to embed such commitments institutionally, through power-sharing arrangements. This is frequently done in peace agreements; a study of 38 agreements signed between 1945 and 1998 showed that all but one included some form of power-sharing provisions.<sup>24</sup> Of course, the costly nature of power-sharing means that many arrangements do not succeed. In particular, it requires contending groups to relinquish the hope of achieving total power. If they believe they can do so outside the framework, or if they find that the framework is not yielding the electoral victories or other payoffs they had expected, they are likely to defect.<sup>25</sup>

### **Power sharing across four dimensions**

Power-sharing arrangements may include four dimensions – security, territory, politics, and economics – and most peace negotiations and agreements will feature more than one. Indeed, some scholars have argued that agreements are more successful to the degree that they include each of the four, as the dimensions are mutually reinforcing and offer stronger commitment signals.<sup>26</sup> Groups will often be offered a specific stake, through proportional membership, specific set-asides of key posts, or wealth-sharing arrangements, all designed to reassure them that their survival will not be threatened and often also to assuage concerns of their support base that too much has been ceded.

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<sup>23</sup>Hoddie and Hartzell, 'Civil War Settlements', p. 304.

<sup>24</sup>Caroline Hartzell and Matthew Hoddie, 'Institutionalizing Peace: Power-Sharing and Post-Civil War Conflict Management', *American Journal of Political Science* 47, no. 2 (2003), pp. 318–32.

<sup>25</sup>Ian S. Spears, 'Understanding Inclusive Peace Agreements in Africa: The Problems of Sharing Power', *Third World Quarterly* 21, no. 1 (2000), p. 108.

<sup>26</sup>Hoddie and Hartzell, 'Civil War Settlements', p. 308; Hartzell, 'Explaining the Stability of Negotiated Settlements', pp. 3–22.

## Security

Perhaps the most acute concern of warring parties in negotiating agreements and in early implementation stages is the demand that they disarm, or at least demobilize, some or all of their fighters. Often a cease-fire at a minimum, and more frequently the disarming and cantonment of fighters, is a condition for serious negotiations, imposed by the government, the rebels, the mediators, or all of these parties. Certainly, disarmament or demobilization of an armed group would convince adversaries that the force was committed to negotiations. It is what Fearon would term a 'costly signal', as it involves the relinquishing of the very capacity that allowed that group to defend itself, or to capture territory and resources. Some scholars argue that relinquishing protections and entrusting security to new or reformed state institutions is the most critical step or signal. Naturally, it is for this very reason that groups will be wary of engaging in this step. It would signal a credible commitment, but at great risk to a group's survival.<sup>27</sup>

Thus the fear and insecurity that may be generated by disarmament and demobilization must be addressed, often through power-sharing in the security forces. A study of 16 peace agreements reached between 1980 and 1996 found some form of power-sharing in the military/security arena.<sup>28</sup> This form of power-sharing may be accomplished through several methods, and some agreements, such as the Comprehensive Peace Agreement (CPA) in Sudan, utilize more than one. The four most commonly used methods are (1) the creation of a new military and/or police force drawing members from former fighting forces (state and non-state) in proportion to their former size; (2) the creation of a new force (or forces) drawing equal numbers from former fighting forces; (3) the appointment of weaker or nondominant armed factions to key leadership posts in the security forces; and (4) permitting combatants to keep their own security or fighting forces.<sup>29</sup> Thus in El Salvador, equal percentages of former national police and rebels from the Farabundo Martí National Liberation Front (Frente Farabundo Martí para la Liberación Nacional [FMLN]) rebels were included in a new national civilian police force; while in Sudan, the CPA created joint integrated units comprising state and rebel fighters from the Sudanese People's Liberation

<sup>27</sup>Hoddie and Hartzell, 'Civil War Settlements', p. 308.

<sup>28</sup>*Ibid.*, p. 309; Hartzell, 'Explaining the Stability of Negotiated Settlements', pp. 7–8.

<sup>29</sup>Hoddie and Hartzell, 'Civil War Settlements', p. 309.

Movement/Army (SPLM/A) and allowed the SPLM to maintain a separate force in the south.<sup>30</sup> However, initial implementation remains a challenge: in Mozambique, the former rebel Mozambican National Resistance (Resistência Nacional Moçambicana [RENAMO]) and the government both delayed taking critical steps toward the creation of a new joint army, each apparently out of concern over delays by the other.<sup>31</sup>

### **Territory**

The appeal of territorial autonomy or a federal system for an armed group engaged in negotiations is relatively obvious: it can ensure the group's own viability, at least within a territory, by allowing it to exercise control over resources and security. It can also potentially enhance the group's own legitimacy in the eyes of its constituents, to whom it might provide services. Such arrangements may also protect underprivileged minorities by allowing them to develop within their own educational and bureaucratic structures.<sup>32</sup> The group may also thereby be guaranteed a greater voice in the central government. When territorial arrangements are federal in nature, the capacity of several groups or regions to block the dominance of one is also expected to alleviate the security dilemma and contain conflict. Not surprisingly, then, statistical studies of negotiated peace settlements have found that those that include provisions for territorial autonomy for threatened groups are more successful.<sup>33</sup>

Territorial autonomy as an incentive is meant here to include only those situations where it is designed to share, rather than completely fragment, power. That is to say, a group or groups are given a greater or lesser degree of control over the politics, economics, and security of a particular geographical area or areas, but generally also should be included in governance at the central level. In short, power-sharing arrangements that include territorial autonomy are not meant to promote partition or separate states, although this will be the fear of other

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<sup>30</sup>For discussion of the Salvadoran bargain, see Chandra Lekha Sriram, *Confronting Past Human Rights Violations: Justice vs. Peace in Times of Transition* (London: Frank Cass, 2004), pp. 78–106. On Sudan, see Chapter 4 in this volume.

<sup>31</sup>Hoddie and Hartzell, 'Civil War Settlements', p. 310.

<sup>32</sup>Hartzell, Hoddie, and Rothchild, 'Stabilizing the Peace After Civil War', pp. 191–2.

<sup>33</sup>*Ibid.*, pp. 199–204.



groups. While there is a literature suggesting that partition is the best solution for states that are ethnically divided, as well as a literature refuting this position, partition is not the focus of this volume. Certainly, partition can alleviate the security dilemma felt by groups – purely homogeneous enclaves, if they have secure boundaries, would not face further ethnic conflict.<sup>34</sup> However, many contemporary internal armed conflicts are not ethnic in nature, and some conflicts that have ended in partition have restarted subsequently.<sup>35</sup> Further, in most instances, international mediators, and states party to negotiations, will be averse to partition, given its implications for state sovereignty and territorial integrity. Partition and independence are not generally contemplated by peace agreements and would not constitute power-sharing arrangements in the way that this book considers territorial autonomy or other regional arrangements to be power-sharing.<sup>36</sup>

### Politics

Groups negotiating a peace agreement may also seek guaranteed participation in politics as a way of protecting themselves and their interests. They may seek it through a range of modalities, ranging from simple legalization and permission to participate as a political party (for outlawed armed groups), to formal guarantees or quotas of political power. Many recent agreements include these more formalized guarantees, with specific allocated ministries, quotas in representative bodies, or shared participation in an executive body. In Sudan, for example, as discussed in Chapter 4, the CPA included the appointment of former SPLM/A leader John Garang to the post of first vice president of the country, and subsequently the demands for equivalent status by the leaders of

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<sup>34</sup>See, for example, Chaim Kaufmann, 'When All Else Fails: Ethnic Population Transfers and Partitions in the Twentieth Century', *International Security* 23, no. 2 (Fall 1998), pp. 120–56; Chaim Kaufmann, 'Possible and Impossible Solutions to Ethnic Civil Wars', *International Security* 20, no. 4 (Spring 1996), pp. 136–75; Radha Kumar, 'The Troubled History of Partition', *Foreign Affairs* 76, no. 1 (January–February 1997), pp. 22–34; Nicholas Sambanis, 'Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature', *World Politics* 52 (July 2000), pp. 437–83.

<sup>35</sup>Sambanis, 'Partition as a Solution to Ethnic War', pp. 464–74.

<sup>36</sup>Alexander B. Downes, 'Separate States or a State of Autonomies? Regional Autonomy Versus Partition After Ethnic Wars', paper prepared for the conference 'Living Together After Ethnic Killing: Debating the Kaufmann Thesis' (Rutgers University Department of Political Science, Rutgers, N.J., October 2000).

other armed groups. The SPLM also became a legal political party, with the capacity to seek office at national and local levels, and was allocated the leadership of key ministries. In Colombia, as discussed in Chapter 5, the pact that terminated the fighting between Liberals and Conservatives involved a shared presidency, albeit one that excluded other parties.<sup>37</sup>

## **Economics**

Both state and nonstate parties will be concerned about the post-conflict distribution of wealth and control over resources, for a number of straightforward reasons. First and foremost, each group will likely be concerned about economic distribution for selfish reasons: they may be concerned about the well-being of the leadership, cadres, and in some instances real or desired constituents. Resources are needed to pay fighters, which may promote predatory or rent-seeking behavior. Or leaders may want resources to buy the loyalty of various groups.<sup>38</sup> Second, the distribution of resources may have been one of the critical reasons that a conflict took place at all. And finally, each group will be concerned about rivals receiving greater economic benefits and thus developing greater social power, capital, or status. Equally important, access to resources can be translated into the capacity to develop hard military power. Thus groups will be concerned about absolute wealth and well-being, but also about relative gains, a phenomenon well-explored by theorists of international politics.<sup>39</sup> Thus many power-sharing agreements will include provisions for wealth-sharing, offering specific formulas for sharing resources, whether natural or man-made, or formulas for control over those resources.<sup>40</sup> Thus, for example, land reform may be critical in some peace processes, as it was in Nicaragua, while in other countries allocation of resources may be crucial, as in the proportional sharing of oil resources in the Sudanese CPA, while in yet others

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<sup>37</sup>Walter, 'Designing Transitions from Civil War', *International Security*, p. 141.

<sup>38</sup>Tony Addison and S. Mansoob Murshed, 'From Conflict to Reconstruction: Reviving the Social Contract', *UNU-WIDER Discussion Paper* no. 2001/48 (August 2001), p. 4.

<sup>39</sup>Frances Stewart, 'Policies Towards Horizontal Inequality in Post-Conflict Reconstruction', *Crise Working Paper* no. 7 (March 2005), available at <http://www.crise.ox.ac.uk/pubs/workingpaper7.pdf>; Christiaan Grootaert, ed., *The Role of Social Capital in Development* (Cambridge: Cambridge University Press, 2002); Joseph M. Grieco, *Cooperation Among Nations: Europe, America, and Non-Tariff Barriers to Trade* (Ithaca: Cornell University Press, 1990).

<sup>40</sup>Hartzell, 'Explaining the Stability of Negotiated Settlements', pp. 10–11.

control over ministries may be more important, as in the appointment of RUF leader Foday Sankoh to head the Sierra Leonean mining ministry. Arrangements for wealth-sharing cannot simply institutionalize the status quo, as some groups will have had preferential access to resources, and all groups will seek to ensure that others do not gain the upper hand. Thus we may see surprising transfers of control, such as that to Sankoh, offered in the hope that the benefits accrued from participating in the government and controlling certain resources will be greater than those a rebel group might expect from overthrowing the state.<sup>41</sup> Of course, as we shall see, not all of the wealth-sharing arrangements in peace agreements succeeded or endured.

### **Assessing power-sharing**

A range of criticisms may be leveled at power-sharing along the four dimensions described above: security, territory, politics, and economics. While the literature has asserted, and it seems to be supported statistically, that the greater the degree of commitment along these four dimensions, the more likely a peace agreement and implementation are to succeed, why this should be the case, and why some agreements fail and others do not, remains to be more fully explored. Further, while it may be the case, as Hartzell argues, that groups do not trade off guarantees along one dimension for those along another, not all agreements include all four types of guarantees.<sup>42</sup> Are there some dimensions along which groups must feel absolutely secure, and that are nonnegotiable? Which groups might have which incentives, and why? As we shall see in the primary case studies presented in Chapter 3–5, as well as in the crosscutting comparison presented in Chapter 2, incentives vary by group, and over time, and thus any power-sharing incentives need to be tailored to group demands. It is not clear that this has always been the case. However, before we consider the particular cases in-depth, and the degree to which the incentives offered fit group demands, we need to consider the range of critiques of power-sharing to date.

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<sup>41</sup>Addison and Murshed, 'From Conflict to Reconstruction', pp. 5, 11.

<sup>42</sup>Hartzell, 'Explaining the Stability of Negotiated Settlements', pp. 11–15, examines three dimensions (excluding territorial autonomy or territorial power-sharing) and finds that agreements that include all of these three are more robust.

### **Power-sharing: Horowitz's critique**

Perhaps one of the earliest and most powerful critiques of power-sharing comes from Donald Horowitz, who focuses on political sharing, and on one particular formulation, consociationalism. Horowitz observes that in free elections in convocational arrangements, it is often the case that, rather than the formation of grand coalitions, we witness the formation of narrow ethnically based parties. Extremists may form at the margins and challenge the very moderates whom it was hoped the arrangement would promote. As Horowitz notes, 'The electoral system favored by consociationalists, list-system proportional representation, insures the representation of ethnically based parties in proportion to their underlying votes, but this can hardly guarantee conciliatory results.'<sup>43</sup> The result can be, as he puts it, the worst of all possible worlds, allowing majority exclusion of the minority.<sup>44</sup> A prime example was the move to proportional representation in Sri Lanka, where, rather than leading to accommodation and moderation on the part of majority Sinhalese parties, minority Tamils have been largely sidelined.<sup>45</sup> Others have suggested that power-sharing may encourage 'identitarian' movements, which may well deepen social cleavages.<sup>46</sup> One response to Horowitz suggests that it is not ethnic cleavages per se that result in the failure of such institutions, but rather worsening economic conditions and/or competition for economic rewards.<sup>47</sup> However, even if this is correct, it does not necessarily mitigate the critique of political power-sharing arrangements in ethnic conflict, but rather may indicate some broader problems with power-sharing along other dimensions and in non-ethnically divided societies. Consociational power-sharing may have the effect of empowering only elites, and rewarding them for manipulating the populace along ethnic or other lines. It may also have the

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<sup>43</sup>Donald L. Horowitz, 'Constitutional Design: An Oxymoron?' in Ian Shapiro and Stephen Macedo, eds, *Designing Democratic Institutions* (New York: New York University Press, 2000), p. 258.

<sup>44</sup>*Ibid.*, p. 262.

<sup>45</sup>*Ibid.*, p. 264; and Chapter 3 in this volume. As I will discuss, the system seems instead to have generated incentives the majority parties not to take account of Tamil concerns, but to compete with each other for the support of extremist Sinhalese parties and to use peace negotiations themselves as political weapons.

<sup>46</sup>Ian S. Lustick, Dan Miodownik, and Roy J. Eidelson, 'Secessionism in Multi-cultural States: Does Sharing Power Prevent or Encourage It?', *American Political Science Review* 98, no. 2 (May 2004), pp. 209–29.

<sup>47</sup>Brooke Ackerly, 'Designing Democratic Institutions: Political or Economic?' in Shapiro and Macedo, *Designing Democratic Institutions*, p. 286.

effect of freezing identities, and permanently excluding from power those who were excluded at negotiations.<sup>48</sup> As is discussed in Chapter 3, the exclusion of Muslims from the peace negotiation process in Sri Lanka, as well as their relative exclusion in the current proportional representation system, has raised concerns that in any future peace agreement and governance arrangements, their interests will be sidelined. However, while excluding some parties from peace and power-sharing processes is dangerous, so too is including all parties.<sup>49</sup>

More generally, it is important to distinguish not only between ethnically and non-ethnically divided societies, but also among ethnically divided societies, for they are not all divided in the same way. They may be split relatively evenly, may be split with one large majority and a minority, or may be quite fragmented. This will have implications for the type of institutional arrangements that are feasible, and will shape key outcomes, such as whether ethnically based or non-ethnically based parties form and are able to collaborate across ethnic lines.<sup>50</sup>

### **Power-sharing in non-ethnically divided societies**

Much of the academic literature on power-sharing focuses solely on ethnically divided societies and countries at risk for, or emerging from, ethnic conflict. There is a strong presumption in the literature that ethnic conflicts are more difficult to solve than, and require distinct solutions from, those conflicts that are driven by political or economic concerns.<sup>51</sup> Yet such power-sharing solutions are often also central to peace negotiations and peace implementation processes in countries where a conflict was not ethnically based, but based on ideology, access to resources, objections to corruption, nepotism, 'bad' governance, and other such factors. There is a rich debate about whether ethnically based conflicts are more difficult to resolve through negotiation than are non-ethnically based conflicts, and certainly, if one is more difficult than the other,

<sup>48</sup>Walter, 'Designing Transitions from Civil War', *International Security*, p. 143.

<sup>49</sup>Spears, 'Understanding Inclusive Peace Agreements in Africa', p. 115.

<sup>50</sup>Reilly, 'Electoral Systems for Divided Societies'; Benjamin Reilly, 'Democracy, Ethnic Fragmentation, and Internal Conflict: Confused Theories, Faulty Data, and the "Crucial Case" of Papua New Guinea', *International Security* 25, no. 3 (Winter 2000–1), pp. 162–85.

<sup>51</sup>But compare Hartzell, Hoddie, and Rothchild, 'Stabilizing the Peace After Civil War', pp. 197–8, which finds no significant distinction in success rates of negotiated settlements between ethnic and non-ethnic conflicts.

then perhaps the structure of peace agreements ought to differ.<sup>52</sup> I do not here differentiate between ethnically and non-ethnically based conflicts, as often the motivations for conflict are both, or are difficult to disaggregate or discern, and as the incentives proposed are frequently the same – power-sharing along one or more of the four dimensions.

It is worth considering, therefore, whether there is any reason to assume that institutional design developed for one situation might be ill suited to another. Further, much of the academic literature regarding power-sharing in ethnically divided societies has focused almost exclusively, at least until recently, on political, specifically parliamentary, arrangements. Yet power-sharing may be developed along several other dimensions, as already discussed. While many of the specifics of power-sharing as designed to cope with ethnic divides may not apply, such as designing voting structures to accommodate ethnic minority parties, the general concerns that have led to the development of power-sharing arrangements do continue to apply in non-ethnically divided societies. These include a security dilemma that will generate genuine concerns by weaker groups about survival, and a tendency by some of these groups to act like spoilers. Thus arrangements that help to appease fears regarding immediate security and long-term viability are often seen as solutions. It is thus that power-sharing deals, originally conceived as solutions to ethnic conflict, have been offered in negotiations to terminate other types of conflict as well.

### **Power-sharing as an ‘earned sovereignty’ compromise**

Because power-sharing agreements are often used to resolve not just ethnic conflict alone, but also territorial claims, political grievances, and the like, particularly in recent decades, some scholars have characterized resulting arrangements as ‘earned sovereignty’. Some have argued that earned sovereignty helps to resolve ‘sovereignty-based’ disputes, which may revolve around demands for territorial autonomy, or around disputes over control of government. It is characterized as follows:

Earned sovereignty, as developed in recent state practice, entails the conditional and progressive devolution of sovereign powers and authority from a state to a substate entity under international

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<sup>52</sup>See, for example, Chaim Kaufmann, ‘Intervention in Ethnic and Ideological Civil Wars: Why One Can Be Done and the Other Can’t’, *Security Studies* 6, no. 1 (Autumn 1996), pp. 62–110.

supervision. ... As an emerging conflict resolution approach, earned sovereignty is defined by three core elements: shared sovereignty, institution building, and a determination of final status.<sup>53</sup>

Earned sovereignty involves the same elements prescribed by social scientists: power-sharing along a number of dimensions and third-party guarantees. It also well depicts a number of agreements that provide for the possibility of autonomy or independence as a final status, but subject to an interim period of shared governance arrangements, as is the case in Sudan under the Comprehensive Peace Agreement.<sup>54</sup> Its emphasis on sovereignty merely reflects concerns of international lawyers and diplomats to preserve some recognition of state sovereignty while recognizing that contemporary conflict resolution frequently involves some compromise of sovereignty. Rather, they argue, than pitting two fundamental principles of international law against each other – state sovereignty and the right to determination – one can offer a constrained recognition of each. Substantively, however, the content of such arrangements remains the same as those advocated by social scientists; the primary distinction lies in the emphasis on specifically legal principles. Implementation of ‘earned sovereignty’ may thus face the same obstacles.

### **Short-term incentives vs. long-term peace**

Although democratization and progression toward open competitive politics are often destabilizing to postconflict states in the short term, there is the possibility that, in the short term, power-sharing can act as a key incentive for insecure weaker groups. By giving groups access to resources, decisionmaking authority, and security directly through involvement in security forces and/or through some measure of autonomy, such groups are reassured not just about immediate survival, but also about their future place in state power and authority.<sup>55</sup> Such guarantees, statistically, have been strong incentives to negotiation:

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<sup>53</sup>Paul R. Williams and Francesca Jannotti Pecci, ‘Earned Sovereignty: Bridging the Gap Between Sovereignty and Self-Determination’, *Stanford Journal of International Law* 40 (Summer 2004), p. 350.

<sup>54</sup>See Chapter 4 in this volume.

<sup>55</sup>Donald Rothchild, ‘Reassuring Weaker Parties After Civil Wars: The Benefits and Costs of Executive Power-Sharing Systems in Africa’, *Ethnopolitics* 4, no. 3 (September 2005), pp. 247–8.

Barbara Walter notes considerably greater willingness among combatants to sign agreements with such guarantees.<sup>56</sup> This might also, it is often hoped, help to mitigate the immediate security dilemma. However, it is not entirely clear that this is the case. In the interim or transitional period, the institutional arrangements of power-sharing will not be clearly locked in or stabilized, and cheating may be relatively easy. Thus peace processes may require credible commitments, which are risky, or phased and reciprocal acts, which are marginally less risky. Unilateral demobilization, for example, is extremely risky, while carefully phased demobilization processes that work in a tit-for-tat fashion may be less risky in the short term.<sup>57</sup>

Even if power-sharing arrangements cannot address the short-term risks of demobilization and the transition to a postconflict unified state, many will argue that they can help to mitigate the demonstrably destabilizing effects of democratization. I suggest that this is often not the case, and rather that competition and suspicion over shaping power-sharing arrangements and maintaining them is itself destabilizing. Thus it becomes unclear whether such arrangements really mitigate security concerns in the short or medium to long term, and scholars are far from agreed on this point.<sup>58</sup>

And herein may lie a key problem. Although power-sharing arrangements may offer the type of incentives that appeal to groups concerned with security, are the created institutional arrangements strong enough to survive the departure (or complete absence) of a third-party guarantor, of the often destabilizing effects of democratization, or of the frequently high levels of postsettlement violence, whether politically motivated or not? Power-sharing arrangements, while often necessary to engage armed groups, often create structures of governance that are weaker or decentralized.<sup>59</sup> They may thus be unable to prevent a power grab by a

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<sup>56</sup>Walter, *Committing to Peace*, p. 80.

<sup>57</sup>Walter, 'Designing Transitions from Civil War', *International Security*, pp. 135–7, addresses these short-term risks.

<sup>58</sup>I am grateful here to conversations with Donald Rothchild on the subject, and draw on his work in this area, including Rothchild, 'Reassuring Weaker Parties After Civil Wars', Philip G. Roeder and Donald Rothchild, eds, *Sustainable Peace: Power and Democracy After Civil Wars* (Ithaca: Cornell University Press, 2005); Hartzell, Hoddie, and Rothchild, 'Stabilizing the Peace After Civil War,' pp. 183–208.

<sup>59</sup>Walter, 'Designing Transitions from Civil War', *International Security*, pp. 137–41; Rothchild, 'Reassuring Weaker Parties After Civil Wars', p. 251.



party. Further, democratic institutions cannot be expected to become strong and deeply embedded overnight, and flawed institutional design may prevent the development of strong governments. For example, allocation of seats in representative bodies, such as parliaments or national assemblies, to former members of armed groups, whether in a fixed formula or through competitive elections, tends to produce fragmented membership and may result in governments that lack a clear mandate and must instead cobble together unstable coalitions. In such circumstances, rather than promoting inclusive politics that compel intergroup participation, such arrangements may be destabilizing, as extremist parties may hold sway over centrist ones that require their cooperation to maintain a government. Indeed, this may mean that the competition and mistrust that previously destabilized the country and became conflictual are imported into structures and institutions of governance, destabilizing already weak or dysfunctional institutions.<sup>60</sup>

Further, civil society may either be weak, or further promote the development of parties with extremist agendas. In any event, parties with diametrically opposed views and agendas are unlikely to work well together, as seen in Fiji.<sup>61</sup> This may result in ethnic outbidding, or collapse of coalition governments. Sri Lanka has experienced the first two dynamics, as discussed in Chapter 3. This is perhaps not surprising: levels of trust will be extremely low in the aftermath of internal conflict, and thus each party will seek a maximalist agenda in power, and view attempts by others to do the same with great suspicion.<sup>62</sup> In short, the security dilemma that makes resolution of internal conflict so difficult may simply be institutionalized or embedded through power-sharing.<sup>63</sup>

Such arrangements may be further weakened where, as is almost always the case after civil wars, resources are scarce. While groups may be reassured about their ultimate survival, they will be acutely sensitive to any apparent disparities in resource distribution among groups. So, for example, even the distribution of humanitarian aid after the 2004 tsunami has become a contentious issue in Sri Lanka, with the Muslim

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<sup>60</sup>This is noted in Andrea Kathryn Talentino, 'Perceptions of Peacebuilding: The Dynamic of Imposer and Imposed Upon', *International Studies Perspectives* 8 (2007), pp. 156–7.

<sup>61</sup>Brij V. Lal, 'Fiji's Constitutional Conundrum', *Round Table* 372 (October 2003), pp. 671–85.

<sup>62</sup>Gurr, 'Attaining Peace in Divided Societies', p. 47.

<sup>63</sup>Snyder and Jervis, 'Civil War and the Security Dilemma'; Posen, 'The Security Dilemma and Ethnic Conflict'.

community, disproportionately hard-hit by the catastrophe, raising concerns that they are being treated unfairly. More generally, as Victor Azarya notes, 'civility in social conduct may be hard to expect in countries with acute shortages, and extreme gaps between levels of aspirations and accomplishments'.<sup>64</sup> Donald Rothchild attributes the mixed results of African power-sharing arrangements in significant part to the effects of economic scarcity, structural inequalities, and concerns about fairness.<sup>65</sup>

Power-sharing arrangements may not only replicate social cleavages, but also reinforce or reify them. Insofar as specific arrangements, such as quotas in security forces, resource-sharing arrangements, and the like, track previous divides, real or imagined, they may impede genuine nation building, or a sense of a collective polity. Thus in Sudan, for example, while conflicts over race and religion were real and bloody, they were based around social constructs and partially imagined histories of race in the country and the region, as Amir Idris persuasively demonstrates.<sup>66</sup> As Rothchild argues:

The polarized and hostile perceptions that contributed to civil war are not transformed by power-sharing arrangements after the peace. These arrangements preserve the separate identities of the former belligerents and include them in the grand coalition at the political centre, which virtually assures limited compromises, but not decisive moves to solve common problems. Without common norms and aspirations, it becomes difficult to maintain a balance of forces, especially where uncompromising leaders, including warlords, enter the cabinet.<sup>67</sup>

Alternatively, power-sharing arrangements might be used by one party to embed its own historical advantage or protect its own interests, as one scholar has argued was attempted by the National Party in promoting discussions of power-sharing in South Africa in the early 1990s.<sup>68</sup>

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<sup>64</sup>Victor Azarya, 'Civil Society and Disengagement in Africa', in John Harbeson, Donald Rothchild, and Naomi Chazan, eds, *Civil Society and the State in Africa* (Boulder: Lynne Rienner, 2004), p. 91.

<sup>65</sup>Rothchild, 'Reassuring Weaker Parties After Civil Wars', p. 252.

<sup>66</sup>Amir H. Idris, *Sudan's Civil War: Slavery, Race, and Formational Identities* (Ceredigion: Edwin Mellen, 2001); Amir H. Idris, *Conflict and Politics of Identity in Sudan* (London: Palgrave Macmillan, 2005).

<sup>67</sup>Rothchild, 'Reassuring Weaker Parties After Civil Wars', p. 259.

<sup>68</sup>Michael MacDonald, 'The Siren's Song: The Political Logic of Power Sharing in South Africa', *Journal of Southern African Studies* 18, no. 4 (December 1992), pp. 709–25.

Another scholar has argued that governments offer power-sharing arrangements to insurgent groups to maintain their own advantage, whether they are winning or losing the battle, albeit with divergent effects on peaceful conflict resolution. When conflict has reached a stalemate, the theory claims, the government will use the offer of power-sharing to obscure its own military capacity and seek to win. Alternatively, when either the government or the insurgents have the upper hand militarily, the government offers power-sharing in order to undercut support for the insurgents from civilian and other followers. If this argument is correct, then rebel groups would rightly be suspicious of any power-sharing packages offered them by governments they have sought to overthrow or compel to change through military means.<sup>69</sup>

However, power-sharing arrangements can create tensions whether or not one party seeks to manipulate them to its own advantage. It is important to emphasize that the mistrust generated by concerns about survival, economic distribution, and embedded (mis)perceptions will occur even in the total absence of spoilers. These concerns affect ordinary people as well as their leaders, so even leaders truly committed to compromise and peace have mixed incentives. They are, after all, accountable to their constituents, who in these structures have specifically defined identities and interests. Thus, leaders will be pressed by those constituents to focus only on their narrow interests, whether in political, security, or economic spheres, exacerbating the security dilemma further.

### **Give democratic governance a chance? The liberal peacebuilding critique**

Even as the practice and analysis of peace negotiation and implementation have expanded, so too have the critiques of the dominant paradigms. In particular, concerns have been raised that peacebuilding theory and practice reflect a particular liberal internationalist paradigm, one that relies excessively on developing market economies and

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<sup>69</sup>Bumba Mukherjee, 'Why Political Power-Sharing Agreements Lead to Enduring Peaceful Resolution of Some Civil Wars, But Not Others', *International Studies Quarterly* 50 (2006), pp. 479–504. However, this inquiry only examines offers by the government, and is not clear as to how proposals of such power-sharing by international mediators are interpreted. It also only considers proposals after fighting has stopped due to stalemate or military victory, not ones that take place during conflict, or where fighting has ceased due to a negotiated or unilateral cease-fire, as is frequently the case.

certain features of liberal democratic domestic politics as pathways to peace. However, the critique runs, many states emerging from conflict have little or no experience with market economies or democracy, and emphasis on these may be both inappropriate and destabilizing.<sup>70</sup> It has been argued that democratization, more generally, is highly destabilizing, as the competition it entails may necessarily enhance existing cleavages that helped to engender conflict.<sup>71</sup> Finally, it has been argued that support for democratization and good governance may experience some success while international actors are present, but that after they leave, the incentives for predatory behavior by local elites are sufficiently great that reforms to governance seldom endure.<sup>72</sup>

It is possible that the particular tools of inclusion I examine here may frequently, although perhaps not always, suffer from the same critique. Some tools of inclusion, such as political power-sharing, are explicitly linked to democratic processes and representation; others, such as inclusion in the security forces or territorial autonomy, may not necessarily be so linked. As such, some tools of inclusion will be more vulnerable to the critique of liberal peacebuilding than others, although some, such as inclusion in the security sector, may have other flaws.

The critique is relatively straightforward: peacebuilding by most international agencies appears to be driven by a single paradigm, liberal internationalism. According to Roland Paris, 'The central tenet of this paradigm is the assumption that the surest foundation for peace, both

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<sup>70</sup>Roland Paris, 'Peacebuilding and the Limits of Liberal Internationalism', *International Security* 22, no. 2 (Fall 1997), pp. 54–89; Paris, *At War's End: Building Peace After Civil Conflict* (Cambridge: Cambridge University Press, 2004).

<sup>71</sup>Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* (New York: W. W. Norton, 2000); Edward Mansfield and Jack Snyder, 'Democratization and the Danger of War', *International Security* 20, no. 1 (1995), pp. 5–38. See, generally, Mahmood Monshipouri, *Democratization, Liberalization, and Human Rights in the Third World* (Boulder: Lynne Rienner, 1995). Strong supporters of and technical advisers on democratization such as the non-governmental organization International IDEA also recognize these risks. See Judith Large and Timothy D. Sisk, *Democracy, Conflict, and Human Security: Pursuing Peace in the 21st Century* (Stockholm: International IDEA, 2006), pp. 57–8.

<sup>72</sup>Stephen D. Krasner, 'Sharing Sovereignty: New Institutions for Collapsed and Failing States', *International Security* 29, no. 2 (Fall 2004), pp. 85–120, proposes that neotrusteeship arrangements or sovereignty sharing may be necessary in some instances, although Krasner's focus is ostensibly not on countries concluding peace agreements, but failing and failed states.

within and between states, is market democracy, that is, a liberal democratic polity and a market-oriented economy.<sup>73</sup> This paradigm is underpinned in part by the 'democratic peace' thesis, which holds that democracies are less likely to go to war with each other, and which, it is often argued, results in more accommodating or rule-obeying behavior by states.<sup>74</sup> The dominant critique of this paradigm does not question its virtues in a general fashion, but rather suggests that it is a particularly poor model for states emerging from armed conflict, and that, paradoxically, given that this paradigm is meant to be a tool of peacebuilding, it is more likely to promote destabilization. As Ted Gurr argues, 'The most dubious expectation of all is that authoritarian states such as Sudan, Iraq, and Burma might be able to defuse ethnopolitical wars by moving toward democracy.'<sup>75</sup> Often, economic distribution and maldistribution is a key source of conflict, with one or more parties claiming to offer more equitable distribution of resources, as happened in El Salvador. However, simply embedding market forces without dealing with past grievances and already embedded inequities may further embed old grievances or create new ones.<sup>76</sup> It is for this reason that land reform and other programs are often in demand after conflict, even though they may operate at cross-purposes with marketization.

Whether or not countries are engaged in violent conflict, or have deep social cleavages, there may be reason for concern that certain institutional arrangements of democratization, if not conflict-generating, are a poor fit with the society on which they are grafted. A significant

<sup>73</sup>Paris, 'Peacebuilding and the Limits of Liberal Internationalism', p. 56.

<sup>74</sup>See, generally, Michael Doyle, 'Liberalism and World Politics', *American Political Science Review* 80, no. 4 (December 1986), pp. 1151–69; Anne-Marie Slaughter, 'International Law in a World of Liberal States', *European Journal of International Law* 6 (1995), pp. 53–81. Compare José E. Alvarez, 'Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory', *European Journal of International Law* 12 (2001), pp. 183–246.

<sup>75</sup>Ted Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts* (Washington, D.C.: US Institute of Peace, 1993), p. 138

<sup>76</sup>Paris, *At War's End*, pp. 112–34, discusses this issue in peacebuilding operations in Central America. I have noted elsewhere that these peacebuilding missions may not only have failed to address the underlying sources of conflict, but in many instances may also have failed to cope with ongoing political and social conflict, treating it as mere 'criminality'. Chandra Lekha Sriram, 'Dynamics of Conflict in Central America', in Chandra Lekha Sriram and Zoe Nielsen, eds, *Exploring Subregional Conflict: Opportunities for Conflict Prevention* (Boulder: Lynne Rienner, 2004), pp. 131–67.

literature has suggested that this was the case with the imposition of Westminster-style parliamentary systems in certain countries in the South Pacific. The argument is not that such countries' political cultures are unsuited to democracy, but rather that they are not suited to particular forms of democracy. In particular, winner-take-all approaches to representation are of concern, as they may fail to represent or protect minorities, and may support overly centralized governments.<sup>77</sup> This critique, of course, is distinct compared to the critique of democratic peacebuilding, although it shares the concern regarding imposition of 'foreign' modes of governance on countries.

The critique of liberal peacebuilding is not, as already indicated, limited to the emphasis on creation of market democracies. It also maintains that the focus on creating functioning electoral democracies may also generate rather than alleviate conflict. Uneven access to political power is often a source of conflict, but simply allowing elections to go forward may not rectify inequalities in access to power due to differential resources, power bases, and experiences, and may reinforce old lines of cleavage or create new ones. Thus, while established liberal democracies may be less prone to violent domestic conflict, the transformation of illiberal and conflict-prone states into such democracies is perilous.<sup>78</sup> In such instances, then, the liberal internationalist approach to peacebuilding may be said to be flawed. Liberal institutions may be conflict-enhancing, and broader liberalization such as a free media may promote conflict through hate speech, as in Rwanda, where, as Paris argues, the internationally promoted power-sharing arrangements, as well as the vibrant but irresponsible media, helped to precipitate the genocide.<sup>79</sup> It is for this reason that he advocates a strategy that he terms 'institutionalization before liberalization', which would prioritize embedding institutions and regulations rather than seeking early elections as a sign of democracy, as the international community so often does.<sup>80</sup> This, as

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<sup>77</sup>On constitutional legacies and attempts at revision, see I. C. Campbell, 'The Quest for Constitutional Reform in Tonga', *Journal of Pacific History* 40, no. 1 (June 2005) pp. 91–104. Some have argued that it is not democracy but its current mode that generates conflict in Indonesia. See Leonard C. Sebastian, 'The Paradox of Indonesian Democracy', *Contemporary Southeast Asia* 26, no. 2 (2004), pp. 256–79.

<sup>78</sup>Paris, *At War's End*, pp. 44–6, elaborates on this point, developed previously in Mansfeld and Snyder, 'Democratization and the Danger of War'.

<sup>79</sup>Paris, *At War's End*, pp. 75–6.

<sup>80</sup>*Ibid.*, *At War's End*, pp. 179–211.

indicated, may have particular ramifications for certain incentives, such as political power-sharing, examined in this book. Specifically, many features of the power-sharing strategy, such as representation in parliaments and ministries, may entail early elections, or may more generally involve a competitive political process that could well turn conflictual. Beyond the security dilemma and the potential risks of liberal peacebuilding, two problems in peace processes and implementation are particularly critical: spoilers who may actively seek to undermine agreements, and armed groups who may genuinely seek to implement them but lack the political and technical capacity to do so.

### Spoilers

Given that not all participants in peace negotiations will behave in the same fashion, it becomes important to attempt to distinguish between those who are negotiating in good faith, and those who are not. Obviously, there may be little point in seeking to identify incentives for those who will simply accept them but then return to fighting as soon as the opportunity arises. While this book focuses only on armed groups, I do not mean to suggest that only they can undermine the peace process: the literature makes it quite clear that governments, too, can be and often are 'spoilers'.<sup>81</sup> So what, exactly, is a spoiler, and how might spoiler behavior vary? Spoilers are 'leaders and parties who believe that peace emerging from negotiations threatens their power, worldview, and interests, and use violence to undermine attempts to achieve it'.<sup>82</sup> Spoilers may also undermine implementation of agreements once reached, accepting incentives but renegeing on their own concessions and returning to armed conflict. An example of this, which will be discussed in further detail in Chapter 2, is the return to fighting by Foday Sankoh and the Revolutionary United Front in Sierra Leone after the 1999 Lomé peace agreement.<sup>83</sup> Spoilers, however, are not all 'Foday Sankohs': they vary in their behavior. Stephen Stedman offers a useful typology of spoilers and their aims: limited, greedy, and total. Limited

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<sup>81</sup>Stedman, 'Spoiler Problems in Peace Processes', pp. 5–53, pp. 32–6, discusses in particular the state of Cambodia as a spoiler in negotiations.

<sup>82</sup>Stedman, 'Spoiler Problems in Peace Processes', p. 5.

<sup>83</sup>See, generally, John Hirsch, *Sierra Leone: Diamonds and the Struggle for Democracy* (Boulder: Lynne Rienner, 2001). See also Michael Pugh and Neil Cooper, with Jonathan Goodhand, *War Economies in a Regional Context: Challenges of Transformation* (Boulder: Lynne Rienner, 2004), pp. 91–142.

spoilers have limited goals, such as power-sharing or redress of grievances, while total spoilers have total goals, such as complete power. Between them in the continuum are greedy spoilers, who have goals that may vary depending on their own calculations of opportunity and risk; they may also be viewed as opportunistic.<sup>84</sup>

The identification of spoilers, and variation among them, produces an important policy recommendation: different groups must be engaged in different ways. It may seldom be possible for negotiators, be they internal or international mediators, to ever satisfy total spoilers. Thus it is important to recognize them as such, lest they undermine negotiations. Limited spoilers may be engaged, albeit with limited concessions, as may greedy spoilers, albeit with the recognition that their goals will likely expand.<sup>85</sup> This guidance may assist policymakers in determining which enticements to offer which groups, if any at all. However, while these insights are important, they may not suffice, as they may not distinguish sufficiently among types of group goals and incentives. Further, they may not account sufficiently for groups and individuals who may undermine peace deals because they do not trust institutions of governance, or do not trust that those within them will adhere to the deals that have been reached.<sup>86</sup>

### **Beyond spoilers? Group goals and incentives**

The spoiler typology is helpful, but only up to a point. It emphasizes the categorization of behavior, but does not provide insights into the interests and incentives of groups that may drive such behavior. That is to say, total spoilers may seek to attain absolute political power, and may also then wish to administer it, or they may simply seek to extract the maximum wealth from a country, while having little or no interest in governing it. Their demands and behavior will be noticeably distinct. The literature on conflict, of course, does categorize types of conflict and the goals sought by combatants in a variety of ways, most often categorizing goals broadly as politico-economic or ethnic. Politico-economic goals can and ought to be further disaggregated, as each may be for traditionally 'legitimate' aims, such as fair participation in politics and equitable distribution of resources, or for what are commonly referred to as 'illegitimate' aims, such as corruption, abuse of power, and

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<sup>84</sup>Stedman, 'Spoiler Problems in Peace Processes', pp. 9–11.

<sup>85</sup>Ibid., pp. 14–17.

<sup>86</sup>Talentino, 'Perceptions of Peacebuilding', p. 157.



predation. This, in the late 1990s, was referred to as the distinction between 'greed' and 'grievance', although these categories were clearly overdrawn.<sup>87</sup>

At base, power-sharing seeks to do two things. First, to reassure weaker parties that they will not be eliminated if they lay down arms and enter democratic or at least civilian politics. Second, to develop or strengthen broadly representative forms of government through including armed groups. These are goals consistent with a liberal peacebuilding agenda, and this approach also acknowledges that many groups are not intransigent spoilers, but rather are concerned with survival.<sup>88</sup>

### **Transforming armed groups and the problem of capacity**

However, power-sharing is made more problematic because many armed groups, however willing to engage in legitimate political processes, lack political experience or expertise, and seldom have the technical capacity to formulate political platforms, run complex election campaigns, or participate, if elected, in complex legislative and bureaucratic processes. They are what have been referred to as 'democratic novices'.<sup>89</sup> The challenges of bringing them into peaceful political competition are then twofold: transforming old habits and building capacity. First, transforming old habits involves retraining leaders and cadres to solve disputes not through violence or coercion, but through legal and political means. For fighters who have been 'in the bush' for years or decades, this may be a hard sell. Even if leaders of armed groups are convinced that the trade-offs are worth it, the rank and file may fear a radical change in lifestyle, an inability to support themselves, and a loss of status as well as income. And these fears are appropriate, as many of the skills needed to fight an internal conflict do not translate well to civilian life, other than through violent crime, and DDR packages are no guarantee of future employment.

Second, in most cases, both leaders and cadres in armed groups will lack the capacity to engage in competitive politics and complex bureaucracies. Further, especially the cadres, but also even the leaders, may

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<sup>87</sup>See, for example, two edited volumes that frame but also challenge the distinction: Mats Berdal and David M. Malone, eds, *Greedy and Grievance: Economic Agendas in Civil Wars* (Boulder: Lynne Rienner, 2000); and Karen Ballentine and Jake Sherman, eds, *The Political Economy of Armed Conflict: Beyond Greed and Grievance* (Boulder: Lynne Rienner, 2003).

<sup>88</sup>Rothchild, 'Reassuring Weaker Parties After Civil Wars'.

<sup>89</sup>Walter, 'The Critical Barrier to Civil War Settlement', p. 340.

lack formal education, due to poverty and discrimination, or because they took up arms rather than attending school. Many will be illiterate, and where the leaders of armed groups are also illiterate the challenge is that much greater. In such instances, leaders and followers will be wary of trying to engage in a complex and unfamiliar political process, and if they do so, may be easily outmaneuvered by experienced professionals among their former adversaries. This phenomenon is well illustrated by the experience of the SPLM in the central Sudanese government following the Comprehensive Peace Agreement: those SPLM leaders who were appointed to head ministries found themselves consistently ignored or outmaneuvered by experienced Sudanese civil servants. Further, building capacity in the south of Sudan has been hampered by the broad illiteracy of all but a few SPLM members and leaders.

### **The perils of power-sharing: a critique of liberal peacebuilding and 'institutionalization before liberalization'**

The critique of liberal peacebuilding so cogently made by Paris and others clearly applies to the use of power-sharing and other incentives in peace negotiations and implementation. Peace accords and peacebuilding processes of this model very clearly seek to promote democratization, and many also seek to promote economic liberalization, regardless of whether the political or economic situation in the country can easily accommodate these reforms. However, the emphasis on institutional arrangements, whether through power- or resource-sharing, territorial autonomy, or inclusion of former members of armed groups in state security forces, would appear to be in line with Paris' partial solution to his own critique of peacebuilding: 'institutionalization before liberalization'. That is to say, the emphasis on allocation of political posts, or of resource shares, or of posts in security or military forces, or even of nominal or significant control over territory, are sought as means of institutionally embedding a negotiated settlement. Indeed, they are conceived of as tools to reassure groups regarding their security, political future, and prosperity, in part because of the recognition of the instability and security dilemmas that can arise during peacebuilding and democratization. However, as shown in the case comparison and the core country studies presented in successive chapters, 'institutionalization before liberalization' is far from a solution. Rather, institutional design and incentives may lock former combatants into state structures, and may import not only competition but also cheating and outright conflict into these structures. They may allow peace agreements to be reached without final accord on difficult

substantive issues, but these issues will then have to be dealt with by weak, nascent, or corrupt state institutions.<sup>90</sup> If parties engage in significant cheating, and levels of mistrust are high, and institutions cannot manage competition and conflict, a breakdown of the peace agreement itself may follow.

### **Creating ‘spoilers’**

Finally, such inclusion arrangements may run the risk of creating ‘spoilers’, in some sense of the term. There has been much discussion of the dangers of negotiating peace agreements in which all combatant parties are not involved. Clearly, groups that have seen fit to use violence to achieve their goals, and have chosen not to engage in negotiations, are unlikely to stop fighting simply because other parties have reached a peace. Indeed, they are likely to do everything possible to undermine negotiations, and to attack those parties that are talking peace. For example, the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia [FARC]) engaged in attacks on the National Liberation Army (Ejército Liberación Nacional [ELN]) when the latter sought to negotiate with the government in earnest. This has led some to conclude that peace agreements will fail if they are not inclusive. While there is some debate, a recent World Bank study has suggested that partial peace (a peace in which some but not all combatants are party) is feasible.<sup>91</sup> Nonetheless, as the case studies demonstrate, a different problem may arise. Peace agreements that include all of the main combatant parties may still create spoilers if they exclude groups with serious grievances that, so far, have not taken up arms. This in part explains the mobilization of rebels in the east and the Darfur region of Sudan, as well as the radicalization of Muslims in the east of Sri Lanka. Clearly, not every potential political or military actor can sit at the peace table – this would make negotiation unwieldy and key combatants would refuse to participate. However, when the types of incentives discussed here are being offered, a real or perceived zero-sum game may emerge, and excluded parties could rapidly seek to spoil the process.

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<sup>90</sup>See Marie-Joëlle Zahar, ‘The Limits of Power-Sharing in Post-Civil War Settings’ (2006) [draft on file with author], for an excellent discussion of the perils of using institutional design to defer decisions on substance.

<sup>91</sup>World Bank, ‘Partial Peace: Rebel Groups Inside and Outside of Civil War Settlements’ (2007), available at <http://siteresources.worldbank.org/intconflict/resources/partialpeacenilsson.pdf>.

## **Implications**

This chapter has surveyed a range of arguments and policy developments concerning peacebuilding. Central to these are two developments: the increased emphasis on inclusion tools to alleviate security concerns of combatants as well as to substantively address some of their demands, and the critique of liberal peacebuilding and the promotion of 'institutionalization before liberalization'. I have suggested that inclusion tools have some potential merits, but also that they may be subject to some of the critiques that are made more widely of liberal peacebuilding. I have further suggested that inclusion tools are consistent with the 'institutionalization before liberalization' prescription, but that this prescription itself has flaws. There are many risks, as the case studies in this volume illustrate: the incentives offered may be of relatively little interest to groups or fail to alleviate their mistrust, or the groups may prove unable to take advantage of them once implementation begins; the conflict itself may become institutionalized and destabilize the process; and inclusion agreements themselves may contribute to the creation of new spoilers. None of this is to detract from the potential of these tools, but rather to suggest caution in their use.

# 2

## Peacebuilding and Conflict Resolution in Practice

This chapter builds on the theoretical critique with a comparative examination of policy practice, presenting general patterns of peace agreements involving one or more of the four key incentives of interest here: economic, political, security, and territorial. The case studies are necessarily short, but the insights from the comparative analysis are fleshed out in the three more detailed country studies that form the core of this book (Chapters 3–5). Beginning with a key case of ‘success’ – El Salvador – the chapter considers the specific tools of inclusion offered in a number of critical cases, and develops hypotheses as to why they worked or did not, and later considers a key case of ‘failure’ – Sierra Leone. The purported success of incentives in El Salvador and the apparent failure of similar, and even more extensive, incentives in Sierra Leone, bracket the discussion, which surveys a total of 25 cases since the end of the Cold War. The two key case studies draw on my extensive fieldwork in those two countries. While each case study focuses on a national conflict, and a national process, I recognize that many conflicts are transborder or regionalized, and that this poses unique problems for negotiators. While negotiations may be bounded by state borders, the flows of arms, refugees, and fighters are not, and neighboring leaders, whether of states or armed groups, may actively support fighters elsewhere. Such was obviously the case in Sierra Leone’s conflict, which was driven in part by Liberian president Charles Taylor.<sup>1</sup> The case studies are grouped by region, so that the regional

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<sup>1</sup>Chandra Lekha Sriram and Amy Ross, ‘Geographies of Crime and Justice: Contemporary Transitional Justice and the Creation of “Zones of Impunity”’, *International Journal of Transitional Justice* 1, no. 1 (February 2007), pp. 45–65. On the role of regional factors in undermining power-sharing in Lebanon, see Brenda M. Seaver, ‘The Regional Sources of Power-Sharing Failure: The Case of Lebanon’, *Political Science Quarterly* 115, no. 2 (2000), pp. 247–71.

dimensions of conflicts are apparent where relevant. As elaborated in greater detail in the introduction to this volume, these cases have been selected based on the presence of key incentives, whether or not implementation of the peace agreements has been successful.

## Latin America

### El Salvador

The peacemaking and peacebuilding process in El Salvador is often touted as one of the few true 'success stories', so it is perhaps not surprising that elements of the peace agreements developed there are often recommended for countries elsewhere.<sup>2</sup> Indeed, the liberal peace arrangements reached in El Salvador, including specific power-sharing arrangements as well as security reassurances, have been promoted as a model whereby external coercion becomes less necessary to maintain peace.<sup>3</sup> Though this is indeed an appealing prospect, many social cleavages remain embedded in El Salvador, even more than a decade since the end of its civil war; potential causes of conflict endure, and high levels of violence are categorized as merely 'criminal'.<sup>4</sup>

After 12 years of conflict, in which some 75,000 people were killed, a UN-sponsored peace process finally helped to bring El Salvador's civil war to a close. The conflict, fought over political ideology and allegations of corruption and abuse by the military-controlled government, was not directly driven by concerns about ethnicity, regional autonomy, or natural resources, although the extreme economic disparities within the country, as emphasized by the Marxist-inspired, leftist Farabundo Martí National Liberation Front (Frente Farabundo Martí para la Liberación Nacional [FMLN]), were a central cause for resentment and conflict. The

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<sup>2</sup>Chandra Lekha Sriram, *Confronting Past Human Rights Violations: Justice vs. Peace in Times of Transition* (London: Frank Cass, 2004), pp. 90–1.

<sup>3</sup>But compare Mark Peceny and William Stanley, 'Liberal Social Reconstruction and the Resolution of Civil Wars in Central America', *International Organization* 55, no. 1 (Winter 2001), pp. 149–82. Peceny and Stanley argue that what is needed is not external guarantees or power-sharing, but liberal democratization. While I concur with their conclusion that power-sharing arrangements in Central American peace agreements have not been particularly efficacious, I cannot accept their relatively sharp distinction between power-sharing and liberal peacebuilding, which are intertwined, as I discuss in Chapter 1.

<sup>4</sup>Chandra Lekha Sriram, 'Dynamics of Conflict in Central America', in Chandra Lekha Sriram and Zoe Nielsen, eds, *Exploring Subregional Conflict: Opportunities for Conflict Prevention* (Boulder: Lynne Rienner, 2004).

1992 peace agreement between the FMLN and the right-wing government contained the central elements of a liberal peacebuilding strategy with an emphasis on inclusion, or power-sharing, especially in regard to the security forces. Not only were the military and the police finally, formally separated, but also, subsequent to vetting, a percentage of each security force was allocated to former FMLN members. Military doctrine was also reformed, to prevent it playing a role in internal security. This, of course, was an effort to reassure the FMLN that it would be allowed not only to survive but also to participate in power, and was necessary to convince its members to demobilize and surrender their weapons. Relatedly, the FMLN was allowed to become a legal political party, another central reassurance of group survival.<sup>5</sup> Notably, the agreements did not address significant resource issues, nor any claims to autonomy. They did mandate land transfers to former combatants, both soldier and rebel, but did not, as other accords have done, guarantee broader access to economic resources.

Since the 1992 peace agreement, some progress and stability have been attained. The FMLN has won a significant number of seats in the national legislature, as well as the mayoralty of the capital. However, despite such significant advances, serious peacebuilding difficulties remain.<sup>6</sup> For example, there is still a central divide between the haves and have-nots, with a very small and concentrated elite controlling the country's resources as well as most political and administrative power.<sup>7</sup> As well, the violence has not abated but rather largely transformed from explicitly political into common criminality. While accurate statistics

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<sup>5</sup>On this issue in the negotiating process, see Sriram, *Confronting Past Human Rights Violations*, pp. 84–6. Note that Peceny and Stanley do not treat the legalization of the FMLN as a political party or its inclusion in the civilian police as power-sharing, while in the four-dimensional definition I use here, both would constitute power-sharing in the security and political domains, albeit without formalized quotas or other formulas for political participation. Peceny and Stanley, 'Liberal Social Reconstruction', p. 167.

<sup>6</sup>Jack Spence, Mike Lanchin, and Geoff Thale, 'From Elections to Earthquakes: Reform and Participation in Post-War El Salvador' (Cambridge, Mass.: Hemisphere Initiatives, April 2001); Jack Spence, David R. Dye, Mike Lanchin, Geoff Thale, and George Vickers, 'Chapultepec: Five Years Later' (Cambridge, Mass.: Hemisphere Initiatives, January 1997).

<sup>7</sup>Mahmoud Monshipouri, *Democratization, Liberalization, and Human Rights in the Third World* (Boulder: Lynne Rienner, 1995), pp. 139–40, discusses the concentration of power and patterns of tutelage, including the role of the military.

are difficult to obtain, El Salvador is second only to Guatemala in levels of serious violent crime per capita in Central America.<sup>8</sup>

El Salvador is viewed by many as having experienced an incomplete transition, or as being a 'protected democracy' in which the state continues to be controlled by a small group. Abuses of power, structural inequalities, and politically motivated violence remain, presenting profound challenges to security and long-term stability in this weak state.

