



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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The Dialogue Brief

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Negotiations in a Cultural Context

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I Introductory Note

This article was initially prepared for a seminar on Negotiations at the School of Advanced International Studies (SAIS) of John's Hopkins University in Washington, DC., which was conducted by Professor I. William Zartman. The principles, as referred to then, were subsequently presented at the peace negotiations in Naivasha, Kenya, that eventually resulted in the 2005 Comprehensive Peace Agreement (CPA). They were also included in a chapter that appeared in two separate books edited by Dr. Kevin Cahill of Fordham University in New York.

The principles are reproduced here because I believe that they are relevant to the current debate on the National Dialogue which was initiated by President Salva Kiir Mayardit in December, 2016, and officially launched in May 2017. The Dialogue is being conducted by a broadly representative Steering Committee of over one hundred people, with a nine-person leadership comprising two co-chairs, a deputy co-chair, a rapporteur, two deputy rapporteurs, and three members.

The Dialogue is envisaged as a bottom-up and top-down process that will conduct consultations at the grassroots, regional and national levels, culminating in a National Conference that will prepare recommendations for the resolution of the multi-faceted conflicts that have devastated the country. So far, the Dialogue has demonstrated an impressive level of inclusivity, openness, credibility, transparency and freedom of expression, principles that are widely acknowledged as essential to the success of any dialogue. After a month of open debate, the Steering Committee benefitted from a series of seminars which underscored these principles and presented experiences from other dialogue situations from which useful lessons can be drawn.

The Steering Committee has organized itself into 15 Sub-Committees that will conduct consultations in the former ten states chosen for logistical convenience in addition to Abyei and Pibor as special administrative areas. The remaining three committees cover

the security sector, the National Capital and refugees and international outreach. Delegations from the Steering Committee have also carried out consultations that have engaged opposition leaders in specific locations abroad and plan to conduct more consultations in other areas with those who do not want to participate in the Dialogue inside the country. The objective is to engage inclusively with all South Sudanese.

If the Dialogue process continues to observe the normative principles that are necessary conditions for success, then there is reason to believe that it stands a good chance of achieving its stated objectives. Furthermore, although the Dialogue is by definition National and owned by South Sudanese, the support of the international community is essential to its success. In that regard, constructive criticism that can improve and strengthen the process should be welcomed. A negative attitude that undermines and weakens the process should be avoided and discouraged. It indeed has the effect of playing into plans of the enemies of peace and reconciliation in the country.

Although National Dialogue is not negotiation in the narrow sense, in the broad scheme, it involves reconciling differences in the society which inherently implies negotiating over the issues behind the conflicts. Whether this is an inter-personal dynamic or a process of mediating differences between and among groups, the principles involved are essentially similar. It is in this context that the IGAD initiative to revitalize the 2015 agreement to resolve the conflict in South Sudan should be welcomed. Revitalization and the National Dialogue are therefore complementary and mutually reinforcing. Indeed, one of the opposition leaders argued that while he welcomed the National Dialogue as a means for South Sudanese to discuss their differences, his priority was for a mediated negotiation. But as the Steering Committee has explained, whether the method involved is conceptualized as a Dialogue or mediated negotiations, the shared objective is to bring peace, security, reconciliation and stability to the country. It is in that sense that the principles reproduced here are pertinent to the National Dialogue and the overall objective of bringing peace, security, and stability to the country.

II Negotiations in cultural context

Negotiations with the third-party mediation are the counterpart to violent confrontation. After independence from the Anglo-Egyptian rule, Sudan alternated between devastating violent conflicts and negotiations leading to the peaceful resolution of these conflicts. The seventeen-year war (1955-1972) was ended by the Addis Ababa Agreement and the twenty-two-year war (1983-2005) ended with the 2005 Comprehensive Peace Agreement and the independence of South Sudan on July 9th, 2011. The search for durable peace and the prospects for achieving genuine consensual unity continues to require an ongoing process of negotiations into the foreseeable future. This is true within and between the two Sudans.

