

January 2014

SHAPING THE STATE THROUGH THE
SOCIAL CONTRACT IN SITUATIONS OF
CONFLICT AND FRAGILITY

Expert and Practitioner Meeting

Conference Report

DRAFT NOT FOR CIRCULATION

DRAFT NOT FOR DISTRIBUTION



*Empowered lives.
Resilient nations.*

Conference Report – ‘Shaping the state through the social contract in situations of conflict and fragility’

This conference was hosted by UNDP between January 15th and January 17th 2014. It follows the UNDP publication ‘Governance For Peace’ and has grown out of UNDP’s increasing insight – based on our operations - about why fragile states are different and the focus of our work in crisis contexts. Boiled down, this insight is startling in its simplicity – we – the international community – have confused the symptoms of fragility with its causes. We see fragile and conflict affected states as weak and read this as the outcome of failed economic policies and dysfunctional institutions. In fact – as James Robinson noted¹ – many so-called fragile states are very resilient – and their institutions and their economic policies work as they were designed – effectively delivering the benefits of development to the few, at the expense of the many. This also explains why many fragile states do not change – even when history presents them with a ‘critical juncture’, or a break with the past that provides a chance to shape the future differently – instead they replace one extractive elite bargain with another. Our focus in this conference was to ask why – given this evidence – and the repeated cycles of conflict emerging from the repeated patterns of extracted elite bargains – the international community seems currently seized – at least in some quarters – with the notion of the elite bargain as critical for peace; and what if anything could be put in its place. We suggest that some of the ideas which are foregrounded through a focus on “social contracts” rather than “political settlements” which have become synonymous with elite bargains are helpful as a way to think about how to assist fragile states that wish to rewrite their futures.

Session 1 - What are the core elements of the social contract and why are state-society agreements in fragile states particularly weak? ²

Marcus Mezzera focused on establishing the core elements of the social contract and put it into the context of the current literature on state building. We started with Jean Jacques Rousseau’s observation that ‘*Man is born free, but everywhere he is in chains...*’\ in essence arguing if people who are governed live in a state far worse than the state of nature³, then what is the point of government? He argued further that it is illogical for people to surrender their freedom in exchange for slavery asked why they did so and what needed to happen for this to be prevented. This became the basis for his argument that government needs to be based on a ‘social contract’ – which is in essence a ‘deal’ between people and their state. People agree to be ‘governed’ and to surrender their freedoms to behave exactly as they like - and in particular they surrender their freedom to use violence as a means to create wealth. In turn, the state upholds their right to the security of their persons and property, as well as their right to participate in the economy – to work and to benefit from that labour. A second critical idea that emerges from thinking on the social contract is that because the state is created by the people, the state embodies those

¹ Speech to INCAF 16th January 2014

² This section combines Mezzera’s talk with the NOREF background paper and additional evidence that emerged during the conference.

³ Michael Lessnoff (1990). *Social Contract Theory*. New York University Press: New York

interests and its role is therefore to act as a neutral arbiter and **mediate** these interests when individuals or groups come into conflict with each other.

This forms the basis of a **civil society** in which citizens uphold the rule of law because they played a role in creating it. Civil society and the horizontal links between citizens have the additional value in that individuals – through organizing - can have enough bargaining power to maintain and sustain the original social contract agreement. The third key element of the social contract is that the state, embodies the will of the people has a duty to act as a neutral arbiter and to mediate differences between individuals and groups within society.

Thinking on the social contract highlights two specific concerns – firstly, a concern with how and by whom the ‘deal’ or settlement between the people and the state is made. Secondly it is concerned with how and by whom this deal is maintained and an equilibrium between the expectations and obligations of the institutions in power and those of the rest of society⁴ achieved. In short the social contract should not only be regarded as a utilitarian transaction (i.e. I forfeit some of my rights in return for other benefits), but also as a conscious associative effort aimed at reaching an egalitarian governance system, while still respecting and guaranteeing the most fundamental individual freedoms and rights.