## **Colombia**

Because Colombia's conflict and negotiating processes are discussed in much greater detail in Chapter 5, I address the key elements only briefly here. Three significant armed groups have demobilized since the end of the Cold War: two rebel groups, the left-wing Popular Liberation Army (Ejército Popular de Liberación [EPL]) and the left-wing 19 April Movement (Movimiento 19 de Abril [M-19]), and a paramilitary group that has strong ties to the government, the United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia [AUC]). In addition, the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia [FARC]), also a left-wing rebel group, sought to form a legitimate party in the context of peace negotiations, and survived until 2002, albeit just barely. The EPL and M-19 were allowed to form political parties as part of their pact to disarm, and at the same time, in 1991, a new constitution was installed that decentralized governance significantly. However, some EPL fighters did not disarm but split from the mainstream, and both it and M-19 came under attack from the paramilitaries and/or the FARC. Hundreds of former EPL members, including political leaders, were massacred. The political party formed by M-19 also suffered attacks, including the 1990 assassination of its presidential candidate. The AUC has not sought to form a legitimate political party, but its influence is known to extend deep into existing political parties and structures, with allegations of direct links to many senators, and even the sitting president, Álvaro Uribe Vélez. Finally, the political party formed by the FARC suffered massacres, allegedly by the AUC and encouraged by the government, and ceased to exist. None of the key armed groups have explicitly sought territorial autonomy or independence, but autonomous zones were created during negotiations for

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<sup>8</sup>Procuraduría para la defensa de los derechos humanos, 'Comentarios sobre inseguridad ciudadana y la debilidad del estado', (n.d.), available at <http://www.pddh.gob.sv/inseguridad.htm>.



the purposes of security for the FARC and the ELN. The AUC, which already exercised effective control in many sectors of the country, has not been granted explicit control, but its influence endures, and its demobilization deal was struck in exchange for protection from prosecution (of the rank and file), reduced sentences (for leaders), and a promise of nonextradition to the United States.

## Guatemala

The conflict in Guatemala, between right-wing, often military-dominated governments, and the left-wing Guatemalan National Revolutionary Unity (Unidad Revolucionaria Nacional Guatemalteca [URNG]), lasted 36 years and claimed some 200,000 lives. It was motivated in large part by significant economic disparities, which also had disparate effects on indigenous persons (*indios*). Key industries and resources were controlled by external corporations and local elites. Land tenure was also contentious, and became more so as development programs entailed further dispossession of landholders in order to build roads and other projects. Many of those dispossessed in the 1960s and 1970s were poor farmers, and many of those were *indios*. This dispossession gave rise to protests, and to violence against the *indios*. At the same time, violence arose in response to attempts at unionization by laborers, from fruit workers to bus drivers.<sup>9</sup> The URNG championed economic change and the plight of the *indios*, and often the guerrillas took shelter in their villages, drawing attacks and reprisals against the population by the military. A peace agreement was finally reached in 1996.

The peace agreement has been described by some experts as essentially liberal, with an emphasis on democratization, but one in which power-sharing provisions were extremely limited.<sup>10</sup> Perhaps the most important element was the legalization and transformation of the URNG into a political party and its disarmament. The agreement also sought to address underlying causes of conflict, such as the deprivation of lands and the suppression of *indios*. However, neither of these provisions established formal power-sharing for political parties or power-sharing based on regional or ethnic claims. Provisions were not made for former rebels to participate in the security forces, unlike in El Salvador.

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<sup>9</sup>James Mahoney, *The Legacies of Liberalism: Path Dependence and Political Regimes in Central America* (Baltimore: Johns Hopkins University Press, 2001), pp. 238–40; Henry J. Frundt, 'Guatemala in Search of Democracy', *Journal of Interamerican Studies and World Affairs* 32, no. 3 (Autumn 1990), pp. 24–74.

<sup>10</sup>Peceny and Stanley, 'Liberal Social Reconstruction', p. 150.

Instead, the new civilian police utilized existing leadership and personnel and engaged in little new training.<sup>11</sup>

The Guatemalan accord, like its Salvadoran counterpart, has been touted as an important success in liberal peacebuilding. However, portions of the peace agreement remain to be fully implemented, and significant political violence has continued. The army has been activated repeatedly to support the police in dealing with violent crime, raising the risk of more permanent involvement by the army in internal security, which would violate the agreement. Serious abuses of human rights by the security forces have increased, as has the growth of clandestine armed groups. These groups are allegedly linked to government officials, including individuals in the state prosecutor's office and in the police and judiciary.<sup>12</sup> Attacks against human rights advocates and those seeking to implement key facets of the peace agreement have increased. The attorney-general was the target of a gunshot attack, apparently because of his investigation of several high-profile human rights cases and of officials involved in organized crime.<sup>13</sup>

## Nicaragua

Nicaragua, like its neighbors, had an unequal distribution of wealth, and was ruled by a small elite – the Somoza family, which came to power in 1936 and was able to concentrate power until the leftist Sandinista National Liberation Front (Frente Sandinista de Liberación Nacional [FSLN]) came to power in 1979. The rise to power of the Sandinistas sparked a sharp response from the United States, which supported the Contras, a rebel group based largely on Honduran soil, in its attempts to overthrow the Sandinistas. The country experienced violent, protracted conflict as the opposition Sandinistas fought to attain power in the 1960s and 1970s, and as the Contras sought to unseat them thereafter. Casualty estimates vary, ranging from 40,000 to 50,000 dead.<sup>14</sup>

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<sup>11</sup>Ibid., p. 174.

<sup>12</sup>Amnesty International, 'Guatemala: Justice Without Fear' (2002) and 'Guatemala 2002: The Human Rights Toll' (2003), both available at <http://www.amnesty.org>. See also US Department of State, 'Guatemala: Country Reports' (Washington, D.C., 2002).

<sup>13</sup>Amnesty International, 'Guatemala: Proposed International Investigatory Commission: International Support and Independence Crucial' (2003) and 'Guatemala 2002: The Human Rights Toll' (2003), both available at <http://www.amnesty.org>. See also 'United Nations Expert Expresses Concern over Threat to Guatemalan Rights Defenders, Calls for Government Action', UN Doc. HR/4607 (13 June 2002), available at <http://www.un.org/news/press/docs/2002/hr4607.doc.htm>.

<sup>14</sup>Thomas Anderson, *Politics in Central America* (United States: Praeger, 1984), p. 189.

The government regime engaged in negotiations with the FSLN and agreed to elections in 1990, which resulted in the election of Violeta Barrios de Chamorro, who as the new president of Nicaragua engaged in a series of reforms to stabilize the economy, professionalize the army and police, and privatize state-owned businesses, among other things.<sup>15</sup> The first civilian defense ministry was introduced in 1997, with the president being chief of the defense and security forces. Power-sharing was also enshrined in the peace process, with President Chamorro offering the Contras control of local government and police forces in their zones of resettlement in order to encourage them to demobilize. This effectively would also provide them territorial control in certain self-governing development zones, in addition to a security guarantee. Simultaneously, protections were offered to former Sandinistas in order to gain their support, including retention of control over the police and significant control over the army. In particular, the brother of former Sandinista president Daniel Ortega was allowed to continue as head of the army.<sup>16</sup> Yet despite these elements of power-sharing, serious violence has endured, much of it perpetrated by former soldiers or guerrillas. In addition, after the peace negotiations, many former rebels rearmed (the Recontras), as did many former government soldiers (the Recompas), and severe if episodic incidents of conflict have claimed thousands of lives. The peacebuilding process has stalled, with the continuing political violence leading one analyst to refer to the situation in Nicaragua as a 'low intensity peace'.<sup>17</sup>

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<sup>15</sup>US Department of State, 'Nicaragua: Background Note', in *Demobilized Soldiers Speak: Reintegration and Reconciliation in Nicaragua, El Salvador, and Mozambique* (Managua: Centro de Estudios Internacionales, 1995). See, generally, David R. Dye, Judy Butler, Deena Abu-Lughod, Jack Spence, and George Vickers, 'Contesting Everything, Winning Nothing: The Search for Consensus in Nicaragua, 1990–1995' (Cambridge, Mass.: Hemisphere Initiatives, November 1995).

<sup>16</sup>Barbara F. Walter, 'Designing Transitions from Civil War: Demobilization, Democratization, and Commitments to Peace', *International Security* 24, no. 1 (Summer 1999), p. 151.

<sup>17</sup>Mark Peceny and William Stanley, 'Liberal Social Reconstruction and the Resolution of Civil Wars in Central America', *International Organization* 55, no. 1 (Winter 2001), pp. 159–60; Rose J. Spalding, 'From Low-Intensity War to Low-Intensity Peace: The Nicaraguan Peace Process', in Cynthia J. Arnson, ed., *Comparative Peace Processes in Latin America* (Stanford: Stanford University Press, 1999), p. 32.

## Africa

### Sierra Leone

If El Salvador is often presented as a country where liberal peacebuilding and strategies of inclusion and power-sharing 'worked', Sierra Leone after the Lomé peace accord is often presented as a country where such strategies failed dramatically.<sup>18</sup> The history of the conflict in Sierra Leone is well known, and need not be rehearsed here in detail.<sup>19</sup> Conflict between the government and the Revolutionary United Front (RUF) erupted in 1991 and endured for over a decade, resulting in some 50,000 deaths and widespread atrocities including mutilation and sexual violence. The conflict was notable also for the widespread use of child combatants, often abducted and drugged, who were both victims and perpetrators of abuses. It appeared that the conflict might finally end when negotiations in 1999 resulted in the peace accord and a UN-mandated peacekeeping force, the United Nations Assistance Mission in Sierra Leone (UNAMSIL).<sup>20</sup> The accord provoked concern from the international community for its inclusion of an amnesty for crimes committed during the conflict. The agreement also included key power-sharing features for the major parties to the conflict: four cabinet and four noncabinet posts were allocated to each, and the RUF was given the chairmanship of the Strategic Mineral Commission. Foday Sankoh was thus able to control diamond mines; he was also given the post of vice president.<sup>21</sup>

<sup>18</sup>John Hirsch, *Sierra Leone: Diamonds and the Struggle for Democracy* (Boulder: Lynne Rienner, 2001). See also Chandra Lekha Sriram, *Globalizing Justice for Mass Atrocities: A Revolution in Accountability* (London: Routledge, 2005), chap. 6.

<sup>19</sup>See, generally, Hirsch, *Sierra Leone*. On the regional dimensions of the conflict, see Michael Pugh and Neil Cooper, with Jonathan Goodhand, 'Sierra Leone in West Africa', in *War Economies in Regional Context* (Boulder: Lynne Rienner, 2004); Comfort Ero and Jonathan Temin, 'Sources of Conflict in West Africa', in Sriram and Nielsen, eds, *Exploring Subregional Conflict*; Adekeye Adebajo and Ismail Rashid, eds, *West Africa's Security Challenges: Building Peace in a Troubled Region* (Boulder: Lynne Rienner, 2004).

<sup>20</sup>*Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone*, UN SCOR, annex UN Doc. S/1999/777 (7 July 1999), available at <http://www.sierra-leone.org/lomeaccord.html>. For the mandate of UNAMSIL, see UN Security Council Resolution 1270, UN Cod. S/RES/1270 (1999).

<sup>21</sup>*Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone*; J. Kayode Fayemi, 'Pursuing Security in the Post-Conflict Phase: Reflections on Recent African Cases and Their Implications for Current and Future Peace Operations', in International IDEA, *Democracy, Conflict, and Human Security: Further Readings* (Stockholm, 2006), p. 174.

The United Nations, which acted as a 'moral guarantor' of the accord, issued a reservation indicating that it did not consider the amnesty provision to cover international crimes. Despite the peace accord, fighting and atrocities continued, along with attacks on UNAMSIL. In May 2000, notorious RUF leader Foday Sankoh was captured, leading to discussions of the possibility of an international or other tribunal to prosecute him and other war criminals. In June, the government asked the United Nations to establish a court to try such cases, and the result was a hybrid tribunal, the Special Court for Sierra Leone (SCSL), which I have discussed elsewhere in some detail.<sup>22</sup> Because the RUF had been defeated militarily, and its head imprisoned, a final peace agreement was not negotiated. Not surprisingly, in attempts to rebuild the country's shattered institutions, the Lomé accord was not referenced, although in an early case before the SCSL the validity of the amnesty was rejected.

### Angola

The 1991 Angolan peace agreement (the Bicesse Accords) created a new national army, to comprise equal parts government troops and former rebel troops from the National Union for the Total Independence of Angola (União Nacional para a Independência Total de Angola [UNITA]). However, UNITA sent only some troops to be demobilized, while hiding tens of thousands of its rebels and their arms. Thus, when postagreement elections were held in 1992, only about a quarter of UNITA troops had disarmed, and only 45 percent of government troops had demobilized. When a new agreement was negotiated in 1994, the issue of demobilization and security power-sharing was addressed again. The new accord, the Lusaka Protocol, called for an integrated army of about 90,000 troops. While the new process was somewhat more successful, it is alleged that, on its completion in 1998, UNITA had not demobilized as many as 30,000 troops.<sup>23</sup> The Lusaka Protocol also included provisions for power and resource-sharing through the appointment of UNITA members to key political ministries, particularly those with control over economic resources such as geology and mines, agriculture, and finance.<sup>24</sup> The inter-

<sup>22</sup>Chandra Lekha Sriram 'Wrong-Sizing International Justice? The Hybrid Tribunal in Sierra Leone', *Fordham International Law Journal* 29, no. 3 (2006), pp. 472–506.

<sup>23</sup>Matthew Hoddie and Caroline Hartzell, 'Civil War Settlements and the Implementation of Military Power-Sharing Arrangements', *Journal of Peace Research* 40, no. 3 (May 2003), pp. 310–11.

<sup>24</sup>Caroline Hartzell, 'Explaining the Stability of Negotiated Settlements to Intra-state Wars', *Journal of Conflict Resolution* 43, no. 1 (February 1999), p. 9.

mittent disarmament, demobilization, and reintegration (DDR) process pushed both sides to renewed fighting, which terminated with a government victory. What followed, in 2002, was a memorandum of understanding known as the Luena Accord, which resulted in a blanket amnesty for crimes committed during the conflict, a more thorough but still flawed domestic DDR process, and integration of some top UNITA generals into the army.<sup>25</sup>

## Liberia

Civil war in Liberia claimed an estimated 150,000 lives between 1989 and 1997, but a peace agreement ended the fighting and led to the installation of a government of national unity, headed by President Charles Taylor. The United Nations installed a peacebuilding support office in Liberia, the first of its kind. However, continuing mistrust and disagreements between the government and opposition, human rights violations, and failure to reform the security sector, led to a breakdown of the peace and the resumption of conflict.<sup>26</sup> Conflict continued until 2003, with the estimated total death toll to that date reaching 250,000.<sup>27</sup>

A peace agreement was reached in Liberia in August 2003, with the support of the United States and the Economic Community of West African States (ECOWAS), mandating Charles Taylor's exile to Nigeria, as well as an interim power-sharing deal. The agreement allocated five cabinet posts to the government, and five cabinet posts to each of the two rebel groups. Another six posts, in a transitional legislature, were allocated to political parties and civil society. The power-sharing deal was buttressed by third-party security guarantees, first by an ECOWAS peacekeeping force, and then by a UN peacekeeping force, the United Nations Mission in Liberia (UNMIL).<sup>28</sup> While the transition could be described as peaceful, and DDR

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<sup>25</sup>Gwinyayu A. Dzinesa, 'Postconflict Disarmament, Demobilization, and Reintegration of Former Combatants in Southern Africa', *International Studies Perspectives* 8, no. 1 (February 2007), pp. 76–7.

<sup>26</sup>UN Department of Peacekeeping Operations (DPKO), 'Liberia-UNMIL-Background' (2005), available at <http://www.un.org/Depts/dpko/missions/unmil/background.html>.

<sup>27</sup>'Country Profile: Liberia' (2 January 2007), available at [http://news.bbc.co.uk/1/hi/world/africa/country\\_profiles/1043500.stm](http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1043500.stm).

<sup>28</sup>*Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties* (18 August 2003), available at [http://www.usip.org/library/pa/liberia/liberia\\_08182003\\_cpa.html](http://www.usip.org/library/pa/liberia/liberia_08182003_cpa.html); UN DPKO, 'Liberia-UNMIL-Background'; Fayemi, 'Pursuing Security in the Post-Conflict Phase', pp. 174–5.

was a particular challenge, Ellen Johnson-Sirleaf was elected president and successfully took office in January 2006. Stabilization has been slow, with the capital falling victim to attacks by armed gangs, and the new police force unable to maintain security. That the security situation has not deteriorated further is due only to the ongoing presence of the 15,000-member UNMIL force.<sup>29</sup>

### **Burundi**

Burundi has experienced several peace or quasi peace processes with elements of power-sharing since the early 1990s. The first, in 1994, followed the downing of a plane carrying both the Burundian and the Rwandan president, which contributed to sparking the Rwandan genocide. Fears of similar violence in Burundi led to the creation of an interim power-sharing government, with an executive body, the National Security Council, comprising 55 percent majority and 45 percent minority memberships. A coalition government was created with the support of 7 of the 13 main political parties in the country. However, ethnically motivated violence from Hutu and Tutsi militias increased, in part due to the government's apparent lack of commitment to power-sharing, and allegations of cheating in the form of support to militias.<sup>30</sup> A coup followed in 1996, installing a Tutsi, Pierre Buyoya, as president. Negotiations in Arusha in 2000, brokered by Nelson Mandela, resulted in an agreement to permit Buyoya to remain in office for 18 months, after which he would be replaced by a Hutu. Under the Arusha Agreement, a transitional power-sharing cabinet was also put into place. A strong executive remained, but the National Assembly was to comprise all parties to the agreement, alongside a new Senate largely comprising dignitaries. However, the process failed to stem the violence, which resulted in a number of successive coup attempts. The Arusha process continued, with the Pretoria Protocol bringing one armed group, the National Council for the Defense of Democracy–Forces for the Defense of Democracy (Conseil National pour la Défense de la Démocratie–Forces pour la Défense de la Démocratie [CNDD-FDD]), into the

<sup>29</sup>Ledgerhood Rennie, 'Liberia: A Year of Slow Progress' (16 January 2007), available at <http://news.bbc.co.uk/1/hi/world/africa/6266155.stm>; Ledgerhood Rennie, 'Vigilantes Take on Liberian Gangs' (19 September 2006), available at <http://news.bbc.co.uk/1/hi/world/africa/5357718.stm>.

<sup>30</sup>Donald Rothchild, 'Reassuring Weaker Parties After Civil Wars: The Benefits and Costs of Executive Power-Sharing Systems in Africa', *Ethnopolitics* 4, no. 3 (September 2005), pp. 261–2.

coalition government and guaranteeing it seats in the transitional cabinet and in the National Assembly, as well as 40 percent of the officer corps in the military and 35 percent of positions in the police force. This arrangement was modified in the Global Peace Accords later in the year, which gave the CNDD-FDD three ministry positions, including the Ministry of State; 15 deputies, including a second vice president and the deputy secretary of the National Assembly; and a significant number of local and ambassadorial posts. Forty percent of officers in the security forces were drawn from CNDD-FDD. The party refused to participate in the Senate, however, given its solely Hutu and Tutsi ethnic composition.

In May 2004 the United Nations Operation in Burundi (ONUB) was authorized, to be composed first of existing African Mission in Burundi (AMIB) forces. The mission was to facilitate a transparent electoral process as envisioned by the Arusha Agreement. Tensions, however, have continued to mount. While armed conflict has not resumed, the transitional period has been extended twice, and CNDD-FDD has refused to participate in cabinet meetings. Further, there have been reports of some groups attempting, through a variety of means, to 'curb' rivals' electoral activities.<sup>31</sup>

Still, in March 2005, voters approved a new power-sharing constitution that guarantees posts for the different ethnic groups in parliament, the army, and the government. In August, a new president, a former rebel leader, was elected, and there is some hope now for the consolidation of peace.<sup>32</sup>

## **Sudan**

As is discussed in more detail in Chapter 4, the Machakos Protocol of 2002, and the Navaisha Protocol of 2004, along with several protocols dealing with security, wealth, and territory, envisage power-sharing along several dimensions as a solution to the conflict in Southern Sudan. The national government remains in control of all of Sudan, but provision

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<sup>31</sup>Fourth Report of the Secretary-General on the United Nations Operation in Burundi', UN Doc. S/2005/328 (19 May 2005), para. 5; UN DPKO, 'Burundi-ONUB-Background' (2006), available at <http://www.un.org/depts/dpko/missions/onub/background.html>.

<sup>32</sup>'Burundi Backs New Constitution' (1 March 2005), available at <http://news.bbc.co.uk/1/hi/world/africa/4306831.stm>; Charles Bigirimana, 'Burundi's Born-Again Ex-Rebel Leader' (26 August 2005), available at <http://news.bbc.co.uk/1/hi/world/africa/4162504.stm>.



has been made for future autonomy of the south. Following a six-year 'interim' period, a referendum will be held to allow a vote on self-determination. A government of national unity and a parliament are to have proportional representation of southerners, and southerners have also been guaranteed mid-level and senior positions in the civil service. Proportional revenue-sharing, for oil revenues deriving from the south, has also been set forth. Rebel leader John Garang was sworn in as vice president in 2005. The United Nations Mission in Sudan (UNMIS) was established in March 2005, with up to 10,000 peacekeepers authorized.

The future of the agreements remains in some doubt following the death of John Garang in a helicopter crash in July 2005, which sparked riots in Khartoum. Prospects for peace may be further clouded by the violence and alleged genocide occurring in western Darfur.

### **Democratic Republic of Congo**

Violence in the Democratic Republic of Congo (DRC) has resulted in the death of more than three million people since 1997, directly or indirectly. Negotiations known as the Inter-Congolese Dialogue have sought to conclude fighting among several armed groups and militias, many of which have been aided by neighboring countries, complicated the peace process. In 1999, a cease-fire agreement was reached in Lusaka, which also led to a transitional power-sharing government that included the government, several rebel groups, the progovernment militia, and civil society. The Lusaka Protocol also included provisions for disarming and demobilizing factions, as well as a joint military commission to address security concerns.<sup>33</sup> Noting the presence of significant numbers of foreign troops from neighboring countries on DRC territory, as well as acting in support of the process, in July 1999 the UN Security Council authorized a small contingent of military liaison personnel in the country; the force grew significantly thereafter, reaching over 16,000 in 2004. However, the power-sharing government has had difficulty taking control of the entire territory, and disputes over the appointment of provincial political and military leaders have arisen. Armed factions remain distrustful, and have been reluctant to abandon their military control structures.<sup>34</sup>

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<sup>33</sup>UN DPKO, 'Democratic Republic of the Congo-MONUC-Background' (2005), available at <http://www.un.org/depts/dpko/missions/monuc/background.html>.

<sup>34</sup>Rothchild, 'Reassuring Weaker Parties After Civil Wars', p. 264.

## **Rwanda**

In 1993 the Rwandan Patriotic Front (RPF) and the Rwandan government negotiated a settlement, the Arusha Agreement, to their internal conflict. This involved a power-sharing arrangement between the representatives of the majority Hutu government and a number of opposition parties and the minority Tutsi RPF. However, mistrust remained high, given the propagation of Hutu hate propaganda, specifically through broadcasts of Radio Télévision Libre des Mille Collines. As is now well known, the shooting down in 1994 of a plane carrying both the Rwandan and the Burundian president contributed to sparking widespread genocide in the country. As the genocide progressed, the United Nations Assistance Mission for Rwanda (UNAMIR) was unable to respond, and was subjected to heavy criticism subsequently. The conflict was terminated only with the military victory of the RPF. In 1996, the Rwandan government requested the withdrawal of UNAMIR, stating that the mission was not addressing the priority needs of the country.<sup>35</sup>

## **Côte d'Ivoire**

Côte d'Ivoire had been, relative to its neighbors in West Africa, fairly stable. However, a power vacuum following the death of long-ruling president Félix Houphouët-Boigny led to competition between General Robert Gueï and Laurent Gbagbo, involving some violent clashes. Subsequently a number of coup attempts and disputes over the issue of citizenship and Ivoirité fostered significant conflict. Further conflict ensued, and a cease-fire and power-sharing agreement in 2002 dissolved quickly. In 2003, with the support of French brokers, the Linas Marcoussis Agreement was reached, which established a power-sharing transitional government. However, within a few months, regional violence and rhetoric led one rebel group, New Forces, to withdraw from the coalition. The group formally left all power-sharing arrangements in 2004 when militias in the capital attacked people from the north of the country and foreigners. At the same time, President Gbagbo indicated that he would not institute provisions of the agreement he thought were at variance with the nation's constitution, and kept his presidential prerogatives. Violent demonstrations took place in the streets of the capital, and there was significant contestation over the return of the

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<sup>35</sup>UN DPKO, 'Rwanda-UNAMIR-Background' (no date), available at [http://www.un.org/depts/dpko/dpko/co\\_mission/unamirs.htm](http://www.un.org/depts/dpko/dpko/co_mission/unamirs.htm).

newly appointed prime minister to the country. The power-sharing arrangements remain contentious, and in 2004, in recognition of the dangerous situation, the United Nations replaced its existing small political mission with a more significant force, the United Nations Operation in Côte d'Ivoire (UNOCI).<sup>36</sup>

### Guinea-Bissau

An attempted coup in 1998 by the army chief of staff, General Ansumane Mané, against President João Vieira, sparked an 11-month civil conflict in Guinea-Bissau.<sup>37</sup> This followed the president's accusation that Mané had sold arms to secessionists in the Casamance region of neighboring Senegal, and his attempt to arrest the general. In response to the fighting, Senegal and Guinea sent troops in support of Vieira. Vieira requested intervention from the ECOWAS Cease-Fire Monitoring Group (ECOMOG), and in July 1998 the warring factions signed a memorandum of understanding calling for the departure of Guinean and Senegalese troops and their replacement with observers from lusophone states. In August, a cease-fire agreement was reached, but two months later heavy fighting broke out in several cities, with Mané's supporters capturing several of them. A further peace agreement was brokered in November by ECOWAS, the first of the accords to be endorsed directly by Mané and Vieira.<sup>38</sup> This agreement provided for a cease-fire, the creation of a government of national unity including Mané and his supporters, the demobilization of some 28,000 fighters, the withdrawal of foreign troops, and the imposition of an ECOMOG force in the country. Francisco Fadul was appointed prime minister. The ECOMOG force was underresourced and plagued with political difficulties, and both parties to the accord violated the cease-fire regularly.

In May 1999, Mané sought to oust Vieira again, this time successfully and without the interference of ECOMOG. The parliament sought to put Vieira and his senior advisers on trial for trafficking arms to Casamance rebels. The prime minister and donors eventually brokered

<sup>36</sup>UN Security Council Resolution 1528, UN Doc. S/RES/1528 (27 February 2004); UN DPKO, 'UN Operation in Côte d'Ivoire' (2005), available at <http://www.un.org/depts/dpko/missions/unoci/index.html>.

<sup>37</sup>See, generally, Adekeye Adebajo, *Building Peace in West Africa: Liberia, Sierra Leone, and Guinea-Bissau* (Boulder: Lynne Rienner, 2002) pp. 111–36.

<sup>38</sup>*Agreement Between the Government of Guinea-Bissau and the Self-Proclaimed Military Junta* (1 November 1998), available at [http://www.usip.org/library/pa/gb/gb\\_11011998.htm](http://www.usip.org/library/pa/gb/gb_11011998.htm).

a deal that allowed Vieira to seek refuge in Portugal on the condition that he relinquish claims to the presidency. International and regional organizations rejected the coup as unconstitutional, but in recognition of its own failings the ECOMOG force withdrew. It was subsequently replaced with a very small UN peacebuilding support office. Elections held in November 1999 placed Kumba Yala in the presidency, but he was unable to control Mané's supporters. Mané again sought to overthrow the president in November 2000, although this coup failed and some of Mané's supporters took refuge in the UN peacebuilding support office. While the immediate threat of civil war has subsided with the removal of one side of the conflict, there remains significant risk that war will reemerge in Côte d'Ivoire, voiced by both the Special Representative of the Secretary-General in the country and by UN Assistant Secretary-General Ibrahima Fall.<sup>39</sup> President Yala has been accused of taking decisions without appropriate consultation, and the country remains politically unstable.<sup>40</sup> The failure of the 1998 peace agreement to restrain Mané, despite including him in the government of national unity, suggests the limits of power-sharing's appeal to him and his supporters.

## Chad

Power-sharing in Chad has been somewhat unusual. Unlike traditional peace processes, which usually involve most of the main players, power-sharing pacts in Chad were developed between the president and a series of clan or rebel leaders over the course of two regimes. The regime of Hissène Habré in the 1980s has been depicted by some analysts as offering too much power-sharing. Habré's regime took power in 1982, but the country's war continued until a settlement in 1989. During that time period, Habré struck deals with numerous minor armed groups, bringing rebels into political life by offering leaders cabinet positions. The result was a large and unwieldy cabinet. He also sought to give incentives to rebel fighters by incorporating them into the national army, a move that created an oversized force. These attempts to incorporate armed groups through participation in the security forces and the government, however, neither prevented conflict, nor

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<sup>39</sup>UN Department of Public Affairs (DPA), 'Guinea-Bissau' (2002), available at [http://www.un.org/depts/dpa/docs/conflict/guinea\\_bissau.html](http://www.un.org/depts/dpa/docs/conflict/guinea_bissau.html).

<sup>40</sup>Adebajo, *Building Peace in West Africa*, p. 130; UNDP, 'Consolidating the Peace in Guinea-Bissau' (2003), available at <http://www.reliefweb.int>.

meant that Chad was a democracy; it was a one-party state. Instead, Habré ruled by presenting himself as the protector of national unity, but with the removal of key enemies, that claim became increasingly difficult to maintain. Habré's regime also perpetrated serious human rights violations against members of many other clans. A coup attempt in 1989 failed, but Habré was overthrown in 1991 by his own former army chief, Idriss Deby. Analysts suggest that it was Habré's cession of so many posts to former rebels that spurred Deby to overthrow him. Deby's regime also promoted power-sharing, and retained a few members of Habré's cabinet while offering posts to former rebels through the early 1990s to encourage them to lay down arms. His cabinet, too, became bloated, eventually comprising 33 ministers.<sup>41</sup> Members of his own ethnic group, who had been central to his rebel force (and later army), resented his push for multiparty democracy, expecting to be sidelined, and in 1992 surrounded the presidential palace. The incident was defused, but is indicative of the challenges to power-sharing arrangements that may come from spoilers (including spoilers from a leader's own allies) even where no traditional formal or unitary peace process has enshrined such arrangements.

### **Mozambique**

The peace agreement in Mozambique, reached between the government and the rebel Mozambican National Resistance (Rêsistencia Nacional Moçambicana [RENAMO]) involved power-sharing along several dimensions and today is considered a relative success, despite serious difficulties in initial implementation. RENAMO raised its security concerns in the negotiations, demanding a mediator, a cease-fire only after discussion of political and military reforms, and UN monitoring through a large force like the one that had been established for Cambodia. RENAMO also demonstrated clear concern about cheating by the government in the early implementation phases, particularly elections,<sup>42</sup> which the agreement sought to address. In terms of security, it provided for the creation of a new national army, integrating equal numbers of RENAMO and Mozambican government fighters. It also barred foreign troops from the country's soil. The demobilization and reintegration timetable was carefully phased in a tit-for-tat fashion to alleviate security concerns.

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<sup>41</sup>Pierre M. Atlas and Roy Licklider, 'Conflict Among Former Allies After Civil War Settlement: Sudan, Zimbabwe, Chad, and Lebanon', *Journal of Peace Research* 36, no. 1 (January 1999), pp. 43–7.

<sup>42</sup>Walter, 'Designing Transitions from Civil War', pp. 147–8.

The agreement also stipulated that the police forces would be restructured, and that RENAMO could nominate members of a newly created oversight commission to monitor the security forces. In terms of politics, the agreement provided for multiparty electoral competition, and the constitution of RENAMO as a political party. However, both sides delayed demobilization, and RENAMO delayed sending troops for officer training, apparently out of mistrust. Demobilization was not completed until two years later, when UN troops arrived.<sup>43</sup> Implementation of political power-sharing was also problematic: while the government's candidate won the presidency and carried five of the country's ten provinces, RENAMO won the other five provinces, and the president refused to either include the RENAMO leader in the new cabinet or form a power-sharing government. As a result, a dual administration was formed, one foreseen in the agreement to protect RENAMO, in which the rebels retained strength in key rural areas. However, while this may have protected RENAMO, it did not fulfil the terms of the peace agreement, or constitute genuine power-sharing.<sup>44</sup> Nonetheless, Mozambique is often viewed as a success story because violent conflict has not resumed, and because the country has successfully held three postagreement democratic elections, in 1994, 1999, and 2004.<sup>45</sup>

## Asia-Pacific

### The Philippines

For 24 years, the Moro National Liberation Front (MNLF) fought a war in the Mindanao region in the southern Philippines, seeking to secede from the country, notwithstanding the existence of legislation establishing autonomy, in the form of the Autonomous Region of Muslim Mindanao (ARMM).<sup>46</sup> The conflict, thought to have resulted in the death

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<sup>43</sup>*General Peace Agreement for Mozambique* (2002), available at <http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/moz4.pdf>; Hoddie and Hartzell, 'Civil War Settlements', p. 310. See also Dzinesa, 'Postconflict Disarmament, Demobilization, and Reintegration', pp. 77–8.

<sup>44</sup>Walter, 'Designing Transitions from Civil War', pp. 149–50.

<sup>45</sup>Khabele Matlosa, 'Electoral Processes and Post-Settlement Peace Building: Perspectives from Southern Africa', in International IDEA, *Democracy, Conflict, and Human Security*, pp. 194–5.

<sup>46</sup>Kenneth E. Bauzon, 'The Philippines: The 1996 Peace Agreement for the Southern Philippines: An Assessment', *Ethnic Studies Report* 17, no. 2 (July 1999); pp. 253–81.

of some 120,000 people, was partially ended with a 1996 peace agreement. The agreement created a three-year transitional period during which time the government would engage in massive development in the region. In the second phase, legislation was to repeal, amend, or extend the ARMM, and plebiscites were to be held to allow voters in various provinces in the south to vote to join (or not) the ARMM, then comprising four regions. The agreement also provided for the inclusion of MNLF representatives in a consultative assembly to monitor the promotion of development in the region, and the inclusion of some former MNLF fighters in the national police, and others in the armed forces. Last, the agreement provided for an ARMM autonomous government with its own legislative assembly. This government was allocated considerable control over resources deriving from taxation, the capacity to contract with corporations and receive foreign aid, and the power to establish *sharia* as the law of the region. The MNLF was to lead the region's Special Zone for Peace and Development in the region, and the ARMM was to have its own security forces as part of the national police.<sup>47</sup> The peace agreement did not provide for disarmament of the rebels, which was still being sought by the government in 2007.<sup>48</sup>

Despite its provisions, the peace agreement did not halt all fighting in the region. Implementation was slow, and the second phase, scheduled to begin in 1999, was delayed. Fighting between the MNLF and the government briefly erupted in 2001, with MNLF leader Nur Misuari seeking to further slow implementation of the peace agreement. The Moro Islamic Liberation Front (MILF) continued fighting as well.<sup>49</sup> The MILF and many observers have argued that the peace agreement failed to bring development to the region, and the government of the Philippines has accused the Autonomous Government of mismanagement of funds. One critical observer suggests that the autonomy arrangement has failed, in part because of interference by the national government,

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<sup>47</sup>*Final Agreement on the Implementation of the 1976 Tripoli Agreement Between the Government of the Republic of the Philippines and the Moro National Liberation Front* (2 September 1996), available at <http://www.c-r.org/our-work/accord/philippines-mindanao/peace-agreement.php>.

<sup>48</sup>Philippines to Seek Disarmament of Muslim Eebels in 1996 Peace Pact' (5 February 2007), available at <http://www.reliefweb.int>.

<sup>49</sup>Thomas M. McKenna, 'Muslim Separatism in the Philippines: Meaning Autonomy or Endless War?' (2007), available at [http://www.asiasource.org/asip/mckenna\\_peace.cfm](http://www.asiasource.org/asip/mckenna_peace.cfm); David G. Timberlake, 'The Peace Agreement with Muslim Mindanao Isn't Working', *International Herald Tribune* (26 November 2001), available at <http://www.iht.com>.

and in part because of the weakness of the Philippine state. The MILF has rejected the autonomy solution, suggesting that a federal solution or complete independence would be more appropriate.<sup>50</sup> Many analysts suggest that autonomy has not brought peace to the region, and comments by Misuari suggest that the MNLF has not fully embraced the autonomy agreement that it negotiated.<sup>51</sup>

### Papua New Guinea

Papua New Guinea is often depicted as an unusual success case: a country with extreme ethnic and linguistic fragmentation that has managed to escape widespread conflict and remain democratic.<sup>52</sup> It has experienced local ethnic conflict, and indeed very severe conflict in Bougainville. Much of the conflict in the country has surrounded elections. The country's political structure has remained democratic since independence, with representative democracy but a fragmented party system. However, there appears to be no suggestion that it is institutionalized power-sharing structures that have limited ethnic conflict in the country. Rather, it appears that the extreme fragmentation of the country means that no single group can ever have a realistic chance of gaining control at the national level, so groups seek local control and must cooperate with others at the national level.<sup>53</sup> This, it has further been argued, functions well in a parliamentary system, which allows for shifting coalitions based on interest. However, one element of power-sharing – territorial – does appear to have aided conflict management. This is the 'quasi-federal' provincial government system, which has devolved some power and, it is argued, limited separatist demands.<sup>54</sup>

One significant conflict, in Bougainville, was the subject of a peace agreement in 1997, which relied significantly on territorial autonomy. A comprehensive agreement for Bougainville was reached in 2001, establishing an interim period during which Bougainville and Papua New

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<sup>50</sup>Benedicto Bacani, 'Autonomy and Peace: Lessons from the Southern Philippines' (19 May 2005), available at [http://www.usip.org/reports/2005/0519\\_bacani.html](http://www.usip.org/reports/2005/0519_bacani.html).

<sup>51</sup>Bauzon, 'The Philippines'.

<sup>52</sup>Benjamin Reilly, 'Democracy, Ethnic Fragmentation, and Internal Conflict: Confused Theories, Faulty Data, and the "Crucial Case" of Papua New Guinea', *International Security* 25, no. 3 (Winter 2000–1), pp. 162–85.

<sup>53</sup>*Ibid.*, p. 178.

<sup>54</sup>*Ibid.*, p. 180. Benjamin Reilly also suggests that proportional representation would have been an inappropriate electoral model, but this is due specifically to the extremely fragmented nature of the polity.



Guinea would share sovereign authority and certain sovereign functions. Bougainville was to assume its sovereign status only with the implementation of a weapons disposal plan and the attainment of certain governance goals. Secession might follow through a referendum, but only after 10–15 years, following completion of weapons disposal.<sup>55</sup>

## **Cambodia**

The Cambodian conflict was long and protracted. Under the rule of the Khmer Rouge, as many as one million Cambodians died in a genocide that ended only with the invasion of the country by Vietnam in 1978.<sup>56</sup> The invasion installed a new regime, that of Hun Sen and Heng Samrin, which provoked a guerrilla movement comprising three key resistance groups. In 1982, all four groups, with the encouragement of the Association of Southeast Asian Nations (ASEAN), created a coalition government. However, this did not bring a close to the fighting, and Vietnamese troops remained in the country for over a decade. The parties agreed in principle to disarmament and UN supervision, with elections planned for 1990, and reached a peace agreement the following year. The 1991 Paris Peace Agreement required that each of Cambodia's four fighting forces, including that of the government, reduce its membership by at least 70 percent, with the remaining 30 percent to be integrated into a new army. However, one of the forces, the Khmer Rouge, refused to demobilize and disarm its fighters, and boycotted the 1993 elections. Those elections resulted in a coalition government of Prince Ranariddh's National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique, et Coopératif [FUNCINPEC]) and Hun Sen's Cambodian People's Party (CPP), which did not work well together.<sup>57</sup> In 1994, with negotiations with the Khmer Rouge failing, the government began an offensive. The security situation stabilized by 1997, with the Khmer Rouge fighting force largely exhausted, after which Hun Sen, in a move

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<sup>55</sup>Paul R. Williams and Francesca Jannotti Pecci, 'Earned Sovereignty: Bridging the Gap Between Sovereignty and Self-Determination', *Stanford Journal of International Law* 40 (Summer 2004), p. 358.

<sup>56</sup>For an overview of the conflict and the role of the United Nations, see Michael W. Doyle, *UN Peacekeeping in Cambodia: UNTAC's Civil Mandate* (Boulder: Lynne Rienner, 1995).

<sup>57</sup>Hoddie and Hartzell, 'Civil War Settlements', p. 311; Ronald Bruce St John, 'Democracy in Cambodia – One Decade, US\$5 Billion Later: What Went Wrong?' *Contemporary Southeast Asia* 27, no. 3 (2005), p. 410.

largely condemned by the international community, staged a coup. The 1998 elections resulted in another coalition government between the CPP and FUNCINPEC, during which time Hun Sen was able to consolidate political power. In the 2003 elections, the CPP again won a majority, but was unable to form a government on its own. Initially, FUNCINPEC refused to form a coalition with the CPP, resulting in a stand-off. The stand-off was eventually resolved through a power-sharing arrangement, but at great cost. In particular, numerous new posts and cabinet seats were created, which drained the economy. By 2005, Hun Sen had consolidated control of the government and security forces, and increased his efforts to crack down on dissent. Some observers have argued that rather than becoming democratic, Cambodia was moving toward one-party rule, with the 20 parties that competed in the 1993 elections having been winnowed to 3 by 2005, and with Hun Sen's CPP the dominant party.<sup>58</sup>

## Europe

### Northern Ireland

Violence in Northern Ireland, known as the 'Troubles', dates back to civil rights clashes in the late 1960s. A brief power-sharing arrangement, from 1973 to 1974, between those supporting independence and those supporting union with the rest of the United Kingdom, collapsed.<sup>59</sup> The Good Friday Agreement, reached in May 1998, enshrined power-sharing through a 10-member executive, with each party represented in proportion to its electoral share in the parliamentary assembly, and the posts of first minister and deputy first minister held by a unionist and a nationalist, respectively, elected jointly by the parliamentary assembly. However, implementation was repeatedly delayed due to disputes over whether disarmament was a primary condition for establishment of the executive, or whether the establishment of the executive was a condition for disarmament.<sup>60</sup>

### Moldova

Following Moldova's independence from the former Soviet Union, politicians considered union with Romania, the kin state of the majority of

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<sup>58</sup>St John, 'Democracy in Cambodia', pp. 411–15, 424.

<sup>59</sup>A full chronology is available at <http://www.bbc.co.uk/history/recent/troubles>.

<sup>60</sup>Ulrich Schneckener, 'Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict', *Journal of Peace Research* 39, no. 2 (March 2002), p. 210.

the population, and Moldovan was declared the national language. These steps concerned various minorities in the country, and Transnistria and Gagauzia declared themselves separate republics. Transnistrian leaders developed tight links with the Russian government, and the Transnistrian declaration of autonomy led to battles between the government and separatists in which several hundred were killed and as a result of which tens of thousands of refugees fled to Ukraine. Russian troops intervened to stop the violence. A peace agreement for Transnistria was reached between the Moldovan government and the Russian government in 1992, including the creation of a joint Russian, Moldovan, and Transnistrian peacekeeping force. In 1994, Transnistria and Gagauzia were granted special status in Moldova, and Gagauzia passed implementing legislation. However, reaching final agreement in Transnistria proved more difficult. A 1997 proposal for significant autonomy for Transnistria was not accepted, and attempts by the Organization for Security and Cooperation in Europe (OSCE), Russia, and Ukraine to broker agreement repeatedly failed.<sup>61</sup> Transnistrian leaders advocating separatism have proven intransigent, and many are subject to an EU travel ban, still in place as of this writing.<sup>62</sup> Transnistrian leaders continue to reject autonomy in favor of complete independence, suggesting the limited appeal of autonomy alone.

## Georgia

Several regions in Georgia, in the former Soviet Union, have experienced conflict, including South Ossetia, Abkhazia, and Javakheti.<sup>63</sup> Of these, the first two are of greatest interest. Shortly after Georgia became independent of the Soviet Union, the regions of South Ossetia and Abkhazia sought to secede. In Abkhazia, the attempt to secede was provoked by a government decision to return to the pre-Soviet constitution,

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<sup>61</sup>Maria Raquel Freire, 'Crisis Management: The OSCE in the Republic of Moldova', *Journal of Conflict, Security, and Development* 2, no. 2 (2002), pp. 69–90.

<sup>62</sup>UK Foreign and Commonwealth Office, 'Moldova' (2007), available at <http://www.fco.gov.uk>; US Department of State, 'Background Note: Moldova' (March 2007), available at <http://www.state.gov/r/pa/ei/bgn/5357.htm>.

<sup>63</sup>See Anna Matveeva, 'Javakheti, Georgia: Why Conflict Prevention?', in Chandra Lekha Sriram and Karin Wermester, eds, *From Promise to Practice: Strengthening UN Capacities for the Prevention of Violent Conflict* (Boulder: Lynne Rienner, 2003); 'Georgia' (2007), available at <http://www.fco.gov.uk>; UNDP, 'Project Brief: Abkhazia, Georgia, Peacebuilding and Recovery Programme Initial Phase' (23 February 2005).

raising concerns that the status of Abkhazia would not be adequately addressed. The Supreme Soviet of the region drafted a treaty for a federal structure and sent it to the Georgian capital, but there was no response. Georgian forces proceeded to attack Abkhaz government buildings, and the armed conflict that ensued led to the displacement of some 300,000 people. A cease-fire provided for separation of forces and a Commonwealth of Independent States (CIS) peacekeeping force, established in 1994, along with a modest UN observer mission.<sup>64</sup> A formal peace accord, the Moscow Agreement, was reached in 1994. In 1998, armed clashes broke out a second time in Abkhazia, although they subsided. A UN peace process to address return of displaced persons, as well as possible comprehensive political settlement, has had little success as of this writing. In South Ossetia, fighting also broke out in 1992 over demands for independence. A cease-fire was reached the same year, effectively recognizing a zone of conflict within which former South Ossetian authorities continued to exercise control, rather than the national government. The agreement also established the Joint Control Commission (JCC), with representatives from Georgia, Russia, and North and South Ossetia, to supervise observance and implementation of the agreement, but a wider political settlement has not been reached.<sup>65</sup> In 2004, armed clashes returned when Georgia sent troops to the region in what it termed an 'anticrime' operation. In 2006, the parliament of Georgia called on the government to review the 1992 peace agreement, raising tensions.<sup>66</sup>

Though comprehensive peace agreements have not been reached in these situations, I have included them here for completeness, given that they are often coded by analysts as involving one or more of the inclusion incentives under scrutiny in this volume. Clearly, the demands for and attempts at independence indicate an interest, by some, in autonomy. Inclusion incentives have been limited, however, with the mixed membership of the JCC being the most relevant, and have clearly failed to promote final agreements.

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<sup>64</sup>S. Neil MacFarlane, 'Georgia-Abkhazia: The Role of the UN' (September 1999), available at <http://www.c-r.org/our-work/accord/georgia-abkhazia/un-role.php>.

<sup>65</sup>Lara Olson, 'Georgia-Abkhazia: The South Ossetia Case' (September 1999) available at <http://www.c-r.org/our-work/accord/georgia-abkhazia/south-ossetia.php>.

<sup>66</sup>Jean-Christophe Peuch, 'Russia/Georgia: Tensions Continue to Mount', *Radio Free Europe/Radio Liberty* (23 February 2006), available at <http://www.rferl.org>.

## Bosnia

The Dayton Accord, reached in 1995, was meant to terminate the conflict in Bosnia and Herzegovina that broke out following the collapse of the Soviet Union and the initiation of the breakup of the former Yugoslavia. The conflict involved mass killings, including targeted ethnic cleansing, and resulted in the displacement of about two million people, or half the population.<sup>67</sup> The agreement provided for a new constitutional structure and two general types of power-sharing arrangements among the three groups on Bosnian territory: Bosnian Muslims, Croats, and Serbs. The state was segmented into two 'entities': a Muslim-Croat federation and a Serb republic. Each entity had its own president, legislature, and governmental institutions, and significant autonomy in many policy spheres.

However, at the center there remained a unitary government, albeit weak, with a rotating presidency representing each of the three communities, and quotas for election or appointment to the central legislature.<sup>68</sup> Observers have argued that the arrangement was fundamentally flawed, although some suggest that the fault lies not in the Dayton Accord, but in the institutions established. In particular, the separate entities are very dysfunctional, and also relatively powerful, thus overriding any possible efficacy of the joint institutions.<sup>69</sup> A significant international presence through the Implementation Force (IFOR) and then the Stabilization Force (SFOR), both under the North Atlantic Treaty Organization (NATO), plus the deployment of an international police force and the presence of a strong Office of the High Representative

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<sup>67</sup>*General Framework Agreement for Peace in Bosnia and Herzegovina* (14 December 1995), available at [http://www.umn.edu/humanrts/icty/dayton/dayton\\_framework.html](http://www.umn.edu/humanrts/icty/dayton/dayton_framework.html); US Department of State, 'Background Note: Bosnia and Herzegovina' (September 2006), available at <http://www.state.gov/r/pa/ei/bgn/2868.htm>; BBC, 'Country Profile' (4 January 2007), available at [http://news.bbc.co.uk/1/hi/world/europe/country\\_profiles/1066886.stm](http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1066886.stm).

<sup>68</sup>Florian Bieber, 'Bosnia-Herzegovina: Developments Towards a More Integrated State?' *Journal of Muslim Minority Affairs* 22, no. 1 (2002), pp. 205–18; Carrie Manning and Miljenko Antić, 'The Limits of Electoral Engineering', *Journal of Democracy* 14, no. 3 (July 2003), pp. 45–60; Elizabeth M. Cousens, 'Building Peace in Bosnia', in Elizabeth M. Cousens and Chetan Kumar, with Karin Wermeister, eds, *Peacebuilding as Politics: Cultivating Peace in Fragile Societies* (Boulder: Lynne Rienner, 2002), pp. 113–52; Schneckener, 'Making Power-Sharing Work', pp. 209–10; International Crisis Group, 'Ensuring Bosnia's Future: A New International Engagement Strategy', *Europe Report* no. 180 (15 February 2007), available at <http://www.crisisgroup.org/home/index.cfm?id=4655&l=1>.

<sup>69</sup>Bieber, 'Bosnia-Herzegovina', pp. 211–13.

(OHR), were needed for over a decade after the agreement, with the OHR office to be closed in June 2008.<sup>70</sup> The fate of the power-sharing arrangements after that is thus somewhat uncertain, particularly as they continue to be viewed by many as 'imported'.<sup>71</sup>

## Croatia

The conflict in Croatia broke out as did the conflict in Bosnia, over secessionist efforts in the former Yugoslavia following the end of the Cold War. The first conflict, which broke out in 1991, was ended with an agreement to create UN-protected areas within Croatia for the Serb minority, which Croatian nationalists viewed as partition. Conflict in Croatia then spread to Bosnia, and continued until the 1995 Dayton Accord, to which Croatia was also a party. The Croatian conflict was addressed in the November 1995 Erdut Agreement,<sup>72</sup> which requested that the UN Security Council authorize an international force. The Croatian government agreed to peacefully reintegrate the regions of eastern Slavonia, Baranja, and western Dirmium, and wide-scale conflict has not resumed.

## Chechnya

The conflict in Chechnya arose following the withdrawal of Russian troops from the region in 1996. A violent and chaotic period of Chechen self-rule ensued, with conflict between secessionists and the Russian government, which a 1997 peace agreement sought to terminate.<sup>73</sup> The peace agreement, however, dealt only with the cessation of hostilities, and not future political principles. It did not deal with Chechnya's status

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<sup>70</sup>For the role and future of the OHR in 2007, see the office's website: <http://www.ohr.int>; and 'Can Bosnia-Herzegovina Survive Without the OHR?' (20 October 2006), available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/soda-6uu3jr?opendocument>.

<sup>71</sup>Bieber, 'Bosnia-Herzegovina', p. 206.

<sup>72</sup>*The Erdut Agreement* (12 November 1995), available at [http://www.usip.org/library/pa/croatia/croatia\\_erdut\\_11121995.html](http://www.usip.org/library/pa/croatia/croatia_erdut_11121995.html); US Department of State, 'Croatia' (May 2007), available at <http://www.state.gov>; UK Foreign and Commonwealth Office, 'Croatia' (2007), available at <http://www.fco.gov.uk>; International Crisis Group, 'After Milosevic: A Practical Agenda for Lasting Balkans Peace', *Europe Report* no. 108 (1 April 2001), available at <http://www.crisisgroup.org>.

<sup>73</sup>UK Foreign and Commonwealth Office, 'Russia' (2007), available at <http://www.fco.gov.uk>; Salome Asatiani, 'Chechnya: Why Did 1997 Peace Agreement Fail?' (11 May 2007), available at <http://www.fferl.org>.

within Russia, although some confusion was generated by the fact that the Chechen leader signed the agreement as the 'President of the Chechen Republic Ichkeria'.<sup>74</sup> It is not clear that this agreement should be viewed as one involving power-sharing incentives, but because it is included elsewhere in the literature, so too it is included here for completeness. In any event, the peace agreement failed; fighting resumed and Russian troops returned in 1999. In 2003, a Chechen referendum affirmed the region's status within the Russian state. Fighting has become more sporadic in the region, but has not ceased.

### **Azerbaijan**

Azerbaijan declared independence from the Soviet Union in August 1991. Not long after, the population of Nagorno-Karabakh, a majority Armenian region of Azerbaijan, began to seek self-determination. Conflict broke out, which Azerbaijan attributed to Armenia's desire for land, and Armenia attributed to Azeri abuse of the population. A 1994 cease-fire was facilitated by the OSCE, but the conflict remains one of neither war nor peace.<sup>75</sup> As of this writing, several attempts at negotiating a peace had not borne fruit, with the de facto leaders of the region rejecting autonomy and the Azeri government unwilling to offer more than autonomy; the region's leaders insist on the principle of self-determination and the Azeri government on the principle of territorial integrity. The de facto rulers of Nagorno-Karabakh have sought over time to develop de facto institutions in the hope of establishing something of a *fait accompli*. Their behavior clearly demonstrates the limited appeal of autonomy alone.

### **Implications**

The implications of this survey – of peace agreements reached between 1991 and 2005 that involve one or more of the inclusion incentives under examination here – are not encouraging. While in El Salvador the FMLN was able to integrate into governance and security roles

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<sup>74</sup>*Peace Treaty and Principles of Interrelation Between Russian Federation and Chechen Republic Ichkeria* (12 May 2007).

<sup>75</sup>International Crisis Group, 'Nagorno Karabakh: A Plan for Peace', *Europe Report* no. 167 (11 October 2005), and 'Azerbaijan's 2005 Elections: Lost Opportunity', *European Briefing* no. 40 (21 November 2005), both available at <http://www.crisis-group.org>.

relatively peacefully, in Guatemala the situation has been far more contentious. In Colombia the EPL and M-19 were able to form political parties, with a certain degree of success, but were also subject to massacres, and the FARC's political party was also decimated. This last event has certainly made the FARC wary of demobilizing to become a political party, even if that were a concession the government was willing to offer. As is well-known, significant inclusion incentives in the Lomé Accord in Sierra Leone did not prevent the RUF from resuming fighting. In countries such as Sudan and Sri Lanka, negotiations (with or without the conclusion of an accord) with some groups have led to radicalization by others who perceived exclusion. Of course, the lessons aren't all negative: the power-sharing and resource-sharing accord in Angola has proven relatively robust, and the Liberian transition, with its power-sharing elements, has proven relatively stable. However, the processes that have achieved greater success appear to be those that have utilized sizable UN peacekeeping forces. Further research might provide insights into the specific utility of different inclusion provisions in these countries.



# 3

## Sri Lanka: The Repeated Failure of Inclusion Incentives

In Sri Lanka, internal conflict has raged for over two decades, involving both a radical movement of nationalist (majority) Sinhalese, the Janatha Vimukthi Peramuna (JVP) in the south of the country in the early 1980s, and a separatist movement of (minority) Tamils, the Liberation Tigers of Tamil Eelam (LTTE), in the northeast. The JVP has since largely abandoned its violent tactics and turned to engagement in democratic politics. This chapter, which draws on fieldwork conducted in Sri Lanka in the summer of 2005, thus focuses primarily on negotiations with the latter movement, the LTTE. However, because the JVP is still a political force and remains strongly opposed to peace negotiations, and the small Muslim minority has also objected to what it perceives as exclusion from the peace process, these parties and their interests and behavior are addressed in my discussion of the negotiations. Peace negotiations have largely involved the possibility of a territorial arrangement, such as autonomy or devolution, and constitutional reforms to support any territorial devolution. Less emphasis has been placed on inclusion in future security structures and governance, at least in contrast with other peace negotiations. In this chapter, drawing upon fieldwork conducted in the country in the summer of 2005, I seek to assess the degree to which these negotiating incentives have had significant leverage on the LTTE.