I see negotiations and the closely related field of diplomacy as essentially management of human relations involving individuals, groups, or nations. Some people would argue that conflict is the normal state of human interaction and that it is futile to try to prevent or

resolve conflicts; the most that can be done is managing conflicts. This can only be valid if it is understood to mean that grounds for conflict exist in normal human relations and that the occurrence of conflict is therefore normal. If it means that conflict is the normal pattern of life, then I would consider that position both empirically questionable and normatively ambiguous. Far from seeing conflicts as the normal state of human interaction, I believe that people are more apt to cooperate and harmonize their incompatible or potentially conflictual positions, and that conflict is in fact a crisis that signifies a breakdown in the normal pattern of behavior. In this sense, conflict involves a collision of incompatible positions resulting from a failure to regulate, reconcile or harmonize the differences. In the normal course of events, society is structured around fundamental values and norms that guide behavior and regulate relations so as to avoid destructive collision of interests or positions. If people observe the principles of the normative code, which they generally do, the normal pattern would be one of relative cooperation and mutual accommodation, even in a competitive framework. To call that state one of conflict would be to put a negative value judgment on positive motivations and endeavors, and on what is in effect a relatively high degree of success is peaceful interaction.

Even more important than strict empirical interpretation would be the normative implications of holding conflict the normal state of human existence, which would tend to foster a disposition that is fundamentally adversarial, suspicious, and conflictual. The extent to which members in a community or group reflect this disposition may depend in large measure on the culture and its normative code, and beliefs that characterizes national, ethnic, or other groups and orient their behavior.

Culture itself is a product of education, both formal and informal, through which the norms of behavior that a society has developed over a long period of time are inculcated from early childhood and passed on from generation to generation. The family is the institutional foundation of education, and, in particular, of the inculcation of basic cultural values. And yet despite the pivotal role of the family and the culture in shaping values attitudes, and operational techniques in human relations, individuals differ even within a family in their understanding, appreciation, and application of the values involved. It is this combination of the collective cultural conditioning and the individual inclination to absorb, accept, and apply what is acquired that gives significance to personal experiences as particular applications of values, customs, and techniques of conflict resolution and diplomacy within a specific cultural framework. As a challenge to grossly inequitable order, conflict may be a positive quest for reform.

It is important to emphasize that the objective is not merely to resolve a conflict but to resolve it in a mutually satisfactory manner. This means addressing the root causes and observing such fundamental norms as justice and human dignity. In other words, where change is urgently needed, the status quo cannot simply be supported for the sake of harmony and peaceful interaction.

Conflict in this context can be defined as a situation of interaction involving two or more parties in which actions in pursuit of conflicting objectives or interests result in varying

degrees of discord. The principal dichotomy is between normally harmonious and cooperative relations and a disruptive adversarial confrontation, culminating at its worst in high-intensity violence. On the basis of this definition, conflict resolution is a normative concept aimed at reconciling, harmonizing, or managing incompatible interests by fostering a process of institutionalized peaceful interaction. Conflict resolution envisages strategies aimed at restoring or establishing the normal state of affairs and raising the level of peaceful, harmonious, cooperative, constructive, and productive interaction.

The achievement of peace and reconciliation becomes a common objective, but one that is only possible if both sides feel that the solution proposed is indeed in the mutual interest. Since both were prepared to enter into conflict in the first place, it means that each must have a subjective view of right and wrong that gives them some degree of right and places some degree of wrong on the opposing party. These subjective perspectives cannot be ignored when negotiation takes place or when the proposals are made for resolving a conflict, even though they need not and should not be allowed to have too much influence on such processes. Ultimately, while there is indeed a hierarchy of rights and wrongs in resolving disputes through negotiations, there should be no absolute winner or loser.