How is this thinking relevant to the work on fragile states?

These issues are clearly relevant, and too often ignored in favour of short-term settlements – often ‘elite bargains’, which merely pause the crisis. But recent evidence suggests that “pausing” does not last and often results in the re-structuring of governments – sometimes under a different name – which are just as extractive. A focus on fragility therefore coincides with a growing interest in how politics shape development. This concern with fragility, in turn, stems from the growing understanding that conflict and instability have a vastly negative impact on development and – more specifically - on the most vulnerable. These states can truly be described as places where people “live in chains”.

The MDG monitoring which started in 2000, consistently returned a sub-group of the **same** states which suffered reoccurring conflict⁵, were not making progress and ultimately were not going to meet their MDG targets. While the exact drivers of conflict are difficult to disentangle, these countries often share “weak” or “extractive” (as opposed to “inclusive”) institutions. Where inclusive institutions secure opportunities for a broad cross-section of society, extractive institutions are designed to extract incomes and wealth from one subset of society to benefit another subset.

The recent evidence has also triggered a debate on whether these weak institutions are a cause of fragility – or a symptom of extractive politics and institutions. The WB World Development Report 2011 (WDR) for example, argues that “weak institutions are particularly important in explaining why violence repeats itself in different forms in the same countries” (p.8). Acemoglu and Robinson⁶ on the other hand would agree that institutions can help to drive conflict, they would argue that they are not weak, in fact they are very resilient and further- that they are a function of the elites that created them. Where the World Bank’s

⁴ Hobbes, Locke, Rawls and Gauthier agree on this point and agree that there is a need to create socio-political processes that eventually create an equilibrium between the powerful and the less powerful. Michael Lessnoff (1990). *Social Contract Theory*. New York University Press: New York.

⁵ The World Bank notes that since 2000, 90% of all violent conflict onsets occurred in countries with previous conflict. In the 1990s, the percentage was 67%. WDR p. 3 Table F1.1. WDR 2011 p. 57

⁶ Acemoglu, D. Robinson, J. “Why Nations Fail” Crown Business, 2012.

focus is to strengthen and improve institutions, the implication of Acemoglu and Robinson's work is that extractive institutions only change if the political dynamics they emerge from change.

This difference is mirrored in the debate about how stability can be created and maintained within fragile states. A key question concerns whether citizens should or can be included in discussions about their societies. This is a hugely contested area – debated around the notion of the “political settlement”. In the background paper, three different positions held respectively by DFID, the World Bank and the UN were used to illustrate the debate. These are not the only views, but they provide a useful shorthand into the different positions.⁷

At one end of the spectrum, is the argument that **elite** bargains – agreements between elite groups in society about the management of national power and wealth are key both to ending violence and to preventing future violence. In these arguments the term “political settlement” is used to describe the process by which a society settles how it wants to be governed. ‘Political settlements’ are a tool to end violence, through a negotiation amongst elites of the ways to organize and exercise political power to suit their interests.⁸ The International Network on Conflict and Fragility (INCAF) defines a political settlement as “the expression of a common understanding, usually forged between elites, about how power is organized and exercised”.⁹

The World Bank, in its **2011 WDR**, “Conflict, Security and Development” broadens this concept – discussing “inclusive-enough coalitions” (p. 120). They indicate the need to engage with informal institutions and patronage networks, in the attempt to acquire “broader societal legitimacy” (p. 122) and suggest further the need for “proactive communication ... to build public understanding and support” (p. 124). In addition, the report discusses the need for fairness and the “political inclusion of all citizens”, with a particular focus on the need to avoid “pure political exclusion of particular groups based on race, ethnicity, religion or geographical location and origin” (p.81). Whilst the need for elite inclusion is clear, the degree of other inclusiveness they envisage is somewhat vague and there is no attempt to look more practically at the issue of how this might be done.