### **Background of the conflict**

Sri Lanka is a multiethnic and multireligious society. The majority of the population, about 74 percent, is ethnically Sinhalese, Tamils constitute about 18 percent of the population, and Muslims constitute

about 7 percent.<sup>1</sup> Prior to independence in 1948, the island was colonized by the Portuguese, the Dutch, and finally the British. The history of the conflict must be understood, in part, in the context of the legacy of British colonialism.<sup>2</sup> British rule had created a single islandwide administration for the first time, and Tamils were perceived to have received preferential treatment in education and official employment. At independence, then, Sinhalese resentments rose to the surface, resulting in the passage of 'Sinhala only' language law in 1956. While the law was later rescinded, the rise in Sinhalese Buddhist nationalism and chauvinism, and discrimination against Tamils in the education system, provoked Tamil nationalism and movements for independence. Ethnic tensions and violence turned to war in 1983, with the leading Tamil militant group, the LTTE, taking up of arms. The conflict and attendant political violence resulted in the death of some 65,000–70,000; over 20,000 more have been 'disappeared', and about one million have been displaced. Both the government and the LTTE have engaged in human rights abuses, with the LTTE responsible for the vast majority, but the state security forces have also undertaken abuses and disappearances.<sup>3</sup> The LTTE is responsible, most notoriously, for its use of child soldiers

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<sup>1</sup>See, generally, K. M. de Silva, *Reaping the Whirlwind: Ethnic Conflict, Ethnic Politics in Sri Lanka* (India: Penguin India, 1999); Kenneth, Bush D., *The Intra-Group Dimensions of Ethnic Conflict in Sri Lanka: Learning to Read Between the Lines* (London: Palgrave Macmillan, 2003); Stanley Tambiah, *Levelling Crowds: Ethno-nationalist Conflicts and Collective Violence in South Asia* (Berkeley: University of California Press, 1997); Sumantra Bose, *States, Nations, Sovereignty: Sri Lanka, India, and the Tamil Eelam Movement* (New Delhi: Sage, 1994). See also Foreign and Commonwealth Office (FCO), 'Country Profile: Sri Lanka' (2007), available at <http://www.fco.gov.uk>; US Department of State, 'Background Note: Sri Lanka' (February 2005), available at <http://www.state.gov/r/pa/ei/bgn/5249.htm>; US Department of State, 'Country Reports on Human Rights Practices, 2004' (28 February 2005), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41744.htm>. These numbers are contested by many parties, and accurate numbers, particularly for the north and east, are difficult to obtain.

<sup>2</sup>Elizabeth Nissan, 'Historical Context'; Kumudini Samuel, 'Straining Consensus: Government Strategies for War and Peace in Sri Lanka, 1994–98'; Sachithanandam Sathanathan, 'Self-Determination: A Ceylon Tamil Perspective'; Alfred Jeyaratnam Wilson with A. Joseph Chandrakanthan, 'Tamil Identity and Aspirations' (1998), available at <http://www.c-r.org/accord/sri/accord4>.

<sup>3</sup>US Department of State, 'Country Reports'; FCO, 'Country Profiles: Sri Lanka'; Chandra Lekha Sriram, 'Dilemmas of Accountability: Politics, the Military, and Commissions of Inquiry During an Ongoing Civil War: The Sri Lankan Case', *Civil Wars* 5, no. 2 (Summer 2002), pp. 96–121.

and terrorist tactics such as suicide bombings. The LTTE has also been responsible for political assassinations of Sri Lankan politicians, including a president, prominent moderate Tamils, and an Indian prime minister. It is proscribed as a terrorist organization in the United States, Canada, the United Kingdom, and a number of European countries. Until the most recent peace negotiations, the LTTE was not banned as a terrorist organization in Sri Lanka.<sup>4</sup>

A number of attempts to resolve social conflicts have been undertaken, both before and after the outbreak of open conflict, including the 1965 Bandaranaike-Chelvanayakam Pact, the 1987 Indo-Lankan Accord, which involved an Indian peacekeeping force, and the 1988–9 negotiations.<sup>5</sup> In 1994, the People's Alliance (PA) was elected to power, and its leader, Chandrika Kumaratunga, subsequently became president. The party had campaigned promising to seek peace negotiations, and did indeed initiate negotiations with the LTTE. Four rounds of talks were held, with moderate success, including an easing of the economic embargo on the Jaffna peninsula. However, the government and the LTTE disagreed about the sequencing of discussions, with the government seeking to address terms for a cease-fire, political elements, and reconstruction and rehabilitation simultaneously, and the LTTE preferring to address elements in a step-by-step manner, beginning with a cease-fire and humanitarian elements. The peace talks ultimately broke down, despite government concessions on several issues, and the LTTE withdrew from the process in April 1995. The government then pursued a two-track strategy, indicating preparedness to engage in negotiations and constitutional reform, as well as a so-called war for peace, with military engagements seeking to weaken the Tigers and compel them to enter negotiation. The government's constitutional proposals included provisions for devolution of power to regions, but these were ultimately defeated due to opposition from the United National Party (UNP).<sup>6</sup>

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<sup>4</sup>US Department of State, 'Country Reports'; FCO, 'Country Profiles: Sri Lanka'.

<sup>5</sup>See, generally, Paikasothy Saravanamuttu, 'Democratization of the Peace Process: Sri Lanka', in International IDEA, *Democracy, Conflict, and Human Security: Further Readings* (Stockholm, 2006), pp. 207–9.

<sup>6</sup>Samuel, 'Straining Consensus', pp. 3–4. See also Rohan Edrisinha, 'Trying Times: Constitutional Attempts to Resolve Armed Conflict in Sri Lanka' (1998), available at <http://www.c-r.org/our-work/accord/sri-lanka/trying-times.php>; and Chapter XV of the proposed 1997 constitution, available at <http://www.c-r.org/our-work/accord/sri-lanka/devolution.php>.

## The political landscape

The political landscape in Sri Lanka is complicated, with many noting that the real obstacle to peace negotiations is political maneuvering in the south. Thus while President Chandrika Kumaratunga's PA party came to power in 1994 on a peace platform, failed negotiation and military campaigns weakened its commitment, particularly when the PA came under fire from the United National Front (UNF), led by then prime minister Ranil Wickremasinghe, and from Sinhalese nationalists.<sup>7</sup> While the history of the rivalry of these parties, personalities, and indeed family dynasties is beyond the scope of this chapter, the basic constitutional structure and political events since 2002 are of interest here.<sup>8</sup> First and foremost, Sri Lanka's electoral system is one of proportional representation, enshrined in the constitution of 1978. This replaced the previous first-past-the-post system, and was expected to moderate the influence of ethnic politics by ensuring representation of minority parties and making it likely that majority parties would need to form coalitions with them.<sup>9</sup> Coalition-building has indeed resulted, but it has been politically unstable, with majority parties catering to the demands of extremists, or losing control when minority parties defect. The instability of the political system has arguably been exacerbated by the executive presidency, enshrined in the constitution of 1978, which provides the president with wide-ranging powers to declare states of emergency and dissolve parliament.<sup>10</sup> These dynamics have meant that it is difficult, if not impossible, for any party that runs and wins on a peace platform to actually implement it, as the minority party challenges every decision taken.<sup>11</sup>

In December 2001, the UNF won a majority of seats in parliament, running on a peace platform. Ranil Wickremasinghe became prime minister, and the government was divided. President Kumaratunga was to be

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<sup>7</sup>Sriram, 'Dilemmas of Accountability'.

<sup>8</sup>Asanka Welikala and David Rampton, 'The Politics of the South: A Thematic Study Towards the Strategic Conflict Assessment – Aid, Conflict, and Peacebuilding in Sri Lanka' (2005) [draft on file with author].

<sup>9</sup>Sunil Bastian, 'Electoral Systems and Political Outcomes', *Law and Society Trust Review* 15, no. 210 (April 2005), pp. 18, 23–5.

<sup>10</sup>Sriram, 'Dilemmas of Accountability'.

<sup>11</sup>This tendency of opposition parties to undermine progress on peace negotiations, as well as the absence of a genuine tradition of bi- or multipartisanship, were noted by Mark Silva of the US Agency for International Development. Author interview (Colombo, 5 July 2005).

a bitter foe, not of the commitment to peace espoused by the UNF, but of the specifics of the negotiations, in particular the cease-fire agreement.

### **From the 2000 unilateral LTTE cease-fire to the 2002 cease-fire agreement**

In early 2000, Sri Lankan president Chandrika Kumaratunga and the LTTE leader, Vellupillai Prabhakaran, requested that the Norwegian government act as facilitator for peace talks. This move occurred even as fighting continued and the LTTE launched new offensives and retook significant territory. In December 2000, the LTTE announced a unilateral cease-fire, which it extended month after month until April 2001, when fighting began again. In June 2001, the LTTE attacked the Sri Lanka's sole international airport, damaging civilian and military aircraft, hurting tourism, and perhaps most important, demonstrating its military capacity. These moves triggered a crisis in the government and dissolution of the ruling coalition. New elections were held and Ranil Wickremasinghe's UNP, which campaigned on a platform of peace and economic recovery, came to power. This resulted, for the first time in Sri Lanka's history, in a government of 'cohabitation', with the president from one party and the prime minister from another, and 'an uneasy and sometimes confrontational relationship' between the two.<sup>12</sup>

In February 2002, the UNP-controlled government and the LTTE were able to reach an accord, the Cease-Fire Agreement (CFA), which was brokered by the Norwegians. While the government's interest in seeking an accord was singularly apparent, the LTTE's interest was perhaps twofold. First, the airport attack helped the LTTE to demonstrate its military prowess, and meant that it could negotiate on a relatively equal basis. Just as important, the LTTE was perhaps also motivated by the international fallout from the terrorist attacks on the United States on 11 September 2001. With the 'global war on terror' under way, the LTTE perhaps became more concerned about being treated as a proscribed terrorist organization, and stepped up its pursuit of legitimacy domestically and internationally.<sup>13</sup> Further, for both the government

<sup>12</sup>Welikala and Rampton, 'The Politics of the South', p. 12.

<sup>13</sup>Jonathan Goodhand and Bart Klem, with Dilrukshi Fonseka, S. I. Keethapongalanm and Shonali Sardesai, 'Aid, Conflict, and Peacebuilding in Sri Lanka, 2000–2005' (15 June 2005) [draft on file with author]. On the war on terrorism, US policy, and the LTTE, see Teresita Schaffer, 'Sri Lanka's Peace Efforts: The View from a Distance' paper prepared for the conference 'International Dimensions of the Peace Process in Sri Lanka', 8–9 July 2005.

and the LTTE, battle fatigue had set in – ostensibly what I. William Zartman has termed a ‘hurting stalemate’.<sup>14</sup> Each finally recognized the costliness of the war, and the need for negotiation, and the conflict was thought to be ‘ripe for resolution’, in part because of the military situation, but also because of the political needs of the government and the LTTE to appeal to their war-weary populations.<sup>15</sup> Whether the conflict remains ripe for resolution, however, is a matter of some dispute.<sup>16</sup> The mediators, the government, and analysts also hoped that the CFA and negotiations might help push the LTTE to reform, and to transform itself from a violent armed group into a viable democratic one. Thus a strategy of using both carrots and sticks was developed, although it has been criticized as offering too many of the latter.<sup>17</sup>

The CFA was reached relatively quickly and secretly, preventing an open discussion of the agreement, but also preventing political machinations that might have defeated it. According to many reports, the agreement was reached by the prime minister and the LTTE without consulting the president. Indeed, it has been said that the president was shown the agreement only after it was completed.<sup>18</sup> More critically, the negotiations that followed not only included just two

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<sup>14</sup>ACCORD, ‘Engaging Armed Groups in Peace Processes, Sri Lanka’ (1998), available at <http://www.c-r.org/accord>; I. William Zartman, *Evasive Peace: Negotiating an End to Civil Wars* (Washington, D.C.: Brookings Institution, 1995).

<sup>15</sup>Liz Philipson, ‘Breaking Recurring Themes in the Cycles of War and Peace in Sri Lanka’, *Research Paper* no. 3 (London: Centre for the Study of Global Governance, London School of Economics, December 1999), pp. 13–15.

<sup>16</sup>As Brian Smith, the postconflict analyst for the Asian Development Bank, suggests, while P-TOMS may be a confidence-building opportunity, the LTTE is extremely cynical about the politics of the south and the capacity of the government to deliver on agreements, and a window of opportunity is closing with regard to reviving a peace process. Author interview with Smith, speaking in his personal capacity (Colombo, 13 July 2005).

<sup>17</sup>Anonymous author interviews (Colombo, July 2005). Several compared the LTTE to the Irish Republican Army, suggesting a legitimate political wing akin to Sinn Fein might be encouraged to develop. Others countered the criticism that international strategies were more carrot than stick, pointing out that an armed group cannot easily or rapidly transform to a political party.

<sup>18</sup>Anonymous author interviews with diplomatic officials and NGO actors (July–August 2005, Colombo). On accusations of Norway bypassing the president and harming the country’s sovereignty, see Susantha Goonatilake, ‘Norway, a 25 Year Odyssey: From Sympathizer to Colonial Intruder’, in World Alliance for Peace in Sri Lanka (WAPS), ed., *Peace in Sri Lanka: Obstacles and Opportunities* (London: WAPS, 2005), pp. 14–16.

parties, but also did not broadly engage the populace on the peace process, resulting in relative ignorance about its content, a fact that extremists were able to manipulate.<sup>19</sup> The CFA had several components – a halt of military operations, a separation of forces between the two sides, measures to restore normalcy, measures to build confidence, and the creation of a Sri Lankan Monitoring Mission (SLMM), which was to report to the Norwegian government.<sup>20</sup>

### **The Sri Lankan Monitoring Mission**

An unusual situation resulted, with the Norwegians facilitating but also monitoring the peace process, a dual function that some would suggest eventually hampered them in both roles.<sup>21</sup> The SLMM itself was quite small, comprising about 60 observers drawn from five Nordic countries. The mission was authorized to engage in on-site monitoring to ensure compliance with the CFA, but had no mandate to compel compliance, through force or otherwise. The preamble to the status-of-mission agreement even noted that ‘the effect of the SLMM will depend upon the parties’ willingness to abide with recommendations from SLMM’.<sup>22</sup> As Helen Olafsdottir, the spokesperson for the SLMM, noted, this meant that the mission had to rely heavily on diplomatic skills.<sup>23</sup> The SLMM was heavily criticized. Many believed it to be biased, or timid, in reporting. It was also limited by its need to support, or at least not interfere with, the peace process. As a result, the monitoring of violations did not have any clear impact on the frequency of violations.<sup>24</sup>

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<sup>19</sup>Author interview with Fareeha Jaleel, Consortium of Humanitarian Agencies (CHA) (Colombo, 7 July 2005), who said that in a CHA survey, most people demonstrated ‘lack of knowledge and fear’ and that there was little or no propaganda offered to counter JVP anti-peace process propaganda.

<sup>20</sup>*Agreement on a Ceasefire Between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam* (22 February 2002), available at <http://www.peaceinsrilanka.org/insidepages/agreement/pv.htm>.

<sup>21</sup>Author interview with Kethesh Loganathan, Centre for Policy Alternatives (Colombo, 4 July 2005).

<sup>22</sup>*Status of Mission Agreement (SOMA) on the Establishment and Management of the Sri Lanka Monitoring Mission (SLMM)* (18 March 2002), available at <http://www.peaceinsrilanka.org/insidepages/agreement/soma.asp>.

<sup>23</sup>Author interview with Helen Olafsdottir (Colombo, 5 July 2005).

<sup>24</sup>Ingrid Samset, ‘Trapped in the Peace Process: Ceasefire Monitoring in Sri Lanka’ (2004), available at <http://www.wider.unu.edu/conference/conference-2004-1/conference%202004-1-papers/samset-1905.pdf>; and Ingrid Samset, ‘Whose Mission? Limits and Potentials of the SLMM’, *Lines* (August 2004).

## The 2002–2003 peace negotiations

Following completion of the CFA, the parties engaged in six rounds of talks, facilitated by the Norwegians. The peace negotiations that proceeded in the coming months saw the lifting of the government's ban on the LTTE; the lifting of checkpoints; the halting of harassment of civilians; the reopening of roads and railways, notably the A9 road running to Jaffna; humanitarian action such as mine removal and rehabilitation and resettlement of internally displaced persons; and efforts to address concerns for the human rights and security of all three communities (Tamil, Sinhalese, and Muslim) in the northeast.<sup>25</sup> The emphasis on humanitarian concerns and separation of forces, as well as basic security, prior to dealing with issues of constitutional, legal, political, and administrative changes, was intentional. The phased approach, which sought to bring stability to people's daily lives as a precursor to broader talks, differed from earlier rounds, which had sought to address territorial and political concerns along with humanitarian concerns.<sup>26</sup> The facilitators hoped that by addressing stability first, before more sensitive political issues, the parties could learn to communicate with and trust each other. This issue was especially important given the history of failed peace negotiations and serious mistrust on both sides.<sup>27</sup> Most of those whom I interviewed agreed that a phased approach was the best one, given the prevailing attitude of mistrust, but also suggested that

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<sup>25</sup>See the following statements of the Royal Norwegian Government: 'Sri Lanka Peace Talks' (16–18 September 2002), available at <http://www.peaceinsrilanka.org/insidepages/pressrelease/rng/19statementrng.asp>; 'Agreed Measures to Improve the Security Situation in the East' (1 November 2002), available at <http://www.peaceinsrilanka.org/insidepages/pressrelease/rng/rng1stnov.asp>; 'Significant Steps to Restore Normalcy, Improve Security, and Address Political Matters', available at <http://www.peaceinsrilanka.org/insidepages/pressrelease/rng/rng3dnov.asp>.

<sup>26</sup>'Significant Steps to Restore Normalcy'.

<sup>27</sup>On earlier attempts at confidence building, as well as the lack of trust felt by both sides, see Philipson, 'Breaking Recurring Themes', pp. 20–2. Further confirmation of the need for a phased approach comes from Jehan Perera and Willie Senanayake of the National Peace Council. Author interviews (Colombo, 6 July 2005). Brian Smith agrees that such a phased approach was a good strategy to help address the mistrust, particularly of the LTTE, of southern politicians, but that there was no strategy to move to the more difficult core issues. Author interview (Colombo, 13 July 2005). By contrast, Ambassador Javid Yusuf of the Muslim Peace Secretariat criticized the strategy, suggesting that while confidence building is important, core issues ought to have been taken up earlier, and that a phased approach could only have made sense in the context of a clear strategy, which was lacking. Author interview (Colombo, 12 July 2005).



it was in some way bound to fail in the absence of serious effort or planning for overcoming a 'hurdle' to reach negotiations on core issues.<sup>28</sup>

The talks, it must be emphasized, were bilateral, between the government and the LTTE only, and did not include members of the significant Muslim population in the east. This may have been justified on the grounds that a multiparty presence would complicate negotiations, though the perceived exclusion of Muslims did lead to suspicion and resentment from the Muslim community. The exclusion was certainly necessary to satisfy the Tigers, who sought negotiating 'parity' with the government, parity that they believed they had earned through battle, and that the Muslims had not earned. Further, a Muslim member of parliament was present on the government's negotiating team, which therefore represented, it was argued, the Muslim community.<sup>29</sup>

The talks progressed and in late 2002 the parties agreed to initiate discussions on sensitive political issues such as power-sharing, human rights protections, administrative mechanisms, public finance, law and order, and geographical arrangements.<sup>30</sup> A key element was the acceptance by both sides, in a departure from earlier positions, of the need for a federal solution, including, potentially, asymmetrical federalism.<sup>31</sup> The government and the LTTE each established peace secretariats. In late 2004, the two major Muslim parties, seeking a greater inclusion in

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<sup>28</sup>This was a common observation. In particular, Kumar Rupesinghe, chairman of the Foundation for Coexistence, argued that the UNF engaged in serious confidence-building measures, and that, in a sense, the negotiations themselves became no more than confidence building. He further observed that confidence building itself became a contested issue, with many measures becoming the subject of 'attrition' on the ground. Author interview (Colombo, 13 July 2005).

<sup>29</sup>This, of course, is a matter for debate. The member of parliament, Rauf Hakeem, was present as a representative of the government, not as a formal representative of the community. I am grateful to Professor Bertram Bastiampillai for this observation. Author interview (Colombo, 8 July 2005).

<sup>30</sup>'Parties Have Decided to Explore a Political Solution on Internal Self-Determination Based on a Federal Structure Within a United Sri Lanka', statement of the Royal Norwegian Government (5 December 2002), available at <http://www.peace.insrilanka.org/insidepages/pressrelease/rng/rng5thdec.asp>.

<sup>31</sup>See Lakshman Marasinghe (who is now the legal adviser to the government's Peace Secretariat), 'An Outline for a Constitutional Settlement in Sri Lanka' (Colombo: International Centre for Ethnic Studies, 24 February 2003). See also Yash Ghai, 'Internal Self-Determination: An International and Comparative Perspective' (Colombo: International Centre for Ethnic Studies, 11 March 2003).

the peace process, signed a memorandum of understanding to work together and establish a peace secretariat for the Muslim community.<sup>32</sup>

Further talks in early 2003 resulted in agreements to address human rights issues, including an agreement to appoint a human rights adviser to the peace process.<sup>33</sup> While some were concerned that dealing with human rights issues at this stage in the process was premature, the adviser who was ultimately appointed, Ian Martin, disagreed, emphasizing the vulnerability of civilians as LTTE forces were being 'cleared'.<sup>34</sup> Martin was a respected UN diplomat, having been Special Representative of the Secretary-General in East Timor, and developed a roadmap for instituting a human rights monitoring mechanism. The primary dispute over this mechanism was whether it ought to be national or international, though the preference was for a national body. While the roadmap was well-received at talks held in Hakone in March 2003, the talks were suspended shortly thereafter and the roadmap was never formally adopted.<sup>35</sup>

### **Collapse of negotiations**

In April 2003, the peace talks broke down when the LTTE announced that it intended to 'suspend its participation in the negotiations'.<sup>36</sup> In a

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<sup>32</sup>'Establishment of a Peace Secretariat for Muslims', press release (15 December 2004) [on file with author].

<sup>33</sup>'Accelerated Action on Resettlement and Humanitarian Action, Progress on Human Rights', statement by the Royal Norwegian Government (9 January 2003) available at <http://www.peaceinsrilanka.org/insidepages/pressrelease/rng/rng09jan.asp>.

<sup>34</sup>Ian Martin, 'Human Rights in Sri Lanka After the Ceasefire', report for the International Working Group on Sri Lanka (April 2002); Ian Martin, 'Human Security: Sri Lanka', address to the Federal Department of Foreign Affairs (Switzerland, 9 September 2003) [on file with author].

<sup>35</sup>Author interview with Ian Martin (New York, 5 April 2005); 'Consolidation of Ceasefire Top Priority, Sri Lanka Monitoring Mission Strengthened' (Royal Norwegian Ministry of Foreign Affairs, 21 March 2003), available at <http://www.peaceinsrilanka.org/insidepages/pressrelease/rng/rng21march03.asp>. These talks also began to address conceptual aspects of power-sharing and devolution, but again these discussions ceased when the talks broke down. See also 'Political Matters Discussed at Length on 3rd Day of Peace Talks' (20 March 2003), available at <http://www.peaceinsrilanka.org/insidepages/pressrelease/webrel/march03/webrel2003>; 'Rehabilitation and Human Rights Issues Addressed' (19 March 2003), available at <http://www.peaceinsrilanka.org/insidepages/pressrelease/march/pressrel19march03.asp>.

<sup>36</sup>Anton Balasingham, 'LTTE Suspends Negotiations with Sri Lanka Pending Implementation of Agreements Reached', letter to the prime minister (21 April 2003), available at <http://www.tamilnet.org>; 'Peace Talks on Pause', *Himal South Asian* (May 2003), available at [http://www.himalmag.com/2003/may/commentary\\_sl.htm](http://www.himalmag.com/2003/may/commentary_sl.htm).

letter to the prime minister, LTTE negotiator Anton Balasingham offered three reasons for the Tigers' withdrawal. First, the government had acted to 'marginalize' the LTTE in approaching international donors. This was a reference to a donor meeting in Washington, D.C., that the Sri Lankan government attended but the LTTE could not, as it had been designated a banned terrorist organization in the United States. Second, the government had allegedly failed to vacate the security forces from certain civilian premises. Third, the donors' poverty reduction strategy paper and government's associated program, titled 'Regaining Sri Lanka', did not take sufficient account of the 'devastation' in the northeast. Some have suggested that, although these three reasons were real motivations for the LTTE's withdrawal, the group was also concerned about the potential constraints of the human rights roadmap (discussed below in more detail). The government's response sought to refute the LTTE's arguments, emphasizing the progress that had been made and, in particular, maintaining that it had not been responsible for the LTTE's exclusion from the Washington meeting, as it could not control US law.<sup>37</sup>

Several alternative explanations have been offered for the LTTE's withdrawal from the peace negotiations. One is that Anton Balasingham, the LTTE negotiator, had 'given too much away' in the Oslo round of negotiations, offering greater agreement on federalism in principle than was acceptable to Prabhakaran. Another is that rifts within the LTTE were growing and that it preferred to negotiate only from a position of strength: advocates of this explanation point to the split by 'Colonel' Karuna, although it occurred well after the LTTE suspended talks. A final interpretation is that the LTTE withdrew precisely because of the content of the negotiations – the presentation of the human rights roadmap and the initial foray into concepts of future administrative arrangements led to LTTE concern that the talks were moving too quickly. Some have gone a step further, suggesting that the LTTE was fearful of concluding agreements that would begin to seriously limit its own freedom of action, preventing it from engaging in further child recruitment or other human rights abuses, and forcing it to accept administrative arrangements and principles of democratic governance

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<sup>37</sup>Letter of Prime Minister Ranil Wickremasinghe to Dr. Anton Balasingham' (29 April 2003), available at <http://www.peaceinsrilanka.org/insidepages/archive/april/ab290403.asp>.

that could weaken its control over the northeast.<sup>38</sup> The latter, however, is a contested position: others argue strongly that it is mere speculation, and that the primary reason for the LTTE's withdrawal was its sense that it was being treated as a 'junior partner', and that the course of negotiations, and increasing conditions placed upon it, exposed the imbalance of power between the two negotiating parties.<sup>39</sup>

Though the LTTE had withdrawn from the talks, it did offer its own proposal for the Interim Self-Governing Authority (ISGA).<sup>40</sup> This proposal, while welcomed by Japanese envoy Yasushi Akashi, provoked a strong reaction in the south, perhaps greater than expected by the LTTE.<sup>41</sup> The precise intent of the proposal is unclear: while some believe that the LTTE offered it in good faith, albeit as a maximalist negotiating demand, and was surprised by the reaction to it, one observer has suggested that it was a 'suicide' text meant to provoke Sinhalese extremists.<sup>42</sup> Those who support the former interpretation believe that while the proposal contained many elements that the government would not accept, it could have been the basis for serious negotiations, and that the UNP government

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<sup>38</sup>Author interview with S. I. Keethaponcalan, Department of Political Science, University of Colombo (Colombo, 1 July 2005); author interview with Kethesh Loganathan, Centre for Policy Alternatives (Colombo, 4 July 2005); anonymous author interview with a Western diplomat who notes that the roadmap was one of the issues of concern (Colombo, 1 July 2005). This view is challenged by Rory Mungoven, senior human rights adviser, UN Country Team. Author interview (Colombo, 22 July 2005).

<sup>39</sup>Author interview with Smith. Kumar Rupesinghe, chairman of the Foundation for Coexistence, argues that the LTTE felt it had to escape the 'peace trap', whereby, according to the LTTE's perception, it made concessions without corresponding responses by the government. Author interview (Colombo, 13 July 2005).

<sup>40</sup>The Proposal by the Liberation Tigers of Tamil Eelam on Behalf of the Tamil People for an Agreement' (31 October 2003), available at <http://www.ltteps.org/list.ltte?folder=6>.

<sup>41</sup>Akashi: ISGA The Base for Future Peace Talks' (2004), available at <http://www.tamilnet.com/art.html?catid=13&artid=12039>.

<sup>42</sup>Author interviews with embassy and government officials (Colombo, July 2005). Professor Bertram Bastiampillai suggested that no government could have accepted the proposal as written, but that it was nonetheless a mistake that its general terms were not discussed. Author interview (Colombo, 8 July 2005). A. J. Canugaratna argues that the ISGA was in essence a blueprint for a separate state, and thus that the reaction was unsurprising. Author interview (Jaffna, 20 July 2005). Vasuki Nesiiah of the International Center for Transitional Justice also notes that the ISGA would result in a functionally separate state. Author interview (New York, 5 April 2005).

made at least two serious tactical mistakes: it did not seek to include the president in the process, and it did not send clear signals to the public that there was room for negotiation.<sup>43</sup> The proposal sparked strong reaction in the south in part due to its content, which would formalize LTTE administrative control over the northeast, but also in part due to its language, which referred to the 'government', and to the 'island' of Sri Lanka, but not to a 'state' of Sri Lanka, which was interpreted as a rejection of sovereign integrity.<sup>44</sup> President Kumaratunga used this opportunity, pointing to instability, to take control of three government ministries and dissolve parliament. It has been suggested that both the LTTE and the UNP miscalculated, failing to predict a strong response by a president with such strong executive powers.<sup>45</sup>

Notwithstanding these developments, an 'informal' process continued outside of official talks, and in May 2004 both the government and the LTTE made public commitments to resuming negotiations.<sup>46</sup> The LTTE continued, however, to insist that the ISGA must be the basis for resuming any future peace talks.<sup>47</sup> The situation in Sri Lanka has been widely described as one of 'no war, no peace': while killings have taken place in the east of the country, and numerous violations of the CFA have also been committed, the country has not returned to war. It has been suggested that each side prefers this situation: neither has to make costly compromises, yet relative stability has allowed economic growth and reconstruction.<sup>48</sup>

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<sup>43</sup>Author interview with Smith.

<sup>44</sup>The Proposal by the Liberation Tigers of Tamil Eelam'; anonymous author interview with a Western diplomat (Colombo, 1 July 2005).

<sup>45</sup>Author interview with Nilan Fernando, Asia Foundation (Colombo, 15 July 2005).

<sup>46</sup>US Department of State, 'Country Report'. The informal process has seen fluctuating tensions. See 'Norway Ambassador to Meet with Sri Lanka Rebels As Tensions Escalate' (4 March 2005), available at <http://asia.news.yahoo.com/050304/ap/d88k0mlo7.html>. See also 'Sri Lanka President Warns Stagnant Peace Process May Erode Tamil Rebels' Patience' (2005), available at <http://www.theacademic.org/stories/10748783440/story.shtml>; 'Sri Lankan President Tells Washington She Will Resume Peace Talks Soon' (2005), available at <http://www.theacademic.org/stories/10817667240/story.shtml>; 'US Asks Sri Lanka Leaders to End Power Struggle' (2005), available at [http://story.news.yahoo.com/news?tmpl=story&u=/afp/20040103/pl\\_afp/srilanka\\_us\\_tamil\\_040103175910](http://story.news.yahoo.com/news?tmpl=story&u=/afp/20040103/pl_afp/srilanka_us_tamil_040103175910); 'What Now for Sri Lanka Peace?' (2004), available at [http://news.bbc.co.uk/2/hi/south\\_asia/3680511.stm](http://news.bbc.co.uk/2/hi/south_asia/3680511.stm).

<sup>47</sup>'Tigers Insist on Self-Rule Before Peace Talks' (2004), available at [http://www.outlookindia.com/pti\\_news.asp?id=217515](http://www.outlookindia.com/pti_news.asp?id=217515).

<sup>48</sup>Author telephone interview with Shonali Sardesai, World Bank Conflict Prevention and Reconstruction Team (21 June 2005); author interview with Loganathan.

## **Government strategy and the peace process**

It is worth considering that the UNP/UNF government, while it ran on a peace platform, emphasized the importance of peace for pragmatic reasons. Specifically, Wickremasinghe emphasized the importance of stability for economic development, and drew heavily on the support of the business community to promote peace negotiations as a means to prosperity. Many thus described his interest in peace as ‘pragmatic’, with good and bad effects. The positive effect of this pragmatism was an engagement in a peace process. The negative side, however, according to some, was a lack of a real commitment to the process per se, as he viewed it merely as a means to an end. Some have argued that the government’s Secretariat for the Coordination of the Peace Process (SCOPP) was relatively ineffectual, as the chief government negotiator drew on his own networks rather than relying on the SCOPP.<sup>49</sup> With the change in government in 2004, new staff entered the peace secretariat, but they did not, as off-the-record discussions indicate, debrief the old staff for lessons learned from negotiations with the LTTE.<sup>50</sup> It has also been argued that the government’s failure to publicize the CFA was an attempt to convince the Sinhalese population that the agreement was worthwhile, and to counter JVP propaganda; similar concerns have arisen regarding the political debates surrounding the Post-Tsunami Operational Management Structure (P-TOMS).<sup>51</sup>

## **Coalition politics and dissolution of government**

As discussed, Sri Lanka’s proportional representation system required the formation of often unstable coalition governments. In response to the crisis triggered by the ISGA announcement, the president declared a state of emergency, took control of three key ministries (Defense, Finance, and State Media), and called new elections for April 2004. The move was viewed by many as mere political opportunism on the part of the president, an attempt to consolidate her power and prevent

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<sup>49</sup>Author interview with Silva.

<sup>50</sup>Anonymous author discussions with experts (Colombo, July 2005).

<sup>51</sup>Author interview with Kishali Pinto-Jayewardena, public interest lawyer, media columnist, and director of the Legal Unit of the Law and Society Trust (Colombo, 15 July 2005). Pinto-Jayewardena suggested that the strength of JVP and JHU objections was increased because the government failed to seriously counter them.

renewed negotiations by the UNP.<sup>52</sup> The political uncertainty this generated was seen by many as a threat to the future of peace talks.<sup>53</sup> It surely must have served to further deepen LTTE mistrust of the government's capacity to engage in peace negotiations in a unitary fashion, or deliver on its promises.<sup>54</sup> Nonetheless, there may have been an unintended positive effect: while presenting herself as defending the country, the president also recommitted to the CFA, creating, in essence, a forced bipartisanship for the agreement.<sup>55</sup> In February 2004, President Kumaratunga formed an alliance with the JVP, the United People's Freedom Alliance (UPFA), which won the April elections, but not with an outright majority. As a result, it formed an unstable coalition government. This shaky coalition would face further challenges in 2005 with rifts over the P-TOMS (discussed below). The new government rejected the ISGA proposal, while inviting the Norwegians to resume facilitation of peace negotiations and recognizing the LTTE as the sole representative of people in the northeast.<sup>56</sup>

### **Rifts in the northeast**

There are at least two serious cleavages of concern in Sri Lanka's northeast, a region that until recently was viewed as a monolith controlled by the LTTE: the division between Tamils themselves, and the division between Tamils and Muslims. But even this account of the cleavages is too simplistic, for there are further divisions at the local level; as well, there are localities where these divides do not exist or are less salient. However, for purposes of the analysis here, these rifts are significant enough, as they indicate significant sets of actors who were not

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<sup>52</sup>Fernando, among others, notes that the president's move prevented a likely response from government negotiators offering counterproposals. Author interview with Fernando.

<sup>53</sup>US Department of State, 'Country Report'; 'Sri Lanka's Power Struggle Continues Despite Fresh Talks' (2004), available at <http://www.theacademic.org/10710720060>; 'Lawmakers, Analysts, Say Elections Could Block Solution of Sri Lanka Ethnic War' (2004), available at <http://www.theacademic.org/stories/10762384570/story.shtml>.

<sup>54</sup>Jehan Perera suggests that this move added to the LTTE's fear of being cheated, strengthening its wish to seek more guarantees and its wariness of giving up arms. Author interview (Colombo, 6 July 2005). Anonymous author interview with a UN official (New York, 6 April 2005).

<sup>55</sup>Author interview with Perera.

<sup>56</sup>International Institute for Strategic Studies, 'Timeline on Sri Lanka-LTTE Peace Process' (on file with author).

included, or not formally included, in the peace process or in the tsunami relief measures, and who may well prove to be significant spoilers of any future peace agreement unless their grievances are dealt with seriously.

Tamil-Muslim relations in many parts of the northeast are tense, as many Muslims in the region resent the fact that they are treated, to a significant degree, both by the government and the international community, as being represented by the LTTE. They argue that, historically, they have supported the Tamil cause, yet find themselves the victims of suspicion and reprisals, including killings, as they are often accused of being government collaborators or informants. The clashes have involved not only significant killings, but also attacks on mosques, in response to which the Muslims created their Home Guard. Notwithstanding this guard, some 75,000–90,000 Muslims were forced out of the Jaffna peninsula in 1990.<sup>57</sup> Some Muslim leaders argue not only that they have supported the Tamil struggle, but also that have their own population to protect, and should have been equal parties in the peace process. They therefore object to the fact that the CFA was signed between the government and the LTTE only, and that the peace process proceeded with only those parties in any formal capacity, although the LTTE and the Sri Lanka Muslim Congress (SLMC) did sign an agreement to reestablish normalcy after the CFA was signed. While most of the displaced Muslims returned to the region following the CFA, they could not return to their homes, and many have again been displaced by fighting in the east.<sup>58</sup> While a Muslim member of parliament was included on the government negotiating team, as mentioned previously, his presence was not as a representative of Muslim communities per se, though it was interpreted by some as implying that the government was capable of speaking for Muslims, and even that Muslims were colluding with the government.<sup>59</sup>

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<sup>57</sup>M. A. Nuhman, 'Understanding Sri Lankan Muslim Identity' (Colombo: International Centre for Ethnic Studies, 10 August 2002); Nissan, 'Historical Context'; 'Sri Lankan Muslims Want Parity Participation in Power Sharing', *Xinhua News Agency* (8 July 2003); 'SLMC Reiterates Need for Separate Muslim Delegation Once Peace Talks Resume', available at <http://www.theacademic.org>; Sanjeev Miglani, 'Sri Lanka's Muslims Trapped in a Deepening Conflict', *Reuters* (8 January 2007).

<sup>58</sup>National Peace Council of Sri Lanka, 'Media Release: Ensure Right of Return of Displaced Muslim Population in New Year', email bulletin (30 December 2006), available at <http://www.peace-srilanka.org>.

<sup>59</sup>Anonymous author interview (Colombo, July 2005).



Some among the Muslim population of the northeast seek geographic autonomy, but largely, given their relative dispersal in the region, they seek political autonomy, or some form of representative federalism.<sup>60</sup> There have also been tensions with Tamils over access to land. Muslims resent what they see as a condescending attitude by the LTTE toward them, while the LTTE argues that Muslims do not have the same claim to participate in negotiations or the political process, as Muslims have not engaged in the same type of military battles as has the LTTE.

Some analysts have raised concerns that Muslim resentment may give rise to greater militancy, comparing disaffected Muslim youth with Tamil youth in the 1970s. Such militancy could give rise to greater violence, particularly if Muslims learn the apparent lesson from both Tamil and JVP militancy – that violence brings attention to the problems they wish to highlight.<sup>61</sup> Moderate Muslims, and they are the majority, do not express such fears directly, but do suggest that, insofar as the negotiations are about a reconstitution of the Sri Lankan state, any solution that excludes Muslims while reaching agreement only with the LTTE is likely to substitute one problem for another.<sup>62</sup> Should peace negotiations move forward without significant Muslim involvement, there is likely to be a backlash. Resentment was already voiced with the exclusion of Muslims from negotiation of the Post-Tsunami Operational Management Structure, the ill-fated joint government-LTTE mechanism for distribution of tsunami aid.<sup>63</sup> While Muslims were given significant representation in the national P-TOMS authority, they expressed concern about their original exclusion and the risk that they would be excluded at the operational level. As discussed below, the mechanism was scrapped by the current president following his election in late 2005.<sup>64</sup>

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<sup>60</sup>Jonathan Goodhand, 'Aid, Conflict, and Peacebuilding in Sri Lanka, 2000–2005, Draft 2' (on file with author); anonymous author interview with a Western diplomat (Colombo, 1 July 2005); author interview with Keethaponcalan.

<sup>61</sup>Goodhand, 'Draft 2'.

<sup>62</sup>Author interview with Ambassador Javid Yusuf, Muslim Peace Secretariat (Colombo, 12 July 2005).

<sup>63</sup>However, one embassy official in Colombo suggests that these fears are overstated – that issues of inclusion matter a great deal more to Muslim politicians than to the population, many of whom would still wish to return to the areas in Jaffna from which they were displaced in 1990. Anonymous author interview (Colombo, July 2005).

<sup>64</sup>Thus while there is general concurrence that Muslims do not object to the P-TOMS in principle, or even largely in content, they remain concerned about being sidelined. Author interview with Yusuf; author interview with Smith.

Muslims are not the only population that has objected to Jaffna-based LTTE dominance over the entire northeast. Many Tamils in the east have resented what they view as control of the region by elites in Jaffna and Kilinochchi, a failure to take their needs into account, and too much compromise with Muslims. They believe that Jaffna Tamils have dominated politics and education, and many have questioned the LTTE's claim to be sole representative of the entire region. While defections had been attempted previously, the split by 'Colonel' Karuna and his cadres in March 2004 posed perhaps the greatest threat to the LTTE and to stability.<sup>65</sup> Karuna and his cadres argued that the LTTE was not the sole representative of the region, sparking fighting between factions in the northeast. Amid the fighting, the LTTE accused the Karuna faction of receiving aid from the government, an accusation some observers give credence. Others have suggested that India may also have provided support to Karuna.<sup>66</sup> Whether the government initially supported Karuna's split or not, there appears to be agreement that once it had occurred, the split in the LTTE was too great a temptation for the government not to support it.<sup>67</sup> The government subsequently denied involvement with the Karuna faction, while admitting that some military personnel might have sheltered Karuna, an admission Karuna himself denied.<sup>68</sup> Karuna's movement has since been largely contained, and there is widespread speculation that he is in hiding outside the country. However, its impact was significant, highlighting the weakness of the LTTE's control over the east, and revealing the lie of its claim as 'sole representative'.<sup>69</sup> Though the LTTE has sought to dismiss the importance of the faction, referring to it as a 'paper tiger', Karuna's defection was a shock to the Tigers, as one observer noted, particularly because he has apparently managed to stay alive while

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<sup>65</sup>'Sri Lanka Crisis' (2007), available at [http://news.bbc.co.uk/2/hi/south\\_asia/2405347.stm](http://news.bbc.co.uk/2/hi/south_asia/2405347.stm).

<sup>66</sup>While rumors of India's involvement are relatively common, no source was able to cite definitive evidence.

<sup>67</sup>Author interview with Fernando.

<sup>68</sup>Alexandra Clark, Jennifer Erickson, and Kevin McMahon, 'Sri Lanka: A Risk Assessment Brief' (February 2005) available at <http://www.carleton.ca/cifp/docs/briefsrilanka.pdf>; author interview with Keethaponcalan.

<sup>69</sup>'Tigers Defeat Breakaway Faction' (2007), available at [http://news.bbc.co.uk/hi/south\\_asia/3621415.stm](http://news.bbc.co.uk/hi/south_asia/3621415.stm); 'Sri Lanka's Tigers: Down but Not Out' (2007), available at [http://www.atimes.com/atimes/south\\_asia/fc17df05.html](http://www.atimes.com/atimes/south_asia/fc17df05.html); author interview with Fernando, who noted that the Karuna split cast a 'long shadow' in the east.

previous defectors have been killed.<sup>70</sup> The event undermined the LTTE's image of invincibility (for insiders as well as outsiders), and has complicated – and apparently, virtually halted – its operations in the east, where most operations are now carried out by the Tamil Rehabilitation Organization, separate from the LTTE. This created a stake for the LTTE in the P-TOMS, which might have allowed it to regain a foothold in the east through distribution of aid.<sup>71</sup> The potential for the Karuna faction, or other similar factions, to become spoilers in any future peace agreement should not be underestimated.

Military opposition is not the only challenge to the LTTE's claim to be the sole representative of the northeast, or of the Tamil people in Sri Lanka. There is also serious opposition, by moderate Tamil politicians, groups, and parties, to the LTTE's dominance and military tactics. In particular, the Eelam People's Democratic Party, a formerly violent faction that has now entered mainstream politics, as well as the Tamil United Liberation Front and the nongovernmental organization (NGO) University Teachers for Human Rights (Jaffna), contest this claim.<sup>72</sup>

### Rifts in the south

Just as the Karuna faction demonstrated the power of spoilers in the east, the JVP demonstrated its own power in southern politics.<sup>73</sup> The JVP emerged in 1966–7, splintering off from the communist party. It was able, utilizing both Marxist and nationalist rhetoric, to mobilize Sinhalese youth, particularly students, and sought in an insurrection in 1971 to take control of the state. It was then outlawed, but in the early 1980s sought to pursue a more democratic path. However, in the late 1980s it returned to violence. After the 1994 election, the JVP returned

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<sup>70</sup>Author interview with Selvy Karthikeyen, LTTE Peace Secretariat (Kilinochchi, 18 July 2005), who suggested that the impact of Karuna's defection has been relatively unimportant. Anonymous author interview with an embassy official (Colombo, July 2005). Lakshman Marasinghe, the legal director of the government Secretariat for the Coordination of the Peace Process, believes that the Karuna split has significantly impacted the LTTE, both militarily and politically. Author interview (Colombo, 5 July and 13 July 2005).

<sup>71</sup>On the importance of the P-TOMS to the LTTE in order that it might offer something to the east, and on the damage to its prestige caused by the Karuna split, I thank an anonymous source.

<sup>72</sup>Shantha K. Hennayake, 'Is LTTE the Sole Representatives [sic] of Tamils?', in WAPS, ed., *Peace in Sri Lanka*, pp. 90–126.

<sup>73</sup>See Welikala and Rampton, 'The Politics of the South'.

as a political force, becoming a recognized party, and winning 10 seats in parliament in 2000, and 39 in 2004.<sup>74</sup> Thus the Sri Lanka Freedom Party (SLFP) viewed it, despite political differences, as a viable political partner. The JVP has moved steadily away from its Marxist roots, emphasizing Sinhalese nationalism, and the importance of maintaining the unity of the Sri Lankan state.

Not only was the SLFP dependent on the JVP in coalition politics, but the JVP demonstrated its desire and capacity to derail the peace process. The JVP contested many elements of the CFA,<sup>75</sup> and subsequently the P-TOMS, persistently objecting to any steps toward autonomy for the northeast and to legitimating LTTE control over the region. In fact, its objections to the P-TOMS resulted in a fracture in the ruling coalition in mid-2005. The JVP, from its violent roots in nationalist uprisings, has transformed itself into a participant in the political process. As such, it is able to challenge the LTTE to similarly give up violent struggle, and to act as an outlet for Sinhalese protest. It nonetheless operates as something of an opposition party, even while in power, and thus its opposition to any form of federalism means that it stands to be a significant spoiler in any revived peace process.<sup>76</sup> The JVP is also by no means the only significant force of Sinhalese nationalism. A rival party, the Jathika Hela Urumaya (JHU), shares similar political stances. I do not discuss it in detail here, as it does not hold the same degree of political power, having won far fewer seats than the JVP in parliament. However, the JHU does espouse a radical nationalist position, one that also strongly opposes the peace process.<sup>77</sup>

### **No War, No Peace?**

Many observers describe the current situation in Sri Lanka under the CFA as one of 'no war, no peace'. The fighting has formally stopped thanks to a cease-fire and this, depending on whom one speaks to, suits the government, or the LTTE, or both, just fine. The LTTE continues to engage in repeated violations of the cease-fire, as reported by

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<sup>74</sup>Ibid., pp. 14–15.

<sup>75</sup>S. Lanka's JVP to Stage Protests Against Power Sharing with Tamil Rebels', *Xinhua News Agency* (29 July 2003).

<sup>76</sup>Goodhand et al., 'Aid, Conflict, and Peacebuilding'. The JVP is not the only potential Sinhalese spoiler; as the report notes, the Jathika Hela Urumaya and other groupings of Buddhist monks also offer strong objections to key elements of the peace process.

<sup>77</sup>Welikala and Rampton, 'The Politics of the South', pp. 28–37.

the SLMM, numbering over 3000 as of July 2005.<sup>78</sup> These violations, including targeted political killings, have been sufficiently pervasive to prompt one observer to argue that Sri Lanka, rather than being in a situation of 'no war', is experiencing low-intensity conflict.<sup>79</sup> The LTTE has also been able to retain control over the north, and to a lesser degree the east, by administering the territory and extracting taxation. While it continues to seek full autonomy, it is unlikely to find any peace agreement that diminishes its control, even a federal one, very appealing. Indeed, as some observers have noted, the LTTE has every reason to fear a full peace deal and international pressure for human rights and democracy, as this would expose it to real competition and force it to refrain from some of its current practices.<sup>80</sup>

Conversely, some observers have noted that the government, even if it could be viewed as a unitary entity, stands to gain little from a full peace agreement. Any party in power that reaches an agreement with the Tigers involving significant autonomy can expect a backlash from the JVP, possibly a violent one. It has been suggested that the government is only interested in maintaining a 'no war' status, such that most of the south is no longer affected; it is less interested in the complicated and costly process of reaching a solution to the ethnic divides, or a more positive peace.<sup>81</sup>

The SLMM and the Norwegian representatives and facilitators, meanwhile, have been subjected to increasing criticism, partly a result of their dual facilitation and monitoring role. Critics charge that, in their efforts to revive the peace process, the Norwegians have tempered their responses to the LTTE's massive violations of the CFA. Some critics even charge that the Norwegians, in an effort to help the LTTE become technically more capable of engaging in peace negotiations with the better-equipped government, have offered material support, although

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<sup>78</sup>SLMM website, available at <http://www.slmm.lk/>.

<sup>79</sup>Anonymous author interview with a Sri Lankan academic (Colombo, July 2005).

<sup>80</sup>Indeed, Keethaponcalan notes that the development of the 'human rights roadmap' by the human rights adviser to the peace process, Ian Martin, was one reason that the LTTE withdrew from the peace process: it feared that adherence to such a plan before completion of the agreement would undermine its capacity to fight and control the region. This interpretation appears to be supported by Pinto-Jayewardene. Author interviews.

<sup>81</sup>Anonymous author interviews (Colombo, July 2005).

this seems more a matter of rumor than fact.<sup>82</sup> The JVP in particular has been a harsh critic, organizing hostile demonstrations outside the Norwegian embassy in Colombo.<sup>83</sup>

The criticism of the Norwegians and the SLMM is but one element of a broader criticism of the so-called internationalization of Sri Lanka's peace process. Not only Sinhalese nationalists, who are worried about sovereignty, and about the putative pro-LTTE bias of certain international actors, but also local NGOs and academics expressed concern with this trend. Though the latter do not suggest that the international community should withdraw, they are critical of the hazards, arguing that international actors have their own agendas and preconceptions, promote conditionalities that may prove problematic, create local dependencies, and are otherwise insensitive to local conditions. In particular, local NGOs and academics worry that international actors may push for unrealistic agreements too quickly.<sup>84</sup>

### **A return to war?**

With the collapse of peace talks, the split by the Karuna faction in the east, vocal criticism by the JVP and political maneuvering by the president in the south, and Muslim objections in the northeast, some have suggested that by late 2004 the country was about to return to war. Specifically, analysts cite Prabhakaran's November 26 Heroes' Day speech, in which he suggested that 'there are limits' to what the Tamil people

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<sup>82</sup>It is worth noting that provision of negotiating skills and other training has been made, justified by concern that the LTTE might otherwise not be equipped to negotiate in a situation that was asymmetric not only militarily but also in terms of political capacity. Author interview with Olafsdottir. On the need for an equitable negotiating field in asymmetric conflicts, see Philipson, 'Breaking Recurring Themes', pp. 36–8.

<sup>83</sup>On a demonstration held in Colombo in early July, Olafsdottir observed that the protest singled out the Norwegians, but was also explicitly a demonstration against the SLMM, which is staffed by officials from six Nordic countries. Author interview. Alan Keenan, 'Have International Donors Failed Sri Lanka's Most Vulnerable?', *Boston Review* (Summer 2005).

<sup>84</sup>Mirak Raheem and Kethesh Loganathan, 'Internationalisation of the Sri Lankan Peace Process', background paper prepared for the conference 'International Dimensions of the Peace Process in Sri Lanka', 8–9 July 2005 [on file with author]. Alan Keenan notes this internationalization as well, suggesting that it may have both overly legitimated the LTTE and inadvertently strengthened the hand of JVP hard-liners. Keenan, 'Have International Donors Failed?'

would tolerate.<sup>85</sup> Off the record, observers suggested that a date had even been set for the LTTE to withdraw from the CFA and reinstate fighting, 14 January 2005.<sup>86</sup> Others dismiss such arguments as mere 'speculation'.<sup>87</sup>

### **The tsunami and relief efforts: a lost opportunity?**

On 26 December 2004, an earthquake off the coast of Indonesia triggered a tsunami wave that hit not only that country, but also India, Thailand, Sri Lanka, and even the east coast of Africa, killing approximately 200,000 people. Some 31,000 people were killed in Sri Lanka, with another half million displaced, devastating a country already hard hit by nearly two decades of armed conflict. The international response was unusually swift and generous, with US\$3 billion pledged for Sri Lanka.<sup>88</sup> Some have suggested that this crisis averted a return to fighting by the LTTE,<sup>89</sup> and many hoped that the necessary coordination between the government and the LTTE, to deliver humanitarian aid in the northeast, might act as a confidence-building measure.<sup>90</sup> They hoped that it would draw the LTTE back into formal discussions and dispel historical mistrust.<sup>91</sup> Observers have also suggested that in the immediate aftermath, average Sri Lankans responded by helping neighbors regardless of religion or ethnicity, in contrast to the frequent ethnicization of politics otherwise present in community affairs.<sup>92</sup> However, it appears now that the opportunity was lost, both because the

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<sup>85</sup>Author interview with Keethaponcalan. Other accounts suggest that Prabhakaran implied that he had reached the limits of his own patience. Priyath Liyanage, 'Sri Lanka: No Peace, No War' (2 December 2004), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4059857.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4059857.stm).

<sup>86</sup>Anonymous author interviews (Colombo, July 2005).

<sup>87</sup>Author interview with Fernando (Colombo, 15 July 2005).

<sup>88</sup>Ethirajan Anbarasan, 'Sri Lanka Leader Gambles on Tsunami Aid' (27 June 2005), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4628125.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4628125.stm).

<sup>89</sup>Author interview with Keethaponcalan. Other observers suggested that it may have averted a return to war not only by creating a crisis for the LTTE to cope with in the areas it controlled, but also by damaging its military power, particularly its sea power.

<sup>90</sup>Anonymous author interviews with bilateral donors (Colombo, July 2005); Goodhand et al. 'Aid, Conflict, and Peacebuilding', note the optimism but also the failure for aid delivery to help build trust.

<sup>91</sup>Author interview with Marasinghe.

<sup>92</sup>Author interview with Jaleel.

influx of aid was arguably not conflict-sensitive, and because the mistrust and rifts could not be overcome. Mistrust meant negotiations over the creation of the P-TOMS in the northeast took about six months to conclude, only to be rejected or criticized by the Muslim community and the JVP.<sup>93</sup> Muslims observed that they sustained the greatest losses in the east, and thus that their inclusion in discussions about any mechanism was justified.<sup>94</sup> The JVP and the JHU both filed legal challenges to the P-TOMS in the Supreme Court. Muslim leaders suggested that they might do so as well, though they had not filed any challenges by mid-July 2005.<sup>95</sup> The LTTE made clear that its engagement in the P-TOMS did not mean its 'acceptance' of the sovereignty of the Sri Lankan state, thereby highlighting its continuing desire to achieve an independent state and further inducing southern concerns.<sup>96</sup> Thus, while donors expected the mechanism to be separate from but potentially contribute to the informal peace process and the revival of a formal one, it appears to have done the reverse.<sup>97</sup>

### Conflict-insensitive humanitarian aid?

The influx of relief organizations and assistance to the island was rapid and massive. Unfortunately, this did not have altogether positive results. Given its speed and volume, the aid was difficult for the government and local actors to absorb, resulting in inefficiency and corruption.<sup>98</sup> Competition and resentment arose within some villages,

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<sup>93</sup>'Muslims to "Boycott" Lanka Deal' (25 June 2005), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4621981.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4621981.stm). Shantha Perera, 'Why the JM Would Serve the Purpose', *Daily News* (30 June 2005); Avanti Amarasiri, 'P-TOMS and Eelam: To Be or Not to Be?', *Daily News* (1 July 2005).

<sup>94</sup>Author interview with Jaleel.

<sup>95</sup>On the legal challenge, see Kelum Bandara, 'Muslims Tet to Challenge P-TOMS', *Daily Mirror* (11 July 2005). The legal basis for the challenge appears weak, although there may have been procedural errors in the authorization given for government signature of the document.

<sup>96</sup>Chris Kamalendran, 'No Acceptance of Sovereignty: LTTE', *Sunday Times* (3 July 2005).