If one comes from a culture, a society, or a family in which unity, harmony, and cooperation are highly valued, then the discord of conflict becomes a disruption that is destabilizing not only to the community, but also intrinsically to the individual. And if one assumes further that in any conflict there are contributing factors for which both sides share responsibility, albeit in varying degrees, then the degree of uncertainty involved must create a sense of shared responsibility for properly tutored or nurtured members of the community. The desire to normalize the situation and restore amicable relations therefore becomes as much a societal as it is an individual objective.

III Expounding the Principles

The proposed principles on negotiation should be seen in the context of the normative framework outlined above. These principles derive from personal experiences and are rooted in values, norms, and mores that emanate from a specific African family and cultural background among the Dinka of South Sudan. They cover experiences in interpersonal relations, third-party mediation and diplomatic negotiations, with overlaps. Although personal and rooted in the Dinka, South Sudanese, and African cultural contexts, they represent values that can claim universal validity, despite cross-cultural variations on the details and their applicability.

Principle One: Rights and wrongs, though seldom equal, are rarely one-sided. Even when you feel sure that you are in the right, you must not only strive to fit yourself into the shoes of the other side, but make the other side recognize that you are genuinely interested in his or her point of view.

Principle Two: It is unhealthy to keep grievances “in the stomach” or “in the heart.” Talking it out, the title of a book I wrote on the theme, is not only the best way to resolve

differences or grievances, but it is also essential for one's mental and even physical health. Often "what is not said is what divides," to use the words of an article I wrote on that theme.

Principle Three: Face-saving is crucial to resolving conflicts. One must avoid saying anything that is humiliating to the other side, and where possible, it is advisable to show deference, even to an adversary, provided it is not cheap flattery.

Principle Four: It is important to listen very attentively and allow the other party to say all that she or he considers significant or relevant. Resolving differences is not a game of wits or cleverness, but of addressing the genuine concerns of the parties in conflict. In Dinka folktales, the cleverness of the fox eventually turns against the fox. Ideally, resolutions must have an element of give and take, although the distribution should be proportional to the equations of the rights and wrongs involved. In assessing the outcome of a negotiated settlement of a dispute, it is unwise to boast of victory, for that implies defeat for the other side and therefore an unsatisfactory outcome.

Principle five: Historical memory of the relations gives depth to the perspectives of the parties and the issues involved, but one must avoid aggravating the situation with negative recollections and emphases and should instead reinforce constructive dialogue with positive recollections or interpretations on events, without of course, distorting the facts.

Principle six: The mediator must be seen to be impartial, but where there is reason to believe that he or she is closer to one side in any capacity, the mediator must reach out to the more distant party. However, this must not be at the cost of fairness to the party close to the mediator. Impartiality does not mean having no position on the issues in dispute, even though voicing opinions should be carefully coached to maximize the bridging roles and promote mutual understanding.

Principle seven: The mediator must listen very patiently to both parties, and even when there are flaws in what is said, the mediator must appear to give due weight to each party's point of view. The popular view that in the indigenous African system of dispute settlement, people sat under the tree and talked until they reached a consensus reflects a broadly shared African normative behavior. Where explaining the opponent's view on a specific issue might facilitate the bridging process, the mediator should intercede to offer an explanation as part of consensus building.

Principle Eight: While the wisdom of words and ability to persuade are important, leverage is pivotal. This means that the mediator must have or be believed to have, the ability to support the process with incentives or threat of negative consequences, according to the equations of the responsibility for the success or the failure of the negotiations. In the past, in African tradition, spiritual powers of the divine leadership provided the required leverage. In the modern context, influencing the balance of power to create a "mutually hurting stalemate" and help to advance the process of "ripening for

resolution” to borrow the famous words of renowned scholar of conflict analysis, I. William Zartman, is part of the leverage that can effectively facilitate the mediator’s task.

Principle Nine: Diplomatic negotiations combine elements of both interpersonal relations and third party mediation in the negotiator who represents his /her government and in a sense combines negotiating with mediating between the respective governments involved. Discretion and creativity in adapting the official position to the dynamics of the situation with a degree of flexibility is critical to the prospects of successful bridging.