The UN Report of the Secretary-General on peace building in the immediate aftermath of conflict, mentions the social contract and focuses on inclusivity and institution-building. Domestic accountability is also identified as supporting the social contract. In its elaboration

⁷ We are also aware that these ideas are contested and debated within these institutions, but are using stated policy positions as illustrative.

⁸ Whaites defines a political settlement as “the forging of a common understanding, usually among elites, that their interests or beliefs are served by a particular way of organizing political power.” Alan Whaites (2008[C/R], p. 4), In a 2008 DFID working paper “States in Development - Understanding State Building Whaites notes further that political settlements are the deeper, often unarticulated, understandings between elites that bring about the conditions to end conflict, but which also in most states prevent violent conflict from occurring. Political settlements happen because of self-interest (hope of greater benefit from a common state-building project) or due to a strong sense of shared ethos (such as religious or ideological conviction). P. 7 * reference for paper above is in the Evans paper.

⁹ INCAF ‘Building Peaceful states and Societies’ p.22, para. 46.

around the concept of the social contract, the report notes that “a key challenge in post-conflict contexts is to overcome a pervasive deficit of trust — between different political parties and social groups, between the State and society and between the State and its international partners”.¹⁰

Juxtaposed against this spectrum of views within the development policy literature, two recent books have emerged which suggest a new approach to fragility. North, Wallace and Weingast argue that developed societies always have developed economies and open polities and suggest that the connection between economics and politics is fundamental to the development process. They show how ‘limited access social orders’ developed that were able to control violence, provide order, and allow greater production through specialization and exchange. Production and growth happen in these orders because the political system is used to limit economic entry and generate wealth which is then used to stabilize the political system and limit violence. They call this type of political economy arrangement a natural state. These states function in that they have law and order and experience economic growth. However, the most economically developed states have developed open access social orders. In these societies, open access and entry into economic and political organizations sustains economic and political competition. Social order is sustained by competition rather than rent-creation.

Robinson and Acemoglu’s book, builds on North Wallis and Weingast, but their key argument is that extractive institutions – their term for limited access social orders, exist by design. On the basis of an extensive historical enquiry, they conclude that the institutions

¹⁰ The academic literature also falls out along a spectrum. Lindemann (2010a* [E, QT, N5.5], p.5) defines the elite bargain as “the distribution of access to positions of state power between contending social groups.” Commenting on a related body of work, Di John & Putzel (2009* [C/R], p.6-7) observe that elite bargains are “to be found at the centre of political settlements” North et.al.’s work on social orders does not employ the term ‘political settlement’, but does observe that it is elite control over economic rents that hold ‘limited access social orders together’ (2007* [C/R], p.6) , but goes on to observe that these elite bargains are not the way in which the ‘handful of countries that achieved sustained rates of economic growth and development in the late 18th and 19th century – the ‘open access social orders’ are organised. These open access orders continue to enjoy sustained peace security and growth today and precisely because they have allowed far more open political and economic competition.

In other discussions, the notion of the political settlement focuses on balances of power. Khan (2004* [C/R] p.168) defines the political settlement simply as the “distribution of organizational and political power between competing groups and classes”. Di John and Putzel (2009* [C/R], p. 4) argue that political settlements are manifested through the structure of property rights and entitlements, and the way in which these are apportioned among elites, groups and classes. Recognised in each of these cited positions is the possibility that the political settlement can extend to new elites, new configurations of elites, or even beyond elite groups over time (see Khan, 2004* [C/R], pp. 176 -181, and North, 2007* [C/R], pp.6 -7).

Other strands of thought, consider not just the distribution of economic, political and coercive power within it, but also its organizational and institutional evolution (i.e. who is included, and what are the rules that regulate inclusion). Barnes (2009 [C/R], p. 9) notes that the “political settlement shapes the field on which politics is played... setting out the nature and rules of the ‘game’ and setting conditions that determine which players are ‘in’ and playing what role.” Fritz & Rocha Menocal define the political settlement as “the expression of a negotiated agreement... binding together state and society and providing the necessary legitimacy for those who govern over those who are ruled” (p. 27).