<sup>97</sup>For example, the Swiss embassy, in welcoming the mechanism, commented that 'Switzerland shares the view expressed by President Chandrika Kumaratunga that this administrative arrangement "would be a foundation to find a final solution to the protracted national conflict"', while observing that the cease-fire agreement remained the cornerstone for a future peace [statement on file with author].

<sup>98</sup>Muttukrishna Sarvananathan, 'Swindlers Hold Sway?', *Economic and Political Weekly* (20 June 2005).



sometimes taking on ethnic dimensions and reversing the positive multiethnic relief efforts that immediately followed the tsunami.<sup>99</sup> It also risked creating aid dependencies where they did not previously exist.<sup>100</sup> They also distorted the local economy by renting accommodations at many times the local price, further limiting housing for the displaced, and by hiring local experts at international salaries. Further, many of the humanitarian actors had not previously worked in Sri Lanka, and were not familiar with the conflict, or the ways in which aid could exacerbate it. Many believed that aid could be neutrally disaggregated from politics, and that they could work ‘around’ conflict.<sup>101</sup> This, as many donors who had been active in the country for some time had concluded, was simply not feasible – all aid, whether development or humanitarian, needed to be conflict-sensitive. Not surprisingly, then, the delivery of assistance to tsunami victims provoked controversy. In particular, many of those who had been displaced by the armed conflict, sometimes repeatedly, and who still awaited assistance, were resentful of what was referred to as ‘five star’ accommodation being provided to tsunami victims.<sup>102</sup> Further exacerbating existing cleavages were the rifts over the joint mechanism.

### **Rifts over the proposal of a joint mechanism**

The planned joint mechanism, known as the Post-Tsunami Operational Management Structure, was to distribute some but not all post-tsunami aid to the country; it could not deliver all aid, as it allowed for LTTE administration of some funds in the northeast, which was not permitted by the laws and regulations of some donor countries, such as the United States.<sup>103</sup> The regional committee for disseminating funds in the northeast was to be controlled by the LTTE and sited in Kilinochchi, where the LTTE’s governance structures were located; the JVP and JHU strongly objected to these features as first steps toward an independent

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<sup>99</sup>Tim Sullivan, ‘Perspective: Jealousy, Competition Ruin Sri Lankan village’, *AP Newswire* (21 June 2005).

<sup>100</sup>Goodhand ‘Draft 2’.

<sup>101</sup>Anonymous author interview with a Western diplomat (Colombo, 1 July 2005).

<sup>102</sup>Goodhand et al., ‘Aid, Conflict, and Peacebuilding’. See also Goodhand, ‘Draft 2’, which notes that war victims live in shacks built years ago for about 5000 rupees (US\$10), while temporary shelters being built for tsunami victims cost about 40,000–50,000 rupees.

<sup>103</sup>Perera and others pointed this out, noting the potential limitations on aid distribution. Author interview.

state. Funds from countries that didn't wish to provide monies to the LTTE would be separately administered through the government. The negotiation and structure of P-TOMS, which had been expected to help build trust, instead triggered mistrust along ethnic and political cleavages, and along the lines that peace negotiations had. Specifically, Muslims, who had objected to being excluded from the formal peace negotiations between the government and LTTE, objected that they were not treated as equal partners in the creation of the joint mechanism. While Muslims would have equal representation on the mechanism at the national level, they had not been included in the actual negotiation process. They also raised concerns that they would not be adequately represented at the regional level, particularly in the east.<sup>104</sup> The spokesman for the SLMC, Rauf Hakeem, argued that over half of the tsunami victims were Muslim, and that their exclusion from the process would affect their chances for autonomy in any future peace deal. As Hakeem put it, 'They are looking at us as bystanders and this is not acceptable.'<sup>105</sup> These objections point to genuine concerns of many Muslims in Sri Lanka, and the proposed representation of Muslims in the P-TOMS mechanism would have been a significant step.<sup>106</sup>

At the same time, the JVP objected that the mechanism, by allowing the LTTE a share in the foreign assistance, would legitimate the Tigers and help them to establish a separate Tamil state. The JVP rejected Kumaratunga's suggestions that the mechanism would help restart the peace process, and instead pulled out of the ruling coalition, which as a result became a minority in government. The JVP and the JHU, as mentioned, filed petitions in the Supreme Court to have the P-TOMS mechanism declared unconstitutional.

On 15 July, the Supreme Court held that the P-TOMS was largely constitutional, and also held that the CFA was constitutional. The court did, however, issue a temporary order limiting some provisions of the agreement. The JVP and JHU thus celebrated the ruling as a victory, although they had lost their constitutional claim. The LTTE similarly greeted the decision as a defeat of the P-TOMS. In particular it objected to the court's holding that the regional mechanism for the northeast could not be permanently sited in Kilinochchi. The leader of the LTTE's political wing, S. P. Tamilchelvan, declared the ruling

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<sup>104</sup>Author interview with Yusuf.

<sup>105</sup>'Muslims to "Boycott" Lanka Deal'.

<sup>106</sup>Author interview with Mungoven.

a defeat of the P-TOMS, and viewed it as further affirmation that the government was not acting in good faith.<sup>107</sup> However, observers have suggested that despite LTTE rhetoric, the Tigers might have been prepared to accept a rotating seat for the regional mechanism, rather than demanding a permanent seat in Kilinochchi.<sup>108</sup> The P-TOMS mechanism was ultimately abandoned.<sup>109</sup>

The political crisis over the P-TOMS was compounded by a crisis over the timing of presidential elections. While an election was constitutionally due in fall 2005, President Kumaratunga resisted calls that she set a date for the election, insisting that she had another year remaining on her term. Ranil Wickremasinghe, the likely UNP presidential candidate, insisted that elections were due, and some observers feared that the president would take 'unconstitutional' measures to remain in power. Ultimately, however, the election was scheduled and held, as the Supreme Court ruled in August 2005 that the president's term would end in December 2005.<sup>110</sup>

## International engagement in Sri Lanka

While the Sri Lankan conflict has sometimes been described as an 'introverted' conflict, with relatively little international involvement or impact, save for the intermittent role of India, the invitation of the Norwegians as mediators constituted a deliberate decision by the UNF to inter-

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<sup>107</sup>Author interviews with Selvy Karthikeyen of the LTTE Peace Secretariat, LTTE Justice Minister Pararayasingham, and N. Malathy of the North East Secretariat on Human Rights (Kilinochchi, 18 July 2005). Further email correspondence from Malathy (21 September 2005) reinforces this LTTE objection; she argued that the P-TOMS was effectively eliminated by the ruling, as it was authorized for one year and subsequent court rulings have extended the temporary restraining order, so the mechanism will never function [email on file with author].

<sup>108</sup>Author interview with Mungoven.

<sup>109</sup>Chandra Lekha Sriram, 'Sri Lanka After the Tsunami: Opportunities Lost?', *Law and Society Trust Review* 17, no. 230 (December 2006), pp. 1–22.

<sup>110</sup>'Polls Chief Won't Talk', *Sunday Times* (3 July 2005); Dinith Karunaratne, 'We Won't Let Govt. Pilfer People's Right, Says Ranil', *Sunday Times* (3 July 2005). Kumaratunga, who is entering her second six-year term, will not be eligible to stand for election again. A number of observers suggested, off the record, that she was likely to take 'unconstitutional measures' to remain in power, particularly if she was assured that the army would support her. 'Court Says Sri Lanka Election Due' (26 August 2006), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4186382.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4186382.stm).

nationalize the process.<sup>111</sup> The LTTE, too, welcomed the internationalization, as it did not trust the government to fulfill its promises, and hoped that the presence of internationals would help it demonstrate the government's bad faith to the world.<sup>112</sup> The subsequent negotiations and the response to the tsunami further internationalized politics in the country, with a significant rise not only in humanitarian presence, but also in international bilateral and multilateral donor presence.<sup>113</sup> Donors developed increasingly conflict-sensitive programming, particularly between 2000 and 2005,<sup>114</sup> which has increasingly been described as following a liberal approach to peacebuilding. This programming has entailed, not surprisingly, an embrace of liberal economic reforms – here the donors found it easy to partner with the UNF, which was promoting just such reforms.<sup>115</sup> Donors have also increasingly engaged, directly or indirectly, with the LTTE. They have clearly promoted liberal economic principles, although they have been less united on political principles. While Western aid agencies have more actively promoted engagement with civil society and political liberalization, some observers note that Asian donors such as the Asian Development Bank (ADB) and the government of Japan, more comfortable with centralized state authority, have not promoted political liberalization as strongly. The latter continue with a more traditional, state-centric, approach to aid; this is significant, as Japan and the ADB are two of the top three donors to Sri Lanka, the World Bank being the third.<sup>116</sup>

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<sup>111</sup>Goodhand et al., 'Aid, Conflict, and Peacebuilding'; Sunil Bastian, 'The Economic Agenda and the Peace Process' [draft on file with author]. But compare Jayadeva Uyangoda, 'Sri Lanka's Conflict and Peace Processes: The International Dimension', paper prepared for the conference 'International Dimensions of the Sri Lankan Peace Process', Colombo, 8–9 July 2005 [on file with author], which argues that the conflict has been internationalized from the outset. On India's role, see another paper prepared for the same conference, V. R. Raghavan, 'India and the Sri Lankan Peace Process'.

<sup>112</sup>Author interview with Karthikeyen.

<sup>113</sup>Adam Burke and Anthea Mulakala, 'Donors and Peace-Building in Sri Lanka 2000–2005' (25 May 2005) [draft on file with author].

<sup>114</sup>*Ibid.*

<sup>115</sup>Bastian, 'The Economic Agenda and the Peace Process'; Burke and Mulakala, 'Donors and Peace-Building'; Saman Kelegama, 'Transformation of a Conflict via an Economic Dividend: The Sri Lankan Experience' (draft, forthcoming in *RoundTable*).

<sup>116</sup>Burke and Mulakala, 'Donors and Peace-Building'; Goodhand et al., 'Aid, Conflict, and Peacebuilding'.

As noted, the engagement of international actors in Sri Lanka has not come without criticism. Not only has the SLMM been accused of being too weak or soft on the LTTE in negotiations, the Norwegians have also been accused of offering material aid to the LTTE. They have been accused of funneling funds and material goods, as well as military training, to the Tigers, although the accusers are often rather light on evidence for their claims. The accusations have nonetheless struck a chord, at least among Sinhalese Buddhist chauvinists, who accuse the Norwegians of being colonialists pursuing their own biased agenda in the country. Further, while Norway is a popular target, it is not the only one. Further accusations are directed at NGOs, both domestic and international, that promote human rights, peace, or democracy in the country. International NGOs are accused of colonialism by indirect means, with local NGOs their tools. The London-based International Alert, and local National Peace Council, have in particular been subjected to such accusations. Some have even accused former prime minister Wickremasinghe of an implicit collusion with the LTTE in an 'asymmetrical' agreement.<sup>117</sup> The LTTE is said to have encouraged perceptions that the Norwegians were biased in their favor, manipulating the process but also provoking Sinhalese extremists in the process.<sup>118</sup> Both the government and the LTTE, in fact, sought to use the internationalization of interest in the conflict for their own ends, even seeking to split the international community, with the government seeking to develop an 'international safety net' with support of the United States and India, and the LTTE seeking to use European support as leverage.<sup>119</sup>

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<sup>117</sup>For a sampling of these views, see the following chapters in WAPS, *Peace in Sri Lanka*: F. Rovik, 'Norway: A Terrorist Safe Haven?', pp. 1–11; Susantha Goonatilake, 'Norway, a 25 Year Odyssey: From Sympathizer to Colonial Intruder', pp. 21–42; Asoka Bandarage, 'Peace, Justice, and Democracy in Sri Lanka', pp. 139–49; Susantha Goonatilake, 'Eric the Viking: Deconstructing Solheim', pp. 226–34; H. L. D. Mahindapala, 'The Political Timing of the Tiger Bombs', pp. 281–8, Norwegians have been variously accused of being LTTE and Nazi sympathizers, and ad hominem attacks have been made on Eric Solheim, the Norwegian negotiator. The LTTE is also compared unfavorably to former Yugoslav Slobodan Milosevic, who is said to have done nothing as serious as the LTTE.

<sup>118</sup>Anonymous author interview with an embassy official of a Western European government (Colombo, July 2005).

<sup>119</sup>Author interview with Rupesinghe; author interview with Fernando (Colombo, 15 July 2005).

## Prospects for the peace process

While it is difficult to predict the future of the Sri Lankan peace process, a number of trends are apparent. First, while the risks of a return to conflict remain, the endurance of the CFA, despite numerous violations by the LTTE, indicates the desire of many Sri Lankans for peace. Further, the relative calm and stability that has resulted, as well as its facilitation of economic recovery, may further embed desires for peace.<sup>120</sup> This may help to restrain both the government and the LTTE from a return to fighting. The LTTE may be further deterred from a return to open war because of its weakening by the Karuna defection and the impact of the tsunami. However, it remains unclear whether the LTTE, or at least Prabhakaran, will accept any settlement that does not result in a separate state. This is certainly the fear of Sinhalese extremists in the south, and many Muslims in the east. There is a further risk that groups that have felt excluded from the formal peace process or P-TOMS negotiations will be radicalized or turn to violence. The Karuna split, Muslim and extremist Sinhalese objections to the P-TOMS, and jockeying among the major political parties to the detriment of peace negotiations all indicate the risk of spoilers undermining the informal peace process and any future formal peace talks. The proliferation of parties demanding the right to participate in any process, and the uneasy political situation within the government, may further limit the prospects for such talks.<sup>121</sup> The final obstacle, political instability and manipulations by both major parties in the south, is perhaps the greatest, according to many.<sup>122</sup> Some suggest that there are really two conflicts that must be addressed: the conflict in the north-east and the political conflict in the south. Unless the second is resolved, so that the opposition party, whatever it may be, does not seek to undermine any agreements made by the party in power, it is unlikely that negotiations can be put back on track, because the LTTE

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<sup>120</sup>Polling data on views of the peace process can be found at the website of the Centre for Policy Alternatives: <http://www.cpalanka.org/polling.html>.

<sup>121</sup>Anonymous author interview with an embassy official of a Western European government (Colombo, July 2005).

<sup>122</sup>Karthykeyen suggested that a necessary precondition for reopening of successful peace talks would be a majority rather than a 'cohabitation' government, because otherwise any agreements reached by a government would simply be undermined by the opposition. Author interview.

will not have faith in implementation of agreements.<sup>123</sup> The dispute over the P-TOMS and other perceived failures of the government to implement agreements led one LTTE official to state that 'all activities taken by the government encourage the war situation'.<sup>124</sup> Some suggested that the best opportunity for renewed negotiations lay in a change of government: that there was simply too much mistrust between President Kumaratunga and her party and the LTTE. They called for elections to be held in fall 2005, predicting that if the UNP were elected, with Ranil Wickremasinghe as president, the LTTE would make overtures for peace, although this claim is disputable and now historically moot, since he was not elected.<sup>125</sup> At the time of this writing, there appears to be no southern politician with sufficient credibility to promote a serious peace process: as more than one observer put it, there is no Sri Lankan Mandela.<sup>126</sup> As a result, some have suggested that only a serious change in southern politics – constitutional reform, including elimination of the executive presidency, as well as behavioral change in the two main political parties, including promotion of multipartisanship.<sup>127</sup> So long as parties use ethnic outbidding as a tool to obtain power, it appears unlikely that a peace process can succeed.<sup>128</sup>

Prospects for peace were further undermined with the assassination of Lakshman Kadirgamar, the foreign minister of Sri Lanka and a prominent Tamil opponent of the LTTE, in August 2005. He had been a strong proponent of the banning of the organization as terrorist, not only in Sri Lanka but in other countries. His assassination has been

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<sup>123</sup>Author interview with Smith.

<sup>124</sup>Author interview with Pararajasingham. On the other hand, the ramifications of the dispute may be minimal, as it is unclear that the LTTE had significant expectations of the mechanism in any event. Author interview with Malathy.

<sup>125</sup>Author interview with Rupesinghe; author interview with Fernando (Colombo, 15 July 2005). In an anonymous interview (Jaffna: 19 July 2005), a professor at the University of Jaffna suggested that Wickremasinghe was not genuinely interested in peace, but only in making trouble for the current government, and argued that the LTTE also questioned his 'bona fides'.

<sup>126</sup>Author interview with Smith.

<sup>127</sup>Author interview with Silva, who noted that perhaps what is needed is training to strengthen the political parties.

<sup>128</sup>Author interview with Fernando (Colombo, 15 July 2005), who noted, however, that there is some hope, as the UNP, in opposition in 2005, has not taken the opportunity to leverage support by opposing the P-TOMS or the continuance of the CFA.

attributed by many to the LTTE; if the Tigers are in fact responsible, it would be a serious violation of the cease-fire.<sup>129</sup> The LTTE has denied responsibility, though, and while the assassination of a Tamil moderate clearly was a blow to the peace process, President Kumaratunga vowed to 'redouble' efforts and also to initiate a review of the peace process.<sup>130</sup> The president requested that a state of emergency be declared, including police powers to conduct searches without a warrant and detain people without charge. Violence continued to escalate, perpetrated both by the LTTE and by civilians. In part of the Tamil-held north, a mob of people tore down a UN flag flying at half mast in respect for the slain politician, and the UN lodged a formal complaint.<sup>131</sup> In December 2005, separate blasts attributed to the LTTE occurred at a Hindu temple, and at a mine, killing 14 soldiers and 3 Swiss nationals.<sup>132</sup>

The election of Mahinda Rajapakse further damaged any prospects of reviving the peace process, particularly given his alliances with the radical nationalist JVP and JHU parties.<sup>133</sup> His hard-line approach has included tactics targeting civilians, and resistance to any serious political solution to the conflict. Aid workers, as well as civilians, have been casualties of the fighting. While the government promised to investigate one incident involving the killing of humanitarian workers, most disappearances and extrajudicial killings will at best be addressed by a new national commission of inquiry, but will not be the subject of criminal investigations.<sup>134</sup> Rajapakse has further threatened to abandon

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<sup>129</sup>Priyath Liyanage, 'Killing Puts Sri Lanka Peace at Risk' (13 August 2005), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4147766.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4147766.stm).

<sup>130</sup>'Thousands at Minister's Funeral' (15 August 2005), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4152250.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4152250.stm).

<sup>131</sup>'Peace Process Focus After Killing' (16 August 2005), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4155436.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4155436.stm).

<sup>132</sup>'Tamil Tigers "Waging Stealth War"' (6 December 2005), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4502020.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4502020.stm).

<sup>133</sup>Ethirajan Anbarasan, 'Tamil Tigers Warn New President' (18 November 2005), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4448824.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4448824.stm).

<sup>134</sup>'Statement from the Special Adviser on Children and Armed Conflict' (13 November 2006), available at <http://www.un.org/children/conflict/pr/2006-11-13statementfromthe127.html>; 'Civil and Political Rights, Including the Question of Disappearances and Summary Executions: Report of the Special Rapporteur, Philip Alston', UN Doc. E/CN.4/2006/53/Add.5 (27 March 2006); Asian Human Rights Commission, 'Human Rights Report, 2006' (21 December 2006), pp. 257-318, available at <http://www.ahrchk.net>; 'Sri Lanka Raid "Kills Civilians"' (2 January 2006), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/6224121.stm](http://news.bbc.co.uk/1/hi/world/south_asia/6224121.stm).



Norwegian mediation and has rejected not just an independent Tamil state, but also any autonomy or self-government for Tamils.<sup>135</sup>

The situation on the ground continued to disintegrate through 2007. Fighting between the government and the LTTE, and the LTTE and the Karuna faction, continued to escalate, the latter two continued to recruit children, and killings, disappearances, and displacements rose sharply. Between April and November 2006 alone, some 240,000 people were displaced by the fighting. Between 2005, when the cease-fire began to collapse, and 2007, more than 5000 people were killed.<sup>136</sup>

With the cease-fire in tatters and prospects for a peace agreement distant, the government initiated discussions on constitutional reform in July 2006 that could result in a federal structure and devolution, but despite provision for Tamil inclusion, pro-LTTE politicians did not participate.<sup>137</sup> In early 2007, the LTTE demonstrated a new military skill, the use of aircraft, with an attack using small planes on the military base near the international airport.<sup>138</sup> Violence on both sides escalated drastically. Conditions further deteriorated with eviction by the government of hundreds of Tamils from Colombo, on the grounds that it was a necessary security measure. The Sri Lankan Supreme Court rapidly halted the eviction, but the process further entrenched Tamil fears of discrimination and abuse by the government.<sup>139</sup>

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<sup>135</sup>'SLFP-JHU Deal Sealed' (13 September 2005), available at [http://www.bbc.co.uk/sinhala/news/story/2005/09/050913\\_jhu\\_slfp.shtml](http://www.bbc.co.uk/sinhala/news/story/2005/09/050913_jhu_slfp.shtml); National Peace Council Media Release, 'Build on Tacit Bipartisanship Without Endangering P-TOMS' (14 September 2005); 'PM Agrees to Scrap P-TOMS' (5 September 2005), available at [http://www.bbc.co.uk/sinhala/news/story/2005/09/050905\\_rajapakse\\_jvp.shtml](http://www.bbc.co.uk/sinhala/news/story/2005/09/050905_rajapakse_jvp.shtml); 'Rajapakse Rejects Tamil Autonomy' (18 October 2005), available at [http://news.bbc.co.uk/1/hi/world/south\\_asia/4353326.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4353326.stm); 'Sri Lanka: A War Strange As Fiction', *The Economist* (7 June 2007).

<sup>136</sup>John Ruwich, 'Truth Elusive As Sri Lanka Slides Deeper into War', *Reuters* (19 April 2007).

<sup>137</sup>Peter Apps, 'Sri Lanka to Talk Constitution Change, Tigers Out', *Reuters* (10 July 2006), available at [http://news.yahoo.com/s/nm/20060710/wl\\_nm/srilanka\\_dc\\_1](http://news.yahoo.com/s/nm/20060710/wl_nm/srilanka_dc_1); 'Sri Lanka Begins Work on New Proposal to End Ethnic Bloodshed', *Agence France Presse* (11 July 2006), available at [http://news.yahoo.com/s/afp/20060711/wl\\_afp/srilankaunrestpolitics\\_060711094617](http://news.yahoo.com/s/afp/20060711/wl_afp/srilankaunrestpolitics_060711094617); 'US Urges "Radical Changes" to Government in Sri Lanka', *Agence France Presse* (11 July 2006), available at [http://news.yahoo.com/s/afp/20060711/wl\\_afp/srilankaunrestpolitics\\_060711165453](http://news.yahoo.com/s/afp/20060711/wl_afp/srilankaunrestpolitics_060711165453).

<sup>138</sup>Sudha Ramachandran, 'Tigers Take Their Struggle to New Heights', *Asia Times* (28 March 2007), available at <http://www.atimes.com>.

<sup>139</sup>'Sri Lankan Warplanes Pound Rebel Positions; Aid Donors Seek to Halt Bloodshed', *International Herald Tribune* (26 June 2007); 'Court Halts Expulsion of Tamils', *BBC Online* (8 June 2007), available at <http://www.bbc.co.uk>.

## **Power-sharing, ethnic politics, and conflict resolution: a murky future**

The importance of power-sharing and a federal solution to Sri Lanka's ethnic conflict is clear, yet the acceptability of each to the government and the LTTE also remains unclear. While both sides committed to exploring federalism in principle in the Oslo negotiations, it is unclear that either really 'wants' federalism. Many in the south critique it as nothing more than a step toward an independent Tamil state, and thus reject it as undermining the territorial integrity of Sri Lanka. There also remains speculation that the LTTE has never been truly committed to federalism, that Balasingham overstepped his authority, and that, further, the organization will ultimately accept nothing less than full independence of the northeast. The position of the LTTE is in fact unclear: it agreed in the Oslo negotiations to consider federalism, but while some officials indicate that this is still an option, one suggests that the 'time for federalism has passed'.<sup>140</sup> If the LTTE is not committed to serious consideration of federalism, then the prospects for peace are dim, as neither the international community nor the Sri Lankan state will accept such an outcome. One observer suggests that both may be the case – the LTTE would prefer a separate state, but would probably accept significant autonomy instead, particularly because it is aware that the international community would be unlikely to treat a separate state as legitimate.<sup>141</sup> If the LTTE is prepared for federalism and power-sharing in principle, then the reforms to southern politics are urgently needed, as without them it is unlikely that the LTTE would have faith that any power-sharing deal could be implemented. Indeed, power-sharing runs the risk of being inconsequential if it can be upended by the acts of an executive president.<sup>142</sup>

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<sup>140</sup>While Karthikeyan indicated that federalism remained a viable option, Parasingham suggested that the government had missed many opportunities for agreeing to federal arrangements and that the time for it had passed. An anonymous professor at the University of Jaffna noted that many doubted that the LTTE was ever really committed to federalism, and suggested that they were committed to establishing a de facto state militarily. Author interviews.

<sup>141</sup>Anonymous author interview with a Western diplomat (Colombo, 1 July 2005).

<sup>142</sup>As Pinto-Jayewardena noted, the LTTE has an easy response to challenges from the south – that so long as southern political structures are in a 'shambles', they are unlikely to respect any demands for the LTTE to cede power or become more democratic.

## Conclusion

Opportunities presented by the 2002–3 peace process and by post-tsunami humanitarian action appear to have been lost. Rather than being ‘ripe for resolution’, the situation appears to be ‘rotten’, with each lost opportunity engendering further mistrust. The election of a hard-liner president opposed to accommodation with the LTTE seems likely, as well, to undermine the prospects for any future peace process. The bleak situation appears exacerbated by the ongoing violence in the northeast.

While the peace process had been revitalized by the cease-fire and the introduction of the SLMM, core issues have never been properly addressed. Nor does it appear that any of the four key incentives examined in this volume – power-sharing, wealth-sharing, inclusion in security forces, and territorial autonomy – could have encouraged a peace agreement, either because the government would not have offered them, the LTTE would not have accepted them, or both. Genuine power-sharing was not explicitly offered, nor was a strong version of autonomy, although a degree of regional autonomy was a possibility in the Oslo negotiations. However, the current government has rejected even a weak form of autonomy, and it is unclear that the LTTE truly committed to it anyway. Wealth-sharing was never an element of the peace negotiations, although the ill-fated P-TOMS mechanism would have involved some LTTE control of humanitarian resources, and its advocates viewed it as a confidence-building measure. This, too, was ultimately rejected by Rajapakse once elected.

At the time of my field research in Sri Lanka, during the summer of 2005, it appeared unlikely that peace talks could be restarted, and the situation has since worsened palpably. An emphasis on institutionalization, or governance and inclusion incentives, as the ‘institutionalization before liberalization’ strategy suggests, seems unlikely to bring the LTTE into negotiations, let alone palatable to the government of Sri Lanka.

# 4

## Sudan: The Dangerous Collateral Effects of Inclusion Incentives

After decades of conflict, the war between the Sudanese government – the National Islamic Front (NIF), which seized power in a 1989 coup – and the Sudanese People’s Liberation Movement/Army (SPLM/A) reached conclusion in 2005. A partial peace accord has been signed, which allows for some degree of autonomy for the south of the country, as well as inclusion in both governance and security structures. Some degree of international security guarantee has been offered, but the accord is considered to be shaky, and it is unclear that implementation will proceed successfully. This skepticism arises in part out of the myriad failed attempts at resolving the conflict in the past. This chapter, based on field research in Sudan, examines the history of past negotiating rounds, seeking to identify the putative sources of their failure. I consider, though extensive interviews, what potential incentives have been of greater interest to the SPLM/A.

### Background of the conflict

While the conflict in Sudan can hardly be attributed solely to colonialism, many of the contemporary cleavages around race and ethnicity are at least in part artifacts of colonial state formation.<sup>1</sup> The territory

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<sup>1</sup>Deng, Francis M. *War of Visions: Conflicts of Identities in the Sudan* (Washington, D.C.: Brookings Institution, 1994); Francis M. Deng, ‘Sudan’s Turbulent Road to Nationhood’, in Ricardo René Larémont, ed., *Borders, Nationalism, and the African State* (Boulder: Lynne Rienner, 2005), pp. 35–6; See also Gerard Prunier and Rachel M. Gisselquist, ‘The Sudan: A Successfully Failed State’, in Robert I. Rotberg, ed., *State Failure and State Weakness in a Time of Terror* (Cambridge, Mass.: World Peace Foundation, 2003), p. 103; Mansour Khalid, *War and Peace in the Sudan: A Tale of Two Countries* (London: Kegan Paul, 2003).

known in modern times as Sudan came under Ottoman-Egyptian rule in 1821, and later was a subject of the Anglo-Egyptian Condominium Administration. These administrations, however, did not seek to unify the territory. Rather, they helped to reinforce distinctions between people in the northern two-thirds of the country, who intermarried with Arab migrants, and those in the southern portion of the country, regarded as African and the subjects of slaving incursions from the north under Ottoman-Egyptian rule. The Anglo-Egyptian Condominium ended slavery and the slave trade, but administered the northern and southern portions of the country separately, reinforcing divisions and allowing development of Islam in the north and 'indigenous' practices in the south, but with the introduction of Christian missionaries as well.<sup>2</sup> As Francis Deng, a leading expert on Sudan, a former Sudanese diplomat, and a respected UN diplomat, has put it:

The crisis of statehood and national identity in Sudan is rooted in the British attempt to bring together diverse peoples with a history of hostility into a framework of one state, while also keeping them apart and entrenching inequities by giving certain regions more access to state power, resources, services, and development opportunities than other regions.<sup>3</sup>

These patterns, which continued into independence, fostered insecurity and resentment in the south and gave rise to armed conflict, which would be further exacerbated with the development of oil exploitation in the south and the increasing entrenchment of Islam in the north, where the government was sited.

In 1995, southern resentment gave rise to a mutiny that resulted in a 17-year war between the Southern Sudanese Liberation Movement (SSLM) and its military wing, and the government. This conflict was brought to a close with the Addis Ababa Agreement of 1972, which contained elements of resource- and power-sharing, a federal governance structure, inclusion of southern rebels in national security forces, and an autonomous regional government in the south, in Juba. The agreement was viewed by many as weak, heavily skewed in favor of the north, and the northern government regularly interfered with the southern government. Insurgency began to rise, and the government

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<sup>2</sup>Deng, 'Sudan's Turbulent Road to Nationhood', pp. 36–41.

<sup>3</sup>*Ibid.*, p. 41.

dispatched Colonel John Garang to quell it, unaware that he intended to lead it. Garang soon united rebel forces in what would become the SPLM/A.<sup>4</sup> The agreement was abrogated unilaterally by Sudanese leader Jaafaer Nimieri in 1983, sparking the most recent conflict, with Garang's SPLM/A fighting with Egyptian assistance.<sup>5</sup>

## **Conflict dynamics: causes and putative causes**

The conflict in Sudan is often characterized as having been 'caused' by several dynamics: race, religion, geographic distinctions, and resources. Each is contentious, and their impact on the conflict or motivation has changed over time. Further, they are not easily separable, as geographic distinctions are clearly linked to racial and religious divides, whether artificial or real. As one analyst has noted, 'The conflict in Sudan skews the notion of neatly compartmentalized theories with regard to the causes and motivations of civil wars. For the conflict in Sudan has had many stages, has been fought for various reasons and has evolved since fighting began in 1956.'<sup>6</sup>

### **Race**

Racial distinctions between the Arabs in the north and the black Africans in the south may have been artificial and constructed, but they were embedded and reinforced through colonialism and practices of slavery.<sup>7</sup> In addition to encouraging slave trade by northern Sudanese in the south, the colonizers also enforced separation between the two regions of the country, essentially sealing off the south and depriving southerners of education in general, and Arabic language skills in particular. These actions would have long-term effects on the mutual perceptions of north and south, and discriminatory policies were continued by the

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<sup>4</sup>Scott Lewis, 'Rejuvenating or Restraining Civil War: The Role of External Actors in the War Economies of Sudan' (Bonn: Bonn International Center for Conversion, 2004), pp. 15–16, available at <http://www.bicc.de>.

<sup>5</sup>Deng, 'Sudan's Turbulent Road to Nationhood', p. 41; Prunier and Gisselquist, 'The Sudan', p. 104.

<sup>6</sup>Lewis, 'Rejuvenating or Restraining Civil War', p. 13.

<sup>7</sup>See Amir Idris, 'The Racialised and Islamicised Sudanese State and the Question of Southern Sudan', in Asafa Jalata, ed., *State Crises, Globalisation, and National Movements in North-East Africa* (London: Routledge, 2004), pp. 30–44; Douglas B. Johnson, *The Root Causes of Sudan's Civil Wars* (Oxford: James Currey, 2003).

northern government after decolonization. However, it would be a mistake to overemphasize the importance of race in the conflict, as it was also bound up with religion and geographic distinctions, and with elite dominance of a few tribes in the north, which also dominated other northerners.

### **Religion**

It is often argued that the second civil war was caused by the imposition of *sharia*, or Islamic law, in the south, through the imposition of the so-called September laws. However, the war actually began before that imposition, with the attempt to disband the provincial Juba assembly, and alter provincial borders to allow for northern control of oil resources. But this does not necessarily mean that the loss of autonomous government or access to oil were central causes: many observers have suggested that the 1972 Addis Ababa Agreement was too weak and ineffectual, or that it was never properly implemented, or that international support and interest were lacking, meaning return to conflict was likely if not inevitable.<sup>8</sup> However, the agenda of the National Islamic Front, like that of the ruling party prior to and under the terms of the Comprehensive Peace Agreement (CPA), the National Congress Party (NCP), was clearly and explicitly to Islamicize parts of the country that were non-Muslim, and to promote its own version of Islam in those that were Muslim, in what both the NIF and its opponents, with different normative interpretations, referred to as a *jihad*.<sup>9</sup>

### **Geographic distinctions and access to power**

The 1972 Addis Ababa Agreement's central feature was the creation of a federal structure for the country, which gave the south its People's Assembly and High Executive Council, located in Juba, to allow for some measure of self-rule. This autonomy worked relatively well, at least until the discovery of oil, although disputes over the control of Nile waters did generate tension in the 1970s. The discovery of oil and the northern government's attempt to control it spurred old resentment. Southern resentment and at least some of the impetus for armed conflict have been rooted in historical and contemporary inequities,

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<sup>8</sup>Author interview with Benedetta de Alessi, political assistant, Italian embassy (Khartoum, 2 July 2006).

<sup>9</sup>Idris, 'The Racialised and Islamicised Sudanese State', p. 42; Author interview with Amir Idris, assistant professor, Fordham University (New York, 7 June 2005).

with the south largely excluded from access to power and wealth. An anonymous publication that appeared in Arabic in 2000, *The Black Book: Imbalance of Power and Wealth in Sudan*, which has been widely copied and shared, demonstrates the extent of that exclusion.<sup>10</sup> Through a statistical analysis of representation in the executive, the legislature, and the judiciary since 1964, the authors show not only that the north has been disproportionately represented in these institutions, but also that even within the north, three Arab tribes dominate key institutions.<sup>11</sup> Thus, while the majority of those who work in the security forces would be categorized as black, the head of the state security forces has always been a member of one of these three tribes. Further, the National Council for the Distribution of Resources, formed for oil exploration and exploitation, is dominated by the Arab parts of the north, which holds 76 percent of the seats.<sup>12</sup>

### Resources

Oil was discovered in the south of Sudan in the 1970s.<sup>13</sup> In 1975 the Chevron Corporation was granted a concession, and in 1997 began drilling. In 1980, President Gaafar Nimeiry began to change the administrative provincial borders so that the north could control oil resources.<sup>14</sup> And in 1983, he abrogated the Addis Ababa Agreement, which not only allowed him to rescind southern autonomy, but also allowed the government to control oil resources. The war resumed. Oil operations continued and grew, although Chevron withdrew in 1984 after a number of its expatriate employees were kidnapped and killed. Other oil companies, including the Canadian company Talisman, subsequently engaged in oil exploration, although Talisman withdrew following

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<sup>10</sup>Seekers of Truth and Justice, *The Black Book: Imbalance of Power and Wealth in Sudan*, translated by Abdullahi Osman El-Tom (March 2004) [electronic version on file with author].

<sup>11</sup>These are the Shaigiyya, the Jaalyeen, and the Dongollawis. See Seekers of Truth and Justice, *The Black Book*; Deng, 'Sudan's Turbulent Road to Nationhood', pp. 57–60.

<sup>12</sup>Seekers of Truth and Justice, *The Black Book*; Deng, 'Sudan's Turbulent Road to Nationhood', p. 58.

<sup>13</sup>Stephen J. Kobrin, 'Symposium: Oil and International Law: The Geopolitical Significance of Petroleum Corporations: Oil and Politics: Talisman Energy and Sudan', *New York University Journal of International Law and Politics* 36 (Winter–Spring 2004), p. 432.

<sup>14</sup>Prunier and Gisselquist, 'The Sudan', pp. 115–16; Kobrin, 'Talisman Energy and Sudan', p. 433.



allegations of complicity in serious abuses in Sudan. Oil exploration and production were subsequently pursued by other foreign companies, largely from China but also from Malaysia and Russia, which have allegedly been less concerned about abuses and conflict.<sup>15</sup> While oil was not the original cause of conflict in Sudan, either at independence or after the breakdown of the Addis Ababa Agreement, it fundamentally altered the nature of the conflict.<sup>16</sup> It arguably shifted the military balance in favor of the government, and also had drastic effects on civilians, forcing mass displacement. Prior to the discovery of oil, the conflict was driven more by concerns about economic marginalization generally, control over territory, and religious freedom and racial discrimination.<sup>17</sup>

### **SPLM motivations for fighting after 1983**

The key grievances underpinning the return to fighting are difficult to pinpoint, as they clearly involve concerns about race, imposition of *sharia*, geographic distinctions (including underdevelopment and marginalization), and access to resources, among others. So too the demands and goals of the SPLM are also difficult to fix with certainty, as they have shifted over time. Traditional goals emphasized the need for autonomy and independence from Khartoum, which was not perceived as willing to treat marginal regions fairly in the wake of the Addis Ababa Agreement's collapse. However, the SPLM under Garang also promoted the idea of a 'New Sudan', sometimes focused on the south and neighboring regions, but more frequently focused on changing governance in the north as well, with equitable participation by all Sudanese. Under Garang, at least, the SPLM sometimes promoted a vision of a unified, democratized Sudan, a vision that appealed to other marginalized regions of the country.<sup>18</sup>

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<sup>15</sup>Kobrin, 'Talisman Energy and Sudan', pp. 434–8. For a controversial view from a Sudanese academic, see Ali Abdalla Ali, *The Sudanese-Chinese Relations: Before and After Oil* (Khartoum: n.p., 2006).

<sup>16</sup>International Crisis Group, 'God, Oil, and Country: Changing the Logic of War in Sudan', *Africa Report* no. 39 (28 January 2002), available at <http://www.crisisgroup.org/home/index.cfm?id=1615&l=1>; see also Lewis, 'Rejuvenating or Restraining Civil War'.

<sup>17</sup>Kobrin, 'Talisman Energy and Sudan', pp. 441–2. Or, as John Harker, a Canadian politician, noted, oil exacerbated the conflict. *Ibid.*, pp. 446–7.

<sup>18</sup>For a document outlining this vision, beginning in but not limited to the south and neighboring regions, see SPLM, 'A Major Watershed: SPLM/SPLA First National Convention, Resolutions, Appointments, and Protocol' (Chukudam, New Sudan: March–April 1994) [photocopy on file with author].

## Regional dimensions of the conflict

While regional neighbors such as Kenya, Uganda, Ethiopia, and Eritrea have been positively engaged in supporting negotiations in Sudan through the Inter-Governmental Authority on Development (IGAD) process, discussed below, regional dynamics have also fomented conflict in the country. Under Mengistu Haile Mariam, Ethiopia provided support to the SPLM/A until 1991, in part out of genuine sympathy and in part due to its suspicion that the Sudanese government was fostering Islamist movements in Ethiopia and Eritrea. When Yoweri Museveni came to power in Uganda in 1986, he also provided support for the SPLM, again out of genuine support but also as part of a strategy to fight the Lord's Resistance Army (LRA), a violent rebel group operating in Uganda along the border with Sudan.<sup>19</sup>

## Recent peace negotiations

Conflict in Sudan between the government based in Khartoum and the SPLM/A occurred in two phases: from independence until 1972, and again from 1983 until recently. This chapter focuses only on the more recent conflict, although the underlying causes in both phases were substantially the same, and the reasons for the failure of the 1972 Addis Ababa Agreement may shed light on the risks of a return to conflict. The chapter also addresses, to a lesser degree, the conflicts and attempts at resolution elsewhere in the country, including in Darfur and in the east.

Attempts to resolve the recent conflict in Sudan have lasted over a decade. In 1993, the Inter-Governmental Authority on Development, an African subregional organization, mandated a number of countries to support peace negotiations under the leadership of Kenya's then-president.<sup>20</sup> The mediating countries declared a set of principles that recognized both the right of the peoples of the south to self-determination as well as the importance of the unity of the Sudanese state, separation of church and state, respect for multiculturalism, and equitable resource-sharing.<sup>21</sup> The government initially rejected these principles but later accepted them, resulting in episodic meetings, cease-fires, and limited progress. The IGAD mediation would revive in earnest a few years later,

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<sup>19</sup>Deng, 'Sudan's Turbulent Road to Nationhood', p. 64.

<sup>20</sup>See Steven Wundu and Ann Lesch, *Battle for Peace in Sudan: An Analysis of the Abuja Conferences, 1992–1993* (Lanham: University Press of America, 2000).

<sup>21</sup>IGAD Peace Initiative, 'Declaration of Principles' (20 July 1994), available at <http://www.sudan.gov.sd/english/peace/peace2.htm>.

in part promoted by changed circumstances, including heightened US and international pressure and the 'war on terror'.

### **International pressures on the peace process**

The IGAD process was bolstered with the input of a number of Western countries, particularly the United States, driven in significant part by concerns about human rights violations but also by allegations of state sponsorship of terrorism. In 1996, following alleged involvement of Sudanese security forces in an attempt on the life of Egyptian president Hosni Mubarak, the UN Security Council condemned the act, called for the Sudanese government to extradite suspects, and, when the government failed to do so, imposed diplomatic sanctions.<sup>22</sup> In 1997, US President Bill Clinton issued an executive order that froze all Sudanese assets in the United States and imposed a ban on investments in, trade with, and loans to Sudan. In 1998, the United States attacked a site in Sudan that it claimed was developing chemical weapons, which turned out to be a pharmaceutical factory, in response to attacks on two US embassies in East Africa.<sup>23</sup> The United States also sanctioned Sudan's state-owned oil companies to prevent them from raising funds in the US stock market. As mentioned, the United Nations first sanctioned Sudan in 1996, following the country's alleged support for an assassination attempt on Egypt's President Mubarak. These sanctions were terminated in September 2001, although new sanctions were put into place in 2004 in response to Sudan's violations of human rights and international humanitarian law in the conflict in Darfur.<sup>24</sup> Following the terrorist attacks of 11 September 2001, the United States further intensified its pressure on the regime, and the Sudanese government agreed to cooperate with the US 'war on terrorism', handing over documents and loosening the implementation of *sharia*.<sup>25</sup> In 2002,

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<sup>22</sup>UN Security Council Resolution 1044, UN Doc. S/RES/1044 (31 January 1996); UN Security Council Resolution 1556, UN Doc. S/RES/1556 (30 July 2004); Wondu and Lesch, *Battle for Peace*, pp. 165–6. Allegations of government involvement in the assassination attempt continue to be raised by SPLM officials in private and public. Anonymous author interview with an SPLM official in the government of national unity (Khartoum, 5 July 2006).

<sup>23</sup>Kobrin, 'Talisman Energy and Sudan', p. 445.

<sup>24</sup>David Briscoe, 'US Imposes Sanctions on Sudan' (16 February 2000), available at <http://www.globalpolicy.org/security/sanction/sudan2.htm>; UN Security Council Resolution 1044; UN Security Council Resolution 1556.

<sup>25</sup>See Emily Wax, 'Sudan's Unbowed, Unbroken Inner Circle', *Washington Post* (3 May 2005), available at <http://www.washingtonpost.com>, which notes the regime's flexibility on apparently core points such as Islamism in the interest of remaining in power.

under George W. Bush, the United States passed the Sudan Peace Act, which authorized US\$100 million in assistance to areas of Sudan not controlled by the government, to help prepare for a peaceful transition.<sup>26</sup> The legislation simultaneously continued the ban on investment by US corporations in Sudan, and directed US representatives to oppose extension of loans or credits by international financial institutions to the government of Sudan. The legislation was designed to monitor and encourage the peace negotiations, while also directing the US secretary of state to collect information pertaining to war crimes, crimes against humanity, genocide, or other violations of international humanitarian law.

The need for the United States to promote peace negotiations in Sudan had been championed by some of the president's core constituents, evangelical Christians, who saw the people of Southern Sudan as Christians (or less frequently, as animists) at risk of repression or denial of religious freedom by a Muslim north.<sup>27</sup> The US president appointed a special envoy to the country, former senator John Danforth, and a special humanitarian coordinator, Andrew Natsios.<sup>28</sup> These steps helped to promote the revival of the IGAD peace process, led by General Sumbeiywo of Kenya as mediator. The process unfolded incrementally, with negotiations in Machakos, Kenya, leading to a series of protocols. The US Congress has remained actively involved in monitoring the progress and implementation of these agreements.<sup>29</sup>

### Peace agreements

The first agreement, the Machakos Protocol, was signed in July 2002 and provided the basic framework for peace, including the right to

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<sup>26</sup>*Sudan Peace Act*, Pub. Law no. 107-245, 115 Stat. 1504 (2002); Sean D. Murphy, 'Contemporary Practice of the United States Relating to International Law: Enactment of the Sudan Peace Act', *American Journal of International Law* 97 (January 2003), pp. 195-6; Kobrin, 'Talisman Energy and Sudan', p. 441.

<sup>27</sup>Allen D. Hertzke, *Freeing God's Children: The Unlikely Alliance for Global Human Rights* (Lanham: Rowman and Littlefield, 2004), pp. 237-300. Kobrin, 'Talisman Energy and Sudan', p. 448.

<sup>28</sup>Deng, 'Sudan's Turbulent Road to Nationhood', pp. 60-1; Jerry Fowler, 'The Role of Justice in Building Peace: Diplomacy and 'the G-Word'', *Case Western Reserve Journal of International Law* 35 (Spring 2003), p. 216.

<sup>29</sup>'Sudan: Peace Agreement Around the Corner?' hearing before the Subcommittee on Africa of the Committee on International Relations, US House of Representatives, 108th Congress, 2nd sess., serial no. 108-79 (11 March 2004); 'Sudan: Peace but at What Price?' hearing before the Committee on Foreign Relations, US Senate, 108th Congress, 2nd sess., S. HRG 108-666 (15 June 2004).

self-determination of the peoples of the south and a six-year interim period to allow for the development of national unity before a participatory process (now a referendum) in which the people of the south could determine their future.<sup>30</sup> The protocol also established an assessment and evaluation commission, comprising equal membership from the SPLM/A and the government, as well as representation from the IGAD subcommittee on Sudan and four observer states (Italy, Norway, the United Kingdom, and the United States), to monitor the implementation of accords during the interim period. Further, the protocol enshrined freedom of religion, and made provisions for effectively curtailing the imposition of *sharia* law in Southern Sudan.<sup>31</sup> Subsequent agreements defined security arrangements in the interim period, providing for integrated but also separate armed units, wealth- and power-sharing (especially regarding divisions in the north), and resolution of related regional conflicts, though provisions to address the conflict in western Darfur have been less successful to date.<sup>32</sup>

A framework agreement on security arrangements was signed on 25 September 2003.<sup>33</sup> The parties agreed that each armed force – that of the government and that of the SPLA – would remain separate during the interim period and be treated equally as national armed forces of the country, with the expectation that eventually they would be integrated into one national army. The parties also agreed to downsizing both forces once a comprehensive cease-fire and peace agreement, involving international monitors, was in place.<sup>34</sup> The framework agreement further provided for the redeployment of the national military forces out of the south, and the redeployment of SPLA forces out of the Nuba Mountains and Southern Blue Nile to the south of the country. The exception to redeployment would be those forces expected to take part in Joint/Integrated Units (JIUs).<sup>35</sup> Some of the national and SPLA forces were to be integrated into JIUs, and deployed to specific regions across

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<sup>30</sup>*Machakos Protocol* (20 July 2002). See also *List of Corrections in the Protocols and Agreements* (31 December 2004); 'The Mediator's Perspective: An Interview with General Lazaro Sumbeiywo' (2006), available at <http://www.c-r.org/our-work/accord/sudan/mediators-perspective.php>.

<sup>31</sup>*Machakos Protocol*, 'Agreed Text on State and Religion', art. 3.2.

<sup>32</sup>See also Deng, 'Sudan's Turbulent Road to Nationhood', pp. 62–3.

<sup>33</sup>*Framework Agreement on Security Arrangements During the Interim Period Between the Government of the Sudan (GOS) and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/SPLA)* (25 September 2003).

<sup>34</sup>*Ibid.*, art. 1.

<sup>35</sup>*Ibid.*, art. 3.

the country, to form the nucleus of a postreferendum army should unity be accepted.<sup>36</sup> A joint defense board for command and control of the two forces, under a common military doctrine, was also stipulated. Finally, the framework agreement stated that no other armed groups would be allowed to operate within the country.<sup>37</sup> On 31 December 2004, the parties agreed on implementation of a permanent cease-fire and security arrangements.<sup>38</sup> Hostilities were to cease within 72 hours of signing the Comprehensive Peace Agreement.<sup>39</sup> The agreement further specified the geographic scope of the cease-fire as well as the schedule of cease-fire activities and arrangements for disengagement of forces, with UN monitoring.<sup>40</sup> The parties agreed to speed the process of dealing with armed groups that were allied either to the government or the SPLA, to incorporate them and reintegrate them in line with the condition that no other armed groups would be allowed to operate.<sup>41</sup> A number of verification and monitoring commissions were to be created – the Cease-Fire Political Commission, the Cease-Fire Joint Military Committee, the Area Joint Military Committee, and Joint Military Teams, with the participation of UN monitors in each – and a UN peace support mission (subsequently authorized as the United Nations Mission in Sudan [UNMIS], discussed below) was requested.<sup>42</sup> The agreement also stipulated policing arrangements to facilitate the removal of military and paramilitary forces while providing for internal security.<sup>43</sup> Finally, the agreement set forth principles and arrangements for demobilization, disarmament, and reintegration (DDR), including a national DDR coordination council and northern and southern DDR commissions, as well as a schedule of DDR activities.<sup>44</sup>

On 7 January 2004 the parties signed an agreement on wealth-sharing during the interim and preinterim period,<sup>45</sup> covering both oil and nonoil

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<sup>36</sup>*Ibid.*, art. 4.

<sup>37</sup>*Ibid.*, arts. 5–7.

<sup>38</sup>*Agreement on Permanent Ceasefire and Security Arrangements Implementation Modalities During the Pre-Interim and Interim Periods* (21 December 2004).

<sup>39</sup>*Ibid.*, art 5.

<sup>40</sup>*Ibid.*, arts. 7–8.

<sup>41</sup>*Ibid.*, art. 11.

<sup>42</sup>*Ibid.*, arts. 14–15.

<sup>43</sup>*Ibid.*, arts. 16–17, 20, 22.

<sup>44</sup>*Ibid.*, arts. 23–5.

<sup>45</sup>*Agreement on Wealth Sharing During the Pre-Interim and Interim Period* (7 January 2004). See also *Implementation Modalities of the Framework Agreement on Wealth Sharing* (31 December 2004).

revenues and emphasizing the need for equity to allow for proper governance in the north and south. Although the agreement did not address property rights per se, it did create two commissions, one national and one covering the south, to address land disputes and land reform, including compensation.<sup>46</sup> The agreement also created a national petroleum commission, and allowed the SPLM to gain access to some existing contracts. Further, revenue was to be shared equally, with half of oil revenues to be allocated to the government of Southern Sudan, and half to the national government and states in northern Sudan.<sup>47</sup> Nonoil revenues, through taxes and customs, were to be shared equally between the national government and the southern government,<sup>48</sup> and a monitoring commission was to ensure transparency in resource allocation, as well as to provide for equitable division of government assets.<sup>49</sup> A number of provisions for financing the transition in Southern Sudan were delineated as well, including vesting the government in the south with the ability to borrow funds, creating both a national and a southern reconstruction and development fund, and establishing mechanisms for the allocation of multidonor trust funds.<sup>50</sup>

In May 2004, the parties agreed to a protocol on power-sharing,<sup>51</sup> which stipulated that the national government would protect the sovereignty and the people of the whole country, while the southern government would exercise authority over the people in its territory. The protocol emphasized the role of local government and devolution of power across Sudan,<sup>52</sup> but also incorporated an interim national constitution as the supreme law of the land, and enshrined key human rights principles, such as protection against torture and slavery.<sup>53</sup> The proto-

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<sup>46</sup>Ibid., pt. 2.

<sup>47</sup>Ibid., pt. 5.6.

<sup>48</sup>Ibid., pts. 6–7.

<sup>49</sup>Ibid., pts. 8, 11.

<sup>50</sup>Ibid., pts. 14–15.

<sup>51</sup>*Protocol Between Government of Sudan and the Sudan People's Liberation Movement on Power Sharing* (26 May 2004). See also *Implementation Modalities of the Protocol on Power Sharing*.

<sup>52</sup>*Protocol Between Government of Sudan and the Sudan People's Liberation Movement on Power Sharing*, art. 1.

<sup>53</sup>Ibid., arts. 1.5–1.6. Further civil and political rights, such as freedom of conscience, religion, fair trial, assembly, and association, were also enshrined. The agreement also provided for equal gender rights and equal enjoyment of rights set forth in both the International Covenants on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

col provided for a national tripartite government – legislative, executive, and judicial branches – and for the representation in each. The national legislature was to comprise the National Assembly and the Council of States, with ‘equitable representation’ of the people of Southern Sudan in both bodies.<sup>54</sup> In the National Assembly, the NCP was allocated 52 percent of seats and the SPLM 28 percent, while other northern forces and other southern forces were allocated 14 percent and 6 percent, respectively. In the Assembly of States, two representatives were allocated to each state in the country.<sup>55</sup> The executive branch was to comprise a president and two vice presidents; John Garang, chair of the SPLM, would become first vice president, president of the southern government, and commander in chief of the SPLA. The consent of the first vice president would be required, among other things, for the president to declare or terminate a state of emergency, or declare a war.<sup>56</sup> The membership of the Council of Ministers, also part of the executive branch, was less precisely defined, but referenced the need for ‘inclusiveness and diversity’.<sup>57</sup> The protocol also stipulated language policy, recognizing all indigenous languages as national languages and permitting lower levels of government to adopt additional official languages, though establishing Arabic and English as the official working languages of the national government and for higher education,<sup>58</sup> and provided for the creation of a host of independent or national institutions to deal with elections, human rights, the judiciary, civil service, finances, and self-determination.<sup>59</sup> In addressing the judicial branch, the protocol established a national-level constitutional court, a supreme court, and appellate courts, and provided for the establishment of further courts as needed. The constitutional court was granted appellate jurisdiction over decisions of the southern supreme court.<sup>60</sup> The protocol also delineated a tripartite structure for the southern government, to comprise a legislature, an executive, and a judiciary. In the Assembly of Southern Sudan, the SPLM was to have 70 percent representation and the NCP 15 percent, with other southern political forces allocated the

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<sup>54</sup>*Protocol Between Government of Sudan and the Sudan People’s Liberation Movement on Power Sharing*, art. 2.2.

<sup>55</sup>*Ibid.*

<sup>56</sup>*Ibid.*, art. 2.3.

<sup>57</sup>*Ibid.*

<sup>58</sup>*Ibid.*, art. 2.8.

<sup>59</sup>*Ibid.*, art. 2.10.

<sup>60</sup>*Ibid.*, art. 2.11.



remaining 15 percent. A southern executive council was to be established as well, by the southern president with the approval of the assembly.<sup>61</sup>

While the bulk of the agreements addressed power- and wealth-sharing between the north and the south, seeking to resolve the long-running conflict and provide for autonomy and potentially independence for the latter, some sought to resolve other conflicts as well: those in southern Kordofan and the Nuba Mountains, the Blue Nile States, and Abyei.<sup>62</sup> Each agreement involved recognition of general principles of human rights and the need of popular consultation, as well as delineating boundaries and determining state or administrative structures. In June 2004, the parties issued a declaration on the final phase of peace, reaffirming their commitment to the agreements described above.<sup>63</sup>

On 9 January 2005, in Nairobi, Kenya, the government of Sudan and the SPLM signed the peace accords, together known as the Comprehensive Peace Agreement. In his commemorative speech, John Garang stated that the agreements opened the way for a Sudan 'in which all Sudanese are equally stakeholders' and referred to 2005 as the 'year of peace' for the country. He further emphasized the importance of including all Sudanese in the state, to ensure 'national unity through pluralism and democracy', a rhetorical claim quite distinct from his previous calls for independence. His speech simultaneously sought to reassure soldiers that they would not be abandoned by the peace process, but protected within it.<sup>64</sup> A supreme court and appellate courts for Southern Sudan were also established, with the supreme court being the final judicial body in the south save for cases involving decisions

<sup>61</sup>Ibid., arts. 3.5–3.6.