Principle Ten: While the tendency of the negotiators is to see the outcome of their efforts in terms of winning or losing, especially for domestic consumption, the desired outcome should be one in which neither side sees itself as a total winner or loser, except where the rights and wrongs involved are incontrovertibly clear. The win-win formula should be the objective and whatever the equations of winning or losing in the mediated or negotiated outcome, as noted in Principle Four, neither side should boast about winning and by implication humiliate the other side as a loser. There must be a degree of parity in both sides winning or losing.

IV Balancing the Universal with the Particular

The principles presented above do not claim a panacea. Quite the contrary, they reflect a particular cultural value system that may be more relative than universal. It would indeed be presumptuous and even hazardous to assume that these are universal, scientifically proven negotiation techniques that are applicable to all situations and cross cultural contexts. A case can of course be made for expert knowledge in negotiation and there is a particular role to be played by individuals with expertise. But to be effective synergy between universal techniques and culturally specific methods need to be developed.

In tribal societies, chiefs and elders mediate. Indeed, most tribal conflicts, which are pervasive throughout the society, are resolved by the traditional mediators, for most part of illiterate but endowed with indigenous knowledge and wisdom. When one recalls that the number of colonial administrators who controlled the Sudan, a vast country of nearly a million square miles, now divided into two separate states, was relatively small, it is easy to see how they made effective use of traditional leaders to maintain law and order, peace and security throughout the rural areas. Failure to use this indigenous capacity accounts for much of the intertribal warfare and criminal violence that has been the lot of the postcolonial administration in Sudan. This must be reversed if the two countries are to enhance its full capacity for promoting peace, security, and stability throughout the country.

V Concluding Comments

Two important dimensions of the National Dialogue need to be highlighted in these concluding comments. The first is that the National Dialogue should be approached as a phased process with structured priorities. Highest in the order of priorities must be ending

the violence that has already caused much death, suffering and displacement, both internally and into the neighboring countries and farther away to distant lands. Second on the priority list should be addressing and resolving inter- communal conflicts that are proliferating throughout the country. Third are intra -communal tensions and conflicts which, though local, can feed into conflicts at higher levels.

The second dimension of the National Dialogue is to see the concept as an on-going process of negotiating human relations which is inherent in social interaction at all levels, from local to global. In that sense, National Dialogue should be seen as a means of shedding light and focusing attention on what is or should be the societal norm of human existence. The by-product of the process should therefore be to reinforce and revitalize the culture of dialogue as a peaceful means of resolving conflicts or differences and discouraging resort to violence as a means of dealing with conflicts.

It is worth bearing in mind that violent conflicts are symptoms of deeper structural problems that call out for remedy. In that sense, they represent a wake-up call for addressing and curing the root causes. Conflicts therefore ironically offer opportunities in crises, a stimulus or motivation for seeking remedies for serious social ills that could become even more critically threatening to the wellbeing of the community, both as individuals and as a collectivity. That is at least my hope in reproducing these guiding principles for negotiating human relations.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

Author's Biography

Francis M. Deng has recently been assigned the position of South Sudan's Roving Ambassador after having been the country's first Permanent Representative to the United Nations. Prior to that, he served for five years as the United Nations Secretary-General's Special Advisor on the Prevention of Genocide at the level of Under-Secretary-General. From 1992 to 2004, he served as Representative of the Secretary-General on Internally Displaced Persons. His first position in the United Nations was that of Human Rights Officer in the Secretariat from 1967 to 1972 when he was appointed Sudan's Ambassador to the Nordic Countries. He was also Sudan's Ambassador to Canada and the United States of America and was also Minister of State for Foreign Affairs for five years. After leaving his Government's service, he held a series of positions in leading think tanks and universities in the United States. Dr. Deng graduated with an LLB (honors) from the University of Khartoum to which he was appointed member of the Law Faculty and then sent abroad for post-graduate studies. He holds an LLM and a JSD from Yale University

Law School. Dr. Deng has authored and edited over thirty books in a wide variety of fields and has written two novels on the crisis of national identity in the Sudan.