**

which much of the work on fragile states portrays as weak – e.g. rule of law, are there by design and exhibit the characteristics they do because this facilitates extraction of wealth by the powerful. Their overriding message, is therefore that the political framework determines how institutions function. This is broadly similar¹¹ to North’s message that “high income good political institutions are closely related”¹². Many in the development policy world seem to be reading these two books as suggesting that what is pragmatically achievable in development negotiations is elite bargains leading to closed order or extractive political arrangements.

Robinson and Acemoglu’s second critical message, however, suggests a different approach. This historical enquiry proves that change to more open political orders is possible and is often forged in “critical junctures”¹³ - moments where because normal government is interrupted there is a chance to make significant changes in the way things are done. These moments happen often in fragile states, because extractive institutional arrangements, though deliberate and resilient over time, are vulnerable to the popular discontent of marginalised groups and to conflict. These are moments of flux when the rules of the game are being contested provides a critical opening for ‘rewriting the future of history’ (Ghani and Lockhart 2007). In such contexts, the social contract – or political settlement can be re-articulated. However, once the moment has past and normal governance resumes, what follows is constrained by the decisions made. Because of the nature of fragile states, the international community is often present. The clear operational implication of this is that the international community needs to get better at identifying these moments and supporting the process of creating a platform which can deliver change rather than just an interruption or substitution of one set of extractive institutions for another. UNDP’s conference focused on the social contract – the notion of a deal between people and their state as a way of thinking through exactly what shifts are to happen if poor engagement is to support progress towards more inclusive institutions which can engage the population and deliver the consistent growth which is the basis for development.

James Robinson the co-author of ‘Why Nations Fail’ centered his keynote speech for the conference on the arguments in his book. He noted that only inclusive economic institutions, which provide broad based incentives and opportunities can ensure that society is able to harness the latent talent of all of its peoples.¹⁴ He went on to note that inclusive economic institutions are created by inclusive political institutions. One of the most relevant aspects of his work for the consideration of the social contract – is the explanation of **why**

¹¹ But see <http://whynationsfail.com/blog/2012/4/30/response-to-fukuyamas-review.html> for an explanation of how the two approaches differ.

¹² NWW p.5

¹³ These have been defined as a moment “in which the structural (that is economic, cultural, ideological, organizational) influences on political action are significantly relaxed for a relatively short period, with two main consequences: the range of plausible choices open to powerful political actors expands substantially and the consequences of their decisions for the outcome of interest are potentially much more momentous.”

¹⁴ The reasons why this is the case are too detailed for this report, but can be found at pp 428-430 of “Why Nations Fail” Daron Acemoglu and James Robinson Profile 2013.

inclusive institutions emerged in some parts of the world, but not in others. The answer Acemoglu and Robinson argue is that major institutional change, the requisite for major economic change takes place as the result of the interaction between major institutions and critical junctures – or historical turning points.¹⁵ In considering whether the social contract was useful as a potential contribution he noted that the social contract was precisely what countries with extractive institutions do not have and further that ideas can play a very powerful role in mobilizing change. A key question for development practitioners that emerges from Robinson’s work is whether conflicts (as in South Sudan, Somalia) or public uprisings (as in the Arab Spring), constitute critical junctures – and if they do, what international actors can or should do to support the emergence of inclusive institutions.

Jenny Pearce posed two questions i) How is it possible to operationalize an intellectual device such as the social contract and ii) Can an intellectual device originally based on historicized assumptions of human rationality, embrace passion, difference, power and dynamics of accumulation? These factors are present in most fragile state contexts and do not necessarily make possible or underpin the operationalizing of the idea of a social contract.