<sup>62</sup>*Protocol Between the Government of Sudan and the Sudan People's Liberation Movement on the Resolution of Conflict in Southern Kordofan / Nuba Mountains and Blue Nile States* (26 May 2004); *Protocol Between the Government of the Sudan and the Sudan People's Liberation Movement/Army on the Resolution of Abyei Conflict* (26 May 2004). See also *Abyei Annex: Understanding on Abyei Boundaries Commission* (17 December 2004).

<sup>63</sup>*Nairobi Declaration on the Final Phase of Peace in the Sudan* (5 June 2004).

<sup>64</sup>'Rebel Leader Garang Hails "New Sudan" of Peace and Pluralism', *BBC Monitoring Middle East–Political* (10 January 2005), retrieved from Lexis-Nexis NEWS library (accessed 25 August 2005). The passage bears repeating here: 'I want also to ensure the SPLA that the experience of Anyanya will not repeat itself because there are many SPLA soldiers that are worried they will be left by peace.' He went on to discuss the sources of funding for both the joint integrated military units and the SPLA, reassuring them of equal pay with northern soldiers in the joint units and reliable sources of income for the SPLA from local and international sources.

arising under national law.<sup>65</sup> Though the CPA set forth national powers, covering national defense and security, national police, issuance of passports, immigration, and the like, it also established the powers of the southern government, covering a separate southern constitution and police force, security during the interim period, and so forth.<sup>66</sup> Though the UN Secretary-General, through his envoy Jan Pronk, hailed the agreement, he also highlighted the 'daunting challenges' of implementation,<sup>67</sup> an accurate assessment indeed. Further complicating the matter, the violence and peace negotiations in Darfur may pose a direct threat to CPA implementation.

### **Early implementation of the CPA**

In early 2005, the prospects for implementation of the CPA seemed promising, despite ongoing violence in Darfur, discussed below. The southern town of Rumbek was chosen to be the administrative capital of the south, and expectations ran high that aid monies and resources from oil would soon arrive.<sup>68</sup> In March, the United Nations established a force of 10,000 troops and 715 civilian personnel, UNMIS, to monitor and support implementation of the CPA.<sup>69</sup> While the primary focus of UNMIS was the CPA, it was also authorized to liaise with the African Union Mission in Sudan (AMIS) in the hope of supporting a peace process in Darfur.<sup>70</sup> Rebel leader John Garang was inaugurated in early July as a vice president of the nation under the terms of the accord,

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<sup>65</sup>*Protocol Between Government of Sudan and the Sudan People's Liberation Movement on Power Sharing*, art. 3.7. Such cases might be referred to the national constitutional or supreme courts. The arrangements detailed in the foregoing provide for elections and thereafter; the agreement also provides for representation pending elections, with similar proportional arrangements. See art. 4.

<sup>66</sup>The lists of the competencies of each are extensive. see *Protocol Between Government of Sudan and the Sudan People's Liberation Movement on Power Sharing*, art. 5.

<sup>67</sup>UN News Centre, 'Annan Hails Signing of Sudan Peace Accord but Warns of "Daunting Challenges" Ahead' (9 January 2005), available at <http://www.un.org/apps/news/storyar.asp?newsid=12991&cr=sudan&cr1=>; Marc Lacey, 'Peace Deal Is Reached in Southern Sudan; Darfur Conflict Continues', *New York Times* (9 January 2005), available at <http://www.nytimes.com>.

<sup>68</sup>Jonah Fisher, 'South Sudan's Unlikely Capital' (21 January 2005), available at <http://news.bbc.co.uk/1/hi/world/africa/4192133.stm>. The capital was moved to Juba following Garang's death.

<sup>69</sup>UN Security Council Resolution 1590, UN Doc. S/RES/1590 (24 March 2005).

<sup>70</sup>See UN News Centre, '10,000-Strong UN Peacekeeping Mission Authorized for Southern Sudan' (24 March 2005), available at <http://www.un.org/apps/news/story.asp?newsid=13765&cr=sudan&cr1=>.

and a government of national unity was established, with the NCP and the SPLM ruling jointly.

### **The death of John Garang**

However, on 30 July 2005, a helicopter carrying Garang crashed, killing him and sparking riots in the capital of Sudan, Khartoum, with many southerners suspicious that Garang's death was not an accident.<sup>71</sup> Over a hundred people died in the riots, stoking further anger over poor management of the situation by the security forces. The SPLM remained publicly committed to the peace process and united with the government through the crisis, and a new vice president to represent them was chosen, Salva Kiir. Opinion about Kiir has been mixed: he is viewed as a man of integrity, given his involvement in earlier peace negotiations, but also as a secessionist, although he has supported unity for the country since becoming vice president.<sup>72</sup> This in contrast to Garang, who was viewed as a strong supporter of unity. Pronk suggested, however, that while the prospect southerners voting for unity declined with Garang's death, Garang too would have had difficulty maintaining support for unity and dealing with political splits in the south, as well as distorting forces such as the presence of external armed groups, including elements of Uganda's Lord's Resistance Army (LRA).<sup>73</sup> Others suggested that the death of Garang might help the implementation of peace, compelling the SPLM, which was driven in significant part by the force of his personality, and repressive rule, to engage in consensus building rather than functioning by fiat.<sup>74</sup> Or, as a representative of Human Rights Watch noted, 'it leaves the door open for more democratic forces to come to the fore'.<sup>75</sup>

The rioting following Garang's death, however, raised fears that civil unrest would ensue, and that spoilers would take the opportunity to

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<sup>71</sup>International Crisis Group, 'Garang's Death: Implications for Peace in Sudan' (9 August 2005), available at <http://www.crisisweb.org>; 'Sudan Bids Rebel Leader Farewell' (6 August 2005), available at <http://news.bbc.co.uk/1/hi/world/africa/4126370.stm>; Peter Greste, 'Hope Endures for Sudan's Fragile Peace' (5 August 2005), available at <http://news.bbc.co.uk/1/hi/world/africa/4746089.stm>.

<sup>72</sup>International Crisis Group, 'Garang's Death', p. 5.

<sup>73</sup>Author interview with Jan Pronk, UN Special Representative of the Secretary-General, UNMIS (Khartoum, 10 July 2006).

<sup>74</sup>Greste, 'Hope Endures'; 'Sudan: Senior US Envoy to Promote Peace Prospects for South and Darfur' *AllAfrica* (22 August 2005).

<sup>75</sup>'Garang's Death: In Quotes' (1 August 2005), available at <http://news.bbc.co.uk/1/hi/world/africa/4734353>.

derail the peace process.<sup>76</sup> The SPLM did join the government in a committee to investigate the riots, but complaints about police operations in refugee camps prompted the SPLM to withdraw from the committee shortly thereafter.<sup>77</sup> Nonetheless, Vice President Kiir remained publicly committed to the peace process and the country's first postwar parliament, whose membership, shaped by the power-sharing provisions in the CPA, opened in late August 2005.<sup>78</sup>

The threat of spoilers might emerge not just from the south, however. Islamists in the north might use Garang's death as an opportunity to challenge the peace agreements. In particular, they have sought to impose *sharia* law across the whole of the country and objected to the elements of the CPA that revoked it in the south and limited its application in the north. They might also fear that the SPLM's participation in the new government will undermine their dominance. Some reports have suggested that Islamists in the north were involved in fomenting some of the unrest following Garang's death.<sup>79</sup>

### **Beyond the CPA: violence in the west, east, and north**

Gerard Prunier has argued that the CPA is unlikely to end the conflict in Sudan, because it does not address ongoing conflict in western Darfur, and because it does not include key opposition groups whose allocation of power is not proportional to their representativeness in the north or the south.<sup>80</sup> Thus there is violence characterized by some as genocide in the west, there is rising violence in the east, and there are potential spoilers to the CPA in the north, and the LRA presence in the south also has the potential to be destabilizing. Further, the implementation of the CPA has been hampered by ongoing disputes regarding the boundaries of Abyei. In all areas of the country outside Khartoum, the sense of marginalization and exploitation by the center has been strong, and has motivated a desire to fight in some instances. Absent

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<sup>76</sup>International Crisis Group, 'Garang's Death'.

<sup>77</sup>Jonah Fisher, 'Sudan SPLM Quits Riots Committee' (16 August 2005), available at <http://news.bbc.co.uk/1/hi/world/africa/4157658.stm>.

<sup>78</sup>'Sudan's Post-War Parliament Opens' (31 August 2005), available at <http://news.bbc.co.uk/1/hi/world/africa/4202114.stm>.

<sup>79</sup>International Crisis Group, 'Garang's Death', pp. 6–7.

<sup>80</sup>Gerard Prunier, 'Sudan Peace Accords Won't End War', *Sudan Tribune* (15 January 2005), available at [http://www.sudantribune.com/article.php3?id\\_article=8030](http://www.sudantribune.com/article.php3?id_article=8030).

some real sense that a peace dividend is being distributed, conflicts that have emerged will be difficult to resolve.<sup>81</sup>

### **Violence in the west: the Darfur crisis**

A full account of the violence and peace negotiations in Darfur is beyond the scope of this chapter. However, both have the potential to impact the CPA, and were arguably in part shaped by the CPA. Further the process by which the armed groups in Darfur engaged in, and did or did not sign, the Darfur Peace Agreement (DPA), is of direct relevance to this study.

Violence in Darfur first came to the attention of the international community in early 2003. The Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) had taken up arms, complaining that the African communities in western Darfur remained traditionally disenfranchised by the government, and that these pastoral communities were also being dispossessed of their land by Arab nomads.<sup>82</sup> The two movements were countered by Arab militias known as the *janjaweed*. The government of Sudan has alternately denied the existence of the militias, or claimed that it had no relation to them. However, evidence is widespread that the militias engaged in campaigns of rape, mass killings, looting, burning of villages, and mutilations that resulted in the death of over 200,000 people in Darfur, and displaced at least two million others. These campaigns have been characterized by many in the international community, including an independent commission of experts, as war crimes and crimes against humanity, but not explicitly as genocide.<sup>83</sup> The US government has characterized these acts as genocide. While the Sudanese government denies supporting the militias, human rights and other groups have presented evidence indicating that the militia cam-

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<sup>81</sup>This point was made eloquently by Helen Oller, a member of parliament from the south, but who represents the National Congress Party. While she strongly supports the peace agreement and sees potential for north-south cooperation and unity, she also indicated that many in the south do not share her expectations. Author interview (Khartoum, 10 July 2006).

<sup>82</sup>See, generally, International Crisis Group, 'Unifying Darfur's Rebels: A Pre-requisite for Peace', *Africa Briefing* no. 32 (6 October 2005), available at <http://www.crisisgroup.org/home/index.cfm?l=1&id=3723>.

<sup>83</sup>'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General' (25 February 2005), available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/eviu-6agkfw?opendocument>.

paigns received air support from the government, as well as that some government soldiers engaged in campaigns alongside the militias.<sup>84</sup>

### *International response*

Pressure mounted on the Sudanese government and militias in late March 2005 with the UN Security Council's passage of Resolution 1593, which referred the situation in Darfur to the International Criminal Court (ICC) for investigation, triggering the possibility that Sudanese government officials, among others, might face investigation and indictment for crimes committed in Darfur.<sup>85</sup> The resolution was passed, perhaps surprisingly, despite strong US objections to the ICC; the United States abstained after inserting clauses into a compromise French draft exempting foreign peacekeepers from the Court's jurisdiction.<sup>86</sup>

### *The truce and AMIS*

Though government of Sudan was and remains steadfastly opposed to the deployment of UN troops to monitor the situation in Darfur, or to implement the subsequent peace agreement, it permitted mediation by the African Union, under leadership by Chad, to broker a cease-fire agreement in April 2004. The African Union Mission in Sudan was authorized in October that year to monitor the cease-fire, support capacity building, and contribute to a secure environment for the return of refugees and internally displaced persons.<sup>87</sup> However, the AMIS force, comprising 7000 troops, was unable to stem the violence or protect civilians in Darfur. Unfortunately, the cease-fire was never effective and the humanitarian situation continued to worsen.<sup>88</sup> This led to strong calls for a UN force

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<sup>84</sup>See, for example, Human Rights Watch, 'Darfur Documents Confirm Government Policy of Militia Support' (20 July 2004), available at <http://hrw.org/english/docs/2004/07/19/darfur9096.htm>.

<sup>85</sup>UN Security Council Resolution 1593, UN Doc. S/RES/1593 (2005).

<sup>86</sup>See the record of comments relating to Resolution 1593: UN Security Council, 5158th Meeting, UN Doc. S/PV.5158 (31 March 2005). See also Haider Rizvi, 'Pressure Mounts on U.S. As Darfur Vote Looms', *Inter-Press Service* (24 March 2005), available at <http://ipsnews.net/interna.asp?idnews=28014>.

<sup>87</sup>See, generally, <http://www.unmis.org/english/au.htm>; *Status of Mission Agreement for Amis* (2004), available at <http://www.unmis.org/english/documents/darfur-soma.pdf>; *Agreement on the Establishment of the Ceasefire Commission and the Deployment of Observers in Darfur* (2004), available at <http://www.unmis.org/english/documents/darfur-implementationofcease-fire.pdf>.

<sup>88</sup>Lydia Polgreen, 'An Incomplete Peace: Sudan's Never-Ending War with Itself', *New York Times* (4 May 2006), available at <http://www.nytimes.com>.

to replace AMIS upon the expiration of its mandate in September 2006, discussed below.

### *The Darfur peace agreement*

Following extensive negotiations between the government and the two rebel movements, the SLM/A and the JEM, beginning in April 2004, a peace agreement for Darfur was reached between the government and the main faction of the SLM/A, led by Minni Minawi, in May 2005. Observers to the negotiations have noted that the rebel groups were unskilled, particularly in comparison to the sophisticated government brokers.<sup>89</sup> However, one faction of the SLM, and the JEM, refused to sign the agreement. Their outstanding demands included a post of vice president in the national government for the rebels, and a greater degree of wealth-sharing for Darfur. The legitimacy of the agreement has been questioned not only by the leaders of the other rebel factions, but also by DPA-opposed populations in refugee camps. The representativeness of Minawi's Zaghawa-dominated faction has been questioned as well, given that the Zaghawa are a minority in the region.

However, despite strong opposition to the DPA by the SLM/A and JEM, and limited participation from the outset, the African Union (AU) and the international community committed to supporting the agreement, although in retrospect many have suggested that the DPA was pushed too forcibly or rapidly. While the African Union has sought to bring other parties into the agreement, as well as to publicize and promote it in Darfur, this has proven a challenge.<sup>90</sup> The Darfur-Darfur Dialogue and Consultation, as provided for in the DPA, is tasked with addressing the challenges of restoring peace to Darfur, overcoming the divisions between communities, and resolving existing problems to build a common future.

A key feature of the DPA, and one of the most contentious elements during negotiations, is the status of former combatants, and their inclusion in security forces. The final agreement provides for the inclusion

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<sup>89</sup>John A. Akec, 'Darfur Peace Agreement: A Just Peace or Peace at All Costs?' *Sudan Tribune* (29 April 2006), discusses and reproduces the draft text of the Darfur Peace Agreement, available at [http://www.sudantribune.com/article.php3?id\\_article=15343](http://www.sudantribune.com/article.php3?id_article=15343). See also 'Main Parties Sign Darfur Accord' (5 May 2006), available at <http://news.bbc.co.uk/1/hi/world/africa/4978668.stm>; author interview with Jack Christofides, director of Political Affairs, UNMIS (28 June 2006); author interview with Cameron Hume, Ambassador of the United States to Sudan (Khartoum, 2 July 2006).

<sup>90</sup>Author interview with Monique Mukaruliza, deputy head of mission, AMIS (Khartoum, 13 July 2006); author interview with de Alessi.

of 4000 fighters from the two rebel movements to be integrated into the national army, and another 1000 into the police and other security forces, with 3000 more given special training for positions in civilian life.<sup>91</sup> To accommodate concerns by the two movements that their former combatants would be widely dispersed across battalions and thus unable to defend themselves if necessary, it was agreed that 100–150 of their combatants would be integrated into each Sudanese battalion, so that they would constitute about a third of the membership. Further, the two movements are to disarm only after the *janjaweed* do so, and after the Sudanese army has withdrawn.<sup>92</sup>

In addition to inclusion of SLM/A and JEM members in the national security and military forces, the DPA contains provisions for power-sharing. Specifically, it provides to the two movements the fourth highest position in the country: senior assistant to the president, who is also the chair of the Transitional Darfur Regional Authority. The agreement provides further that this body will manage the transition in Darfur, and that the SLM/A and JEM will have effective control of it. Provision is also made for the two movements to control 12 seats in the National Assembly and 21 in each of the Darfur state legislatures during an interim period prior to a popular referendum in 2010. This referendum will not provide the option of independence; rather, voters will decide whether Darfur ought to be one unitary region with a single government, or continue as three separate entities. These arrangements fell short of the demands by the JEM and one faction of the SLM/A, which sought a post of vice president and were concerned that their representation in the Darfur state administrations would not allow them to decisively influence policy. The representation of 21 seats in each state legislature is small, in comparison to the 70 percent control awarded the SPLM/A in the government of Southern Sudan.<sup>93</sup> The comparatively limited number of seats set aside for SLM/A and JEM representatives in the National Assembly was also a concern for the two movements, but the DPA also had to accommodate the NCP's desire to maintain its majority control of the government, given that the latter retained only 52 percent of seats under the terms of the CPA.

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<sup>91</sup>*Darfur Peace Agreement*, art. 30. See also Alex de Waal, 'Explaining the Darfur Peace Agreement – Part 9: The Future of the Movements' Combatants', *The Citizen* (Khartoum) (28 June 2006), p. 3.

<sup>92</sup>*Darfur Peace Agreement*, art. 30. See also US Department of State, 'Fact Sheet: Darfur Peace Agreement' (8 May 2006), available at <http://www.state.gov/r/pa/prs/ps/2006/65972.htm>.

<sup>93</sup>Akec, 'Darfur Peace Agreement'.



The DPA also provides for wealth-sharing, although, unlike the CPA, which specifies percentages allocated to the national and southern governments, it calls for equitable allocation with a recognition of the specific reconstruction needs of Darfur. The agreement indicates that the Fiscal and Financial Allocation and Monitoring Commission will 'accomplish the task of fiscal equalization'.<sup>94</sup> This is designed as an independent body to make recommendations on resource allocations and transfers, with representation from Darfur.

#### *DPA holdouts and continuing violence*

The *janjaweed* militias were not party to the negotiations nor did they sign the DPA; instead the government negotiated their status and promised to disarm them. However, such disarmament has yet to occur, and the militias have continued their attacks on civilians, with many reports suggesting that the humanitarian situation has worsened since the agreement.<sup>95</sup>

Further, of the Darfur rebel groups, only the mainstream SLM/A, led by Minni Minawi, has signed the DPA. An SLM/A faction and the JEM have refused to sign, despite sanctions threats by the African Union and the United Nations.<sup>96</sup> Thus the cease-fire contained in the agreement has never been fully implemented, as only two parties who signed the DPA itself, and some groups from the SLA and JEM who signed the Declaration of Commitment to the DPA, have embraced to the agreement and participate in the its monitoring commission. Similarly, implementation of other features of the DPA has proven a challenge. The integration of the rebels into national security forces will necessitate first training them to improve their effectiveness and professionalism.<sup>97</sup> Despite the ongoing failure of implementation, the SLM/A faction nominated Minawi as assistant to the president, per the terms of the agreement, apparently confirming accusations by the other factions that he has sold out to increase his own power.<sup>98</sup>

<sup>94</sup>*Darfur Peace Agreement*, para. 124.

<sup>95</sup>'Over Tea, Sheik Denies Stirring Darfur's Torment' (12 June 2006), available at <http://www.nytimes.com/2006/06/12/world/africa/12darfur.html?page-wanted=2&r=1>.

<sup>96</sup>'Darfur Peace Deal Deadline Passes' (1 June 2006), available at <http://news.bbc.co.uk/1/hi/world/africa/5034020.stm>.

<sup>97</sup>Author interview with Mukaruliza; author interview with Cage Banseka, political analyst, AMIS (Khartoum, 29 June 2006).

<sup>98</sup>Ghada Al Jamal, 'SLM/A Relieves Spokesperson', *Sudan Vision* (3 July 2006), p. 1; 'Minawi Nominated Assistant to President', *Sudan Vision* (12 July 2006), p. 1.

Further, the commitment of the NCP to implementation of the agreement remains uncertain, particularly given its adamant opposition to the introduction of a UN force, or admittance of ICC investigators. This may be not least because key NCP leaders fear indictment and arrest themselves. Vice President Ali Osman Taha, a chief architect of the DPA, was also responsible for the design of the government campaign in Darfur, only later 'repackaging' himself as a peace negotiator there.<sup>99</sup> While at the time of this writing the ICC has not issued any indictments, he and other top leaders in Khartoum fear they might be named, and many see any UN force for Darfur as threatening to carry out their arrests. Any UN force is apparently expected by the government to have wider powers and greater strength than AMIS, and indeed it is the inability of AMIS to stop continued fighting and predation on civilians that has led to calls for its replacement. The NCP, issuing statements on behalf of the government, has sought to rally support for its position by depicting any UN force for Darfur as foreign invasion, or colonialism, an assertion that was echoed by some Sudanese tribal leaders when they met with a mission of the UN Security Council in June 2006. The 15-member Council mission was unable to convince the government to accept a handover of the AU force to the United Nations.<sup>100</sup> President Omar al-Bashir has called repeatedly for resistance and even jihad against such foreign invasion, a call adopted by Islamic militants and even promoted by a tape attributed to Osama bin Laden in April 2006.<sup>101</sup> He has called for the continuation of AMIS, offering to fund it, or alternately called for the deployment of joint national forces involving national Sudanese armed forces and SPLA forces.<sup>102</sup> The rejection of a UN force was repeated by the SPLM-appointed national foreign minister, Lam Akol. However, the split in the government of national unity became apparent when the SPLM vice president and the SPLM spokesman announced the support of the party for a UN force, and the rejection of the deployment of

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<sup>99</sup>Wax, 'Sudan's Unbowed, Unbroken Inner Circle'.

<sup>100</sup>'Security Council Told Recent Mission to Sudan Successful, Although Agreement Not Reached on Transfer of Peacekeeping to UN', UN Security Council, 5462nd Meeting (AM), available at <http://www.un.org/news/press/docs/2006/sc8750.doc.htm>.

<sup>101</sup>Edith M. Lederer, 'Sudan Tribal Leaders Reject U.N. Forces', *Associated Press* (10 June 2006), available at [http://news.yahoo.com/s/ap/20060610/ap\\_on\\_re\\_af/sudan\\_security\\_council](http://news.yahoo.com/s/ap/20060610/ap_on_re_af/sudan_security_council).

<sup>102</sup>'Sudan Ready to Fund AU Peacekeepers in Darfur for 6 Months', *The Citizen* (4 July 2006), p. 2.

any joint national force to Darfur.<sup>103</sup> While the UN Secretary-General tried and failed at the African Union summit in July 2006 to convince Bashir to accept a UN force, fighting continued in Darfur, and several rebel groups announced the formation of a united force. Further, in 2006, for the first time, these rebel groups launched attacks outside Darfur, just 120 miles from Khartoum, and fighting between the signatory and nonsignatory rebels also emerged.<sup>104</sup>

Pressure continues on the Darfuri fighters and the Sudanese government through the imposition of sanctions, under a UN Security Council resolution in April 2006, against four individuals: a Sudanese air force officer, a janjaweed leader, and two rebel leaders.<sup>105</sup> The DPA was also challenged from another source: the UN envoy, Pronk himself, who wrote in his Web log that the DPA was on the verge of collapse, and that it did not resonate with the people. He argued that to survive, the agreement would require additional elements addressing the concerns of the armed groups that did not sign it, and a UN force to support its implementation.<sup>106</sup> However, Minawi's rebel group has threatened to withdraw from the DPA unless UN troops are deployed, and the head of the AMIS force suggested in July 2006 that the mission should withdraw in September if there were no promise of a UN force to follow. While the

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<sup>103</sup>'Kiir Supports UN Troops in Darfur', *Khartoum Monitor* (1 July 2006), p. 1; Jimmy Atilio, 'SPLM Rejects War Against UN', *Khartoum Monitor* (1 July 2006), p. 1. The government has been adamant in combating these rumors. See UNMIS Public Information Office, 'UNMIS Media Monitoring Report, 27th June 2006', and two newspaper reports: 'Dr. el-Khalifa refutes reports of conflict between President Bashir and V-p Taha'; 'Defence Minister-Bashir in Contact with Taha', *Sudan Tribune* (6 July 2006), p. 4. Taha returned to the country shortly thereafter.

<sup>104</sup>'Annan Fails to Convince Sudan to Accept UN Darfur Force', *The Citizen* (3 July 2006), p. 1; 'Founding Declaration of Darfur's National Redemption Front', *The Citizen* (3 July 2006), pp. 1, 3. See also Jim Lobe, 'Sudan: Stronger Intervention Urged As Violence Spreads', *Inter-Press Service* (2 July 2006). 'Darfur Rebel Alliance Attack Town, Declare Truce Over', *The Citizen* (4 July 2006), p. 1; 'Rebels Launch Raid Outside Darfur' (4 July 2006), available at <http://news.bbc.co.uk/2/hi/africa/5144154.stm>. The Sudanese government promptly accused Eritrea of 'hosting' the rebel alliance. Opheera McDoom, 'Sudan Summons Eritrean Envoy on Darfur Rebel Attack', *Sudan Vision* (6 July 2006), p. 2; 'Bloody Battle in Northern Darfur' (10 July 2006), available at <http://news.bbc.co.uk/2/hi/africa/5165856.stm>.

<sup>105</sup>Warren Hoge, 'UN Council Imposes Sanctions in Darfur War Crimes', *New York Times* (26 April 2006), available at <http://www.nytimes.com>.

<sup>106</sup>'Darfur Peace Deal on Brink of Collapse – UN's Pronk', *The Citizen* (3 July 2006), p. 1.

mandate of the weak AU force has been extended, a joint AU-UN force was only agreed to by the Sudanese government in June 2007, and its deployment had not begun at the time of writing, with many important details yet to be agreed.<sup>107</sup> Minawi's group was also accused of engaging in fighting against the other two rebel factions with the support of Khartoum, including the use of white helicopters to mimic AMIS and UNMIS helicopters as air support for attacks by the Minawi faction. This was subsequently confirmed in a report of the UN Secretary-General that accused the Sudanese government of flying weapons and ammunition into the region and of disguising planes to look like UN aircraft; the Sudanese government rejected these findings as 'lies'.<sup>108</sup>

### **Conflict in the east**

Like other 'marginalized' regions of the country, the population of the east, largely Beja, has long suffered from underdevelopment and a sense of discrimination. Their situation deteriorated with the coup that brought the NIF to power, as their democratically elected leader was ousted and executed, and Khartoum installed leaders, began expropriation of fertile land, and forcibly conscripted Beja youth into the Popular Defense Forces.<sup>109</sup> Low-intensity conflict began in 1995, with the Beja Congress taking up arms and challenging Khartoum and seeking greater independence and a share in wealth. The SPLA also had a strong presence prior to the CPA, but its members were to be pulled back under the terms of the agreement. However, while the agreement addressed the presence of the SPLA, it addressed neither the presence of other armed groups in the region nor the political and economic demands of the people of

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<sup>107</sup>UN Integrated Regional Information Networks, 'AU Mission Extended to Year-End but No Deal on UN Force' (2 July 2006), available at <http://allafrica.com/stories/printable/200607030058>; 'Sudan Accepts Joint Darfur Force', *BBC News* (12 June 2007), available at <http://news.bbc.co.uk/2/hi/africa/6745691.stm>; Gerard Aziaku, 'Sudan Warned to Accept Darfur Force, Hand Over War Crime Suspects', *Agence France Press* (7 June 2007).

<sup>108</sup>Minawi Uses SAF for Killing Former Allies', *Juba Post* (14–20 July 2006), p. 12; James Smith, 'The Clock Ticks, Sudan Heads for Disaster' (11 July 2006) available at [http://www.aegistrust.org/index.php?option=com\\_content&task=view&id=423&Itemid=88](http://www.aegistrust.org/index.php?option=com_content&task=view&id=423&Itemid=88); *Report of the Secretary-General on the Sudan*, UN Doc. S/2007/213 (17 April 2007); Edith M. Lederer, 'Sudan Accuses UN Panel of Lying', *Yahoo News* (19 April 2007), available at <http://news.yahoo.com>.

<sup>109</sup>International Crisis Group, 'Sudan: Saving Peace in The East', *Africa Report* no. 102 (5 January 2006), pp. 3–4.

the east. The CPA thus offered no real peace dividend to the region, to a people described by the International Crisis Group as the most politically marginalized in the country and experiencing a humanitarian situation worse than that in some parts of Darfur.<sup>110</sup> The fighting became more consolidated in 2005 with the merging of the Beja Congress and the Free Lions, in an attempt to form a united political and military front, the Eastern Front. A peaceful demonstration seeking recognition and negotiation on power-sharing and wealth-sharing in Port Sudan in January 2005 was confronted with the use of significant force by the security forces, which resulted in many deaths and provoked further anger and frustration among the Beja. The Eastern Front is not isolated, having forged alliances with rebel groups in Darfur, and drawn interest from the Eritrean government as well.<sup>111</sup> Peace negotiations for the conflict in the east were mediated by the Eritrean government, resulting in a statement of principles between the government and the Eastern Front in June 2006, and President Bashir promoted the CPA and DPA as models for a peace agreement there.<sup>112</sup> In October 2006, the Eastern Sudan Peace Agreement (EPA) was reached, which involved a power-sharing arrangement that gave the Eastern Front one assistant to the president, one presidential adviser, and one post of state minister, as well as eight seats in the national parliament and ten seats in each of the three eastern state parliaments.<sup>113</sup> Implementation proceeded slowly and, according to a report of the UN Secretary-General, 'stagnated' by April 2007.<sup>114</sup> It appeared to be partially revived with the completion of an agreement on reintegration of former rebel combatants, in July 2007.<sup>115</sup>

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<sup>110</sup>Ibid., pp. 1, 6–7.

<sup>111</sup>International Crisis Group, 'A New Sudan Action Plan', *Africa Briefing* no. 24 (26 April 2005), p. 4; International Crisis Group, 'Sudan: Saving Peace in the East', pp. 8–9.

<sup>112</sup>'Sudan Says Dogged to Realise Peace in Eastern Sudan, Praises Eritrea', *Khartoum Monitor* (1 July 2006), p. 2; 'Al-Bashir: Government Would Adopt Darfur, South Sudan Models to Resolve Eastern Sudan Problem', *Sudan Vision* (1 July 2006), p. 2; 'Eastern Front Ready for Next Round: Mutasim', *Khartoum Monitor* (11 July 2006), p. 1.

<sup>113</sup>*Eastern Sudan Peace Agreement* (16 October 2006), available at <http://www.sudan-tribune.com/spip.php?article18145>.

<sup>114</sup>*Report of the Secretary-General on the Sudan*, para. 21.

<sup>115</sup>'Sudan, Former Eastern Rebels Sign Military Deal', *Agence France Presse* (18 July 2007).

## **Opposition in the north**

Opposition parties in the north, namely the Umma Party, the Popular Congress Party, and the Communist Party, apparently feel little interest for the CPA, from whose negotiations they were excluded, the more so because the CPA parties did not attempt a more inclusive conference to discuss the agreement once concluded. The parties do not currently pose a risk of violence, and indeed do have an interest in the features of the CPA that would result in open elections, in which they hope to gain a greater role.<sup>116</sup> While opposition parties are critical of their exclusion from CPA negotiations, many observers see that as unavoidable. There are two contending views of this exclusion: that groups may take up arms because they believe it the only way to get their concerns addressed, and alternatively that inclusion of all parties is impossible, and one must deal only with the most important parties who are currently engaged in conflict.<sup>117</sup>

## **Threats to stability in the south: the Lord's Resistance Army**

Even as the CPA was reached, the continued presence of northern Ugandan rebels, the Lord's Resistance Army, in southern Sudan, was reported. While the LRA had been present in eastern Equatoria in the south since the 1990s, it was hoped that the CPA would result in its departure, with its traditional support from the Sudanese armed forces cut off. The northern government had supported the LRA presence in the south to undermine the SPLM, and to retaliate against the government of Uganda for its support to the SPLM/A. The SPLM/A had traditionally opposed the presence of the LRA as a threat to security and as part of the strategy of divide and rule pursued by the government of the north.<sup>118</sup> However, the SPLM's engagement with the LRA has changed, as the government of Southern Sudan has sought to mediate between the government of Uganda and the LRA. Southern Sudan leader Riek Machar even provided the LRA with some US\$20,000, ostensibly for food supplies, at the outset of talks.<sup>119</sup> The government of Southern Sudan began

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<sup>116</sup>International Crisis Group, 'Sudan's Comprehensive Peace Agreement: The Long Road Ahead', *Africa Report* no. 106 (31 March 2006), pp. 24–5, available at <http://www.crisisweb.org>.

<sup>117</sup>Author interview with Pronk; anonymous author interview with a Sudanese scholar (Khartoum, 27 June 2006).

<sup>118</sup>International Crisis Group, 'Sudan's Comprehensive Peace Agreement', pp. 14–17.

<sup>119</sup>Author interview with de Alessi; author interview with Christofides.

convening peace talks in Juba in July 2006, which led to a truce in August.<sup>120</sup> The SPLM has opposed a trial by the ICC, instead supporting a negotiated end to the conflict and safe haven for Joseph Kony and other top leaders. In an apparent reversal of previous support for the LRA, President Bashir demanded the group's departure from the country in January 2007.<sup>121</sup> At the time of completion of this book, negotiations were stalled due to funding challenges and concerns about ICC indictments.

### Ongoing challenges to CPA implementation

Implementation of the CPA has been slow, and riddled with delays and cheating. Progress has been a challenge, not least due to the complexity of the agreement, which requires that over 50 national commissions and other bodies be created for monitoring and implementation. The institutions to be created are so numerous that the UN's implementation publication, the *CPA Monitor*, devotes significant space to the progress, or lack of it, in establishing commissions on issues such as civil service reform, judicial institutions, boundary delimitation, elections, human rights, and petroleum, to name just a few of the most contentious ones.<sup>122</sup> Even where these commissions have been created, however, they are frequently not meeting regularly, or do not take up matters of any substance. Many functions that were to have been managed by the commissions have been taken over by the presidency.<sup>123</sup> As the International Crisis Group has put it, 'the picture that emerges is of a pattern of NCP attempts to systematically undermine, delay, or simply ignore the elements called for in the CPA that would fundamentally alter the status quo and its grip on power'.<sup>124</sup> While undoubtedly this characterization of government behavior is accurate at least in part, the reality is that the SPLM has also done its part to undermine the creation and effective functioning of the commissions. I discuss here the disputes and

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<sup>120</sup>Nhial Bol, 'Uganda Government Delegation Arrives in Juba for Peace Talks to Start Next Week', *The Citizen* (4 July 2006); 'Uganda Talks with LRA Next Week' (3 July 2006), available at <http://news.bbc.co.uk/2/hi/africa/5140296.stm>.

<sup>121</sup>'LRA Rebels Should Leave Sudanese Territory – Bashir', *United Nations Integrated Regional Information Networks* (10 January 2007), available at <http://allafrica.com/stories/printable/200701100523>.

<sup>122</sup>UNMIS, *CPA Monitor*, available at <http://www.unmis.org/english/cpamonitor.htm>.

<sup>123</sup>Author interview with Pronk.

<sup>124</sup>International Crisis Group, 'Sudan's Comprehensive Peace Agreement', p. 2.

progress relating to just a few central commissions that are emblematic of the larger struggle over implementing substantive procedural and institutional features of the CPA.

The National Constitutional Review Commission was created by the CPA to draft an interim national constitution and prepare statutes and other materials to ensure the independence of the many other commissions detailed in the CPA. However, since drafting the interim constitution, the review commission has ceased to function, while NCP-dominated bureaucracies have sought to bypass it in creating legislation regulating the National Judicial Service Commission, and in passing laws that are patently unconstitutional, such as one providing that the president of the country would appoint all judges in Southern Sudan.<sup>125</sup> In the case of the independent Abyei Boundary Commission, discussed below, the NCP has flatly rejected its recommendation.

However, undermining commissions is not purely the province of the NCP. The SPLM has also proven obstructionist, in relation to the National Petroleum Commission. The issue of who had the authority over the distribution of oil and other resources was, not surprisingly, a thorny one. There are mixed accounts as to what agreement was reached regarding this issue in negotiations, but the SPLM claimed that it was promised the Ministry of Mining and Energy. After Garang's death, when the NCP claimed the ministry, the SPLM objected strenuously, although some observers say that the latter's claim was in error. In the end, the SPLM was given control of the National Petroleum Commission, which was convened in early 2006, although the commission's efforts have been largely ceremonial and failed to address disputes over the amount of petroleum resources due to the south, or oil contracts concluded by both parties that have yet to be reported. While some have attributed this to machinations of the NCP, others have seen an unwillingness by the SPLM to have the body function properly, as transparency would embarrass the SPLM as well.

The National Petroleum Commission's status as an advisory or a decisionmaking body has also been disputed, as has its exact relationship with the Ministry of Mining and Energy, which is headed by the NCP. Some observers who are skeptical of the impartiality of the commission point to the significant stake in the company White Nile Oil held by Riek Machar, vice president of the government of Southern Sudan, who concluded favorable contracts with the company after the

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<sup>125</sup>Ibid., pp. 6–7; UNMIS, *CPA Monitor* (May 2006, June 2006).



signing of the CPA, apparently undermining the sanctity of existing contracts signed with other oil companies prior to the CPA. Machar's wife, Angelina Jani, is an SPLM member of the National Petroleum Commission, further fueling suspicions.<sup>126</sup> After a slow start, the commission had become operational by the time of this book's completion.<sup>127</sup>

Demobilization of forces has proved a particular challenge. In January 2006, the Juba Declaration was issued by Salva Kiir and the head of the Southern Sudan Defense Forces (SSDF), long the government-controlled armed group in the south. The declaration stated that the national armed forces and the SPLM were the only legally permitted armed groups in the country, a significant step forward in demobilization of the SSDF and other armed groups. However, demobilization has posed a challenge because no thorough review of these other groups has been undertaken to identify who would be demobilized and remain in the south, and who would move to the north.<sup>128</sup>

Demobilization has been particularly problematic due to lack of capacity in the south. While a northern commission for disarmament, demobilization, and reintegration of former combatants was established, its southern counterpart is barely operational, due to lack of funding, staff, and capacity. Notwithstanding delays, an interim DDR program was adopted by the government of Southern Sudan and the government of national unity in early 2006.<sup>129</sup> However, security issues remain salient because of the intrinsic challenges of DDR in Sudan: the other armed groups have yet to be fully integrated into national armed forces and the SPLA, while the SPLA itself is still struggling with its internal reorganization, which makes defining the combatants to be demobilized very difficult. The creation of joint integrated units has also been quite slow. Coordination between the southern and northern DDR commissions has also been poor.<sup>130</sup> Finally, there is a security problem that DDR programs are not designed to address: the prevalence of armed

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<sup>126</sup>Author interview with Hume; anonymous author interview with individual close to the IGAD mediation team (Khartoum, 28 June 2006). Compare International Crisis Group, 'Sudan's Comprehensive Peace Agreement', pp. 7–9.

<sup>127</sup>*Report of the Secretary-General on the Sudan*, para. 19; UNMIS, *CPA Monitor* (August 2007), available at [http://www.unmis.org/common/documents/cpa-monitor/cpaMonitor\\_aug07.pdf](http://www.unmis.org/common/documents/cpa-monitor/cpaMonitor_aug07.pdf).

<sup>128</sup>Anonymous author interview with a Western diplomat (Khartoum, 29 June 2006).

<sup>129</sup>UNMIS, *CPA Monitor* (June 2006); author interview with Maximo Halty, UN DDR team, UNMIS (Khartoum, 5 July 2006).

<sup>130</sup>*Report of the Secretary-General on the Sudan*, paras. 3–10, 34–7.

civilians. In a context where civilians are largely armed to protect themselves, in the south but also elsewhere in the country, any disputes run the risk of becoming violent. This is a long-term problem for stability, and one that a specific community security program has been established to address.<sup>131</sup>

Other commissions and bodies central to the implementation of the CPA have also not been established, such as the National Elections Commission, which will be vital to the 2010 elections; the National Census Commission, which will also be vital to the upcoming elections; and the National Civil Service Commission, which will be vital to reforming the corrupt, elite-driven, and NCP-dominated national institutions.<sup>132</sup> Indeed, the reform of the civil service is perhaps the most imperative for the implementation of true power-sharing, as for the moment the SPLM members now heading national ministries are largely 'bolted onto' those institutions and unable to effect any real change in networks that have become embedded over 17 years of NCP rule.<sup>133</sup> The commission mandated to deal with the protection of non-Muslims in the capital, to be established by the presidency, also had not been created. Similarly the nonestablishment of the National Boundary Commission means that vital issues of resource-sharing cannot be addressed, as precisely whose territories contain which resources remains to be established.

Further, the status of the boundary at Abyei remains a crucial issue, as it affects the division of resources and the status and homes of a number of tribes.<sup>134</sup> While the Abyei Boundary Commission has issued a recommendation, which has been accepted by the SPLM, the NCP has rejected it, in part because the commission defined certain areas that produce significant quantities of oil as belonging to the south, but that the north had expected to control. This has led to a standoff, with no implementation and heightened concerns about violence.<sup>135</sup> The issue is to be taken up by the Assessment and Evaluation Commission, one of the few CPA commissions that functions regularly. The latter

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<sup>131</sup>Author interview with Halty; author interview with Oller.

<sup>132</sup>UNMIS, *CPA Monitor* (June 2006). A census council was convened, but a national census was far from being undertaken.

<sup>133</sup>Anonymous author interview with a Western diplomat (Khartoum, 29 June 2006).

<sup>134</sup>International Crisis Group, 'Sudan's Comprehensive Peace Agreement', pp. 4–6.

<sup>135</sup>Winnie Richard, 'Abyei Civil Society Rejects Four Options Proposal', *Sudan Tribune* (3 July 2006), p. 1.

commission, however, is the only of the CPA-created commissions to permit international participation, and observers have suggested that Sudanese members often ally in opposition to international participants in meetings.<sup>136</sup>

A few commissions, including the aforementioned Assessment and Evaluation Commission, have been much more effective, albeit for troubling reasons: both parties have a vested interest in a commission's functioning, or each party has different reasons to support a commission, or a commission is driven by the international community. Thus the bodies dealing with immediate security concerns, such as the Cease-Fire Political Commission and the Cease-Fire Joint Military Commission, have met regularly and achieved significant progress, though this be because, as some observers suggest, effective implementation of a cease-fire is so clearly in the interests of both parties.<sup>137</sup> In addition, various commissions have been of particular interest to the NCP because they ultimately report to the presidency; alternately, the SPLM has supported Assessment and Evaluation Commission because it expects international participants to consistently support the commission's recommendations. Some observers suggest that the Assessment and Evaluation Commission has functioned largely due to pressure by international actors, but it remains less effective than originally intended since the parties themselves have not turned to it to resolve their differences.<sup>138</sup>

Perhaps the greatest challenge to CPA implementation is the SPLM itself, as the organization struggles with limited capacity, the challenge of transforming from a military movement into an institutionalized party, and the impact of the death of Garang. The SPLM/A was always a military organization first, and a set of institutions a distant second. Despite the announcement of institutions in the First National Convention in 1994, most of these were structures in name only, with little real impact on governance in the south. They certainly provided no template for the creation of a government of Southern Sudan.<sup>139</sup> The

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<sup>136</sup>Author interview with de Alessi.

<sup>137</sup>UNMIS, *CPA Monitor* (June 2006); anonymous author interview with a senior expert in UNMIS (Khartoum, 28 June 2006); author interview with de Alessi.

<sup>138</sup>UNMIS, *CPA Monitor* (June 2006); author interview with Taye-Brook Zerihoun, Principal Deputy Special Representative of the Secretary-General, UNMIS (Khartoum, 11 July 2006); author interview with Christofides.

<sup>139</sup>See SPLM, 'A Major Watershed', [on file with author] which purports to create elaborate governance structures and committees for everything from foreign affairs to social affairs.

difficulty in transforming from an armed group into a political party is not unique to the SPLM/A: groups must undergo radical transformations in ideology, military doctrine, and practice, and alter their decision-making procedures, relations with civilians, and the like – far from simple tasks. Highly centralized forces such as the SPLM/A may have particular difficulties in adopting formalized, much less participatory or democratic, procedures for decisionmaking, as opposed to following dictates from leaders.<sup>140</sup>

The SPLM has demonstrated weakness and a lack of institutional capacity in both the government of national unity, where its ministers and legislators have proven relatively ineffectual, and in the government of Southern Sudan, where they face heavy criticism for having failed to deliver a so-called peace dividend. The result is a sense that the CPA has delivered benefits for a few elites who were involved in negotiating it, but not the bulk of the people.<sup>141</sup> While the government of Southern Sudan has made key strides, including the creation of a national legislature and appointments to the high court, it has been unable to manage a panoply of other issues, including providing payments to the SPLA, initiating DDR programs, and implementing basic public works programs that would improve the lives of southern Sudanese. The SPLA, considered by many to be central to the peace agreement, to ensure southern security, including against threats by leaders in Khartoum, was unpaid for over a year after the peace agreement. Even after funds were disbursed from the national budget for that purpose, failure to fully register members meant that payments were further delayed.<sup>142</sup> Even the southern capital, Juba, remains largely undeveloped, with little infrastructure to support the new government. The government of Southern Sudan remains unable to develop a payroll not only for its army, but also for its functionaries, and in the

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<sup>140</sup>These challenges for armed-group transformation are discussed, and particularly well-illustrated, in the context of the SPLM/A in 'Inside the Black Box: An Indicative Framework for Armed Group Transformation and Its Application to the Sudan People's Liberation Movement/Army' (2006) [on file with author].

<sup>141</sup>This point was made by representatives of the Sudanese government in Khartoum. Author interviews with Yusif Salvatore Nzaku, director of the Peace and Human Rights Department, and Ahmed Saidahmed, executive director of the Council of Ministers and secretary of the CPA Committee (Khartoum, 3 July 2006).

<sup>142</sup>Swangin Isaac and Hillary Jada, 'Salary Payments for SPLA Still Delayed', *Juba Post* (14–20 July 2006), p. 5.

meantime people are employed not through contracts, but through informal means where they receive allowances rather than salaries. This is clearly a problematic way to build an effective and permanent civil service. Finally, the SPLM has historically been prone to divisions within the party that also threaten to undermine effectiveness.<sup>143</sup>

The death of Garang was, by all accounts, a devastating blow to the prospects for peace implementation as well as for leadership in the south. One analyst referred to it as 'one of those hinges in history', and alternatively as 'a fulcrum upon which everything else turns'.<sup>144</sup> Clearly Garang's status as a charismatic leader enabled him to garner support not only in the south but also elsewhere in the country; by some accounts, in a free national election he would have won. Further, Garang was personally committed to the peace process, and to the principle of unity in 'New Sudan', while most other members of the SPLM leadership have been historically committed to separation. Garang's personal involvement in the creation and implementation of the CPA, and in particular his apparent understanding with Vice President Taha, were lost with his death.<sup>145</sup> Further, Garang's tightly centralized control of his organization meant that his deputies – Salva Kiir, who became vice president in the government of national unity and president of the Government of Southern Sudan; and Riek Machar, who became vice president for the government of Southern Sudan – were viewed as weaker leaders.

Implementation of the CPA may be further undermined by crises elsewhere in the country, in a number of ways. First, outright violence could spread to areas covered by the agreement; second, international attention to the CPA could be diverted to other crises; and third, the terms of other peace agreements could directly affect the CPA.

### **Problems of institutionalism in a political culture of authoritarianism**

While many provisions of the CPA and the interim national constitution enshrine key individual protections as well as democratic and

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<sup>143</sup>International Crisis Group, 'Sudan's Comprehensive Peace Agreement', pp. 20–4.

<sup>144</sup>Author interview with Christofides.

<sup>145</sup>International Crisis Group, 'Sudan's Comprehensive Peace Agreement', pp. 20–1; anonymous author interview with a Western diplomat (Khartoum, 28 June 2006); anonymous author interview with a Sudanese scholar (Khartoum, 27 June 2006).

institutional reforms to the civil service, judiciary, and the like, actual democratization and institutionalization of transparent procedures is far from guaranteed in Sudan's prevailing political culture. Both the NCP and the government it previously controlled, and the SPLM, before and after Garang's death, are extremely centralized parties resistant to change or democratization. The control of the northern government by a small elite drawn from just three tribes has been discussed above, but the SPLM is equally narrow, drawing its leadership almost exclusively from the Dinka tribe.<sup>146</sup>

Even a Sudanese expatriate resident in the west, in a commentary arguing for greater institutionalization in the south, pointed to the general absence of a political culture that foments respect for formal bureaucratic rules and institutions: 'The Sudanese community leadership has taken a colonial and controlling approach on individual basis and not institutional basis. Sudanese community elders dictate upon what the youth and the middle class should do forgetting the institutional policies set up by the governments here.'<sup>147</sup> This is not to say that longer-term institutionalization would not be desirable, but to highlight the degree to which institutions are ignored or captured in Sudanese political practice at the moment, and the degree to which merely creating new institutions does not guarantee their effective functioning.

## Conclusion

The Sudanese CPA, and to a lesser degree the DPA and EPA, utilized all four types of incentive examined in this volume: power-sharing, resource-sharing, inclusion in security forces, and territorial autonomy. However, the experience of each, as outlined here, demonstrates the limitation of such incentives. In the case of the DPA, the incentives simply did not suffice to bring all of the major rebel groups into the agreement; in significant part their demand was for greater power in the central government. While the EPA incentives sufficed to bring rebels into an agreement, the implementation phase has stalled. And the complex CPA has also demonstrated the difficulties in using governance and inclusion incentives. First, in many aspects, the SPLM

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<sup>146</sup>Richard Dowden, 'Sudan's Peace Balancing Act' (27 May 2004), available at <http://news.bbc.co.uk/1/hi/world/africa/3420809.stm>; author interview with Zerihoun.

<sup>147</sup>Dominic Woja Maku, 'Institutionalism the Best Strategy for South Sudan', *The Citizen* (3 July 2006) p. 3.

does not appear to have the capacity to function effectively either in the south or in an NCP-dominated central government. Second, many elements of the CPA have not been implemented due to infighting between the NCP and the SPLM, corruption, or lack of will. As a result, conflict over control has simply been imported into existing and new institutional structures. Such conflicts may not only affect implementation of the agreement, but also have the potential to become more acrimonious and generate further conflict. Such a result would confound the expectations of the 'institutionalization before liberalization' approach, which would expect institutionalization to promote peaceful solutions to conflict over power and resources, and potentially to promote longer-term confidence building.

# 5

## Colombia: The Limited Appeal of Inclusion Incentives

This chapter considers the multiple efforts at engaging three armed groups in Colombia: the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia [FARC]), the National Liberation Army (Ejército Liberación Nacional [ELN]), and the United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia [AUC]). I address the various demands for territorial and political control put forth by each of the two key rebel armed groups – the FARC and the ELN – as well as the efforts to either address those demands or simply recognize the security situation on the ground, and to reach cease-fires and engage in demobilization. This engagement appears to have failed, for various reasons, including the possibility that the incentives offered are not of significant interest to groups also engaged in the lucrative narcotics industry, or fearful of the heavy presence of the United States through Plan Colombia. Based on my fieldwork, carried out in summer 2006, I address the key concerns and objections of each armed group. Finally, although the umbrella group of right-wing paramilitaries, the AUC, has distinct historical origins and relations with the government, I address the demobilization of the AUC undertaken with the government's guarantee of amnesty and a 'concentration' zone. Given the historical alignment of the AUC with the government, negotiations with and demobilization of its forces face different, and potentially rather fewer, challenges than negotiations with rebel armed groups.

### **Background of the conflict**

Colombia's civil conflict is the longest-running in Latin America, but this chapter focuses largely on developments since the 1990



presidential election and the 1991 constitutional reform.<sup>1</sup> Estimates vary regarding the casualties of the armed conflict, but hundreds of thousands of people have been displaced and estimates place the death toll at least in the tens of thousands, with the majority of civilian casualties caused by guerrilla groups.<sup>2</sup> Prior to the time frame examined here, Colombia suffered extended conflict, including a period of severe political violence between 1946 and 1965 known as *La Violencia*.<sup>3</sup> This violence, between the Liberal and Conservative Parties, was resolved through an essentially power-sharing arrangement, the National Front. This arrangement ensured peace between the two parties, but to the exclusion of other social and political forces, and was according to some a key underpinning to the emergence of rebel groups.<sup>4</sup> A high level of violence endures in Colombian politics, and has become, according to one commentator, a normal way to handle conflict.<sup>5</sup> Colombia's

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<sup>1</sup>Marc Chernick, 'Colombia: International Involvement in Protracted Peacemaking', in Chandra Lekha Sriram and Karin Wermester, eds, *From Promise to Practice: Strengthening UN Capacities for the Prevention of Violent Conflict* (Boulder, CO: Lynne Rienner, 2003), pp. 233–66, offers a more extended historical account. See also Ivan Orozco Abad, with Alejandro David Aponte, *Combatientes, rebeldes y terroristas: guerra y derecho en Colombia* (Bogotá: Instituto de Estudios Políticos y Relaciones Internacionales, Universidad Nacional, 1992); Eduardo Pizarro Leongómez, *Colombia: violencia y democracia – informe presentado al ministerio de gobierno* (Bogotá: Universidad Nacional de Colombia, 1988); Eduardo Pizarro Leongómez, *Insurgencia sin revolución: la guerrilla en Colombia en una perspectiva comparada* (Bogotá: Tercer Mundo Editores, 1996); Livingstone, Grace, *Inside Colombia: Drugs, Democracy, War* (London: Latin America Bureau, 2003).

<sup>2</sup>Jorge Restrepo and Michael Spagat, 'Civilian Casualties in the Colombian Conflict: A New Approach to Human Security' (October 2004) [draft on file with author]; Jorge Restrepo, Michael Spagat, and Juan F. Vargas, 'The Severity of the Colombian Conflict: Cross-Country Datasets Versus New Micro-Data', *Journal of Peace Research* 43, no. 1 (2006), pp. 99–115; Jorge Restrepo, Michael Spagat, and Juan F. Vargas, 'The Dynamics of the Colombian Civil Conflict: A New Data Set', *Homo Oeconomicus* 21 no. 2 (2004), pp. 396–428; Human Rights Watch, 'Colombia: Displaced and Discarded' (October 2005), available at <http://hrw.org/reports/2005/colombia1005/>; 'Colombia Gives Militia Ultimatum' (1 November 2005), available at <http://news.bbc.co.uk/1/hi/world/americas/4397084.stm>; Jorge A. Restrepo and Michael Spagat, 'El conflicto colombiano: hacia donde va?' (Bogotá: CERAC, 2005).

<sup>3</sup>It is estimated that some 200,000 Colombians died during *La Violencia*, 'Colombia's Elusive Quest for Peace' (26 March 2002), p. 8, available at <http://www.crisisgroup.org/home/index.cfm?id=1538&cfid=6492227&cftoken=94789986>.

<sup>4</sup>Jorge L. Esquirol, 'Can International Law Help? An Analysis of the Colombian Peace Process', *Connecticut Journal of International Law* 16 (Fall 2000), pp. 28–9.

<sup>5</sup>Harvey F. Kline, 'Colombia: Lawlessness, Drug Trafficking, and Carving Up the State', in Rotberg, *State Failure and State Weakness*, pp. 163–4.

homicide rates continue to be among the highest in Latin America, and its rates of other violent crimes are very high as well.<sup>6</sup> This has been attributed to several sources – trade in illegal drugs, failings of the penal system, availability of small arms, and guerrilla violence.<sup>7</sup>

Given the length of the conflict, and rates of criminal violence, estimating casualties and human rights violations in Colombia is notoriously difficult. Of a population of about 40 million, some 2.1–2.5 million are estimated to have been displaced.<sup>8</sup> The entrenched and protracted nature of the conflict has led one expert to describe the civil war as a ‘war system’, meaning that the inertia of the conflict generates its own perpetuation, even as the character and actors of conflict may change.<sup>9</sup>

It is important to understand that the character of the Colombian conflict has changed over time, and that while two of the three armed groups began as leftist movements, and the third emerged from efforts at civil defense, each of these, as well as the government, has been affected by disputes over key economic resources – oil and cocaine.<sup>10</sup> The elimination of coca production and narcotrafficking has been a concern not only for the Colombian government, which seeks to stem these as resources for armed groups, but also for the United States, though the latter is less concerned with the domestic conflict than with stemming the flow of drugs across its borders. Drug trafficking has been a significant source of income for the FARC and the AUC, but the

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<sup>6</sup>Steven Levitt and Mauricio Rubio, ‘Understanding Crime in Colombia and What Can Be Done About It’, in Alberto Alesina, ed., *Institutional Reforms: The Case of Colombia* (Cambridge: Massachusetts Institute of Technology Press, 2005).

<sup>7</sup>*Ibid.*, pp. 146–58, points to these sources and argues that poverty and income disparity were not significant sources of violence. See also La hidra de Colombia: las múltiples caras de La Violencia armada’, in *Small Arms Survey 2006* (Oxford: Oxford University Press, 2006), pp. 216–34.

<sup>8</sup>Luz E. Nagle, ‘Placing Blame Where Blame Is Due: The Culpability of Illegal Armed Groups and Narcotraffickers in Colombia’s Environmental and Human Rights Catastrophes’, *William and Mary Environmental Law and Policy Review* 29 (Fall 2004), p. 9.

<sup>9</sup>Nazih Richani, ‘Third Parties, War Systems’ Inertia, and Conflict Termination: The Doomed Peace Process in Colombia, 1998–2002’, *Journal of Conflict Studies* (Winter 2005), pp. 1–24.

<sup>10</sup>Alexandra Guáqueta, ‘The Colombian Conflict: Political and Economic Dimensions’, in Karen Ballentine and Jake Sherman, eds, *The Political Economy of Armed Conflict: Beyond Greed and Grievance* (Boulder: Lynne Rienner, 2004), pp. 73–106, examines the role of natural resources in the conflict in Colombia in greater detail.

ELN by comparison has played a relatively marginal role in the cultivation or trafficking of narcotics.<sup>11</sup> While the current Colombian and US governments often argue that eliminating drug trafficking would bring an end to the conflict, reality is more complex. While the FARC has relied heavily on income from narcotic cultivation, the conflict predates the extensive cultivation of narcotics in the 1970s, and the initial rationales of groups for taking up arms, political and ideological, have not disappeared.<sup>12</sup> It is, on the other hand, certainly the case that the AUC emerged from the cultivation and trafficking of drugs. However, the disbanding of the AUC, even if complete, would seem unlikely to have a significant impact on drug cultivation, or on long-term conflict dynamics.<sup>13</sup>

Colombian oil is also of importance to the United States as a significant supply source, but the armed conflict continues to undermine production, with the FARC and the ELN actively engaging in extortion and attacks on pipelines. The Colombian government, in tandem with US Special Forces and the AUC, has sought to protect a key pipeline, further demonstrating the importance of its oil not just for major actors internally, but also for the world's sole remaining hegemon.<sup>14</sup> As with drug trafficking, the presence and exploitation of oil is not the cause of conflict in Colombia, but has undoubtedly affected its dynamics.

### **Institutional structures: challenges and potential for reform**

Before turning to the key armed groups that have engaged in Colombia's decades-old conflict, it is important to understand the governance structures in the country, as well as the weakness of state control in many regions. Colombia's political, judicial, and security structures suffer from a lack of transparency and endemic elitism. The state does not effectively control much of the territory of the country. Further, as discussed later, the US campaign against narco-trafficking has had a substantial effect on the internal politics and policies of Colombia.

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<sup>11</sup>International Crisis Group, *War and Drugs in Colombia* (27 January 2005), pp. 8–20, available at <http://www.crisisweb.org>.

<sup>12</sup>*Ibid.*, pp. 5–7.

<sup>13</sup>*Ibid.*, pp. 13–17.

<sup>14</sup>Julia E. Sweig and Michael M. McCarthy, 'Colombia: Staving Off Partial Collapse', in Russell Crandall, Guadalupe Paz, and Riordan Roett, eds, *The Andes in Focus: Security, Democracy, and Economic Reform* (Boulder: Lynne Rienner, 2005), p. 29.

### Political structures

Colombia's executive branch is quite strong and enjoys great discretion, particularly during states of emergency or 'states of internal commotion'.<sup>15</sup> The legislature is bicameral and elected through proportional representation under a 'largest-remainder' system. This system, according to analysts, 'permits the election of members who have either narrow geographic bases ... or narrow special interest bases', resulting in 'pork barrel' politics rather than genuine grassroots representative politics.<sup>16</sup> Colombia's Congress has generally been slow to support, or even block, reforms that presidents, who are elected by the country as a whole, have proposed to benefit a wide range of citizens, such as land reform or the broadening of social security.<sup>17</sup> This is a result of the fact that relatively narrow groups of voters elect congresspersons, a pattern that is exacerbated by the fragmenting of national party lists, itself a result of the largest-remainder system.<sup>18</sup>

### Judicial structures

The 1991 constitutional revisions, which enshrined indigenous and other rights, and decentralized governance, also led to the creation of the Constitutional Court.<sup>19</sup> It was designed to identify and prevent collusion between the executive and the legislature, but like other courts in the country has taken on an activist role, intervening in the legislative process. Some analysts have suggested that this activist tendency has been enhanced by the fixed nature of judicial terms on the court, as judges are said to seek popular approval so as to ensure their future political careers.<sup>20</sup>

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<sup>15</sup>Maurice Kugler and Howard Rosenthal, 'Checks and Balances: An Assessment of the Institutional Separation of Political Powers in Colombia', in Alesina, *Institutional Reforms*, pp. 83–5. Further discussion of the details of the largest remainder system can be found in Gérard Roland and Juan Gonzalo Zapata, 'Colombia's Electoral and Party System: Possible Paths for Reform', in Alesina, *Institutional Reforms*, pp. 105–6.

<sup>16</sup>Kugler and Rosenthal, 'Checks and Balances', pp. 88–9.

<sup>17</sup>Roland and Gonzalo Zapata, 'Colombia's Electoral and Party System', pp. 108–13.

<sup>18</sup>*Ibid.*, p. 110.

<sup>19</sup>Arturo Carrillo-Suarez, 'Hors de Logique: Contemporary Issues in International Humanitarian Law As Applied to Internal Armed Conflict', *American University International Law Review* 15 (1999), pp. 30–4.

<sup>20</sup>Kugler and Rosenthal, 'Checks and Balances', pp. 90–1.

### State capacity and governance

Yet while the executive is quite strong, this does not mean that there is effective government control of the entire country. The lack of state presence in large regions may explain in part why drug cultivation and trafficking were able to develop so extensively in Colombia.<sup>21</sup> And indeed, the state's support of paramilitary groups emerged in significant part because the national army was unable to either defeat the leftist rebels or control much of the territory where rebels operated.

### The role of the United States

The United States has played an important role, for good or ill, in Colombia's armed conflict, due in large part to its interest in combating communism in Latin America and in stemming the flow of drugs from Colombia, and to a lesser degree, its interest in oil resources in the country.<sup>22</sup> Significant involvement began with counterinsurgency under the John F. Kennedy administration. One analyst notes several key engagements by the United States: a Central Intelligence Agency (CIA) and Special Forces program initiated in 1962 to train Colombian police and paramilitary groups in counterinsurgency techniques; US National Security Decision Directive 221 in 1986, which designated drug trafficking as a national security matter and allowed, in 1991, the introduction of US troops into Colombia, with CIA collaboration; Plan Colombia, which granted US\$1.3 billion in aid to the country as part of a campaign to combat drugs and insurgency; and the decision by President George W. Bush in 2001 to support Colombian army security provision for oil pipelines.<sup>23</sup>

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<sup>21</sup>International Crisis Group, *War and Drugs in Colombia*, p. 3.

<sup>22</sup>Peter Dale Scott, *Drugs, Oil, and War: The United States in Afghanistan, Colombia, and Indochina* (Oxford: Rowman and Littlefield, 2003); Marc W. Chernick, 'Colombia: International Involvement in Protracted Peacemaking', in Sriram and Wermester, *From Promise to Practice*, pp. 233–66; Marc Chernick, 'Negotiating Peace amid Multiple Forms of Violence: The Protracted Search for a Settlement to the Armed Conflicts in Colombia', in Cynthia Arnson, ed., *Comparative Peace Processes in Latin America* (Stanford: Stanford University Press, 1999); Alexandra Guáqueta, 'The Colombian Conflict: Political and Economic Dimensions', in Ballentine and Sherman, *The Political Economy of Armed Conflict*, pp. 73–106.

<sup>23</sup>Scott, *Drugs, Oil, and War*, p. 71.

Early counterinsurgency training included training for the Colombian army and paramilitaries, support for the creation of 'self-defense units', and training in terrorism and bomb-making. The latter, critics allege, was not training in the tactics of terrorism in order to facilitate fighting it, but simply training in conducting terrorism itself.<sup>24</sup> The paramilitaries have been used by US corporations operating in Colombia to protect their premises, but also in anti-union campaigns, often resulting in serious human rights violations and deaths.<sup>25</sup>

The CIA has also maintained a presence in Colombia, although the scope of its activities is less well known. It is alleged to have worked closely with some paramilitary units.<sup>26</sup> As mentioned, its presence in Colombia was officially authorized in 1991 under National Security Decision Directive 221 of 1986, following allegations not only that the left-wing guerrillas were linked to drug trafficking, but also that they were receiving support from the communist Sandinista government in Nicaragua.<sup>27</sup>

Support to counterinsurgency operations is questionable at best, given their dubious effectiveness and apparent track record in engendering new illegal armed groups and human rights violations. For this reason, US measures in Colombia have focused on drug cultivation and trafficking. Plan Colombia, introduced in 2000, was rapidly criticized by academics and policy nongovernmental organizations (NGOs). European Union nations, originally interested in cooperating, became concerned over the plan's emphasis on military rather than economic aid, and scaled back their involvement.<sup>28</sup> Colombian human rights groups also protested strongly. In response, the United States has revised and supplemented the plan several times. In 2001, it announced a supplement to the plan, the Andean Regional Initiative, to focus on economic growth and democratic institution building. The US Department of State offered further supplements the same year, allocating funds for development, health, and child survival.<sup>29</sup> These supplements notwithstanding, Plan Colombia is primarily a military one, focusing on

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<sup>24</sup>Ibid., pp. 76–80.

<sup>25</sup>*Sinaltrainal v. Coca-Cola*, 2003 Westlaw 1839782 (2003).

<sup>26</sup>Scott, *Drugs, Oil, and War*, pp. 85–91.

<sup>27</sup>Ibid., pp. 87–8.

<sup>28</sup>International Crisis Group, 'Uribe's Re-election: Can the EU Help Colombia Develop a More Balanced Peace Process?', *Latin America Report* no. 17 (8 June 2006), p. 12, available at <http://www.crisisgroup.org>.

<sup>29</sup>Scott, *Drugs, Oil, and War*, p. 73; Chernick, 'Colombia'.

destroying coca plantations and fighting the insurgent groups that traffic in drugs and threaten oil production and pipelines. Between 2000 and 2005, Plan Colombia's costs to fight drug trafficking and spray drug crops, to train the military to fight insurgents, and to develop and improve institutions of governance, amounted to US\$3 billion, but without much success. In fact, 2005 was a record year in Colombia for coca cultivation.<sup>30</sup> The plan has not targeted the military or paramilitary groups, however, which are also alleged to be actively involved in the drug trade. Even the chief AUC paramilitary leader, according to one analyst, has acknowledged that the bulk of AUC resources come from the drug trade. Some US estimates indicate that the AUC was responsible for some 40 percent of Colombia's drug trafficking.<sup>31</sup> Critics of US policy have pointed out that the United States emphasizes the involvement of left-wing guerrillas in the trade while turning a blind eye to the involvement of its right-wing military allies.<sup>32</sup> However, as we shall see, the United States has subsequently indicted a significant number of AUC leaders, with the potential of undermining negotiations and demobilization. Further, on 10 September 2001, the United States added the AUC to its list of terrorist organizations, alongside the FARC and the ELN.<sup>33</sup> US support for Plan Colombia, in a surprising twist, may even have helped to undermine the paramilitaries. In strengthening the Colombian army, it undermined the paramilitaries' *raison d'être*, which may have hastened their willingness to demobilize. Further, the increased capacity of the military has allowed the Colombian government to pressure the paramilitaries to desist from their embarrassing abuses and engagement in criminal activities.<sup>34</sup>

US interest in Colombia also shifted in the aftermath of the 11 September 2001 terrorist attacks, given concerns raised about the links between narco-trafficking and terrorist groups, and about alleged links between Colombian groups and terrorist groups abroad, such as the

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<sup>30</sup>Elinor Shields, 'US Weighs Costs of Plan Colombia' (5 July 2005), available at <http://news.bbc.co.uk/1/hi/world/americas/4627185.stm>; "'Plan Colombia': Elements for Success – Staff Trip Report to the Committee on Foreign Relations, United States Senate', 109th Congress, 1st sess., S.PRT 109–43 (December 2005), p. 3.

<sup>31</sup>'"Plan Colombia": Elements for Success', p. 4.

<sup>32</sup>Scott, *Drugs, Oil, and War*, pp. 74–5, notes that until recently the FARC did not traffic in drugs but did tax the drug trade.

<sup>33</sup>International Crisis Group, *War and Drugs in Colombia*, p. 21.

<sup>34</sup>Author interview with Carlos Nasi Lignardo, University of the Andes, Department of Political Science (Bogotá, 4 August 2006).

Irish Republican Army.<sup>35</sup> The George W. Bush administration is concerned with both drugs and terrorism in Colombia, but has not, according to one analyst, fully recognized the flaws in key Colombian institutions of justice, economics, and security.<sup>36</sup> A plan to address insurgency, drug trafficking, or terrorism is unlikely to achieve lasting success without addressing these shortcomings of the Colombian state. The US strategy therefore presumes that fighting drugs at their source will best cut supply, and that armed groups reliant on the drug trade will be weakened if this source of income is reduced. The government of Álvaro Uribe Vélez has taken this logic one step further, denying the presence of a conflict in the country and insisting that what exists is a problem of narcoterrorism.<sup>37</sup> Thus, while the government has remained open to some negotiations with and demobilization of armed groups, it has also continued to promote an offensive aimed at eliminating the FARC, while also engaging in more serious negotiations with the AUC and ELN.

While US policy has not sought to undermine peace negotiations, this has been the result in some instances. As we will see, while the United States has partially supported demobilization of the AUC, its indictment of several of that group's leaders risks undermining the process. Similarly, while US support for Plan Colombia bolstered the national army's fight against the FARC, it also thus reduced the government's interest in negotiating. It also led to a change in FARC tactics to offset the government's increased air-power advantage. Thus what some had viewed as a mutually hurting stalemate, prior to Plan Colombia, which could have encouraged negotiations, resulted in an increase in violence. This is what Nazih Richani has described as a biased, rather than neutral, third-party intervention.<sup>38</sup>

### Illegal armed groups

There are four main armed rebel groups of interest to this study that are or have been active in Colombia: the FARC, the ELN, the Popular

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<sup>35</sup>Russell Crandall, 'From Drugs to Security: A New U.S. Policy Toward Colombia', in Crandall, Paz, and Roett, *The Andes in Focus*, pp. 184–7; Cardenas, 'Colombia's Peace Process', pp. 286–7.

<sup>36</sup>Crandall, 'From Drugs to Security', pp. 184–7.

<sup>37</sup>International Crisis Group, *War and Drugs in Colombia*, p. 21.

<sup>38</sup>Richani, 'Third Parties, War Systems' Inertia, and Conflict Termination', pp. 77, 84–90.



Liberation Army (Ejército Popular de Liberación [EPL]), and the 19 April Movement (Movimiento 19 de Abril ([M-19])). I will focus primarily upon the first two, which are most significant, before turning to the activities and demobilization of the AUC.<sup>39</sup> The FARC is the largest illegal armed group in Colombia, comprising some 18,000 members, and has local forces throughout the country and a growing urban militia in addition to its presence in rural areas. While the FARC began fighting in the 1960s as a peasant-supported group espousing social justice, and continues to espouse a Marxist ideology, it has been heavily involved in drug trafficking and other organized crimes, including kidnapping.<sup>40</sup> The ELN, also a leftist group, founded by priests, university students, and intellectuals, emerged near the end of *La Violencia*.<sup>41</sup> It is somewhat smaller, comprising some 4000 members by the late 1990s.<sup>42</sup> It has been involved in significant numbers of kidnapping, including of foreign journalists.<sup>43</sup> The EPL was a pro-Chinese group that accepted a peace deal in 1991, but dissident elements of which continue violent activities. Finally, M-19, which claimed to be the armed front of a political party that alleged a 1970 election was stolen, was named for the date of that election. It emerged in 1974, but accepted a peace agreement in 1989 and became a political party.<sup>44</sup> Of these four guerrilla groups, this chapter focuses on the FARC and the ELN as the most enduring in contemporary Colombia, but also examines the demobilization of the EPL and M-19 and their attempted conversion to legitimate political activities.

The AUC has a rather different origin than the guerrilla groups. It was founded in 1997, consolidating under one umbrella numerous right-wing self-defense forces, many of which were created as a response to guerrilla violence and kidnappings.<sup>45</sup> The size of its membership is disputed, with estimates ranging from 14,000 to 18,000. The AUC has attacked not

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<sup>39</sup>See, generally, Alfredo Rangel, ed., *El Poder Paramilitar* (Bogotá: Editorial Planeta Colombiana, 2005); Ricardo Peñaranda and Javier Guerrero, eds, *De las armas a la política* (Bogotá: Tercer Mundo Editores, 1999).

<sup>40</sup>See, generally, Carrillo-Suarez, 'Hors de Logique', pp. 18–28; Eduardo Pizarro Leongómez, *Las FARC: de la autodefensa a la combinación de todas formas de lucha* (Bogotá: Tercer Mundo Editores, 1991).

<sup>41</sup>Kline, 'Colombia', p. 166.

<sup>42</sup>Council on Foreign Relations, 'FARC, ELN, AUC' (2005), available at: <http://www.cfr.org/publication/9272/#4>; Levitt and Rubio, 'Understanding Crime in Colombia', p. 152.

<sup>43</sup>Sweig and McCarthy, 'Colombia', pp. 18–19.

<sup>44</sup>Kline, 'Colombia', p. 166.

<sup>45</sup>Levitt and Rubio, 'Understanding Crime in Colombia', p. 153.

just guerrillas but also civilians, and is alleged to have committed significant massacres and human rights violations. Some estimates suggest that it is responsible for over 80 percent of human rights abuses in the Colombian conflict.<sup>46</sup> Also unlike the guerrilla groups, the AUC is alleged to have engaged in collaboration and intelligence-sharing with the government, but like the guerrilla groups it too is involved in drug trafficking.<sup>47</sup> The AUC has claimed common ground with the goals of Uribe – the pursuit of law and order and the stemming of drug trafficking – and members object fervently to being punished for undertaking what they see as work the government failed to do.<sup>48</sup> The AUC paramilitaries have engaged in extortion through protection ‘taxes’ and have seized vast tracts of land in ‘reform’ efforts in zones under guerrilla control, often claiming lands that had been ‘abandoned’ by people displaced by the conflict. Such lands are then be transferred to paramilitary ownership, which has increased greatly in the north-central portion of the country in particular.<sup>49</sup>

### **Constitutional reform and negotiations under Betancur and Pastrana**

In 1982, Belisario Betancur came to power. Pushed by Colombians’ exhaustion with the war, Betancur negotiated a cease-fire with the FARC (as well as M-19) in 1984. Negotiations were undertaken at the so-called Casa Verde (Green House), an area in the department of Meta, which had been FARC-controlled for many years. The FARC created a legal political party, the Union Patriótica (UP), and many top guerrillas joined, although the FARC had not lain down arms. The UP was subjected to severe attacks by paramilitary groups, and fighting between the military and the FARC escalated. Massacres and assassinations followed, including the killing of the UP’s former presidential candidate. Given the nature of the violence, advocates sought to have the Inter-American Commission on Human Rights term the attacks

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<sup>46</sup>Maria Cristina Cardenas, ‘Colombia’s Peace Process: The Continuous Search for Peace’, *Florida Journal of International Law* 15 (Fall 2002), p. 279. While these are common estimates, the demobilization process has purported to deal with about 30,000 AUC members, as discussed below.

<sup>47</sup>Sweig and McCarthy, ‘Colombia’, p. 19.

<sup>48</sup>*Ibid.*, p. 20. Kline, ‘Colombia’, pp. 166–7.

<sup>49</sup>Nagle, ‘Placing Blame Where Blame Is Due’, p. 30.

'political genocide'.<sup>50</sup> The party ceased to exist officially in 2002, though contacts and negotiations between the government and FARC continued intermittently, until an army attack in late 1990 on the Casa Verde, on the day of elections to the Constituent Assembly. The FARC continues to refer to this incident as support for its suspicions of peace negotiations with civilian and military leaders, and its insistence that it needs territorial control in order to remain safe.<sup>51</sup> The military's apparent role as a potential spoiler in any peace process would further bolster the FARC's fears for its own security.<sup>52</sup>

The 1991 constitution was written as a response to the violence of the 1990 electoral campaign, in which three presidential candidates were killed. The purpose of the constitution was to reduce the elitist and clientelist nature of Colombian politics and bureaucracy, although, as we shall see, the success of this attempt at decentralization of power is unclear.<sup>53</sup> The period following adoption of the 1991 constitution saw attempts to strengthen and consolidate democracy, but also increased crises due to drug trafficking and the control of the guerrilla groups over significant regions of the country. At the same time, citizen support grew for so-called self-defense groups, which in 1997 would join to form the paramilitary AUC. While the drug cartels would be defeated by the late 1990s, this would leave the three armed groups and the state competing for resources and control.

In 1998, Andrés Pastrana won the presidency, and sought simultaneously to reach a settlement with the FARC and to cultivate US

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<sup>50</sup>Because the definition of genocide excludes attacks with the intent to destroy political groups, the Inter-American Court of Human Rights declined to call the attacks genocide, but was prepared to consider them crimes against humanity. *Diaz et al v. Colombia*, Case 11.227, Inter-American Court of Human Rights 5/97, OEA/ser.L./V./II.95 doc. 7 rev. 99 (1997); Farid Samir Benavides-Vanegas, 'The Elimination of Political Groups Under International Law and the Constitution of Political Claims', *Florida Journal of International Law* 15 (Summer 2003), pp. 575–6; Rodrigo Losada, 'Elecciones libres, deshechos por los violentos', in Fundación Seguridad y Democracia, *Libertad o seguridad: un dilema contemporáneo* (Bogotá, 2005), pp. 179, 187.

<sup>51</sup>However, it must be recognized that the attack came in the context of the FARC's failure to comply with the cease-fire on which negotiations were conditioned. Carlos Nasi, 'Colombia's Peace Processes, 1982–2002: Conditions, Strategies, and Outcomes' (2006) [on file with author], p. 17. Author interview with Daniel García Peña (Planeta Paz, 9 August 2006).

<sup>52</sup>Richani, 'Third Parties'.

<sup>53</sup>Sweig and McCarthy, 'Colombia', p. 13.

support through Plan Colombia. In 1999, Pastrana negotiated a *despeje*, or demilitarized zone, for the FARC, a vast area the size of Switzerland that was to remain under its control as an incentive to engage in peace negotiations. While controversial, the zone in a sense simply acknowledged the FARC control that already existed on the ground, the weakness of the Colombian military, and the desire of the people to see some resolution to the protracted conflict.<sup>54</sup> In 2001, the FARC agreed to a deadline to set cease-fire terms, heightening hopes for negotiations.<sup>55</sup> This was the FARC's chance to prove its interest in and capacity to govern, but observers described the zone as a photo opportunity at best, and a license for to engage in drug trafficking and kidnapping at worst, given that the FARC didn't seek to provide services or demonstrate interest in administering the area, aside from imposing curfews.<sup>56</sup> The talks had little substantive content, although there was a humanitarian exchange of fighters; the '100 points' put forth by the FARC were very broad, and the government also offered no clear position.<sup>57</sup> Indeed, some observers argued that the government negotiators lacked a clear mandate or strategy.<sup>58</sup> Talks began to falter in 2001 as the FARC continued to engage in terrorist and drug-cultivation activities, and indeed FARC violence increased during the negotiations. The talks broke down altogether in 2002 when the FARC escalated attacks on government targets, and kidnapped a senator who supported the peace talks, kidnapped presidential candidate Ingrid Betancourt, and kidnapped, tortured, and murdered another senator.<sup>59</sup> Pastrana's administration also began negotiations with the ELN, which sought a demilitarized zone like the one the FARC had obtained.<sup>60</sup>

President Álvaro Uribe Vélez came to power in 2002, pledging to take a harder line toward the FARC. Uribe, with the support of the United

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<sup>54</sup>Author interview with Juan Carlos Garzón, OEA-MAPP Analysis Unit (Bogotá, 7 August 2006).

<sup>55</sup>Crandall, 'From Drugs to Security', p. 174.

<sup>56</sup>Cardenas, 'Colombia's Peace Process', pp. 280–1; Nagle, 'Placing Blame Where Blame Is Due', p. 21; Nasi, 'Colombia's Peace Processes', p. 17; anonymous author interviews with a Western diplomat close to the process, and with UNDP experts (9 August 2006).

<sup>57</sup>Author interview with Garzón.

<sup>58</sup>Richani, 'Third Parties'.

<sup>59</sup>Crandall, 'From Drugs to Security', pp. 174–5; Sweig and McCarthy, 'Colombia', pp. 15, 36–7.

<sup>60</sup>Kline, 'Colombia', p. 174.

States, pursued a 'law and order' strategy to curb violence. His overall approach, the 'democratic security policy', sought to extend military and police control to the whole of Colombia and create peasant-soldiers and a network of civilian informants.<sup>61</sup> He declared a 'state of internal commotion,' which allowed him to issue decrees regarding security, economic, and political affairs, although this action was declared unconstitutional by the Constitutional Court less than a year later. He also gave the military greater authority to gather intelligence, without judicial oversight, and subsequent antiterror legislation has given judicial powers to the armed forces.<sup>62</sup> Significant taxes were imposed in 2002 on wealthy Colombians, raising funds for the training of new troops for efforts to combat illegal armed groups. Several regions of the country have been declared 'rehabilitation and consolidation zones' and are governed by a military commander appointed by the president.<sup>63</sup> Uribe also initiated, in 2004, Plan Patriota, under which some 15,000 troops were deployed in FARC-controlled territory. The campaign against armed groups has seen nominal success, with significant numbers of guerrilla and paramilitary members being captured or killed, others disarming, and desertions on the rise. However, this does not appear to have resulted in significant weakening of the groups themselves, as guerrilla attacks have continued despite the diminution of their cadres.<sup>64</sup> These security strategies have drawn criticism, internally and externally, as failing to control security problems and violating human rights standards.<sup>65</sup>

## Contemporary negotiations with armed groups

Negotiations with the FARC have reached a standstill, while those with the ELN have been somewhat more promising, if sporadic. Most successful have been attempts to demobilize and disband the AUC paramilitaries traditionally linked to the government, although, given the close links between them, the process has not really been a 'negotiation' in the traditional sense.

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<sup>61</sup>Jorge A. Restrepo and Michael Spagat, 'Colombia's Tipping Point?' *Survival* 47, no. 2 (Summer 2005), pp. 131–52.

<sup>62</sup>Sweig and McCarthy, 'Colombia', p. 23.

<sup>63</sup>Crandall, 'From Drugs to Security', p. 176.

<sup>64</sup>Sweig and McCarthy, 'Colombia', pp. 22–3.

<sup>65</sup>*Ibid.*, p. 24.

## The FARC

The promise of renewed negotiations with the FARC emerged in February 2004 with the armed group's so-called diplomatic offensive, which sought the release of several hundred of its fighters by the government in exchange for the FARC's release of 59 hostages.<sup>66</sup> The government, through the High Commissioner for Peace, initially denounced the proposal for a humanitarian exchange as blackmail and demanded that the hostages first be released. The government was limited, according to analysts, because of the ongoing negotiations with the AUC, discussed below, as the AUC would have denounced any concessions to the FARC. Nonetheless, in August 2004 the High Commissioner for Peace announced the government's preparedness to release 50 prisoners. The FARC rejected this offer, and a series of counterproposals on humanitarian exchange followed, which experts suggest largely demonstrated that both sides had unrealistic expectations and were unprepared for real compromise.<sup>67</sup> Subsequent to these discussions, the FARC proposed the revival of the Group of Friends mechanism, previously active under President Pastrana, but did not make any substantive proposals beyond the expansion of the body. The FARC was also reported to have engaged in a confidential negotiations with France regarding the release of French-Colombian national Ingrid Betancourt, kidnapped by the FARC while campaigning for president.<sup>68</sup>

In late 2006, the FARC reiterated its preparedness to engage in prisoner exchanges and initiate talks, but only if government troops withdrew from part of southern Colombia. The FARC also called on the government to clarify whether negotiations would be with the FARC as an armed insurgent group or as a terrorist group, a determination that would affect the role that international observers could play.<sup>69</sup> The commitment of the FARC to engage in prisoner exchange and negotiations may be questioned, but it is clear that the group will not do so without security guarantees such as the drawdown of government

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<sup>66</sup>International Crisis Group, 'Colombia: Presidential Politics and Peace Prospects' (16 June 2005), p. 24, available at <http://www.crisisweb.org>. See also INDEPAZ, 'Acuerdos humanitarios y dialogos', *Documentos* no. 19 (March–April 2004).

<sup>67</sup>International Crisis Group, 'Colombia: Presidential Politics and Peace Prospects', pp. 24–5.

<sup>68</sup>*Ibid.*, p. 26.

<sup>69</sup>'Uribe Is Blocking Prisoner Swap, Rebels Say' (13 October 2006), available at <http://www.anncol.org>; 'Colombian Government and FARC at Odds' (11 September 2006), available at <http://www.anncol.org>.

forces, reflecting lessons learned from the 'Green House' negotiations and the demise of the UP.

The FARC is also concerned about extradition of its members to the United States for drug- and terrorism-related prosecution. Uribe's government has extradited record numbers of Colombians to the United States, including several of about 50 FARC members that the latter seeks to prosecute. Many FARC members fear extradition and thus demand that any peace process include protection from it.<sup>70</sup>

At the time of this writing, no formal negotiations between the government and the FARC are underway. FARC numbers have been somewhat depleted by self-demobilization, sometimes in large groups, such as the 70 FARC combatants who self-demobilized in March 2006. According to the Colombian Ministry of Defense, between 2002 and 2006, over 9000 individuals demobilized, of whom nearly half were former FARC combatants.<sup>71</sup> These acts may signal a weakening of the FARC, or simple exhaustion with conflict on all sides.

### The ELN

In June 2004, talks with the ELN were revived with the support of a Mexican facilitator. However, the negotiations snagged on the government's insistence that the ELN first cease hostilities. The ELN also strongly objected to the ongoing negotiations with the AUC.<sup>72</sup> Other sticking points included the ELN's call for the inclusion of civil society representation in the negotiations and, perhaps more problematic, the inclusion of the FARC. As analysts have noted, this demand may suggest the degree of influence that the FARC holds over the ELN, and represents a potentially serious obstacle to negotiating with the latter. Discussions formally collapsed in April 2005.<sup>73</sup> However, in January 2005,

<sup>70</sup>Rachel van Dongen, 'US Indictment Complicates Colombian Peace Process' (26 July 2004), available at <http://www.csmonitor.com/2004/0726/p04s01-woam.html>; 'The FARC on Trial: Simón Trinidad as Representative' (31 October 2006), available at <http://www.anncol.org>.

<sup>71</sup>Tumacoy Pasto, 'Se desmovilizaron nueve guerrilleros de las FARC en Nariño', *El Tiempo* (7 April 2006), available at <http://www.eltiempo.com>.

<sup>72</sup>Sweig and McCarthy, 'Colombia', pp. 18–19. However, Michael Beaulieu, the principal specialist in the OAS Office of Conflict Prevention and Resolution, suggested that negotiations would resume shortly with serious good faith engagement. Author interview (Washington, D.C., 22 November 2005). Negotiations with the ELN have since resumed, as discussed below.

<sup>73</sup>International Crisis Group, 'Colombia: Presidential Politics and Peace Prospects', pp. 27–8.

even as disputes over the negotiations continued, the ELN did decide to unilaterally clear a section of mined road, and in December 2005 new negotiations between the government and the ELN were announced.<sup>74</sup> In February 2006, the ELN declared a cease-fire in advance of forthcoming elections, and negotiations resumed, with the government suspending arrest orders for two ELN leaders.<sup>75</sup> Further, the government has recognized two ELN leaders it had previously imprisoned, Antonio García and Francisco Galán, as negotiators for the group.<sup>76</sup> Still, the negotiations have failed to make any substantive progress, and have been described by some as not negotiations but rather as an 'acercamiento', meaning that the parties are in proximity but not talking in earnest.<sup>77</sup> The fundamental disagreement over terms remains, with the government insisting on a cease-fire and an eventual political role for an unarmed ELN, and the ELN insisting that more fundamental changes, and a Constitutional Assembly, are needed.<sup>78</sup> The ELN does not yet appear prepared to make further concessions, even though it has been significantly weakened by attacks on its community base by the AUC.<sup>79</sup> Of critical concern is ensuring consensus over strategy within the ELN, particularly as command and control have weakened with the loss of military strength. Over the summer of 2006, top leadership convened a three-week strategy meeting to plan their next steps, and peace negotiations were reopened subsequently.<sup>80</sup> At the time of writing, attacks

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<sup>74</sup>Geneva Call, 'Press Release' (12 December 2005), available at <http://www.geneva-call.org>.

<sup>75</sup>Stephen Gibbs, 'Colombia Lifts Rebel Arrest Order' (25 February 2006), available at <http://news.bbc.co.uk/1/hi/world/americas/4750818.stm>; International Crisis Group, 'Uribe's Re-election', pp. 20–1.

<sup>76</sup>International Crisis Group, 'Colombia: Towards Justice and Peace?', *Latin America Report* no. 16 (14 March 2006), p. 7. Jaime Zuluaga Nieto, "'Casa de paz': una oportunidad para el diálogo de paz entre el Gobierno y el ELN', in INDEPAZ, *Punto de Encuentro* no. 31 (November 2005), pp. 12–15.

<sup>77</sup>Author interview with Leonardo González, INDEPAZ (9 August 2006).

<sup>78</sup>See Camilo González Posso, 'ELN-Gobierno: todo es más complejo de lo que parece', *Punto de Encuentro* no. 36 (May 2006), pp. 1–6.

<sup>79</sup>Jorge Restrepo and Michael Spagat, 'The Colombian Conflict: Uribe's First 17 Months' (June 2004) [draft on file with author]. Daniel García Peña argued in an author interview that these attacks have a significant effect on the ELN because it does have significant local ties, and that this is what made it so vulnerable to paramilitary attacks. Garzón also supports this point.

<sup>80</sup>Author interview with García Peña; author interview with Raul Rosende, UN-OCHA head of office (Bogotá, 18 August 2006).



by the FARC on the ELN had intensified, with the former referring to the latter as traitors for engaging in negotiations.<sup>81</sup>

### The AUC

In 2004, Uribe undertook a controversial campaign to negotiate with the AUC, following a unilateral cease-fire declared by AUC leader Carlos Castaño in November 2002. The AUC promised to stop aggressive action, and the leadership reached an agreement with the government to enter a 'concentration zone' where negotiations and demilitarization of the AUC could take place in exchange for security guarantees and suspension of arrest orders.<sup>82</sup> The cease-fire by the AUC has been viewed by many as the simple formalization of a trend already in place – the AUC's declining military effectiveness.<sup>83</sup> The government in turn passed the Justice and Peace Law in July 2005, which granted amnesty or the promise of reduced sentences to former members of paramilitaries who demobilized, and which the government insisted would apply to the FARC and the ELN as well.<sup>84</sup> The law was condemned by some EU officials and human rights bodies, including the Office of the High Commissioner for Human Rights, and challenges were brought before the Colombian Constitutional Court, discussed below.<sup>85</sup>

The talks appeared to falter, however, with violations by the AUC of its own unilateral cease-fire. Eventually, disarmament and demobilization were able to proceed apace, with some 11,000 of an estimated 30,000 members having been demobilized by late 2005, and demobilization essentially

<sup>81</sup>Hugh Bronstein, 'Colombians Displaced by Rebel-on-Rebel Violence', *Reuters* (6 July 2007).

<sup>82</sup>*Acuerdo entre Gobierno Nacional y las Autodefensas Unidas de Colombia para la zona de ubicación en Tierralta, Córdoba* (13 May 2004), available at <http://www.reliefweb.int>; Sweig and McCarthy, 'Colombia', p. 37.

<sup>83</sup>Restrepo and Spagat, 'The Colombian Conflict', p. 18.

<sup>84</sup>*La Ley de Justicia y Paz*, Law no. 975 (2005); 'New Colombia Law Grants Concessions to Paramilitaries', *New York Times* (23 June 2005), available at <http://www.nytimes.com/2005/06/23/international/americas/23colombia.html>; Álvaro Uribe Vélez, 'Hay que esperar para medir la ley y sus resultados', *Punto de Encuentro* no. 28 (July–August 2005), pp. 17–19; INDEPAZ, 'Interrogantes sobre la Ley de Justicia y Paz', *Punto de Encuentro* no. 28 (July–August 2005), pp. 20–2; Fundación Ideas para la Paz, '¿En que va la ley?' (1 July 2006).

<sup>85</sup>Luis Carlos Restrepo Ramirez, 'Estado de la desmovilización de las AUC', *Punto de Encuentro* no. 36 (May 2006), pp. 7–12; Centro por la Justicia y el Derecho Internacional, 'Justicia y paz en Colombia: el derecho a la verdad, la justicia y la reparación' (San Jose, Costa Rica, 2006) [on file with author]; International Crisis Group, 'Colombia: Towards Justice and Peace?', pp. 1, 17.

completed by early 2006. The process has saved a significant number of civilian lives according to some analysts.<sup>86</sup> However, a further point of contention remains: while members of the militias have been given domestic amnesty under the peace plan, there is no guarantee that they won't be extradited to the United States, where several leaders are sought on drug-trafficking charges. Fear that the extradition of one leader was being planned led the AUC to halt disarmament briefly in October 2005.<sup>87</sup> The US Congress has approved US\$20 million to support the demobilization process, so long as certain paramilitary commanders wanted in the United States on charges of human rights violations or drug trafficking are extradited.<sup>88</sup> This condition is likely to remain a source of contention, as leaders of the paramilitaries may seek to halt demobilization again, or go into hiding, to avoid extradition.<sup>89</sup> In August 2006, the Colombian president called on key AUC leaders to turn themselves in, sparking concerns that they might attempt a return to combat. The call was particularly troubling to the paramilitary leaders whose extradition has been sought by the United States, as it occurred alongside the extradition of two other Colombian citizens to the United States on drug-trafficking charges. After some threats, most leaders did in fact turn themselves in.<sup>90</sup> The United States, meanwhile, has not altered its policy of seeking extradition, but has not actively sought the extradition of paramilitary leaders. The United States cannot politically abandon demands for extradition in

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<sup>86</sup>'Calculan que aún quedan 3 mil paramilitares por desmovilizarse', *El Tiempo* (7 April 2006), available at <http://www.eltiempo.com>; anonymous author interview with an OAS expert (Washington, D.C., 22 November 2005); Michael Spagat, 'Colombia's Paramilitary DDR: Quiet and Tentative Success?' (Bogotá: CERAC, 2006) [draft on file with author]; Andrea Gonzalez Pena and Jorge Alberto Restrepo, 'Desmovilización de las AUC: mayor seguridad humana?', *La Nación* (21 May 2006), pp. 8–9.

<sup>87</sup>AUC Militia "Resumes Disarmament" (17 November 2005), available at <http://news.bbc.co.uk/1/hi/world/americas/4445080.stm>.

<sup>88</sup>'US Backs Colombian Peace Process' (3 November 2005), available at <http://news.bbc.co.uk/1/hi/world/americas/4402304.stm>; International Crisis Group, 'Colombia: Presidential Politics and Peace Prospects', p. 22.

<sup>89</sup>Anonymous author interview with an OAS expert (Washington, D.C., 22 November 2005).

<sup>90</sup>Uribe ordena a jefes "paras" or de inmediato a "cárceles", *El Tiempo* (15 August 2006), pp. 1–4; 'Qué buscan los "paras" con esta crisis', *El Tiempo* (16 August 2006), pp. 1–3; 'Autodefensas piden una constituyente', *El Nuevo Siglo* (16 August 2006), p. 1; 'Así decidió Uribe apretar a "paras"', *El Tiempo* (17 August 2006), pp. 1–2; 'AUC piden acatar directriz presidencial', *El Mundo* (18 August 2006), p. A6; 'No aparecen cuatro extraditables "paras"', *El Tiempo* (18 August 2006), pp. 1–4.

the interest of the peace process.<sup>91</sup> Some analysts have even suggested that US demands, far from being an impediment to disarmament, demobilization, and reintegration (DDR), actually offer useful leverage for the Colombian government, which can entice paramilitary leaders with the promise of more lenient sentences at home than abroad.<sup>92</sup>

Further, the Justice and Peace Law, which had shielded many from prosecution, was partially struck down by the Colombian Constitutional Court in May 2006, sparking threats that the AUC would halt cooperation with the DDR process. The court decision required paramilitary leaders who received lessened prison sentences for cooperating with the process would have to admit to all of their crimes, and would have to pay reparations to families and reveal to the government the location of bodies of victims. Further, those who had lied about past actions could face full sentences.<sup>93</sup> The Inter-American Commission on Human Rights supported the court decision and urged full compliance.<sup>94</sup>

In April 2006, former combatants of the AUC claimed that the paramilitaries had completed demobilization.<sup>95</sup> While the demobilization of former AUC fighters has largely been successful, there is cause for concern. There are significant reports that many demobilized members

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<sup>91</sup>Anonymous author interview with a Western diplomat close to the process (10 August 2006).

<sup>92</sup>See, for example, “‘Plan Colombia’: Elements for Success – Staff Trip Report to the Committee on Foreign Relations, United States Senate’, 109th Congress, 1st sess., S.PRT 109-43 (December 2005), p. 10, which argues that extradition offers Uribe an ‘effective weapon’, but also the risk that AUC members will be shielded by double jeopardy rules if given very short sentences in Colombia. Many interviewees suggested this point, some on the record, some off the record. Juan Carlos Garzón of OEA-MAPP was among those who viewed extradition as a carrot and stick for the government. So did Alexandra Guáqueta, academic director of Fundación Ideas para la Paz (Bogotá, 11 August 2006), as well as Jorge Restrepo of CERAC (Bogotá, 2 August 2006).

<sup>93</sup>‘Comunicado de prensa sobre demanda contra la Ley de Justicia y Paz, Ley 975 de 2005’, Edpediente D-6032, Sentencia C-370/06 (18 May 2006); Juan Forero, ‘Court Overrules Parts of Law Shielding Colombia’s Warlords’ (20 May 2006), available at <http://www.nytimes.com>; Comisión Colombiana de Juristas, ‘La Corte Constitucional protege los derechos de las víctimas y de la sociedad colombiana a la verdad, la justicia y la reparación’ (19 May 2006), available at [http://www.icj.org/img/pdf/comunicado\\_ccj\\_sobre\\_85c94.pdf](http://www.icj.org/img/pdf/comunicado_ccj_sobre_85c94.pdf); Leonardo González Perafán, ‘Análisis a la cesación de la corte’, *Punto de Encuentro* no. 36 (May 2006), pp. 13–19.

<sup>94</sup>Pronunciamiento de la Comisión Interamericana de Derechos Humanos sobre la aplicación y el alcance de La Ley de Justicia y Paz en la República de Colombia’ (2006) [on file with author].

<sup>95</sup>See the website of former combatants of the AUC: <http://www.colombialibre.org>.

of the AUC have taken up arms again, for other armed groups or as part of organized crime. While top leaders have turned themselves in, mid-level leaders have developed new illegal groups that, combined with the *reductos*, or holdouts, who refused to demobilize, have been characterized by the Organization of American States (OAS) mission as a network of criminals who are fluid and flexible. This flexibility has made it difficult to curb their activities, as these groups, when targeted by the state security forces, are able to disband and reform easily. Further, despite the fluidity of these groups, the OAS has also note that a strict hierarchical control of illicit economic activities exists.<sup>96</sup> A rise in crime has been found in areas where DDR has been undertaken, as demobilized fighters move into these new groups.<sup>97</sup> However, some observers suggest that while this development is cause for concern, these groups are relatively small, and that it is more important that the military structure of the AUC has been dismantled.<sup>98</sup>

The phenomenon of remobilization may be exacerbated by the lack of a coherent DDR plan. While former combatants are provided with about 18 months' worth of pay, they are not provided with any education or training that could help them to seek gainful, peaceful employment. Indeed, initially, not a single agency in the Colombian government existed to manage demobilization, although there is now a high commissioner's officer for 'reinsertion'.<sup>99</sup> Nonetheless, the DDR strategy is not coordinated, and it remains unclear how many former combatants are receiving benefits.<sup>100</sup> Further, there are concerns that many demobilized former paramilitary fighters will not receive demobilization packages, or that such packages, the equivalent of about US\$100 per

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<sup>96</sup>OAS, *Ninth Quarterly Report of the Secretary-General to the Permanent Council, on the Mission to Support the Peace Process in Colombia (OAS/MAPP)*, OEA/Ser.G, CP/doc. 4237/07 (3 July 2007).

<sup>97</sup>"Berna" reconoce que desmovilizados se han rearmado', *El Nuevo Siglo* (Bogotá, 5 August 2006), p. 4. Author interview with Restrepo.

<sup>98</sup>Anonymous author interview with a Western diplomat close to the process (Bogotá, 10 August 2006).

<sup>99</sup>The lack of a unified structure was raised by several NGO officials off the record. See also María Piedad Velasco, 'Participación del sector empresarial en la reinserción: percepciones y oportunidades' (Bogotá: Fundación Ideas para la Paz, June 2006). On the work of the high commissioner, see Fuerza Aerea Colombiana, 'The Commissioner Will Meet with the Demobilized Chiefs' (6 December 2006), available at <http://www.fac.mil.co/index.php?idcategoria=16127&phpsesid=2b1545c20d290ae60a45b77769d4f2c6>.

<sup>100</sup>OAS, *Ninth Quarterly Report*.

month, will be insufficient, particularly for paramilitary members who have been accustomed to a comfortable standard of living.<sup>101</sup> The middle ranks of the AUC may not be politically organized, but these successful businessmen and drug traffickers will be loath to lose their benefits.<sup>102</sup> As well, while the bulk of the rank and file may have demobilized, the AUC paramilitaries have always had several functions – as self-defense forces, as private armies, and as drug traffickers – the latter two of which may be more difficult to eliminate.<sup>103</sup> Indeed, differentiating between self-defense cadres who engage in criminal activity, and those who are merely criminal alone, is difficult.<sup>104</sup>

Remobilization may also be exacerbated by the difficulty that former AUC fighters face when reintegrating into communities that are not prepared to accept them. As a result, many demobilized fighters, unable to find jobs, have resorted to lives of crime, especially in the larger cities. Some analysts have argued that the demobilization and reconciliation process needs to be aimed not just at individuals but also at communities or society as a whole.<sup>105</sup> Further, while demobilized AUC fighters have had to surrender control of some land and goods, they retain effective control over some areas of the country, and have significant influence in some political parties. Known paramilitary candidates, albeit not campaigning as such, have even won some elections. Paramilitary leader Salvatore Mancuso claimed publicly in 2005 that paramilitaries controlled 35 percent of Congress, and some analysts maintained that paramilitaries control 11 of the country's 33 provinces.<sup>106</sup> Control over municipalities gives them effective control over municipal budgets, which are not insignificant given decentralization under the 1991 constitution. Their role in the political parties, such *Convergencia Ciudadana*, *Partido de la U*, *Cambio Radical*, *Colombia Democrática*, and *Colombia Viva*, which were part of or supported President Uribe's ruling coalition, was rumored for some time but brought to light

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<sup>101</sup> Author interview with García Peña.

<sup>102</sup> Author interview with Garzón.

<sup>103</sup> Author interview with Gomez Buendia, speaking in his personal capacity (Bogotá, 4 August 2006).

<sup>104</sup> Author interview with Guáqueta.

<sup>105</sup> Author interview with García Peña; anonymous author interview with the head of a local NGO (Bogotá, 10 August 2006); anonymous author interview with a CNRR official (Bogotá, August 2006).

<sup>106</sup> Alexandra Guáqueta, 'The Way Back In: Reintegrating Illegal Armed Groups in Colombia Then and Now' (May 2006) [draft on file with author], p. 12.

by Mancuso's testimony and leaked documents.<sup>107</sup> Another observer noted that the AUC has always had three roles – military, political, and economic – but that only the first has been addressed.<sup>108</sup> Certainly, the AUC process – lacking a plan to rehabilitate communities, failing to address the relative impunity enjoyed by former paramilitary fighters, and failing to strip them of their extensive social and economic power – cannot be characterized as a peace process in any traditional sense. The FARC spokesman described the process as a 'farce' and a 'means of legalizing impunity'.<sup>109</sup> Further, the process has not acknowledged the role of the Colombian government in supporting paramilitary fighters, and is unlikely to do so. Reports of former paramilitary infiltration into the government security agency, the Department of Administrative Security, as well as other state institutions, have raised additional concerns about the political influence of the paramilitaries.<sup>110</sup>

At the time of writing, the AUC demobilization process was thrown into turmoil by the withdrawal of paramilitary leaders. This move was provoked by a Supreme Court decision that they could be tried for common crimes, rather than the political crimes covered by the Justice and Peace Law. President Uribe rejected the court's ruling and insisted that he would put the process back on track.<sup>111</sup>

### **Beyond demobilization: reparation and reconciliation**

Uribe's plan to offer amnesty to AUC members under the Justice and Peace Law drew significant fire from human rights groups, while the concentration zone drew unfavorable comparisons to the demilitarized zone for the FARC.<sup>112</sup> The FARC referred to the law as 'grotesque', while the ELN suggested that there could be no peace process between the

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<sup>107</sup> Author interview with García Peña; Juan Forero, 'Colombia Lawmakers Linked to Death Squads', *Miami Herald* (21 November 2006), available at [http://www.miami.com/mld/miamiherald/news/world/americas/16063297.htm?source=rss&channel=miamiherald\\_americas](http://www.miami.com/mld/miamiherald/news/world/americas/16063297.htm?source=rss&channel=miamiherald_americas); author interview with Rosende. See also International Crisis Group, 'Uribe's Re-election', p. 6.

<sup>108</sup> Author interview with Garzón.

<sup>109</sup> International Crisis Group, 'Colombia: Towards Justice and Peace?', p. 18.

<sup>110</sup> Amnesty International, 'Colombia: Paramilitary Infiltration of State Institutions Undermines Rule of Law' (29 November 2006), available at <http://www.amnestyusa.org/regions/americas/document.do?id=engamr230482006>.

<sup>111</sup> 'Colombia Militias Quit Peace Deal' (25 July 2007), available at <http://news.bbc.co.uk/2/hi/americas/6915238.stm>.

<sup>112</sup> Randall, 'From Drugs to Security', p. 178.

government and the paramilitaries because they were never in conflict.<sup>113</sup> In particular, human rights advocates objected that any such amnesty would not take seriously the thousands of civilian victims of right-wing paramilitaries. The UN High Commissioner for Human Rights and the Inter-American Commission on Human Rights indicated that the Colombian government was not doing enough to address paramilitary crimes, and the prosecutor of the International Criminal Court (ICC) requested information regarding the AUC process.<sup>114</sup> These international criticisms naturally created fears among the paramilitaries that they might face legal accountability, notwithstanding the domestic amnesty law.<sup>115</sup> This fear was compounded when the Colombian Constitutional Court rejected the amnesty provisions. However, the effect of the court decision should not be overestimated, as the amnesty legislation was not designed to protect the majority of former paramilitary fighters, but rather their leaders. Many former fighters have been subjected to legal processes, although they are likely to serve their sentences not in prison but largely in farms under conditions of 'security and austerity'.<sup>116</sup> Estimates vary, but at least 2000 former paramilitary fighters are facing legal prosecution. However, subsequent explanation by the Constitutional Court and interpretation by the Colombian government indicate that former fighters, even those convicted of crimes, will receive the benefits of the Justice and Peace Law if they can demonstrate membership in an armed group, and that paramilitary leaders' sentences, if any, will be short. The top paramilitary leader, Salvatore Mancuso, confessed to about 50 crimes, including murders and massacres, in January 2007. In his testimony he acknowledged that he effectively controlled the police in his area, presented evidence of paramilitary collaboration with over a dozen politicians, and claimed that

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<sup>113</sup>International Crisis Group, 'Colombia: Presidential Politics and Peace Prospects', p. 23.

<sup>114</sup>Ibid., p. 18. See also 'La justicia tiene la palabra', in UNDP, *Hechos del Callejon* 2, no. 14 (May 2006), pp. 2–4.

<sup>115</sup>International Crisis Group, 'Colombia: Towards Justice and Peace?' p. 10. International Crisis Group, 'Colombia: Presidential Politics and Peace Prospects', pp. 18–19, notes that the Colombian High Commissioner for Peace apparently offered leaders reassurance in late 2004 that because domestic legal accountability was possible, international proceedings could be avoided.

<sup>116</sup>'Ex "paras" pagarían mayor parte de condena en "fincas"', *El Tiempo* (Bogotá, 2 August 2006), pp. 1–5.

paramilitaries pressured people to vote for President Uribe in 2002. A leaked document recounting a secret pact between paramilitaries and politicians in 2001 was printed in the national newspaper, *El Tiempo*, shortly after the testimony. Mancuso faces up to 8 years in prison for his crimes, rather than the maximum of 50 he faced for a previous conviction in absentia.<sup>117</sup> Testimony by a former intelligence official and AUC member has further revealed the extent of AUC manipulation of politics, in particular a massive electoral fraud in 2002 that ensured candidates selected by the AUC would be elected to Congress.<sup>118</sup>

The government also created the National Commission for Reparation and Reconciliation (Comisión Nacional de Reparación y Reconciliación [CNRR]) as part of the Justice and Peace Law. The commission, formally named in September 2005 and established in October, is to compensate victims of the armed conflict. The commission will also seek to establish the 'truth', and seek to create conditions that allow for national reconciliation, including issuance of a report on the acts of all armed groups, with a historical overview and recommendations for reconciliation.<sup>119</sup> The commission, according to its head, Eduardo Pizarro, will seek the return of expropriated possessions, but will also have the power to sue armed groups for reparations from other income sources, including income from narcotics trafficking.<sup>120</sup> The CNRR determined that it was authorized to consider victims' reparation claims dating to 1964, the year the FARC was created, effectively including victims of the FARC and the ELN as well as the AUC. This was viewed as a historic decision, because the FARC and the ELN, of course, were

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<sup>117</sup>Sybilla Brodzinsky, 'Colombian Paramilitary Head Confesses', *Christian Science Monitor* (17 January 2007), available at <http://www.csmonitor.com/2007/0117/p06s01-woam.htm>; Simon Romero, 'Colombian Government Is Ensnared in a Paramilitary Scandal', *New York Times* (21 January 2007), available at <http://www.nytimes.com>; Fundación Ideas para la Paz, '¿En que va la ley?', *Observatorio de Justicia y Paz* (1 July 2006); *Siguiendo el conflicto: hechos y análisis de la semana* no. 44 (30 June 2006), available at <http://www.ideaspaz.org>; International Crisis Group, 'Uribe's Re-election', pp. 4–6.

<sup>118</sup>Juan Forero, 'Colombian Unravels Government-Paramilitary Ties', *Washington Post* (20 March 2007), available at <http://www.washingtonpost.com>.

<sup>119</sup>Fundación Ideas para la Paz, '¿En que va la ley?', pp. 7–12; Alexandra Montoya, 'La reparación de las víctimas del conflicto armado interno', *Punto de Encuentro* no. 32 (December 2005), pp. 25–8.