Nevertheless, she concluded that in spite of these problems the essence of the social contract – the notion of a deal between people and their state - is potentially a useful device if it can be brought up to date in terms of contemporary understandings of who should participate in the formation of a social contract as well as how the intellectual device of a contract or deal can be translated into practical forms of participation, engagement and dialogue between states and citizens. Updating the concept, therefore, requires unpacking assumptions about the meaning of social contract and how reason, passion, difference, power and dynamics of accumulation can be incorporated into it in ways that are both principled and practical.

Violence in human interaction is reproduced through time and space. It will not disappear after a peace negotiation, for example. The social contract needs to be mindful of its persistent mechanisms of reproduction and how they can be addressed. In addition, the universalized central – white male property owner - identity assumed by early social contract theorists must give way to an understanding of multiple identities, their different interests and how power has operated to enable some to gain dominance over others, leaving us with a notion of the social contract that recognizes diversity and understands the way in which inequalities embed themselves over time in structure like forms or institutions.

¹⁵ Interestingly, North poses a similar disjunct between closed access orders, which are similar in outcome and operation to Robinson and Acemoglu’s extractive institutions and open access orders which are the equivalent of inclusive institutions. He does not however, privilege critical junctures in the same way, noting only that the “transition [from one to the other] entails a set of changes in the polity that ensures greater participation by citizens and secures impersonal political rights, more transparent institutions structuring decision-making processes and legal support for a wide range of organizational forms...” North, D, Wallis J and Weingast, B p. 2

This in turn implies strengthening the (bargaining) power of those who have been historically powerless, not through mere 'empowerment' but through enabling voice and organization and new understandings of non-dominating power which enable others. This must transcend the use of power along communal or ethnic lines but reflect a flavour of a universalism which recognizes particularism while incentivizing identification with wider goals – such as nation building. This requires both strengthening the bargaining parties but also providing a bargaining context which enables meaningful participation in spite of institutionalized inequalities. By setting out the factors that may contribute to an operationalization of the social contract, Jenny Pearce may also be suggesting answers to the question about whether it is possible for the international community to engage in such a way as to increase the likelihood that critical junctures or “moments” may result in a shift to inclusive institutions.

Sheelagh Stewart spoke about her research on the 1979 settlement in Zimbabwe. The argument presented in this paper is that the mobilization of the rural peasantry that resulted in the War of Liberation 1965-1979, produced a critical juncture. The question posed in her paper is whether the 1979 talks maximized the chance of change to inclusive institutions – or an open access order. She noted that the talks were constrained by several factors. Firstly, despite the war, the liberation armies had produced only a stalemate, not an outright military victory. This meant that the liberation forces could not prescribe the terms of independence but were only party to a negotiated political settlement brokered by the British as the colonial power. The British mediated the discussions but they also had their own concerns – managing domestic public opinion by ensuring that the settlement did not dispossess the white population and extracting themselves from the colonial responsibility. The parties at the table all had reason to severely distrust each other. Although the talks were ethnically inclusive women who had played a critical role in the armed struggle had been excluded. However, land was removed from the discussions and a ten year moratorium was placed on this key to economic inclusiveness. This she argued meant that in this instance more inclusive economic institutions could not follow logically from the more inclusive political institutions. Inclusion therefore is not limited to parties but also to the economic levers of power.

Tim Sisk discussed the links between social cohesion and the social contract, making the point that the social contract underpins social cohesion because it gives everyone a stake in the new context. A key point he noted was that for development assistance to be effective, the state must be inclusive at the “commanding heights” of power and in terms of macro-economic level policy making. Like Sheelagh Stewart, he noted that the promise of inclusion has to “mean something” – both politically and economically. Work focused on capacity – or building efficiency - therefore has the potential to undermine inclusion if it sacrifices inclusion for efficient operations. This point that inclusion is logistically difficult, but not the only goal – and that inclusion might matter more recurred through the conference. He concluded by noting that public administration reform requires consensus-oriented decision-

making, policy-making, and implementation... inclusivity may initially undermine effectiveness at the decision making and policy phases, but it increases long-term effectiveness and sustainability.