<sup>120</sup>'Colombia to Help Conflict Victims', *BBC Online* (5 October 2005), available at <http://news.bbc.co.uk/1/hi/world/americas/4311198.stm>.



not part of peace processes, and the CNRR had been created following negotiations with the AUC. The source of funds for victims is to come from all armed groups, in principle, although the AUC is the only group currently prepared to provide funds for reparation. Other sources of funding may include the national budget and national and international donations. Reparations could also include nonmonetary compensation, such as symbolic acts.<sup>121</sup> The CNRR has already heard confessions, some of which have helped to resolve old cases of mass killings by the AUC, and to ensure the exhumation of victims' bodies.<sup>122</sup> However, any final report will be limited in its scope, as it will include the testimony of victims and of former members of the AUC, but not the testimony of former members of the FARC or ELN.<sup>123</sup>

While reparations are to include seized lands, it has been claimed that, in practice, lands are not being returned to individual expropriated landholders, but are rather being kept as blocks, often headed by former commanders who hire both former paramilitary members and victims to work on these properties.<sup>124</sup>

### **External involvement in the peace process**

The Organization of American States and a number of individual governments – the United States, Spain, France, and Switzerland – have been the most heavily involved in supporting the various negotiation efforts in Colombia. The United States in particular has had a significant, if not always positive, impact on the peace process, given its interest in stemming terrorism and the flow of drugs from Colombia.<sup>125</sup> The United Nations has played a relatively limited role, largely relegated to its ongoing development and humanitarian activities, in part because it has not been specifically asked to support the peace process. Still, in principle,

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<sup>121</sup>'Victimas del conflicto desde 1964 podran pedir reparacion', *El Tiempo* (Bogotá, 3 August 2006), pp. 1–4; anonymous author interview with a CNRR official (Bogotá, August 2006).

<sup>122</sup>'Tres casos se aclaran por confesión de ex paramilitares a Justicia y Paz', *El Tiempo* (14 August 2006), pp. 1–6.

<sup>123</sup>Anonymous author interview with a CNRR official (Bogotá, August 2006).

<sup>124</sup>Anonymous author interviews with local DDR experts (Bogotá, 10 August 2006).

<sup>125</sup>Richani, 'Third Parties', refers to the US involvement as a 'biased intervention'.

specialized agencies such as the International Labour Organization might have a role to play in retraining former combatants.<sup>126</sup>

### The organization of American states

In 2004, the OAS established a mission to support the peace process in Colombia, the Mission to Support the Peace Process in Colombia (Misión de Apoyo al Proceso de Paz en Colombia [MAPP/OEA]).<sup>127</sup> The initial mission was quite small, with just over 20 members involved in supporting a demobilization process involving tens of thousands. Not surprisingly, the mission was criticized for its size. Even the mission itself, in its October 2005 operation report, highlighted this fact, stressing that the situation in Colombia 'clearly merits' greater support.<sup>128</sup> The mission, just 44 members at the time of that report, was subsequently expanded to about 200 members. Several European states – Sweden, the Netherlands, and Ireland – offered support to MAPP/OEA.<sup>129</sup>

### Foreign governments

Since 2000, the Group of Friends for the ELN peace process has comprised five nations: Cuba, France, Norway, Spain, and Switzerland. Mexico began facilitation of talks in 2004, followed by Venezuela and Cuba.<sup>130</sup> A Group of Friends was also created during the Pastrana administration's negotiations with the FARC. The latter group, comprising

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<sup>126</sup>Education and vocational training are ordinarily central parts of any DDR process. Lotta Hagman and Zoe Nielsen, 'A Framework for Lasting Disarmament, Demobilization, and Reintegration of Former Combatants in Crisis Situations' (December 2002), available at <http://www.ipacademy.org/publications/publications.htm>. On the role of the international community in Colombia generally, see the papers and presentations in 'Comunidad internacional y paz en Colombia', *Punto de Encuentro* no. 37 (June 2006).

<sup>127</sup>OAS Resolution CP/RES. 859 [1397/04] (2004).

<sup>128</sup>*Quinto informe trimestral del secretario general al consejo permanente sobre la misión de apoyo al proceso de paz en Colombia (MAPP/OEA)* (5 October 2005), p. 2.

<sup>129</sup>*Ibid.*, p. 13; International Crisis Group, 'Uribe's Re-election', p. 14.

<sup>130</sup>Andres Valencia Benavides, 'The Peace Process in Colombia with the ELN: The Role of Mexico' (Washington, D.C.: Woodrow Wilson Center, March 2006), available at <http://www.consejomexicano.org/download.php?id=515793,781,7>.

<sup>131</sup>Augusto Ramirez Ocampo, 'The Role of the International Community in Colombia' (2004), available at <http://www.c-r.org/our-work/accord/colombia/role-international-community.php>; Ricardo Correa Robledo, 'La comunidad internacional y las negociaciones de paz en Colombia', *Punto de Encuentro* no. 35 (April 2006), pp. 66–7.

26 members, had a 'facilitating commission' of ten nations, with one representative each from Canada, Cuba, Spain, France, Italy, Mexico, Norway, Sweden, Switzerland, and Venezuela.<sup>131</sup> After initial interest in supporting Plan Colombia, EU states instead pursued their own path, offering significant financial support to the peace and demobilization processes in Colombia, and supporting local peacebuilding processes when formal negotiations broke down.<sup>132</sup>

Involvement of the United States in any peace process is complicated by its concerns about combating terrorism and drug trafficking, its role in Plan Colombia, and its extradition demands. The United States officially supports the Colombian peace process, but it is not part of the Group of Friends, and its staunch support for Uribe may be a hindrance. However, US policies do have significant effect on any negotiations, as discussed above. Some have even suggested that the United States should itself be at the negotiating table because it is an actor or party to the situation in Colombia.<sup>133</sup>

### **The United Nations**

While the United Nations has not played a central role in the Colombian peace process, it did appoint a special adviser, though this individual was later withdrawn amid controversy.<sup>134</sup> The United Nations Development Programme (UNDP) originally had the authority to undertake DDR work, but this too was withdrawn. Still, the UNDP has sought to support local peacebuilding efforts, through its *Redes* program. These involve local village assemblies, of everyone from leaders to housewives, to discuss

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<sup>132</sup>European Union, 'The EU's Relations with Colombia' (2006), available at [http://ec.europa.eu/comm/external\\_relations/colombia/intro/index.htm](http://ec.europa.eu/comm/external_relations/colombia/intro/index.htm); Christopher Welna and George A. Lopez, 'Breaking the Deadlock: European "New Leadership" in a Colombian Peace Process' (2004), available at [http://kroc.nd.edu/faculty\\_staff/faculty/colombia.pdf](http://kroc.nd.edu/faculty_staff/faculty/colombia.pdf). Some argue that it is a purely internal conflict posing no threat to international peace and security, thus excluding traditional UN peacekeeping activities. See Cardenas, 'Colombia's Peace Process', p. 295; while this may be true, it is not the only type of UN involvement to be contemplated.

<sup>133</sup>Anonymous author interviews with UNDP experts (Bogotá, 9 August 2006); author interview with Nasi.

<sup>134</sup>James LeMoyné Appointed Special Adviser on Colombia', UN press release, UN Doc. SC/A/823 (1 November 2002); anonymous author interviews with UNDP experts (Bogotá, 9 August 2006); Rodrigo Pardo, 'The UN in the Distance: Multilateralism and Armed Conflict in Colombia' (2004), available at [http://kroc.nd.edu/faculty\\_staff/faculty/colombia.pdf](http://kroc.nd.edu/faculty_staff/faculty/colombia.pdf).

methods of resolving conflict and raising grievances.<sup>135</sup> There has been some unofficial discussion of the United Nations 'accompanying' the ELN process, but this has not yet occurred.<sup>136</sup>

## Future prospects

### Uribe's second term

On 28 May 2006, President Uribe was reelected in a landslide victory, following elections in March for the legislature in which his supporters won a majority.<sup>137</sup> The new administration faces several key challenges in the second term. It must not only reintegrate the former paramilitary fighters and the individually demobilized former FARC fighters, but also pursue negotiations with the ELN and seek an agreement on humanitarian prisoner exchange that might help initiate negotiations with the FARC. It must also manage implementation of the Justice and Peace Law in light of the decision by the Constitutional Court limiting its amnesty provisions. Some signs are positive: while the FARC attempted to disrupt the congressional elections in March, its efforts had little effect or were counterproductive, and electoral violence targeting political leaders and candidates was at its lowest in nearly a decade.<sup>138</sup> Further, the ELN maintained its cease-fire through the electoral period. However, there are negative indications as well. Prior to Uribe's inauguration in early August, when the president promised to promote the peace process, the FARC increased its attacks on military and police targets, as well as on anti-narcotics agents engaged in spraying illegal crops. It has also resisted agreement on humanitarian exchange, and has accused the government of obstructing the path to any agreement.<sup>139</sup> The FARC outright rejected a

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<sup>135</sup>UNDP Colombia, 'Redes reconciliación y desarrollo', 'Asamblea municipal constituyente de la Argentina', and 'Programa de desarrollo y paz del Huila y Piedmonte Amazónico - Huipaz' (n.d.) [all documents on file with author]; author observations of the Asamblea Municipal Constituyente and Huipaz (La Argentina, Huila, 15 August 2006).

<sup>136</sup>Anonymous author interviews with UNDP experts (Bogotá, 9 August 2006).

<sup>137</sup>International Crisis Group, 'Uribe's Re-election'.

<sup>138</sup>*Ibid.*, p. 3.

<sup>139</sup>Chris Kraul, 'At 2d Inauguration, Colombia's Uribe Vows to Pursue Peace', *Los Angeles Times* (8 August 2006), available at <http://www.latimes.com>; 'Valle, el mas vulnerable ante ultima escalada de las FARC', *El Tiempo* (Bogotá, 5 August 2006), pp. 1-3; 'Sies metros por carro-bomba en Cali', *El Nuevo Siglo* (Bogotá, 5 August 2006), p. A2; 'Empezo aspersion aerea en La Macarena', *El Nuevo Siglo* (Bogotá, 5 August 2006), p. A3.

proposal from an international commission assembled by France, Spain, and Switzerland for a demilitarized area in which to discuss an exchange of hostages and prisoners.<sup>140</sup>

Any peace process depends on the willingness not only of the armed groups to negotiate, but also of the government to engage in good faith. The latter is by no means guaranteed: Uribe's government is quite right-wing, has strongly allied itself with the George W. Bush administration's antiterrorism agenda, and has characterized Colombia's two key rebel groups as terrorist rather than insurgent. This is more than a political move; Uribe's government and those before his have rejected labeling the FARC and the ELN as armed groups or belligerents, concerned that they might be obliged to comply with the terms of Additional Protocol II to the Geneva Conventions (governing noninternational armed conflict), or that such labels would legitimize these groups and place them on 'equal' footing.<sup>141</sup> Both the FARC and the ELN reject the terrorist label and insist that they have political agendas and are legitimate belligerent forces.<sup>142</sup> However, some observers suggest that Uribe is nonetheless a pragmatist concerned with his legacy, and that a successful legacy would involve a successful peace process. In early 2007, he announced that he was interested in direct negotiations with the FARC over hostages.<sup>143</sup> If this is so, it indicates his willingness to negotiate, although the FARC seems less amenable to reciprocating than does the ELN. However, serious negotiation might also be possible with the FARC, to which the government had extended not only offers of a humanitarian exchange, but also the possibility of meeting its demand for a constituent assembly, in late 2005.<sup>144</sup> While negotiations with the FARC had not resumed at the time of this writing, the government had released a key FARC leader from prison, Rodrigo Granda, so that he could support and participate in any peace talks. The government also released some 150 FARC fighters in

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<sup>140</sup>International Crisis Group, 'Uribe's Re-election', pp. 20–2.

<sup>141</sup>Cardenas, 'Colombia's Peace Process', pp. 291–2; Esquirol, 'Can International Law Help?', pp. 39–40.

<sup>142</sup>See, for example, 'Comunicaciones del ELN', *Punto de Encuentro* no. 31 (2005), p. 17.

<sup>143</sup>In an author interview, García Peña described him as 'Uribista'. See also 'Colombian President Authorizes Direct Hostage Negotiations with Rebels', *VOA News* (24 February 2007), available at <http://www.voanews.com>.

<sup>144</sup>International Crisis Group, 'Uribe's Re-election', p. 22.

June 2007 in the hope that the FARC would release a number of high-profile captives, including Ingrid Betancourt.<sup>145</sup>

### FARC-ELN confrontation

The prospects for peace with either the FARC or the ELN are compounded by fighting between the two groups. There are widespread reports of FARC attacks on ELN contingents and civilian supporters, and the FARC has also accused the ELN of attacks. Further, the FARC has apparently sought to 'reconvert' former ELN fighters, generating further conflict.<sup>146</sup> As with the EPL, discussed below, the FARC is unlikely to accept significant progress in government-ELN negotiations if the FARC itself is not engaged in a peace process, and might well escalate attacks on the ELN or more generally. Thus the ELN is politically independent of the FARC, but strategically constrained by it.<sup>147</sup> A more positive prediction was offered by one expert, however, who suggested that more moderate FARC members might see the ELN process as a tester, rather than a threat.<sup>148</sup> However, the loss and reconversion of ELN troops will continue to be a problem, as it weakens the ELN's negotiating position.

### Lessons from previous transformations

Over more than 40 years, a range of armed groups have fought on Colombian soil, and a few have disarmed peacefully and sought to engage in politics. It is worth considering what lessons may be learned from their experiences for any future political role for the AUC, or for the FARC and the ELN should peace negotiations succeed. Of particular note are the EPL and M-19. As already noted, M-19 engaged in negotiations with the government and became a political party, the M-19 Democratic Alliance (Alianza Democrática M-19), in 1989. Party members received pardons for past wrongdoing, in exchange for demobilizing. Some of the M-19 cadres were gradually integrated into security forces.<sup>149</sup> While they converted into a political party and obtained some electoral success, and were able to

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<sup>145</sup>'Colombia Rebels See Role for Freed FARC Commander', *Reuters* (22 June 2007); Philippe Zygel, 'Disgust, Rage, Among Colombia's Poor over Prisoner Swap Plan', *Agence France Presse* (7 June 2007).

<sup>146</sup>'Colombian Rebels Turn on Allies' (12 June 2006), available at <http://www.bbc.co.uk>; 'FARC: ¿tras los niños de Tame?', *El Tiempo* (11 August 2006); author interview with Rosende; International Crisis Group, 'Uribe's Re-election', p. 21.

<sup>147</sup>I am grateful for this point to Daniel García Peña.

<sup>148</sup>Author interview with Rosende.

<sup>149</sup>Author interview with Restrepo.

help push for the new 1991 constitution, their political influence declined subsequently, although leader Antonio Navarro was able to become a successful politician in his own right.<sup>150</sup> Still, the party was able to survive the assassination of its presidential candidate, Carlos Pizarro Leongómez, in 1990, apparently by a paramilitary leader, as well as intermittent violent attacks by other armed groups, including the FARC. The level of violence perpetrated against M-19, while important, was relatively small: one observer pointed out that while M-19 lost about 10 members to violence during its transformation, the FARC's ill-fated political party, the UP, suffered the massacre of 2000–3000 members. The EPL demobilized in 1991, forming the party Hope, Peace, and Liberty (*Esperanza, Paz y Libertad*), although a splinter group refused to demobilize and continued low-level operations. EPL members, who received amnesties for past crimes, were considered 'traitors' by the ELN and the FARC, and the latter undertook a series of attacks and assassination attempts against them, weakening the already frail party; the attacks and their effects on the EPL were significantly greater than those on M-19.<sup>151</sup> The EPL reintegration process has been criticized as being too rapid, inappropriately one-size-fits-all, and poorly planned, criticisms that might also be leveled at the AUC process.<sup>152</sup>

Some observers have suggested that the transformations of the EPL and M-19 are not analogous to any possible transformations of the AUC and the ELN. They point in particular to the political sophistication of M-19, which largely comprised middle-class, urban professionals rather than rural guerrillas.<sup>153</sup> As well, M-19 could mobilize votes, and thus the government considered it a politically viable negotiating partner.<sup>154</sup> Some suggest that, from its experiences with M-19 and the EPL, the government should have learned the importance of defeating opposition groups prior to negotiation.<sup>155</sup>

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<sup>150</sup>Nasi, 'Colombia's Peace Processes', pp. 10–11; author interview with Nasi.

<sup>151</sup>Author interview with Nasi.

<sup>152</sup>Comisión Interamericana de Derechos Humanos, 'Violencia y la violación del derecho internacional de los derechos humanos y el derecho internacional humanitario' (1999), available at <http://www.cidh.oas.org/countryrep/colom99sp/capitulo-4a.htm>; Human Rights Watch, 'Colombia and International Humanitarian Law' (1998), available at [http://www.hrw.org/reports98/colombia/colom989-05.htm#p1344\\_318454](http://www.hrw.org/reports98/colombia/colom989-05.htm#p1344_318454); author interview with Garzón.

<sup>153</sup>Author interview with Garzón.

<sup>154</sup>Author interview with Gomez Buendia, speaking in his personal capacity.

<sup>155</sup>Anonymous author interview with a Western diplomat close to the process (Bogotá, 10 August 2006).

With M-19 and the EPL, the issue of becoming a political party was on the negotiating table from the beginning, but not with the AUC, whose negotiations dealt only with disarmament and amnesty.<sup>156</sup> Further, many argue that the AUC had no interest in becoming a distinct national political party, given its extensive reach and influence in existing parties. Rather, its primary interest was avoiding extradition and preserving its income-generating activities, whether licit or illicit.<sup>157</sup> As one observer put it, while the agreement with M-19 looks like a peace accord, that with the AUC looks like a plea bargain. This would sharply differentiate the AUC as a criminal rather than political organization, but of course it does hold political sway. It arguably already control many departments and regions of the country, and so has no need to seek power in national elections. The government would also have great difficulty considering power-sharing arrangements with the AUC, given Uribe's ties to the paramilitaries, and strong opposition by the United States to any overt AUC role in politics.<sup>158</sup>

The issue of political transformation has also not been explicitly raised in negotiations with the ELN and the FARC, although there is greater indication of their desire to eventually play political roles. This is particularly true of the ELN, which has promoted the idea of a national convention or a constituent assembly. While vague (it is unclear whether this means a general civil society assembly or a meeting to revise the constitution), this idea suggested that the ELN wished to run as a political party in the fall 2007 municipal elections.<sup>159</sup> Its negotiating concerns are economic and political, such as tax policy, labor policy, and the privatization of oil extraction. These are issues suited for legislative activities, not peace negotiations.<sup>160</sup> However, the ELN will be wary of giving up its arms, which it must do in order to legally run as a party. The ELN will likely want protection from prosecution, good DDR packages, and social investment in the areas under its control so it could offer benefits to its potential constituents.<sup>161</sup>

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<sup>156</sup>Anonymous author interviews with political experts (Bogotá, 10 August 2006).

<sup>157</sup>Author interview with Nasi.

<sup>158</sup>Guáqueta, 'The Way Back In', pp. 5, 9, 19. An anonymous author interview with a Western diplomat close to the process (Bogotá, 10 August 2006) also suggests that the process was more one of the AUC surrendering to justice than a peace process.

<sup>159</sup>Anonymous author discussions with NGO experts (Bogotá, August 2006).

<sup>160</sup>Author interview with Guáqueta.

<sup>161</sup>Author interview with García Peña; author interview with Guáqueta.



It has also been suggested that the ELN will seek participation in future security forces, as former rebels of the Farabundo Martí National Liberation Front did in El Salvador.<sup>162</sup>

However, some observers suggest that the prospects for power-sharing or resource-sharing arrangements with the ELN, as well as the FARC, are limited. Given their past activities and predations, any amnesty or political role for either would be unpopular. Unlike M-19, neither appears to be a viable political force.<sup>163</sup> Further, it is not clear that the government has any incentive to deal with either group politically, rather than addressing them as military powers to be defeated. If this is the case, then the range of incentives that might be offered is extremely limited.

Further, notwithstanding the ELN's apparent interest, at the time of field research in summer 2006, in standing for elections as soon as the fall of 2007, neither the ELN nor the FARC have offered particularly clear political agendas or platforms, although that of the ELN is relatively more detailed. Each has strongly critiqued the existing socio-economic order, and the marginalization of certain groups and regions of the country. They have called for wide-scale transformation of politics, or for specific changes such as land reform. But their broader agendas remain relatively undefined. As mentioned, although the ELN has called for a national convention or a constituent assembly, as a broad engagement with civil society, the exact form that this might take is unclear.<sup>164</sup>

The FARC's interest in politics is less clear, although it has made broad political demands for structural change, and to address the needs of marginalized populations in Colombian society. It has also proposed a popular assembly, with civil society engagement, though the nature of such a body has not been specified. But as one observer has suggested, while the FARC talks about the 'popular power to renovate' and claims to represent campesinos, it doesn't really engage the people or seek to learn what they might want.<sup>165</sup> The FARC might be able to control political power in some regions of the country, but is unlikely to be an important political force nationally. Further, it will remain wary of surrendering arms to form a political party, given the Casa Verde and UP experience. The FARC will be wary of demobilizing with-

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<sup>162</sup> Author interview with García Peña.

<sup>163</sup> Author interview with Gomez Buendia, speaking in his personal capacity.

<sup>164</sup> *Ibid.*

<sup>165</sup> Anonymous author interviews with UNDP experts (Bogotá, 9 August 2006).

out security guarantees and a genuine DDR process, but the government will most likely be unwilling to engage in serious negotiations without prior FARC demobilization.<sup>166</sup> Negotiations have been challenging because of this: the FARC fears negotiating in territory it holds, and has thus promoted negotiations outside the country, in Mexico and Venezuela. However, the leader of the FARC, Pedro Antonio Marín, also known as Manuel Marulanda Vélez, reportedly will not leave FARC territory, much less the country, to engage in discussions, so second-tier cadres must negotiate instead. Thus the FARC's demand for a demilitarized zone from which to negotiate is likely to endure.<sup>167</sup> However, this demand for territorial control for the purposes of negotiations, and even the FARC's more extensive demands for territorial autonomy, emphasizing that it already exercises *de facto* control in large areas, are not akin to demands in many other countries for territorial autonomy. That is to say, the FARC does not appear to want to govern a territorially autonomous region, much less an independent state. Rather, it seeks to ensure its capacity to defend itself during negotiations and any transitional period.<sup>168</sup>

The FARC and the ELN may also calculate that their options have changed with the rise in democratically elected and radically left-leaning governments in Latin America. The import of this trend, however, remains unclear: they could believe that the ideological tide is turning in their favor, but they could also come under pressure from those regimes to engage in the pursuit of democratic rather than violent change.<sup>169</sup> However, neither group has mass popular support such that they could expect resounding victory at the polls; both have a largely rural base, while the majority of voters in Colombia are now urban.<sup>170</sup>

Further, the ELN and the FARC, like the AUC, face threats external to Colombia: criminal judicial processes elsewhere. As all three groups have been active in narco-trafficking, members of each are facing or could face criminal charges in, and extradition to, the United States. Members could also face charges before the International Criminal

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<sup>166</sup>Anonymous author interview with an NGO conflict expert (Bogotá, 9 August 2006).

<sup>167</sup>Author interview with García Peña.

<sup>168</sup>Author interview with Guáqueta; anonymous author interview with a Western diplomat close to the process (Bogotá, 10 August 2006); author interview with Nasi.

<sup>169</sup>Author interview with Garzón; author interview with García Peña.

<sup>170</sup>Author interview with Garzón.

Court for crimes committed since Colombia's ratification of the ICC statute; the ICC prosecutor has even claimed that one paramilitary leader laid down arms out of fear of indictment, although that individual seems to have done so in response to a US indictment, and was subsequently killed.<sup>171</sup> However, the key leaders may well face a few years' imprisonment, which the ICC may consider to be sufficient under the principle of complementarity.<sup>172</sup> Fear that any domestic amnesty could be rendered irrelevant through extradition might lead the FARC and the ELN to shy away from negotiations, and any extraditions of AUC members could yet undermine that process. While in principle the Justice and Peace Law applies to all armed groups, including the FARC and the ELN, both groups reject the idea of a one-size-fits-all solution, or being grouped with the AUC, and amnesties for their members would be politically unsavory. Further, the ICC would be under no obligation to respect a domestic amnesty.

### **Limits to participation incentives in Colombia's peace processes**

Colombia's peace process, whether in relatively robust form for the AUC, or in nascent or potential form for the ELN and the FARC, does not appear to be particularly well-suited to the use of governance or participation incentives, at least not as traditionally promoted in peace processes. This is the case certainly because the government and the populace would be highly resistant to formal guarantees to groups viewed by most as criminal, terrorist, or both. Thus, offering them secured places in government institutions or reserved seats in the legislature, a portion of national resources, participation in the military or police, or territorial autonomy, seems inconceivable to most Colombians, based on field interviews. By the same token, it is not clear that any of these three armed groups would respond to such incentives, although they are concerned about the underlying issues that these incentives are meant to address. So, for example, it seems unlikely that the ELN or the FARC would seek participation in national security forces. Each is concerned

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<sup>171</sup>The individual in question was Carlos Castaño, who disappeared in 2004 and whose body was found in 2006. Elizabeth Rubin, 'If Not Peace, Then Justice' (4 April 2006), available at <http://www.globalpolicy.org/intljustice/icc/2006/0402rubin.htm>; Rachel van Dongen, 'Colombian Peace in Flux After Leader Disappears', *Christian Science Monitor* (30 April 2004), available at <http://www.csmonitor.com/2004/0430/p07s01-woam.html>.

<sup>172</sup>I am grateful to Juan Carlos Garzón for this insight.

about security, but would not seek to have members deployed outside areas already under their control.<sup>173</sup> Further, the security dilemma for armed groups is not just about attacks by government forces; some of the most serious damage to armed groups has been inflicted by other armed groups as well as by the state and/or by armed groups openly or surreptitiously aligned with the state. Thus, as Carlos Nasi has noted, the literature on spoilers has not been sufficiently clear about 'who should fear whom', and this makes spoiler management in Colombia a challenge, given the complex dynamics of the conflict.<sup>174</sup> Thus demilitarized zones where the Colombian army is not present, which have been attempted during negotiations with the ELN and the FARC, may not suffice. Either group may seek promises of protection against the other, or against vestiges of or a revived paramilitary presence. This, obviously, would be rather unpopular politically.

The FARC's concern with security has manifested itself as a demand for territorial control, but not, as has been the case in other countries, as a demand for permanent territorial autonomy. Similarly, it should not be expected that the FARC or the ELN would seek guarantees of inclusion in government. The FARC, following the UP experience, does not seem to have political aspirations at the national level, although it might at the local level, and is not interested in obtaining seats in the legislature. The ELN does appear to have some national political aspirations, but would likely seek legalization as a party rather than a seat allocation. The ELN, like the FARC, may seek to maintain local political bases and control, but does not seek regional autonomy. It is also not clear that the ELN and the FARC have the capacity to become successful political parties: as with many groups that have fought for extended periods of time, this is where their skill lies, rather than in formulating policies and administering them, or engaging in multiparty coalition building. Each would need a great deal of technical support to successfully transform.<sup>175</sup> And finally, both the FARC and the ELN evince concern about resources, and object strenuously to privatization of oil resources. But they do not explicitly seek to control those resources themselves. Of course, this is not to say that each does not have economic agendas, whether kidnapping and extortion or drug trafficking. The FARC and the ELN, like the AUC, will seek to retain resources

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<sup>173</sup>Author interview with Restrepo.

<sup>174</sup>Nasi, 'Colombia's Peace Processes', pp. 14–16.

<sup>175</sup>Guáqueta, 'The Way Back In', p. 22.

that they have acquired, legally or illegally. But neither seeks a portion of the income from natural resources, as was enshrined in the Comprehensive Peace Agreement in Sudan. For different reasons, the AUC has not explicitly sought these incentives either: it does not seek to form a political party, garner a share of national resources, participate in state security forces, or secure regional autonomy. Rather, the AUC appears to be satisfied with the influence it already has, wants to maintain its legally and illegally obtained wealth, has moved into private security, criminality, and the formation of new armed groups rather than seeking participation in state forces, and exercises effective control in many areas without seeking autonomy. What it really wants, according to many, is protection from extradition, and to maintain its lands and goods.<sup>176</sup>

## Conclusion

In this sense, then, the actions and interests of armed groups in Colombia confounds the prescriptions of the 'institutionalization before liberalization' approach. Their behavior contradicts the frequent assumption that they can be induced to negotiate and disarm, and to implement peace agreements, through incentives such as power-sharing, resource-sharing, territorial autonomy, or inclusion in security forces. Even for those groups that did successfully convert into legitimate political parties, such as M-19 or the EPL, no further participation guarantees were offered, nor were the other typical incentives offered. For the FARC, it is unclear whether forming a legal political party is even a serious incentive, although it might be one for the ELN. Yet there is no question that each has concerns emanating from the security dilemma, about protecting themselves, and in some cases their constituents, from direct attack by other actors, about ensuring long-term economic survival, and even about localized autonomy. The traditional power-sharing incentives, however, are neither on offer by the Colombian government, nor apparently of great interest to the FARC.

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<sup>176</sup>These points were made repeatedly in the interviews cited throughout this chapter, and reiterated clearly in my interview with Restrepo.

# Conclusion

## The Need for More Nuanced Governance Incentives

In this chapter I seek to identify cross-cutting issues and comparative lessons that might be learned from the rich and diverse country experiences examined in this volume. I undertake a deeper comparative analysis of the differing behavior, interests, and demands of each armed group, as well as their relative support bases, and the implications of these variations for the use of power-sharing incentives. Clearly, each armed group has different goals that take primacy, and even if these can be identified and addressed, this is no guarantee that peace negotiations and implementation will be successful.

After summarizing key governance incentives and their putative virtues, I turn to the challenges that arise at the negotiation and implementation phases, and potential negative side-effects. I conclude with a broader discussion that addresses the role of governance and inclusion as part of the liberal peacebuilding consensus, the critique of this consensus, and the 'institutionalization before liberalization' prescription.

### **Incentives for armed groups: power-sharing across four dimensions**

In this volume I have examined power-sharing incentives offered to induce armed groups to engage in peace negotiations, negotiate an agreement, and engage in implementation. It is important to recognize that offering such incentives is bound to be controversial, because the groups may have committed significant crimes against the civilian population and security forces. Human rights groups, victims, and various external actors may frequently demand accountability and recoil at the idea that leaders of groups responsible for atrocities will not only go

free, but also be given power in any future state. However, negotiations often require concessions to unsavory groups.<sup>1</sup> I have examined cases in which peace negotiations or agreements offered one or more of four types of incentives, which I have broadly termed 'governance incentives'. The first is obvious – power-sharing, whereby direct participation by former members of armed groups in future political processes is clearly a governance incentive. Groups that may previously have been criminalized may be permitted to function openly as political parties, or may even be guaranteed posts in government ministries or quotas of elected positions, in exchange for a peace deal. The second is perhaps less obvious, but also frequently of interest to these groups – inclusion of former combatants in security forces, usually in reformed forces in tandem with state security forces, but occasionally in distinct forces of their own. This incentive not only alleviates an armed group's concerns about security, but also provides it access to a key element of the state apparatus. The third incentive, resource-sharing, can take two forms: offering an armed group either direct economic benefits, or a hand in the governance of resources. The latter form is clearly a governance incentive. Finally, territorial autonomy – the prospect of regional government and independence (or referendums for independence) – is clearly a governance incentive, as it gives an armed group the power to rule directly, either absolutely over its own state, or in a federal or other arrangement within a larger state.

It is evident why these incentives might be of interest to armed groups, as they bring direct benefits and offer some guarantees that a group will survive and flourish. However, in many instances such incentives do not suffice to induce armed groups to negotiate; even if they do, negotiated peace agreements may falter at the implementation stage. Why might this be the case? The answer to this question begins with understanding the virtues of governance incentives.

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<sup>1</sup>This is well-known and discussed endlessly in the literature on both conflict resolution and transitional justice – there is a need to involve all key fighting forces, as well as a resistance to rewarding those who have engaged in predatory and abusive behavior. Peace agreements that do not include the major fighting forces will be particularly prone to challenge by spoilers, as discussed in Chapter 1. See Jamal Benomar, 'Constitution-Making After Conflict', *Journal of Democracy* 15, no. 2 (2004), p. 84; Stephen John Stedman, 'Spoiler Problems in Peace Processes', *International Security* 22, no. 2 (Fall 1997), pp. 5–53.

## **Virtues of governance incentives**

What are the virtues of these governance incentives? Why are they so often promoted by mediators to conflicts, and why do armed groups often accept one or more of these in exchange for laying down their arms?

The most obvious reason is that these incentives often represent the promise of that an armed group will be allowed to accomplish at least some of the objectives that motivated it to fight in the first place. In this sense, these incentives are positive. As we know, many armed groups seek to change or replace the existing government, to control key resources, to secure themselves and their interests, or part of the population, or to gain autonomy or independence for a region.

However, these incentives are also in some sense negative, in that they are protections against threats that armed groups fear in laying down their weapons. Armed groups that consider laying down their weapons face what scholars have termed a 'security dilemma': if they do surrender their weapons, they run the risk of being destroyed if the government or another armed group chooses to renege on a cease-fire or peace agreement. Clearly, in situations of violent conflict, particularly protracted civil war, mistrust among parties to the conflict will be extreme, and mere promises will not suffice. Rather, before giving up their weapons, armed groups will want to obtain positions in existing or new power structures to protect their own interests, and to protect themselves from destruction. Statistical and country case-study analyses by Walter and others thus suggest that two types of guarantees are needed for peace agreements to be implemented successfully: the governance incentives under examination here, and the presence of a strong third-party guarantor of the peace agreement. I have not focused in this volume on the latter, although the presence of a UN peacekeeping or-peacebuilding mission, or other external security force, is certainly very important.

Armed groups are interested in governance incentives because they help to cement and institutionalize their survival and their capacity to help and protect themselves and those whom they purport to represent. Such institutionalization is important because it protects against cheating or violations by other parties; mere promises on paper do not appear sufficient. It is for this reason that armed groups may seek to convert into legitimate political parties or obtain guaranteed positions in government ministries in order to secure their future and agenda. Similarly, they may seek to be included in old or reformed security



forces – the police or military – to ensure protection from direct attack. They may also seek direct control over key resources, or participation in the governance of those resources, again to finance future group activities. Finally, they may seek territorial autonomy, governance, or independence not merely as a political goal, but to ensure a safe space for themselves and populations with whom they claim a relationship.

Such incentives are also said to be appealing from a government perspective, by giving armed groups a buy-in: not only do they have an incentive to comply with any agreement, but the government has leverage and a stick to punish a group that violates an agreement. Such incentives are of interest to governments and international mediators alike because they are said to mitigate or solve the ‘spoiler problem’ in peace processes: groups that are intransigent and bent on halting or spoiling a peace process because they expect to be losers may be converted into supporters.

I turn now to some of the challenges of relying on governance incentives to bring armed groups to the negotiating table and to promote peace implementation.

### **Challenges of negotiation**

First, though governance incentives may logically offer a way out of the security dilemma faced by armed groups, mistrust among them may result in fear of disarming. Governments may also be unprepared to offer such incentives, believing either that armed groups will use the negotiation or cease-fire period to rearm, or that once empowered with such access to governance the groups will harm those currently in power or the state itself. There is some evidence that Sri Lanka’s LTTE used periods of negotiation and cease-fire to rearm and strengthen its position; its enhanced military capacity was dramatically illustrated with its first use of airplanes in 2007. Similarly, the governments of Colombia and Sri Lanka have opposed the use of most of the incentives considered here for the FARC, the ELN, and the LTTE, although the government of Colombia has used inclusion incentives with other armed groups.

Second, such incentives may foster trust only if a third-party guarantee is also present. Such guarantees have not been present in recent peace processes in Colombia or Sri Lanka. In Colombia, the OAS support mission, while important, lacks muscle, and there is no prospect of an international or regional peacekeeping force should peace be reached with either major leftist rebel group. In Sri Lanka the SLMM has a limited

mandate, and in India neither an international nor a regional peace-keeping force would be welcomed by the government, which itself engaged in a disastrous peacekeeping effort in 1987. The negotiation of Sudan's CPA was arguably bolstered by the presence of strong regional mediators and the prospect of a UN peacekeeping force, while the limited participation in the Darfur negotiations may reflect the poor prospect for a robust international force there.<sup>2</sup> While we as analysts or advocates might wish that a third-party guarantor always be available, we know that often it is not.

Third, it may simply be the case that the wrong incentives are being offered. For example, some groups value territorial autonomy and governance of resources, but have no particular interest in governing at the national level. These groups might not be interested in signing an agreement that offers them, say, participation in national security forces or in parliament. Such is the case with the LTTE, which has engaged in predation and coercive extraction of support funds from the Tamil diaspora globally, but has not sought resource-sharing in negotiations; nor did the ill-fated tsunami aid-distribution mechanism appear to be a significant incentive. The LTTE's demands have largely been for territorial autonomy, self-governance, or complete independence, so the offer of resource-sharing is unlikely to be a significant incentive. By comparison, while the FARC and the ELN do demand territorial control, and engage in rhetoric that at least purports to defend their putative constituents, these demands have largely been driven by short-term security concerns rather than desires for long-term control over specific territories. They are also clearly linked to drug cultivation and criminal activity, which have enabled them to fund fighting, but which have also become ends in themselves. However, the demands that they have made with regard to state resources have not been for resource-sharing, but for more equitable distribution of resources across the populace. In Sudan, the SPLM/A had the most clearly articulated demands for power- and resource-sharing, and territorial autonomy. It had less apparent interest in inclusion in security forces, which is at odds with future autonomy, so perhaps it should be no surprise that the creation of joint integrated units has been halting.

Fourth, clearly these incentives alone will not be enough to impel armed groups to sign any peace agreement: they will insist that some

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<sup>2</sup>At the time of completion of this manuscript, in September 2007, new peace negotiations for Darfur had been initiated, but these cannot be addressed here.

of their original demands, those that drove them to take up arms, be met as well. Where such incentives, such as autonomy, are the original demands, this may facilitate agreement. The SPLM/A's platform had for some time alternately included fundamental change in the national government and regional independence; it achieved the first at least formally, and the prospect of the second through a referendum in the CPA. By comparison, LTTE demands for autonomy have only ever been met historically by very weak decentralization, and devolution remains a 'dirty word' in mainstream Sri Lankan politics. Indeed, the only power-sharing that does occur in Sri Lanka, within electoral politics, has tended to radicalize politics, as mainstream parties are compelled to form coalition governments with Buddhist fundamentalist parties. In Colombia, even if the government were prepared to offer the FARC or the ELN governance incentives, it is unclear what the appeal of these would be in the absence of fundamental reform of the land system and given the economic disparities that have been central to the rebels' motivations, or at least their ideological arguments.

Finally, these incentives can seldom eliminate the 'spoiler problem', and may actually create spoilers, or at least consolidate opposition of groups that were previously positive or neutral toward the peace process. Peace agreements can seldom be comprehensive, and opposition groups, armed or otherwise, as well as government hard-liners, may oppose peace agreements that exclude them or that they feel give away too much. Disenfranchised groups may even take up arms if they see agreements progressing that appear to exclude them and divide the pie of power and resources in a permanent fashion.

## **Challenges of implementation**

Alternatively, in some conflicts, though peace agreements that utilize some or all of these governance incentives may be concluded successfully, a number of challenges may arise at the implementation level.

First, a group may conclude an agreement, but easily violate it either because the incentives were not important to the group, or because the group can achieve its goals, and more, through violence. An example is the 1999 Lomé Accord in Sierra Leone, which provided the RUF leadership with access to control over resources, directly and indirectly. Not only was Foday Sankoh made a vice president and a minister with control over diamond mines, but Johnny Paul Koroma was also made the head of the government commission for peace consolidation. Yet as we know, the RUF rapidly returned to fighting – control over dia-

monds was an insufficient incentive, as the RUF already had attained de facto-control over many mines. And evidently, broader political rule was not of significant interest to the RUF either.

Second, a group may sign an agreement involving incentives that are of lesser interest to them, or that they are unable to partake of adequately. In Sudan, for example, many suggest that the SPLM really was interested in the possibility of complete independence, interim autonomy, resources, and autonomous security forces. The Comprehensive Peace Agreement gave it all of these things, as well as proportional participation in the central government, and in joint security forces. But many in the SPLM/A forces resist the idea of participating in joint security forces and being redeployed outside what they expect to be their own country in the future. Many of the SPLM members who have taken up posts as heads of government ministries appear to have been unprepared for their roles, or are unable to actually direct embedded bureaucracies. In Colombia, when the rebel group M-19 disarmed and formed a political party, it was considered unusually prepared, as a group led by many urban educated people, to function in politics. Yet while a few individual politicians were able to thrive, the party failed.

A third challenge may arise when patterns of mistrust and cheating are simply transported into institutions of governance, new and old. In Sudan, many of the institutions developed by the peace agreement to ensure implementation of specific governance incentives – the petroleum commission, the DDR commissions, and the like – have not been created, or have been highly dysfunctional. In Sudan, when SPLM members were placed at the head of key ministries, many of the functions of those ministries were first transferred to presidency, which was dominated by the NCP and the old government. Such cheating and manipulation of institutional structures can increase mistrust and, where it is severe, provoke a revival of tensions or even conflict. Nascent state institutions may be unable to manage conflict, or conflict may be managed in repressive ways. The result could be collapse of a peace agreement, failure of state institutions, or more violent resolution of disputes.

A fourth challenge may arise when power-sharing fails to create a grand coalition, but rather creates incentives for extremism and ethnic or political hard-liner outbidding. Centrist parties may be pulled to one extreme and find themselves able to maintain power only by forming coalitions with extremist parties, or by taking more extreme stands themselves. While the electoral system in Sri Lanka is not the direct result of a power-sharing peace agreement, this may explain why politicians who reach

power advocating peace have often quickly formed coalitions with hard-line Buddhist parties such as the JHU or JVP.

A fifth and related problem is that regionalization, territorial autonomy, and certain modes of federalism or decentralization may encourage secessionist tendencies and the breakup of the state. Alternatively, such strategies may encourage the homogenization of populations. Where preconflict populations were mixed and were displaced into more homogeneous communities by conflict, they may not remix after the conflict, or may do so very slowly. Further, autonomous territories may not be sustainable without serious resource commitments from the central government or the international community. Obviously, central governments, which are likely to be dominated by a group that is ethnically, linguistically, or religiously distinct from the majority of the autonomous region, may not be committed to financing that autonomy. Some analysts suggest that this explains the breakdown of Sudan's Addis Ababa Agreement; conversely, the presence of oil and the development of oil extraction in Southern Sudan today could in theory assist its government in developing its own capacity over time.<sup>3</sup> The international community might support and aid an autonomous region, such as Kosovo, but concern about the maintenance of sovereignty and the stability of states means it won't often do so.

A sixth problem is that parties may have committed to power-sharing arrangements out of short-term pragmatism rather than as part of long-term policy. If they see governance arrangements as mere tools to achieve power through nonviolent means, they may be unlikely to comply with the agreement if they feel the strategy is failing – for example, because an adversary is likely to do better outside elections. This may particularly be the case if power-sharing is viewed as imported or externally imposed, as was arguably the case in Bosnia-Herzegovina. Where politics is historically clientelistic, corrupt, personalistic, or absolutist, parties committing to democratization and power-sharing may do so for cynical or short-term ends, and will eventually seek to obtain absolute power. It has been argued that this was the case in Cambodia in the mid-1990s, and in many African states that emerged from conflict.

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<sup>3</sup>Pierre M. Atlas and Roy Licklider, 'Conflict Among Former Allies After Civil War Settlement: Sudan, Zimbabwe, Chad, and Lebanon', *Journal of Peace Research* 36, no. 1 (January 1999), p. 50.

A seventh and extremely dangerous risk is the creation of new conflicts, or the stoking of existing conflicts, where power-sharing excludes significant parties or interests. The pragmatic choice to include only warring parties, or only powerful parties, at the negotiating table spawns potential new spoilers. Some Muslims in Sri Lanka, persistently excluded from the formal negotiating process, have become increasingly radicalized, and may see violence as the only route to staking a claim in any future negotiations. The CPA in Sudan appears to have incited groups in the east and Darfur to use violence to get their demands heard regarding land, resources, and discrimination, out of concern that the north, under the peace agreement, will divide the power and resources of the country while keeping them marginalized.

An eighth potential risk is that, after an agreement, violence may erupt not among former enemies but among former allies. This is not a problem unique to power-sharing arrangements, but may well emerge in them. Peace agreements generally seek to address the grievances that initiated the original conflict, and power-sharing seeks to address the fears and demands of the original combatants in relation to each other. However, in either a former government or a former rebel group, one or more factions may be privileged over others in the division of the 'spoils' of peace. If this is the case, fighting and factional divisions among former allies, or rifts within groups, may result.<sup>4</sup> In Sri Lanka, the split of the Karuna faction with the LTTE, which occurred during the cease-fire rather than the implementation stage, is nonetheless indicative of concerns within the rebel group that any potential peace agreement would privilege northern Tamils over eastern Tamils. This fear might help to explain the otherwise curious collaboration of the Karuna faction with the Sri Lankan army.<sup>5</sup>

Finally, implementation of power-sharing may be challenged in 'bad neighborhoods'. That is to say, the involvement of other states may destabilize internal pacts, whether the neighboring states' interests are political, or also linked to ethnic kinship or rivalries. Thus scholars have pointed to the destabilizing role of both Israel and Syria in Lebanon, or of neighboring states and refugee flows in Rwanda, on power-sharing arrangements.

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<sup>4</sup>*Ibid.*, pp. 35–54.

<sup>5</sup>At the time of completion of this chapter, I am conducting research in Nepal, where the conclusion of the Comprehensive Peace Agreement, which brought Maoist rebels into government, has been challenged by former elements of Maoist groups in the Madhesi population in the Tarai region, who have formed multiple new splinter groups.

## **Ideal conditions seldom exist**

A key issue is that ideal conditions for negotiating and implementing power-sharing arrangements seldom exist, precisely because of the security dilemma and mistrust that such arrangements are designed to alleviate. Though power-sharing arrangements have achieved well-documented success in stabilizing some ethnically divided countries in Europe, such as Belgium, promoting and implementing such arrangements in countries with recent histories of bloody, often protracted, violent conflict has proven rather more difficult, as demonstrated by the in-depth studies of negotiations in Sudan, Sri Lanka, and Colombia presented in this volume, as well as the survey of post-Cold War peace agreements that incorporated such arrangements. This is perhaps not surprising, if we consider how few of the many preconditions for success actually exist in these situations. One scholar, in an examination of European power-sharing deals, has argued that 11 conditions facilitate these deals in ethnically divided societies, and that the more that are present, the greater the chance of success. This is undoubtedly true, but these conditions are rather unlikely to be present in many countries emerging from ethnically based conflict, nor in countries emerging from other types of conflict. The 11 conditions are: small gaps in socioeconomic status; roughly equivalent-sized groups; territorial segmentation of groups; the existence of an overarching loyalty to a broader grouping; crosscutting cleavages; 'moderate pluralism' (representation of different groups by several parties rather than one monolithic party); dominant elites; respect of key parties for the status quo; traditions of compromise; comprehensive participation; and internal drivers rather than external imposition of compromise.<sup>6</sup> Institutional design may matter, but perhaps more important are the preexisting conditions, and actors, and these may be less amenable to power-sharing. In societies with deep cleavages, institutionalizing roles of different groups in governance based on identity may increase those cleavages. What's more, such governance incentives may replicate existing patterns of social dominance, with elites (whether ethnic, caste, class, or other dominant groups) manipulating governance arrangements to maintain dominance.

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<sup>6</sup>Ulrich Schneckener, 'Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict', *Journal of Peace Research* 39, no. 2 (March 2002), pp. 211–17.

## **Liberal peacebuilding and ‘Institutionalization Before Liberalization’**

The United Nations, international mediators, and conflict resolution experts and NGOs broadly agree that a rapid push for elections and democratization can be destabilizing to postconflict countries, in essence recognizing the force of one component of the liberal peacebuilding critique. The critique of market liberalization has perhaps not been squarely addressed, but this has not been a central focus here. Rather, this study has focused on alternatives to rapid elections and democratization: institutionalization of the roles of former combatants within state structures, prior to any electoral processes. The governance incentives examined here have become a central feature of internationally supported peace agreements in recent years, in essence embodying the proposal for ‘institutionalization before liberalization’. However, as this book has demonstrated, the rush to institutionalization carries with it significant risks, including destabilization of weak state structures and the development or consolidation of new spoiler groups.

### **Options for the future**

Given the problems with governance incentives identified in this volume, should they be abandoned? The answer clearly is no: these incentives are simply too important to both armed groups and governments to be rejected out-of-hand. Armed groups will be reluctant to relinquish weapons without security guarantees, and governments will generally demand cantonment of weapons and fighters in order to ensure their own security. Participation in governmental structures, in reformed security forces, in distribution of resources, and in control over a territory may provide such security guarantees. If such incentives can contribute to the termination of a long and bloody civil war such as that in Sudan, their merits must be acknowledged.

However, given the significant risks that this study has identified, a key policy insight emerges: governance incentives must be tailored much more closely and carefully to alleviate risks that they will not work, or that they will create unintended consequences. And such tailoring is not, in theory, beyond the capacities of mediators and other actors in the international community. I suggest here a modest set of policy recommendations to address some of the risks and challenges that I have identified. Prior to developing governance incentives, a close examination of the demands, structures, incentives, and capacities of



armed groups should be undertaken, to ensure that the incentives proposed are of genuine interest; otherwise they are unlikely to ensure a deeper commitment by a given armed group to a peace settlement. Further, while peace negotiations can never be as inclusive as many elements of society might demand, a careful analysis of potential future spoilers and areas at risk of conflict might suggest the need to include representatives (even if very few in number) at the negotiating table from beyond the groups engaged in direct combat. In designing the distribution of power, security, resources, or control of land, close attention should be paid to the risk that marginalized groups might be further marginalized, by presumption that their interests will be represented by other more dominant groups, or by unfavorable electoral arrangements and drawing of districts and regions. Moreover, while mediators can only deal with the armed groups with which they are presented, donors can seek to address those groups' capacity limitations. Such assistance can and already does include material support, parliamentary training, and other technical support. However, many armed groups may require greater support in order to function in political, military, and bureaucratic roles, particularly given the resistance of entrenched officials within state institutions. Similarly, donors are in the position to fortify the capacity of weak state institutions to withstand the conflict that may emerge within them through the use of power-sharing and other governance incentives. Such measures may not address all of the risks identified in this study, but they would constitute important first steps.