Erin Mcandless discussed non-state actors in FCAS, noting that they can develop and maintain considerable influence in the forging of a new social contract because they deliver services – often at a time when no-one else can. Legitimacy, she noted, is context specific but legitimate local actors – especially those who have delivered services - can win trust particularly when the alternative is a group whose institutions may be unknown and cannot respond at local levels. It is therefore vital – particularly to building trust to understand these actors and draw them into the process of recovery and the nurturing of a robust social contract. This is particularly important because these powerful actors sometimes run structures which are a real alternative to the state. They can therefore play a powerful role in contributing to (or undermining) the state’s own efforts to forge a robust social contract. In considering these NSA it is important to interrogate the link between inclusion in process and who is delivering needed services on the ground.

The Policy Implications - How Does a Focus on the Social Contract Shift our Approach?

This section was based on the rich set of workshops discussions in the conference, which set out the key themes and provide us with the basis for further work and texting of the social contract. Where relevant and useful, points from the literature are introduced to augment and support the outputs of these discussions. The clear conclusion reached by all discussants and backed by the evidence of settlements that endure is that neither elites alone nor elite exclusion is the right platform for the development of a social contract. The group discussions concluded that the social contract overall makes us focus on the idea that effective governance is based on a 'deal' between people/citizens and the state and that its maintenance relies on maintaining this balance. Elites are an important part of this deal, but their importance must not be so privileged that states remain extractive in nature.

1. **The first** and most important notion stemming from a concern with the social contract is a concern with the **interface – or interaction between the state and its people**. It is not one agreement once only, but setting the context for an ongoing discussion about the nature of the state. Firstly, this means building state and citizen collaboration in all of the areas where the state and people should and do encounter each other and increasing the possibility for these exchanges. It also means a focus on and valuing forms of governance – whether formal or informal which prioritise and facilitate this interface. When governance is seen as a constant negotiation about power across society – it directs attention to the formal and informal moments when positive interaction between state and citizens are built. As group 2 noted, it also directs attention away from thinking about the demand and supply side of governance in a siloed fashion and towards building institutions and organisations focused on collaboration both politically and economically. When thinking about incentives, it also shifts the focus from incentives to obey rules to incentives to collaborate – both politically and economically.
2. Secondly, it prompts a shift of attention to the possibilities for active collaboration politically and economically. Where a traditional governance approach talks about incentives to following the rules, a social contract approach emphasizes the incentives for collaboration both economically and politically, as this has the potential for establishing a more co-operative and less zero-sum path forward. Phillips argues that the Somaliland settlement which has held for a quarter of a century in spite of a war torn context, has held precisely because it managed to draw political elites into collaborating to make money.
3. **Critical junctures** - moments when it is possible to make change – and negotiate a new deal between people and the state are important opportunities. Fragile states are beset with crises that suspend normal ways of doing business and therefore potentially present these moments of 'brief change or institutional flux during which

more dramatic change [than normal] is possible'¹⁶. Examples include – formal peace negotiations after a conflict, the national dialogue that follows popular revolution or major reform processes. Critical junctures also result from natural disasters most obviously in Haiti – where the extent of the disaster paused normal business. Other moments can be generated from a slow burning and incremental crisis and the Zimbabwe elections in 2012 and Yemen where there was no conflict, but other problems had the effect of pausing normal business - in are both examples of these.

These junctures represent important windows of opportunity for change but can easily be squandered if the wrong objectives are pursued. What matters in these moments is **both** the restoration of stability **and** the creation of a space for change. The international community has made key errors in engaging with these processes in the past. First, they have emphasized immediate peace – coupled in some instances with an ability to exit and shed responsibility (Zimbabwe, Afghanistan) rather than enduring settlements which build a basis for managing future conflicts. This has led to an over-reliance on elite bargains and elite power as a rapid route both to stop the conflict and hold the peace. As Robinson and Acemoglu (op cit) observe, it is precisely these elite bargains that have given rise to conflict over power and resources, in the first instance. Consequently, some peace processes have been very expensive, hurried and in some instances (South Sudan) crumble after a short period of time. Moore notes that when citizen groups take part in reforms then it is more likely that the institutional models that emerge will enable collective action to engage, influence policy, monitor delivery and hold the institutions to account.