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# Index

- 11 September 2001 terrorist attacks, 76, 114, 150
- Abkhazia, 66–7
- abuses of power, 39, 45, 47, 73, 104, 150
- Abyei Boundary Commission (Sudan), 135, 137
- Abyei, (Sudan), 120, 123, 137
- accommodation, 19, 20, 27, 29, 36, 41, 96, 106, 127
- accountability, 37, 181
- Addis Ababa Agreement (1972), 108, 110–12, 113, 188
- Afghanistan, 6
- Africa, 6, 51–61, 94
- African Union (AU), 125, 126, 128, 129, 130, 131
- African Union Mission in Sudan (AMIS), Sudan, 121, 125, 126, 129, 130, 131
- aid, 62, 8, 90, 94n.60, 95, 96, 99, 100, 121, 148, 149
- Akashi, Yasushi, 83
- Akol, Lam, 129
- Alianza Democrática M-19 (M-19 Democratic Alliance), Colombia, 47–8, 71, 152, 153, 173–5, 176, 180, 187 *see also* Movimiento 19 de Abril (19 April Movement [M-19]), Colombia
- amnesty, 4, 51–2, 53, 143, 160–1, 162, 175, 176, 178
- human rights objections to, 166–7
- legal limitations on, 171
- Anglo-Egyptian Condominium Administration, 108
- Angola, 52–3, 71
- antiterror measures, 156, 172
- Antonio Marín, Pedro (Manuel Marulanda Vélez), 177
- armed conflict, 1, 5, 13, 36, 55, 108, 110, 172
- casualties of, 144
- compensating victims of, 167
- displacement of people, 67, 94, 96
- obstruction of oil production, 146
- spoilers, 38
- armed groups, 1–8, 10–13, 14, 31–2, 38–9, 44, 47–9, 54–5, 117, 122, 124, 136–7, 143, 145–9, 154, 153–5, 156, 166, 165–8, 178–9, 190 *see also* illegal armed groups
- demobilization by, 22, 47–8
- disarmament by, 19, 22
- governance incentives to, 183–6
- government-controlled, 136
- and institutionalization before liberalization, 37–8
- low-intensity conflicts by, 131–2
- and negotiations/peace processes, 22, 151, 156–64, 172–4
- political demands of, 24–5
- power-sharing incentives to, 3–4, 12–17, 19, 32, 40, 178–82
- process tracing of, 7–8
- territorial autonomy to, 23, 47–8
- third-party efforts with, 183–9, 191–2
- transforming of, 5, 11, 24–5, 40–1, 59–60, 77, 139
- weakness of institutional arrangements, 31–4
- zonas de despeje* demands for, 5
- Armenia, 70
- Arusha Agreement (Burundi), 54–5, 57
- Asia Foundation, 84n.45
- Asian Development Bank (ADB), 77, 99
- Asia-Pacific, 61–5
- Assessment and Evaluation Commission (Sudan), 116, 137, 138
- Association of Southeast Asian Nations (ASEAN), 64

- AUC, Colombia, 47, 48, 143, 145, 146, 153–4, 157, 158, 159, 173, 174, 177, 179  
 demobilization of, 152, 156, 162, 168  
 extradition to United States, 161, 178  
 fears of remobilization of, 163–4  
 involvement in drug  
   trade/trafficking of, 150–3  
 negotiations with President Uribe, 160, 165–8, 175  
 origins of, 152–3  
 retention of resources acquired by, 179–80  
 authoritarianism, 36, 140–1  
 Autodefensas Unidas de Colombia (United Self-Defense Forces of Colombia [AUC]) *see* AUC, Colombia  
 Autonomous Region of Muslim Mindanao (ARMM), Philippines, 61, 62  
 Azarya, Victor, 33  
 Azerbaijan, 70  
 backlash, 88, 92  
 Balasingham, Anton, 81n.36, 82, 105  
 Bandaranaike-Chelvanayakam Pact (1965), Sri Lanka, 74  
 bans/proscribers, 74, 79, 84, 102, 114–15  
 Banseka, Cage, 128n.97  
 Baranja (Croatia), 69  
 Barrios de Chamorro, President Violeta (Nicaragua), 50  
 al-Bashir, President Omar, (Sudan), 129, 130, 132, 134  
 Bastiampillai, Professor Bertram, 80, 83n.42  
 Beaulieu, Michael, 158n.72  
 Beja Congress (Sudan), 131–2  
 Bejas (Sudan), 131, 132  
 Betancourt, Ingrid, 155, 157, 173  
 Betancur, Belisario, 153–4  
 bias, 15, 78, 100  
 ‘biased intervention’, 151, 168n.125  
 Bicesse Accords (Angola), 52  
 bilateral donors, 8, 94n.90, 99  
 bipartisanship, 85–6  
*The Black Book: Imbalance of Power and Wealth in Sudan* (2000), 111  
 Blue Nile States (Sudan), 116, 120  
 Bosnia, 16, 68–9, 188  
 Bosnian Muslims, 68  
 boundaries, 24, 120, 123, 134, 137  
 broad-based coalitions, 18  
 building capacity, 40–1  
 bureaucracy, 40, 135, 154, 157  
 bureaucratic processes, 123  
 bureaucratic roles, 192  
 bureaucratic rules and institutions, 123  
 bureaucratic structures, 123  
 Burundi, 16, 54–5, 57  
 Bush, President George W., 115, 148, 151, 172  
 Buyoya, Pierre, 5  
 Cambio Radical party, Colombia, 164  
 Cambodia, 60, 64–5, 188  
 Cambodian People’s Party (CPP), 64–5  
 Canada, 74, 170  
 Canugaratna, A. J., 83n.42  
 Casa Verde (Green House)  
   negotiations, Colombia, 153–4, 176  
 Castaño, Carlos, 160, 178n.171  
 casualties, 49, 103, 144, 145  
 Cease-Fire Agreement (CFA), Sri Lanka, 76, 95  
 cease-fire agreement, 20, 56, 58, 76, 95n.97, 125 *see also* cease-fire  
 cease-fire, 20, 22, 34n.69, 56, 57, 58, 60, 67, 70, 74, 95n.97, 103, 106, 113, 116, 138, 143, 159, 189 *see also* cease-fire agreement  
 collapse of (Sri Lanka), 104  
 in Darfur, 125–8  
 ELN, 159, 171  
 FARC (Colombia), 153, 154n.51, 155  
 implementation in Sudan, 116–18, 138  
 ‘no war, no peace’ situation (Sri Lanka), 91–3  
 reasons for renegeing on, 183–4

- cease-fire – *continued*  
 unilateral  
   AUC (Colombia), 160  
   LTTE (Sri Lanka), 76–8
- Central America, 8, 17, 36n.76, 45n.3, 47
- Centre for Policy Alternatives, 78n.21, 83n.38, 101n.120
- CERAC, 162n.92
- Chad, 59–60, 125
- cheating, 11, 15–16, 20–1, 86, 134  
 by government, 54, 60  
 and institutionalized power-sharing arrangements, 31, 41–2, 183, 187  
 and third-party guarantors, 13
- Chechnya, 69–70
- Chevron Corporation, 111
- child soldiers/combatants, 51, 72–4, 82–3
- Christofides, Jack, 126n.89, 133n.119, 138n.138, 140n.144
- civil conflict, 58, 143–6
- civil society, 10, 32, 53, 56, 99, 158, 175, 176
- civil war, 9, 18, 19n.18, 32, 33, 45, 59, 109, 110, 145, 183, 191
- cleavages, 35, 37, 86–7, 96, 109  
 ethnic, 27, 97, 107–9  
 and ‘identitarian’ movements, 27  
 political, 97  
 societies/social, 1, 27, 33, 36, 45
- Clinton, President Bill, 114
- coalition governments/ruling coalitions, 32, 54–5, 64–5, 76, 85–6, 91, 97, 164, 186
- coalition(s), 32, 57, 63, 65, 75, 76, 187–8  
 broad-based, 18  
 grand, 19, 27  
 politics, 75, 85–6
- coca cultivation/production, 145, 149–50
- Cold War, 2, 8, 44, 47, 69
- collapsed state structures, 3
- Colombia Democrática party, 164
- Colombia Viva party, 164
- Colombia, 2, 47–8, 143–5, 180  
 constitutional reforms instituted in, 153–4
- negotiations with armed groups, 155–64  
 external involvement in, 168–70  
 facilitation to transform, 173–9  
 reparation and reconciliation offers, 165–7, 178–9
- peace process/prospects for, 170, 171–7
- rebel groups, 151–2
- role of the United States, 148–50, 168, 170
- weakness of governance structures, 146–7
- colonialism/colonialist, 73, 100, 107–8, 109, 129, 141
- combatants, 3, 11, 15, 41, 43, 126–7, 158, 182, 189, 191  
 access to economic resources, 46  
 demobilization/self-demobilization of, 158, 162–3  
 power-sharing by, 20–2, 39  
 reintegration/retraining of, 132, 136, 169  
 spoilers among, 38–9, 42
- Comisión Nacional de Reparación y Reconciliación (National Commission for Reparation and Reconciliation [CNRR]), Colombia, 164n.105, 167, 168
- Commission for the Consolidation of Peace (Sierra Leone), 4
- Commonwealth of Independent States (CIS), 67
- Communist Party (Sri Lanka), 90, 133
- competitive politics, 30, 40–1
- complementarity, principle of, 178
- compliance (with agreements), 3, 15, 16, 78, 162
- Comprehensive Peace Agreement (CPA), Sudan, 5–6, 22, 30, 41, 110, 117, 120, 180, 187, 189n.5  
 implementation of, 121–4  
 lack of inclusiveness in, 133
- compromises, 20, 29–30, 33, 34, 84, 89, 125, 157, 190
- ‘concentration’ zone, 143, 160, 165
- concessions, 10, 19, 38–9, 71, 74, 83n.39, 157, 159, 182
- confidence-building measures, 13, 77, 80, 94, 106

- conflict dynamics, 109–10, 146, 179  
 conflict resolution, 8–9, 12–30, 32–4,  
 36–41, 44, 70–1, 105, 182n.1, 191  
   in African nations, 51–60  
   in Asia-Pacific region, 61–4  
   and Colombia's three armed  
   groups, 47  
   El Salvador success in, 45–7  
   in European countries, 65–9  
   and left wing revolutionary  
   groups, 48–50  
   Sri Lankan efforts in, 72–4  
 conflict *see* armed conflict  
 conflict-sensitivity, 95–6, 99  
 consensus, 1, 12, 18, 122, 159, 181 *see*  
   *also* liberal peacebuilding  
   consensus  
 Conservative Party, Colombia, 25,  
 144  
 consociationalism/consociational  
   approach, 18, 19–20, 277  
 Constitutional Court (Colombia),  
 119, 147, 156, 160, 162, 166, 171  
 constitutional reform, 72, 74, 102,  
 104, 144, 153–6  
 constrained recognition, 30  
 Contrás (Nicaragua), 49, 50  
 Convergencia Ciudadana party,  
   Colombia, 164  
 cooperation, 4, 10, 15, 32, 63, 114,  
 124n.81, 149, 162  
 corporate nonterritorial federalism,  
 19  
 corruption, 28, 39, 45, 95, 142  
 costly signaling, 20–1, 22  
 Côte d'Ivoire, 57–8  
 counterinsurgency, 148–9  
 coups, 54, 57, 58, 59, 60, 65, 107, 131  
 credible commitment, 20–1, 22, 31  
 crimes against humanity, 115, 124,  
 154n.50  
 criminal activity, 164, 185  
 Croatia/Croats, 68, 69  
 Cuba, 169, 170  
  
 Danforth, John, 115  
 Darfur crisis, Sudan, 124, 126–31  
   international response to, 125  
 Darfur Peace Agreement (DPA),  
   Sudan, 126–31  
  
 Darfur, Sudan, 42, 56, 113, 114, 116,  
 121, 123, 132, 185, 189  
 Darfur-Darfur Dialogue and  
   Consultation, Sudan, 126  
 Dayton Accord (1995), 68, 69  
 de Alessi, Benedetta, 110n.8, 126n.90,  
 133n.119, 138nn.136–7  
 de facto control, 5, 177, 187  
 Deby, Idriss, 60  
 decisionmaking bodies/procedures,  
   14, 20, 135, 139  
 decisionmaking power/authority, 14,  
 30  
 defection/defectors, 4, 13–14, 15, 21,  
 75, 89, 90, 101  
 demilitarized zone/area, 155, 165,  
 172, 177, 179 *see also* *zonas de*  
   *despeje/despeje*  
 demobilization/self-demobilization  
   *see* disarmament, demobilization,  
   and reintegration (DDR)  
 democratic governance, 34–8, 82–3  
 'democratic peace' thesis, 36, 37  
 Democratic Republic of Congo (DRC),  
 56  
 democratization, 1, 18, 30, 31, 45,  
 112, 141, 188, 191  
   after departure of international  
   actors, 35  
   and economic liberalization, 41–2  
   limited power-sharing provisions,  
   48  
 Deng, Francis, 107n.1, 108, 109n.4,  
 113n.19, 115n.28, 116n.32  
 destabilization, 1, 30, 31, 32, 35, 36,  
 43, 123, 189, 191  
 devolution, 5, 29, 72, 74, 81n.35, 104,  
 118, 186  
 Dinka tribe (Sudan), 141  
 diplomatic sanctions, 114–15  
 Dirmium (Croatia), 69  
 disarmament, demobilization, and  
   reintegration (DDR), 5, 13–14,  
   20, 22, 31, 62, 139, 143, 150–3,  
   156, 158, 164–8, 169n.126, 170,  
   176  
   in African nations, 52–3, 56, 58, 60,  
   61  
   in Asia-Pacific countries, 64, 71  
   AUC, Colombia, 160–1

- disarmament, demobilization, and reintegration (DDR) – *continued*  
 in Darfur peace agreement, 127, 128  
 facilitation for transformation, 40, 136–7, 162–3, 173–5, 177  
 and Good Friday Agreement, 65  
 international financial support for, 161, 170  
 international guarantees for, 15–16, 117  
 in Latin American countries, 46, 47, 48, 50  
 and Lusaka Protocol, 52–3, 56  
 and transformation, 48, 173, 175, 187
- disarming/disarmament *see*  
 disarmament, demobilization, and reintegration (DDR)
- discrimination, 19, 41, 73, 104, 109–10, 112, 131, 189
- displacement/displaced persons, 67, 68, 73, 79, 87, 88n.63, 94, 96, 104, 112, 124, 125, 144, 145, 153, 188
- distrust/distrustful, 11, 20, 56
- divided societies, 17–18 *see also*  
 ethnically divided societies;  
 non-ethnically divided societies
- donors, 8, 58–9, 94, 118, 192  
 international, 82  
 tsunami (Sri Lanka), 95–9
- drug cultivation, 146, 148, 149, 155, 185
- drug trafficking/drug trade, 145–6, 150–5, 161, 164, 170, 179
- dysfunctional institutions, 1, 11, 32, 68, 187
- earned sovereignty, 29–30
- Eastern Sudan Peace Agreement (EPA), 132, 141
- economic benefits, 25, 182
- Economic Commission of West African States (ECOWAS), 53, 58
- economic distribution, 25, 34, 36
- economic recovery, 76, 101
- economics, 17, 19, 21, 23, 25–6, 151
- ECOWAS Cease-Fire Monitoring Group (ECOMOG), 58, 59
- Eelam People's Democratic Party, Sri Lanka, 90
- Ejército Liberación Nacional (National Liberation Army [ELN]), Colombia *see* ELN, Colombia
- Ejército Popular de Liberación (Popular Liberation Army [EPL]), Colombia *see* EPL, Colombia
- ELN, Colombia, 2, 5, 42, 48, 143, 146, 150, 151, 152, 165–6, 167–8, 171, 172, 184–6  
 confrontation with FARC, 173–8  
 contemporary negotiations with, 156, 158–60  
 demand for demilitarized zone, 155  
 participation in peace processes by, 169–70, 178–80
- EPL, Colombia, 47, 71, 152, 173, 174, 175, 180
- El Salvador, 3, 5, 6, 22, 36, 44–7, 48, 51, 70–1, 176
- elections, 37, 38, 50, 59, 63, 64, 76, 85, 90–1, 98, 102, 103, 106, 104, 119, 121, 152, 154, 159, 171, 175, 176  
 cheating by the government in, 60  
 and 'democratic novices', 40  
 and formation of coalitions, 27, 32, 65, 86
- Muslim representation in P-TOMS (Sri Lanka), 88
- post-agreement, 52, 61, 133–7  
 proportional representation for, 18  
 quotas for, 68–9
- electoral arrangements, 17, 192
- electoral systems, 18, 19, 20, 27, 75, 187–8
- elitism, 19, 27, 35, 89, 137, 139, 146, 190  
 and concentration of power, 49, 110, 141, 154  
 control of country's resources, 46, 48
- equitable representation, 119
- Erdut Agreement (November 1995), 69

- Eritrea/Eritrean, 113, 132
- Esperanza, Paz y Libertad (Hope, Peace, and Liberty) Party, Colombia, 174
- Ethiopia, 113
- ethnic conflicts/tension, 18, 24, 27, 28, 29, 63, 73, 105
- ethnic divides, 24, 29, 92
- ethnic groups, 10, 55, 60
- ethnic outbidding/ethnic outbidders, 20, 32, 102
- ethnic politics, 75, 105
- ethnically based conflicts, 28–9, 190
- ethnically based parties, 27, 28
- ethnically divided societies, 18, 24, 28, 29, 190 *see also* divided societies; non-ethnically divided societies
- Europe/European, 65–70, 74, 100, 169, 190
- European Union (EU), 66, 149, 160, 170
- exclusion/exclusionary process, 6, 7, 71, 133, 144
- Muslims in Sri Lanka, 28, 72, 80, 82, 88, 97
- south Sudan by north, 111
- expropriation, 131, 167, 168
- external actors, 12, 15, 16, 168–71, 181
- external guarantees/external guarantors, 15, 45n.3
- extortion, 146, 153, 179
- extradition, 114, 158, 161–2, 170, 175, 177, 178, 180
- Fall, Ibrahima, 59
- FARC, Colombia, 2, 5, 42, 47, 48, 71, 143, 145, 146, 150–8, 160, 165–8, 169–70, 171–80, 184–6
- confrontation with ELN, 173–8
- Fearon, James, 20, 22
- fears, 13–14, 23, 82, 86n.54, 92, 98, 122–3, 129, 143, 177, 179, 183
- of disarming, 183–4
- of discrimination and abuse, 104
- of exclusion, 88, 101
- of extradition, 158, 161
- of legal accountability, 166, 178
- in power sharing, 11, 54, 189
- of security and survival, 20, 29, 40, 154
- of transitions, 18–19, 22
- feasibility, 8, 28, 42, 96
- federalism, 19, 20, 23, 63, 67, 80, 82, 91–2, 104, 105, 108, 110, 182, 188
- federations, 18, 19, 68
- Fernando, Nilan, 84n.45, 86n.52, 89nn.67, 69, 94n.87, 100n.119, 102nn.125, 128
- Fiji, 32
- First National Convention (1994), Sudan, 112, 138
- Fiscal and Financial Allocation and Monitoring Commission (Darfur), 128
- FMLN, El Salvador, 3, 22, 45, 46, 70, 176
- Foundation for Coexistence, Sri Lanka, 80n.28, 83n.39
- France, 157, 168, 169, 170, 172
- Free Lions (Sudan), 132
- Frente Farabundo Martí para la Liberación Nacional (Farabundo Martí National Liberation Front) [FMLN], El Salvador *see* FMLN, El Salvador
- Frente Sandinista de Liberación Nacional (Sandinista National Liberation Front [FSLN])/Sandinistas, 49, 50, 149
- Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia [FARC]) *see* FARC, Colombia
- Fundación Ideas para la Paz (Colombia), 162n.92
- Galan, Francisco, 159
- Garang, John, 24, 56, 109, 112, 119, 120, 121, 122–3, 135, 138, 140, 141
- García Peña, Daniel, 154n.51, 159n.79, 164nn.101, 105, 165n.107, 172n.143, 173n.147, 175n.161, 176n.162, 177nn.167, 169



- Garcia, Antonio, 159
- Garzón, Juan Carlos, 155nn.54, 57, 159n.79, 162n.92, 164n.102, 165n.108, 174nn.152–3, 177nn.169–70, 178n.172
- Gaugauzia (Moldova), 66
- Gbagbo, President Laurent, 57
- Geneva Conventions, Additional Protocol II, 172
- genocide, 37, 54, 56, 57, 64, 115, 123, 124, 154
- geographic autonomy, 88
- geographic distinctions, 109–11, 112
- George W. Bush administration, 151, 172
- George, Alexander, 7  
‘controlled comparisons’, 7
- Georgia, 66–7
- good faith, 38, 83, 97–8, 158n.72
- Good Friday Agreement, 65
- governance arrangements, 28, 30, 188, 190
- governance incentives, 1, 185, 191–2  
*see also* incentives; inclusion incentives
- challenges at implementation level, 186–90
- scope of, 1–10
- virtues of, 183–4
- government/government strategy, 2–11, 16, 30–3, 47–57, 63, 184–5, 186–9, 191–2
- credibility of, 14–15, 20–1
- and democratic governance, 34–43, 106
- inclusion measures of, 45–6, 56
- in Sri Lanka, 85–9, 94–5, 97–8, 100, 102, 103–4, 106
- in Sudan/Darfur, 108–9, 113–14, 117–22, 124–5, 127–32, 133–4, 139–40
- grand coalitions, 18, 19, 27, 33, 187
- Granda, Rodrigo, 172
- ‘Green House’ negotiations (Colombia), 153, 158
- grievances, 5, 14, 17, 20, 36, 40, 169–70, 189
- difficulty in identifying, 112
- of spoilers, 38–9, 42, 87
- and trust levels, 20
- group goals, 39–40
- Group of Friends for the ELN peace process, 169
- group rights, 19
- Guatemala, 47, 48–9, 71
- Gueï, General Robert, 57
- guerrillas/guerrilla groups/guerrilla movements, 48, 64, 144, 145, 149, 150, 152–3, 154, 156, 174
- Guinea-Bissau, 58–9
- Gurr, Ted Robert, 17, 36
- Habré, Hissène, 59–60
- Hakeem, Rauf, 80n.28, 97
- Halty, Maximo, 136n.129, 137n.131
- Harker, John, 112n.17
- Hartzell, Caroline A., 1n.1, 10n.19, 13n.3, 14nn.4–5, 16n.13, 20n.21, 21, 22nn.27–9, 23nn.32–3, 25n.40, 26, 28n.51, 31n.58, 52nn.23–4, 61n.43, 64n.57
- Heng Samrin, 64
- Herzegovina, 68, 199
- High Commissioner for Peace, Colombia, 157, 166n.115
- Hoddie, Matthew, 1n.1, 10n.19, 13n.3, 14nn.4–5, 16n.13, 20n.21, 21, 22nn.27–9, 23nn.32–3, 28n.51, 31n.58, 52nn.23–4, 61n.43, 64n.57
- Honduras, 5
- Horowitz, Donald L., 16, 27  
critique of power-sharing, 27–8
- hostages, 16, 157, 172
- hostilities, 69, 108, 117, 158
- Houphouët-Boigny, Félix, 57
- human rights abuses/human rights violations, 4, 15, 20, 49, 53, 60, 73, 82, 114, 145, 149, 153, 161
- human rights roadmap, 81, 82, 83n.38, 92n.80
- Human Rights Watch, 122, 125n.84, 144n.1, 174n.152
- humanitarian aid, 32–3, 94–6  
conflict-sensitivity of, 95–6, 99
- humanitarian exchange, 155, 157, 171, 172
- Hume, Cameron, 126
- Hun Sen, 64, 65

- 'hurting stalemate'/mutually  
hurting stalemate, 77, 151  
*see also* stalemate
- Hutu militias (Burundi/Rwanda), 54  
Hutus (Burundi/Rwanda), 54
- Idris, Amir H., 33, 110n.9
- illegal armed groups, 149, 151–3, 156  
*see also* armed groups
- implementation (of agreements), 3,  
6–11, 12, 20–1, 28, 26, 30, 34–41,  
45–9, 52–3, 58–64, 66, 70–1,  
92–3, 102, 142, 181, 182
- cease fire in Sri Lanka, 76–85, 87–8,  
91–4, 95, 96–8
- challenges to, 134–9, 186–9
- in Colombia, 149–51, 155, 156,  
165–8, 171
- of Comprehensive Peace Agreement  
(CPA) in Sudan, 25, 107,  
115–16, 121–30, 134–40
- and disruptions by spoilers, 38–40,  
41, 86–91, 96–8
- governments and national politics  
in, 60
- international presence/monitoring  
of, 68–9, 107, 115–17
- preconditions for, 65, 67
- and security dilemmas/security,  
13–17, 22–3
- setbacks to, 139–41
- Implementation Force (IFOR), Bosnia,  
68
- incentives, 1, 2, 10, 12, 28, 30, 38, 43,  
44, 70, 72, 106, 107, 142, 143,  
176, 184–7, 191–2 *see also*  
governance incentives; inclusion  
incentives
- addressing security dilemmas in,  
13–16, 59–60
- armed groups, 181–2
- group goals and, 39–40
- participation, 178–80
- political arrangements, 17–20
- power sharing, 11, 21–5, 141,  
182
- in short-term vs. long-term peace,  
31–4
- inclusion incentives, 6, 43, 67, 70–1,  
74–6, 93–4 *see also* Colombia;  
governance incentives;  
incentives; Sri Lanka; Sudan
- inclusion strategies, 12, 26–7, 43, 51  
credible commitment of, 20  
democratic governance and, 34–7,  
40  
power-sharing and, 17–19, 21–5,  
28–33, 41  
and security dilemmas, 13–16  
and spoilers, 38–40, 41, 86–91,  
96–8
- inclusion tools/tools of inclusion, 2,  
35, 43, 44
- inclusiveness and diversity, 119
- independence, 6, 24, 30, 47–8, 63,  
65–6, 67, 70, 73, 108, 182, 184  
and Beja Congress (east Sudan),  
131  
and Darfur (west Sudan), 127  
LTTE demand (Sri Lanka) for, 105,  
185  
SPLM motivation for (Southern  
Sudan), 112, 119, 120, 187
- India/Indian, 74, 89, 94, 98, 99n.111,  
100, 185
- indios* (Guatemala), 48
- Indo-Lankan Accord (1987), 74
- inequities, 36, 108, 110
- insecurities, 18, 22, 108
- institutional arrangements, 1, 3–4, 6,  
17, 19, 28, 31, 36, 41
- institutional design, 15, 29, 32, 41,  
42n.90, 190
- institutional reforms, 19n.18, 141
- institutionalism, 140–1
- institutionalization before  
liberalization, 3, 11, 37–8, 106,  
142, 180  
and liberal peacebuilding, 191  
power-sharing perils and, 41–3
- institutionalized insurance, 19
- institutions of governance, 1, 11, 12,  
32, 39, 150, 187
- insurgency/insurgent groups, 34,  
108–9, 150, 151, 157, 172
- integrative approaches, 19–20
- Inter-American Commission on  
Human Rights, 153, 154n.50,  
162, 166
- Inter-Congolese Dialogue, 56

- interests, 11, 14–15, 19, 33, 34, 138, 180, 181  
 and governance incentives, 183  
 guaranteed participation in politics of, 24  
 of marginalized groups, 28, 72, 189, 192  
 of spoilers, 38–40
- Inter-Governmental Authority on Development (IGAD), Sudan, 113, 114, 115, 116, 136n.126
- Interim Self-Governing Authority (ISGA) proposal, Sri Lanka, 83–4, 85–6
- internal armed conflicts, 6, 13, 24
- internal conflicts, 8, 32, 40, 57, 72–4, 170n.32
- internal security, 46, 49, 117
- International Alert, 100
- International Center for Transitional Justice, 83n.42
- international community, 2, 16, 17n.15, 37–8, 51, 63–4, 93, 105, 169n.126, 188  
 and Darfur crisis, 124–5, 138  
 facilitation of negotiations by, 13  
 and manipulation by parties to conflict, 100  
 perceptions of, 87  
 tailoring of governance incentives, 191
- International Covenant on Economic, Social, and Cultural Rights, 118n.53
- International Covenants on Civil and Political Rights, 118n.53
- International Criminal Court (ICC), 125, 129, 134, 166, 178
- international force, 16, 69, 185
- international humanitarian law, 114, 115
- International IDEA, 17n.15, 35n.71, 51n.21, 61n.45, 74n.5
- International Labour Organization, 169
- international law, 30
- international mediators, 24, 34n.69, 39, 184, 191 *see also* mediators/third-party mediators
- international NGOs, 8, 100
- international observers, 157
- international politics, 8, 25
- international pressures, 92, 114–15, 125
- internationalization (of conflict/peace process), 93, 99, 100
- intransigent spoilers, 10, 40
- Iraq, 6, 36
- Ireland, 169
- Irish Republican Army, 77n.17, 151
- Islam, 108, 110
- Islamists/Islamism/Islamicize, 110, 113, 114, 123, 129
- Italy, 116, 170
- Jaleel, Fareeha, 78n.19, 94n.92, 95n.94
- Janatha Vimukthi Peramuna (JVP), Sri Lanka, 72, 78n.19, 85, 86, 88, 90–1, 92, 93, 95, 96, 97, 103, 188
- Jani, Angelina, 136
- janjaweed* militias, 5, 124, 127, 128, 130
- Japan, 83, 99
- Jathika Hela Urumaya (JHU), Sri Lanka, 85n.51, 91, 95, 96, 97, 103, 188
- Javakheti (Georgia), 66
- jihad, 110, 129
- John F. Kennedy administration, 148
- Johnson-Sirleaf, Ellen, 54
- Joint Control Commission (JCC), Georgia, 67
- Joint/Integrated Units (JIUs), Sudan, 116
- Juba (southern Sudan), 108, 110, 121n.68, 134, 139
- Juba Declaration (Sudan), 136
- Justice and Equality Movement (JEM), Sudan, 124, 126, 127, 128
- Justice and Peace Law, Colombia, 160, 162, 165, 166, 167, 171, 178
- Kadrigamar, Lakshman, 102–3
- Karhikeyen, Selvy, 90n.70, 98n.107, 99n.112, 101n.122, 105n.140
- Karuna faction (of LTTE), 89, 90, 93, 104, 108, 189

- Karuna, 'Colonel', 82, 89, 90n.70  
 Kenya, 113, 115, 120  
 Keethaponcalan, S. I., 83n.38, 88n.60, 89n.68, 92n.80, 94nn.85, 89  
 key resources, 6, 183–4  
 Khmer Rouge, (Cambodia), 64  
 kidnappings, 111, 152, 155, 179  
 Kiir, Salva, 122  
 Kony, Joseph, 134  
 Kordofan (Sudan), 120  
 Koroma, Johnny Paul, 4, 186  
 Kumaratunga, President Chandrika, Sri Lanka, 74, 75, 76, 84, 86, 95n.97, 97, 98, 102, 103
- La Violencia*, (Colombia), 144, 152  
 bin Laden, Osama, 129  
 land grabbing/seizing, 153, 168  
 land reform, 25, 36, 118, 147, 176  
 land transfers, 48  
 largest-remainder system, 147  
 Latin America, 45–50, 143, 145, 148, 177  
 Law and Society Trust, Legal Unit, Sri Lanka, 85n.51  
 left wing movements, 47–8, 149, 150  
 legal accountability, 166  
 legal political parties, 25, 46, 153, 180  
 legitimate political parties, 3, 5, 47, 180, 183  
 Leongómez, Carlos Pizarro, 174  
 liberal democratic polity, 36, 45n.3  
 liberal internationalism, 34–7  
 Liberal Party, Colombia, 25, 144  
 liberal peacebuilding  
   consensus/liberal peacebuilding, 1, 2, 11, 12, 40, 45n.3, 46, 49, 51, 181, 191 *see also* peacebuilding  
   democratic governance and, 34–8  
   power-sharing perils in, 41–3  
 Liberation Tigers of Tamil Eelam (LTTE), Sri Lanka *see* LTTE/Tigers (Sri Lanka); Sri Lanka  
 Liberia/Liberian, 44, 53–4, 71  
 Lijphart, Arend, 18, 19  
   *Democracy in Plural Societies*, 18  
 Linas Marcoussis Agreement (Côte d'Ivoire), 57
- Loganathan, Kethesh, 78n.21, 83n.38, 84n.48, 93n.84  
 Lomé peace accord (1999), Sierra Leone, 4, 38, 51–2, 71, 186  
 long-term peace implementation, 10  
   short-term incentives, 31–4  
 Lord's Resistance Army (LRA), Uganda, 113, 122, 123, 133–4  
 low-intensity conflicts, 92, 131  
 LTTE Peace Secretariat, 80, 90n.70, 98n.107  
 LTTE/Tigers (Sri Lanka), 2, 5, 72–5, 80, 82, 87–8, 91–2, 95–6, 99–100, 103–6, 185 *see also* Sri Lanka  
   approach to P-TOMS, 97–8  
   divisions in, 89–90, 101–2, 189  
   peace negotiation (2002–2003) with, 79–80, 85–6, 93–4  
   withdrawal from, 81–4  
   power-sharing prospects with, 105, 186  
   rearming of, 184  
   unilateral cease-fire/cease-fire agreement, 76–8  
 Luena Accord, 53  
 Lusaka Protocol, 52, 56
- Machakos Protocol (2002), 55, 115–16  
 Machar, Riek, 133, 135, 136, 140  
 Malathy, N., 98n.107, 102n.124  
 Mancuso, Salvatore, 164–7  
 Mandela, Nelson, 54, 102  
 Mané, General Ansumane, 58, 59  
 manipulation, 8, 101, 167, 187  
 Marasinghe, Lakshman, 90n.70, 94n.91  
 marginalization/marginalized populations/marginalized groups, 101–2, 82, 112, 189, 192  
   in Colombia, 176  
   in south Sudan, 112, 123  
 market economies, 34, 35  
 marketization, 1, 36  
 Martin, Ian, 81, 92n.80  
 Marxism/Marxist, 45, 90–1, 152  
 massacres, 47, 71, 153, 166, 174

- mediators/third-party mediators, 3,  
13, 16, 60, 115, 183, 185, 191,  
192 *see also* international  
mediators  
in disarmament, 22  
internationalization, 98–9  
and ‘spoiler problem’, 184  
in transformation, 77
- Mengistu, Haile Mariam, 113
- Mexico, 169, 170, 177
- military doctrine, 46, 117, 139
- military power/military powers, 25,  
94n.89, 176
- military victory, 2, 6, 10, 34n.69, 57
- militias, 5, 54, 56, 57, 124, 125, 128  
domestic amnesty, 161  
urban, 152
- Milosevic, Slobodan, 100n.117
- Minawi, Minni, 126, 128, 130, 131  
Zaghawa-dominated faction,  
Darfur, 126
- minorities/minority groups/minority  
parties, 14, 18, 23, 27, 28, 29, 37,  
57, 66, 69, 72, 75, 97, 126
- mistrust, 12, 14, 17, 20, 61, 86, 94–7,  
102, 183, 187, 190  
and destabilization, 32, 79–80  
post-agreement, 42, 43, 53, 184  
in power-sharing arrangements, 34
- Misuari, Nur, 62, 63
- moderation, 20, 27
- Moldova, 65–6
- monitoring commissions, 117–18, 128
- monitoring/monitoring and  
reporting, 15–16, 61, 62, 78, 81,  
92, 115, 134  
UN/international, 60, 116, 117,  
121, 125
- Moro National Liberation Front  
(MNLF), Philippines, 61, 62, 63
- Moscow Agreement, 67
- Movimiento 19 de Abril (19 April  
Movement [M-19]), Colombia,  
152, 153, 176, 180 *see also*  
Alianza Democrática M-19 (M-19  
Democratic Alliance), Colombia  
disarming of, 47  
transformation to political party,  
71, 173–5, 187
- Mozambique, 23, 60–1
- Mubarak, Hosni, 114
- Mukaruliza, Monique, 126n.90,  
128n.96
- multiculturalism, 113
- multipartisanship, 75n.11, 102
- Mungoven, Rory, 83n.38, 97n.106,  
98n.108
- Museveni, Yoweri, 113
- Muslim Peace Secretariat, Sri Lanka,  
79n.27, 88n.62
- Muslims, Sri Lanka, 28, 42, 73–4,  
80–1, 86–9, 95, 97, 101, 189
- Nagorno-Karabakh, Azerbaijan, 70
- narcoterrorism, 151
- narcotics/narcotrafficking, 143,  
145–6, 150–1, 167, 171, 177–8
- Nasi Lignardo, Carlos, 150n.34,  
154n.51, 170n.33, 174nn.150–1,  
175n.156, 177n.168, 179
- National Census Commission  
(Sudan), 137
- National Civil Service Commission  
(Sudan), 137
- national conflict, 44, 95n.97
- National Congress Party (NCP),  
Sudan, 110, 119, 122, 127, 129,  
134–8, 140–2, 187
- National Constitutional Review  
Commission (Sudan), 135
- National Council for the Defense  
of Democracy–Forces for the  
Defense of Democracy (Conseil  
National pour la Défense  
de la Démocratie–Forces pour  
la Défense de la Démocratie  
[CNDD-FDD]), Burundi, 54,  
55
- National Council for the Distribution  
of Resources (Sudan), 111
- National Elections Commission  
(Sudan), 137
- National Front (Colombia), 144
- National Islamic Front (NIF), Sudan,  
107, 110, 131
- National Judicial Service Commission  
(Sudan), 135
- National Party (South Africa), 33

- National Peace Council (Sri Lanka), 79n.27, 87n.58, 100
- National Petroleum Commission (Sudan), 118, 135, 136
- National Union for the Total Independence of Angola (União Nacional para a Independência Total de Angola [UNITA]), 52, 53
- National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique, et Coopératif [FUNCINPEC]), 64, 65
- national unity, 53, 56, 58, 59, 60, 114, 116, 120, 122, 129–30, 136, 139, 140
- Natsios, Andrew, 115
- natural resources, 4–5, 45, 145n.10, 180
- Navaisha Protocol (2004), Sudan, 55
- Navarro, Antonio, 174
- negotiated settlements, 2, 8, 10, 28n.51, 41
- negotiations, 2, 3, 6, 7, 20–4, 29, 38, 39, 44–50, 71, 182–90 *see also* peace negotiations
- challenges of, 184–6
- in Colombia, 151, 153–67, 171–7
- for consociational power-sharing, 27–8
- and facilitation by mediators, 13–17
- with LTTE, 72–84, 105–6
- collapse of, 81–4
- P-TOMS, 94–7
- renewal, 86–100
- need for confidence building measures, 18–19
- and spoilers, 42
- in Sudan, 115, 126–8, 133–5
- Nesiah, Vasuki, 83n.42
- Netherlands, 169
- Nicaragua, 25, 49–50, 149
- ‘low intensity peace’, 50
- Nimeiry, President Gaafar (Sudan), 109, 111
- non-ethnic conflicts/non-ethnically based conflicts, 18, 28–9
- non-ethnically based parties, 28
- non-ethnically divided societies, 28–9 *see also* divided societies; ethnically divided societies
- nongovernmental organizations (NGOs), 7, 8, 77n.18, 90, 93, 100, 149, 163n.99, 164n.105, 175n.159, 177n.166, 191
- nonviolent means, 17, 188
- North Atlantic Treaty Organization (NATO), 68
- North East Secretariat on Human Rights (LTTE), 98n.107
- Northern Ireland, 65
- Norway/Norwegian, 76, 78, 79, 86, 92, 93, 98, 100, 104, 116, 169, 170
- Nuba Mountains (Sudan), 116, 120
- Nzaku, Yusif Salvatore, 139n.141
- OAS Office of Conflict Prevention and Resolution, 158n.72
- Office of the High Representative, Bosnia, 68
- oil exploration/oil extraction/oil exploitation, 56, 108, 110, 111, 112, 148, 150, 175, 188
- oil revenues/oil contracts, 56, 118, 135
- oil/oil resources, 25, 110, 111, 112, 121, 137, 145, 146, 148, 179
- Olafsdottir, Helen, 78, 93nn.82–3
- Oller, Helen, 124n.81, 137n.131
- Organization for Security and Cooperation in Europe (OSCE), 66, 70
- Organization of American States (OAS), 163, 168, 169
- Misión de Apoyo al Proceso de Paz en Colombia (Mission to Support the Peace Process in Colombia [MAPP/OEA]), 169
- organized crimes, 49, 152, 163
- Ortega, Daniel, 50
- Oslo round of negotiations (Sri Lanka), 82
- Ottoman-Egyptian rule (Sudan), 108

- Papua New Guinea, 63–4
- paradigms, 34–6
- paramilitary leaders, 150, 161, 162, 164–7, 174, 178
- paramilitary/paramilitary forces/paramilitary groups/paramilitaries, 2, 47, 117, 143, 148, 149, 159, 162, 163–8, 171, 175, 179
- amnesty/reduced sentences for, 160
- and campaign against armed groups, 156
- engaged in extortion, 153
- and self-defense groups, 154
- Pararajasingham, (LTTE Justice Minister), 98n.107, 102n.124
- Paris Peace Agreement (1991), 64
- Paris, Roland, 1n.1, 7n.12, 35, 36nn.73, 76, 37, 41
- participation, 2, 3, 5, 81–2, 112, 117, 126, 138, 185, 190
- in governance, 5, 182–4, 187, 191
- limits to incentives for, 178–80
- in politics, 24–5, 32, 39, 46n.5
- in security structures, 13–15, 59, 176
- and spoilers, 38–40, 41, 86–91, 96–8
- Partido de la U party, Colombia, 164
- partition (separate states), 23–4, 69
- Pastrana, Andrés, 153, 154–5, 157, 169
- peace accords, 4, 41–2, 107 *see also* peace agreements
- peace agreements, 1, 3–6, 8–9, 26–8, 110, 185 *see also* peace accords
- confidence building measures for, 20–5, 30
- in Darfur, 126–8
- efforts in Colombia, 152, 153–65, 167–80
- efforts in Sri Lanka, 74, 76–8, 83–4, 87
- implementation of, 45–9, 52–3, 58–64, 66–71, 92–3, 121–3, 139–40, 186–91
- risks in incentives for, 30–3, 41
- role of incentives in, 1–17, 104–6, 182–4
- and spoilers, 38–40, 41, 86–91, 96–8
- in Sudan, 115–20, 132
- Peace and Human Rights Department, Sudan government, 139n.141
- peace consolidation, 16, 186
- peace implementation, 10, 13–17, 28–9, 140, 184
- peace negotiations, 7–8, 10, 13–17, 47, 50, 181–2, 192 *see also* negotiations
- in Colombia, 151, 154–60, 173, 175–6
- critiques of, 34–42
- in Darfur, 124–5, 185n.2
- power-sharing arrangements in, 21–9
- and security dilemmas, 13–17
- in Sri Lanka, 74–86, 88, 92–4, 97, 101, 106
- in Sudan, 113–15, 121, 122, 132
- and territorial arrangement, 72
- peace platform, 75, 85
- peace processes, 1n.1, 10, 18, 45–6, 56, 77n.16, 94–8, 122–3, 140, 190 *see also* liberal peacebuilding
- consensus/liberal peacebuilding; peacebuilding
- cease-fire/cease-fire agreements, 76–8, 91–3
- confidence building measures, 20–5, 30–1
- consociational/integrative approaches, 19–20
- factors to be dealt with by, 13–17, 67, 72, 80–1
- government attitude, 85–6, 153–67
- international involvement in, 168–71
- international pressures on, 114–15, 121, 125
- power-sharing, 50, 54–5, 59–60, 181–9
- prospects for, 101–6, 171–80, 191–2
- spoilers, 38–40, 41, 86–7, 154
- peace secretariats (Sri Lanka)
- government, 80, 85
- LTTE, 90n.70, 98n.107
- Muslim, 79n.27, 81, 88n.62

- peacebuilding operations, 3, 19, 36n.76
- peacebuilding, 1, 2–3, 8, 11, 12, 17, 34–7, 41, 43, 45, 49–50, 53, 99, 170 *see also* liberal peacebuilding consensus/liberal peacebuilding; peace processes
- ‘spoiler problem’, 38–9, 184
- true ‘success story’ of, 45–6
- UN support/support offices, 53, 59, 170–1, 183
- peacekeeping forces, 16, 51, 53, 66, 67, 71, 74, 184–5
- peacemaking *see* liberal peacebuilding consensus/liberal peacebuilding; peace processes; peacebuilding
- Peceny, Mark, 16, 17n.14, 45n.3, 46n.5, 48n.10, 50n.17
- ‘liberal social reconstruction’, 17
- People’s Alliance (PA), Sri Lanka, 74, 75
- Perera, Jehan, 79n.27, 86nn.54–5
- Perera, Shantha, 96n.103
- phased approach (to peace negotiations), 79–81
- The Philippines, 61–3
- Pinto-Jayewardena, Kishali, 85n.51, 92n.80, 105n.142
- Plan Colombia, 143, 148–51, 155, 170
- Plan Patriota (Colombia), 156
- political actors, 8, 11
- political cultures, 37, 140–1
- political liberalization, 99
- political parties, 24, 46n.5, 47, 53, 54, 102
- elections, 164
- peace negotiations, 101
- transforming from armed group into, 48, 61, 71, 77n.17, 139, 152, 173–6, 179, 180, 182, 187
- political power-sharing, 9, 27, 35, 38, 61
- political structures, 63, 105n.142
- largest-remainder system, 147
- political violence, 49, 50, 73, 144–6
- politics, 4, 17, 19, 21, 23–5, 26, 30–1, 32, 35, 40, 72, 144, 146, 154, 186–7, 188
- building capacity for, 40–1
- and electoral fraud, 167
- ethnicization of, 94–5
- inclusion of FMLN into, 46–7
- politico-economic goals, 39–40
- ‘pork barrel’, 147
- transformations and, 173–8
- Popular Congress Party (Sudan), 133
- popular consultation, 120
- post-Cold War negotiated peace agreements/pacts, 6, 8, 9, 11, 19, 190
- postconflict countries, 191
- postconflict pacification, 2
- postconflict setting, 2
- Post-Tsunami Operational Management Structure (P-TOMS), 85, 86, 88, 90, 91, 95, 96–8, 101–2, 106, 177n.16
- power sharing, 1, 12–16, 22–5, 29–33, 43, 187, 189–92
- in African nations, 51–60
- Asia-Pacific countries, 61–4
- in Colombia, 144, 175, 180
- credible commitments in, 20–1
- critiques of, 26–8, 34–42
- in European countries, 65–71
- and incentives for armed groups, 181–2
- in Latin American nations, 46–50
- perils of, 41–2
- solution to internal conflict, 17–20
- in Sri Lanka, 80–1, 105–6
- in Sudan, 108, 118–21, 123, 132, 137–8, 141
- power structures, 13, 14, 183
- power-sharing incentives, 2
- power-sharing mechanisms, 3
- power-sharing solutions, 17–20, 28
- Prabhakaran, Vellupillai, 76, 82, 93, 94, 101
- November 26 Heroes’ Day speech, 93–4
- predatory/rent-seeking behavior, 4, 25, 35, 182n.1
- Pretoria Protocol, 54



- prisoners/prisoner exchanges, 157,  
 171, 172  
 process tracing, 7–8  
 Pronk, Jan, 121, 122, 130, 133n.117,  
 134n.123  
 property rights, 118  
 proportional representation, 18–19,  
 27–8, 56, 63n.54, 75, 85, 111, 147  
 Prunier, Gerard, 123  
  
 quotas, 24, 33, 46n.5, 68, 182  
  
 Radio Télévision Libre des Mille  
 Collines (Rwanda), 57  
 Rajapakse, President Mahinda  
 (Sri Lanka), 103, 104, 106  
 Ranariddh, Prince, 6  
 rebels/rebel groups, 2, 3, 5, 26, 34,  
 113, 141, 184  
   in Colombia, 47, 143, 151–3, 172,  
   187  
   in Côte d'Ivoire, 57  
   in Darfur, 126, 128, 130, 132  
   in Democratic Republic of Congo  
   (DRC), 56  
   in Liberia, 53  
   in Nicaragua, 49  
   in Sri Lanka, 73, 76–7, 79, 81–4,  
   89–91, 93–4, 96–7, 100, 101,  
   102–4, 106, 189  
 Recompas (Nicaragua), 50  
 reconciliation, 53, 164, 165–8  
 reconstruction, 2, 74, 84, 118, 128  
 Recontras (Nicaragua), 50  
 Redes program (UNDP), 170–1  
*reductos*/holdouts (Colombia), 163  
 referendums, 6, 56, 64, 70, 116, 117,  
 127, 182, 186  
 refugees/refugee camps, 44–5, 66,  
 123, 125–7, 189  
 rehabilitation, 74, 79, 156, 165  
 reintegration *see* disarmament,  
   demobilization, and reintegration  
   (DDR)  
 relief efforts, 94–5, 96  
 religion, 33, 94, 109, 110, 116,  
 118n.53  
 religious freedom, 1, 6, 110  
 remobilization, 163–4  
  
 repression, 5, 115  
 resentments, 45, 87, 88–9, 96  
 Resistência Nacional Moçambicana  
 (Mozambican National  
 Resistance) [RENAMO]), 23, 60,  
 61  
 resource allocation, 118, 25–6  
 resource sharing, 1, 13, 17, 33, 52, 71,  
 137, 141, 176, 182, 185  
 Revolutionary United Front (RUF), 4,  
 16, 26, 38, 51, 52, 71, 186–7  
 Richani, Nazih, 145n.9, 151, 168n.25  
 right-wing entities, 46, 48, 143, 150,  
 152  
 'ripe for resolution', 77, 106  
 Romania, 65  
 Rosende, Raul, 159n.80, 165n.107,  
 173nn.146, 148  
 Rothchild, Donald, 28n.51,  
 31nn.58–9, 33, 40n.88, 54n.30,  
 56n.34  
 Rupesinghe, Kumar, 80n.28, 83n.39,  
 100n.119, 102n.125  
 Russia/Russian, 66, 67, 69, 70, 112  
 Rwanda, 16, 37, 54, 57, 189  
 Rwandan Patriotic Front (RPF), 57  
  
 Saidahmed, Ahmed, 139n.141  
 Sankoh, Foday, 4, 26, 38, 51, 52, 186  
 Sardesai, Shonali, 84n.48  
 secession/secessionism, 5, 58, 64, 69,  
 122, 188  
 Secretariat for the Coordination of  
 the Peace Process (SCOPP),  
 Sri Lanka, 85, 90n.70  
 security concerns, 14, 31, 43, 56, 60,  
 138, 185  
 security dilemmas, 3, 23–4, 34, 38,  
 41, 172, 180, 183, 190  
   and governance incentives, 184  
   in non-ethnically divided societies,  
   29  
   peace negotiations and, 13–18  
   reassurance in, 30–2, 45  
 security forces, 15, 22, 30, 33, 35, 46,  
 50, 61, 62, 65, 73, 114, 122, 187,  
 191  
   human rights abuses by, 49, 132,  
   181

- inclusion of former members of  
 armed groups in, 41–2, 48, 55,  
 59, 106, 108, 126–8, 141, 173,  
 176, 178, 180, 182, 185  
 peacekeeping/peacebuilding  
 missions, 183  
*reductos*/holdouts, 163  
 security guarantees, 12, 16–17, 50,  
 53–4, 107, 157–8, 160, 177, 191  
 security structures, 1, 13, 72, 107,  
 146  
 self-defense, 14, 149, 152, 154, 164  
 self-demobilization, 158  
 self-determination, 17n.15, 70, 113,  
 116, 119  
 Senanayake, Willie, 79n.27  
 Senegal, 58  
 Serbs, 68, 69  
*sharia* law, 6, 62, 112, 114, 116, 123  
 September laws (Sudan), 110  
 Sierra Leone, 4, 5, 6, 16, 26, 38, 44,  
 51–2, 71, 186  
 ‘resource war’, 4–5  
 Silva, Mark, 75n.11, 85n.49, 102n.127  
 Sinhalese nationalism/Sinhalese  
 nationalists, 75, 91, 93  
 Sinn Fein, 77n.17  
 Sisk, Timothy, 14n.6, 16n.12, 19,  
 35n.71  
 integrative approach, 19–20  
 slavery, 108, 109, 118  
 Slavonia, 69  
 Smith, Brian, 77n.16, 79n.27, 83n.39,  
 84n.43, 88n.64, 102nn.123,  
 126  
 social cleavages, 1, 27, 33, 36, 45  
 social conflicts, 36n.76, 74  
 Solheim, Eric, 100n.117  
 Somoza family (Nicaragua), 49  
 South America, 6  
 South Asia, 6  
 South Ossetia, (Georgia), 66, 67  
 Southern Sudan Defense Forces  
 (SSDF), 136  
 Southern Sudan, 55, 115–16, 118–19,  
 120, 127, 133, 135–6, 138–9, 140,  
 188  
 Southern Sudanese Liberation  
 Movement (SSLM), 108  
 ‘sovereignty-based’ disputes, 29–30  
 Soviet Union (former), 8, 65, 66, 68,  
 70  
 Spain, 168, 169, 170, 172  
 Special Court for Sierra Leone (SCSL),  
 52  
 spoilers, 10, 38–40, 41, 42, 86–91,  
 96–8  
 Sri Lanka Freedom Party (SLFP), 91  
 Sri Lanka Muslim Congress (SLMC),  
 87, 97  
 Sri Lanka, 2, 94–7, 102–3, 105–6  
 coalition politics, 85–6, 90–1  
 external involvement, 92–3,  
 98–100  
 history of conflict, 72–4  
 LTTE’s unilateral cease-fire, 76–8  
 peace process/peace negotiations,  
 79–84  
 collapse of, 81–4, 93–4  
 future of, 101–4  
 government strategy, 85  
 lost opportunity, 94–9  
 political currents/maneuvering  
 in, 75–8, 84–94  
 divisions between/in  
 LTTE cadres, 89  
 Tamils and Muslims, 80–1, 88  
 Tamils, 86–7, 89  
 ‘no war, no peace’ situation, 91–2  
 Sri Lankan Monitoring Mission  
 (SLMM), 78, 92, 93, 100, 106,  
 184  
 Stabilization Force (SFOR), Bosnia, 68  
 stalemate, 18, 34 *see also* ‘hurting  
 stalemate’/mutually hurting  
 stalemate  
 Stanley, William, 16, 17n.14, 45n.3,  
 46n.5, 48n.10, 50n.17  
 ‘liberal social reconstruction’, 17  
 state sovereignty, 24, 30, 93, 95,  
 77n.18, 84, 93, 118, 188  
 state structures, 3, 41, 191  
 status quo, 26, 134, 190  
 Stedman, Stephen John, 38, 182n.1  
 Strategic Mineral Commission (Sierra  
 Leone), 51  
 structural inequalities, 33, 47  
 substance, 8, 42n.90, 134

- Sudan, 2, 55–6, 107–8, 113–23  
*see also* Darfur crisis, Sudan  
 Comprehensive Peace Agreement (CPA)/peace agreements in, 5–6, 113–20, 121–3, 134–40  
 conflicts/crises in, 109–12, 124–30, 131–2  
 DDR program in, 136–7  
 dominant tribes in, 133, 141  
 north-south divide, 110–12  
 violence in, 123–33
- Sudanese People's Liberation Movement/Army (SPLM/A), 2, 23, 24–5, 41, 107, 113, 114n.22, 116, 129–30, 133–4, 142, 186, 187  
 and Comprehensive Peace Agreement (CPA), 120–2  
 Garang's leadership of, 109, 112, 141  
 and *janjaweed* militias, 5  
 motivations for fighting of, 112  
 and power-sharing, 118–19, 123, 139–40  
 representation in Darfur administrations, 127  
 and wealth-sharing, 117, 135–6, 137–8, 185
- Sumbeiywo, General (Kenya), 115  
 support bases, 21, 181  
 survival, 14, 20, 21
- Sweden, 169, 170
- Switzerland/Swiss embassy, 81, 95n.97, 155, 168, 169, 170, 172
- Taha, Vice President Ali Osman, (Sudan), 129, 130n.103, 140
- Talisman (Canadian oil company), 111
- Tamil Rehabilitation Organization, Sri Lanka, 90
- Tamil United Liberation Front, 90
- Tamilchelvan, S. P., 97
- Tamils, 5, 27, 72–4, 86–9, 104, 189  
 'identitarian' movements, 27
- Taylor, President Charles (Liberia), 44, 53
- territorial autonomy, 1, 13, 19, 23–4, 26n.42, 59, 35, 106, 141, 182, 184, 185, 188  
 and Colombia, 47–8, 177–80  
 institutional arrangements for, 41  
 in Papua New Guinea, 63–4  
 'sovereignty-based' disputes over, 29–30
- territorial control, 4, 5, 41, 50, 146, 148, 154, 177, 179, 185
- territory, 5, 21, 22, 23–4, 55, 107–8, 177, 191  
 and FARC, 156  
 and LTTE, 76, 92  
 power-sharing dimension, 26, 68, 118
- terrorism, 74, 76, 82, 102, 104, 172  
 in Colombia, 149, 150–1, 155, 156, 158, 168, 170, 178  
 state sponsorship of, 114
- third-party guarantors, 4, 13, 16, 31, 183, 185
- third-party/international guarantees, 4, 15, 16–17, 184
- tit-for-tat, 21, 31, 60
- tools of inclusion *see* inclusion tools  
 tools/toolbox, 3, 41, 43, 100, 188  
 ethnic outbidding, 102  
 international guarantees, 15  
 merits and limits of, 19, 35–6  
 power-sharing, 13, 17–18
- Transitional Darfur Regional Authority, 127
- transitional justice, 182n.1
- transitions/transitional  
 phases/transitional periods, 5, 6, 15–16, 62, 118, 177, 182  
 governance during, 53–7, 71, 127  
 'protected democracy' in El Salvador, 47  
 stability and security of, 18–19, 31, 115
- Transnistria (Moldova), 66
- transparency, 16, 55, 118, 135, 141, 146
- tsunami aid, 32, 88, 96, 185
- tsunami victims, 96, 97 *see also* victims
- Tutsi militias (Burundi/Rwanda), 54  
 Tutsis (Burundi/Rwanda), 54, 55, 57

- Uganda, 113, 122, 133
- Ukraine, 66
- umbrella groups, 143, 152
- Umma Party (Sudan), 133
- UN High Commissioner for Human Rights, 166
- UN Security Council, 69, 114, 121n.69, 125, 129, 130
- Unidad Revolucionaria Nacional Guatemalteca (Guatemalan National Revolutionary Unity) [URNG], 48
- Union Patriótica (UP), Colombia, 153, 158, 174, 176, 179
- unitary state/unitary entity, 14, 20, 68, 92, 127
- United Kingdom, 65, 74, 116
- United National Front (UNF), Sri Lanka, 75, 76, 80, 85, 98, 99
- United National Party (UNP), Sri Lanka, 74, 76, 83, 84, 85, 86, 98, 102
- United Nations Assistance Mission for Rwanda (UNAMIR), 57
- United Nations Assistance Mission in Sierra Leone (UNAMSIL), 16, 51, 52
- United Nations Development Programme (UNDP), 9, 10, 155n.56, 170, 171n.136, 176n.168
- Redes program, 170–1
- United Nations Mission in Liberia (UNMIL), 53, 54
- United Nations Mission in Sudan (UNMIS), 56, 117, 121, 131
- CPA Monitor*, 134
- United Nations Operation in Côte d'Ivoire (UNOCI), 58
- United Nations, 2, 52, 53, 58, 114, 121, 128, 129, 168, 191
- role in Colombian peace process, 170–1
- United People's Freedom Alliance (UPFA), Sri Lanka, 86
- United States (US), 6, 48, 49, 53, 84n.46, 94, 96, 100, 125, 126n.89
- ban/proscriber on LTTE, 74, 82
- elimination of coca production/narcotrafficking, 145–6, 158, 175
- National Security Decision Directive 221 (1986), 148
- peace process in Sudan, 114–16, 125
- role in Colombia, 148, 150–1, 154–5, 170, 175, 178
- Andean Regional Initiative, 149
- extradition efforts, 161–2
- involvement in peace process, 168–9, 170
- Plan Colombia, 143
- Sudan Peace Act (2002), 115
- 'war on terror'/'war on terrorism'/'global war on terror', 76–7, 114
- United States Central Intelligence Agency (CIA), 148, 149
- University Teachers for Human Rights (Jaffna), Sri Lanka, 90
- unstable coalitions, 32, 85–6
- Uribe Vélez, President Álvaro (Colombia), 47, 151, 153, 155, 158, 162n.92, 164, 167, 170
- second term of, 171–3
- 'democratic security policy' of, 156
- negotiation with AUC, 160, 165–8, 175
- Plan Patriota of, 156
- US Agency for International Development, 75n.11
- US Special Forces, 146, 148
- Venezuela, 169, 170, 177
- victims, 51, 81, 162, 166, 167, 168, 181 *see also* tsunami victims
- victories, 8, 21, 53, 97, 171, 177
- Vieira, President João', 58, 59
- violence, 5, 40, 47, 186
- in African nations, 51, 54, 56, 57
- brings attention to problems, 88
- in Colombia, 144–5, 151, 152–3, 154, 155–6, 171, 174
- in Darfur, 121, 124–30
- in European nations, 65, 66
- in Latin American countries, 45, 47, 48, 49, 50

- violence – *continued*  
   post settlement, 31  
   by spoilers, 38, 42  
   in Sri Lanka, 73, 88, 90–1, 101, 103,  
     104, 106, 189  
   in Sudan, 123, 133, 137, 140  
 violent conflict, 4, 36, 61, 183, 190
- Walter, Barbara F., 7n.12, 9n.16,  
   10n.19, 13nn.2–3, 14nn.4, 6–7,  
   15n.9, 25n.37, 28n.45, 31,  
   40n.89, 50n.16, 60n.42, 61n.44,  
   183  
   ‘democratic novices’, 40
- war crimes, 115, 124  
 ‘war system’, 145  
 warlords, 4, 33  
 warring parties, 20, 22, 189  
 wealth-sharing/wealth-sharing  
   arrangements, 21, 25–6, 106, 117,  
   120, 126, 128, 132
- weapons, 15, 18, 27n.45, 46, 64, 114,  
   131, 162n.92, 183, 191  
 White Nile Oil Company (Sudan),  
   135  
 Wickremasinghe, Ranil, 75, 76,  
   82n.37, 85, 98, 100, 102  
 World Bank Conflict Prevention and  
   Reconstruction Team, 84n.48  
 World Bank, 19n.18, 42, 99
- Yala, President Kumba  
   (Guinea-Bissau), 59  
 Yugoslavia (former), 8, 68, 69  
 Yusuf, Ambassador Javid, 79n.27,  
   88nn.62, 64, 97n.104
- Zartman, I. William, 77  
   ‘hurting stalemate’, 77  
*zonas de despeje/despeje* (demilitarized  
   zone), 5, 155 *see also*  
   demilitarized zone/area