4. **Understanding the specifics of the context.** All of the groups noted the need for understanding the specifics of the context and in particular the need to understand how history has shaped the patterns of state-society relations and the structures that distribute power and wealth across societies. These vary hugely from context to context, but in essence processes of bargaining between the state and social groups and across social groups create the form of governance. It stands to reason that exclusive processes result in exclusive societies – societies with limited growth and development and because resources are scarce - conflict. Conversely, there is evidence that when citizen or user groups take part in reform, this can generate institutional models that enable citizens to organise collectively, influence policy and hold service users to account.¹⁷ Violence, or the threat of violence can produce extract relationships which benefit very few but if common interests can be found then sufficient common understanding can be forged to co-operate. This may in turn form the basis for the creation of greater social cohesion and collaboration across

¹⁶ Capoccia, G. and Keleman, D. "The Study of Critical Junctures in Historical Institutionalism"

<http://ecohist.history.ox.ac.uk/readings/critical-junctures.pdf>

¹⁷ Moore, "An upside down view of governance" IDS 2010 pp.38; 73

society. The way negotiations are conducted and the context of the struggle over resources and power varies hugely across different contexts and if the international community is to be of assistance, a detailed understanding of the political economy is required. Policy makers need to switch their attention from formal institutions towards mapping and understanding the complex interactions between public and private actors, the state and informal institutions. In a globalised world, external actors – possibly including bilateral donors, and their interests are also important and sometimes – as the group on Afghanistan illustrated, critical. Key questions in this enquiry might include ‘what is shaping the interests of political elites’ what sort of economic opportunities exist and encourage collaboration to make profit – ‘win-win’ rather than violence?¹⁸ Here groups noted that we cannot ignore the possibility that both outsiders and elites stand to make a great deal of money from valuable resources in many fragile states. This can set incentives that encourage elite bargains, and discourage collaboration across the society. So any political analysis needs to be clear about how the countries natural and mineral resources, may be facilitating the opposite of the social contract. Similarly international interests and approaches – for example the war on terror, may mean that assistance again is responsible for skewing incentives – in some instances towards exclusive societies.

5. **Inclusion - getting citizens around the table - building a inclusive platform for negotiation.** Discussants began by agreeing that inclusion in negotiations about the future state is critical for legitimacy.¹⁹ However, inclusion is logistically daunting and difficult to operationalise and the focus on elites may in part be a response to this difficulty. Groups made the following points about how to increase inclusion. Inclusion has to ‘**mean something**’ both politically and economically. Both political and economic issues have to be on the table and negotiated. It is particularly important that the economy is not left out of the equation because the relationship between those who hold power in the economy and those who hold power politically is very important

6. **Work with groups that already exist.** Case studies from Afghanistan, and Rakhine State Myanmar emphasized the need to engage with groups that already existed and build from there. This needs to include working with spoilers and groups 4 and 6²⁰ discussed taking context as the starting point or ‘**learning to dance with the ugly... but not oil the squeaky wheel...**’ Although it is important as group 4 noted, to dance with the ugly – the spoilers, it was also noted that sometimes in peace processes, ‘firepower pays’ leading to processes which tend to reward the victorious and the

¹⁸ See Moore, M “An Upside Down View of Governance” IDS 2010, pp12-13.

¹⁹ Group 2 noted that the inclusion of women in peace agreements can reduce the return to conflict by 64%ICAN, conference participant.

²⁰ Group 6 listed possible spoilers as including armed gangs, jihadist movements, clans, rebel movements, vigilantes private security groups...

violent at the expense of the losers (e.g. Sri Lanka) and this can work against the prospects for long-term stabilisation. One of the participants in the conference therefore noted the need to 'avoid oiling the greasy wheel'. The key notion that emerged is the need for balance between different interests – or as Group 3 noted – to take the peace actors as seriously as we take the spoilers. **If we are to do this effectively then** as groups 5 and 6 noted we need an excellent analysis of the formal and informal political economy of the context which identifies actors, their motivations and also identifies points for entry and engagement. Finally it is important that convenors of peace processes are impartial and do not impose their own agendas. The examples of Iraq and Afghanistan where security considerations have dominated peace processes (the exclusion of the Taliban was allowed), or the example of Zimbabwe, where the British who convened the 1979 talks had both been deeply engaged as the colonial power and wanted to terminate their governing responsibility are both examples of practice to be avoided if at all possible.

7. **Horizontal and vertical inclusion.** Inclusion is not just about a seat at the table, but **how** that seat is utilised. In thinking about how to practically operationalise inclusion, Group 3 proposed the notion of horizontal participation - giving representative groups a seat at the table and vertical participation – ensuring that those not at the table were given meaningful opportunities to participate. The question of who gets a seat at the table needs to be decided on the basis of context and the principle of full representation.²¹ One interesting observation that emerged from the groups is that we need in some way to distract political parties from waging war against each other inside political fora and enable them to concentrate on engaging their supporters. In addition, that it is not sufficient just to reflect majority views – that minority views need also to be respected in the peace process. Finally, a power analysis is very important – because whether settlements last depends on how power – over politics and economics is distributed and balanced across society. **New technologies** have the potential to be incredibly important both in bringing people's views into discussions and in reaching out and communicating progress to people. However, we need further work to discuss how this might work in the context of the future state.
8. Group 3 noted that it is important to use dialogue and negotiation in **supporting groups to identify and communicate their vision**. This highlights the second element of inclusion – that it is not only about getting a seat at the table, but using participation effectively. In the often time-limited context of negotiations it may make sense to appoint a specific set of actors within each negotiating team who are tasked with and capable of reaching both outward to their followers and across the

²¹ See Philips, S. Political Settlements and State Formation – the Case of Somaliland DLP Research Paper 23 November 2013 for a discussion about how this worked and failed in the context of Somaliland.

table to gather ideas and facilitate conversations especially over tricky issues. Putzel and Di John flag the need to have trained mediators working within the international community²², but each party to the negotiation should ideally task individuals to play this role and it may be worth the international community providing rapid mediation training to equip national actors to manage these windows of opportunity. Out above which is a useful place to start considering the skills required for non-state actors to engage in political and economic negotiations. Key actors in groups with a seat at the table need to be able to engage in difficult political and economic negotiations, but nevertheless continue to represent sometimes very marginalised communities. These skills are not easy to come by, and support to non-state actors in deciding what skills they need and then identifying them may be helpful. Charles Chauvel discussed some of the relevant skills in enabling participation of women. The training programs he outlined went beyond the women's groups and focused also on enabling other actors to understand and accept the importance of women's views. Political parties, for example, were taught the importance of welcoming women whilst women's groups were given training in leadership and a better understanding of barriers to their participation. This underlines a critical point about skills required for negotiation and for engagement with the state – both sides have to have training in how to hear – different points of view and how to express them. Training needs to focus on building the basis for constructive dialogue with all actors, not just focus on a favoured few with single episode training.

9. **Switching the focus - 'elite enough' rather than 'inclusive enough'**. Settlements that exclude some groups and do not include all important political and economic issues will not stay the course. **However, settlements that do not include elites will also fail.** Here the notion of balance matters – and groups emphasized the notion of more balanced negotiations – noting that elites are important but their importance must not be so privileged that change becomes impossible and states remain extractive by nature.. hence the idea in the title which emphasizes a different notion of balance from elite settlements. Putzel and Di John refer to the 'central role played by elite bargains'²³ **embedded in wider processes** – that is embedded in institutions that enable openness and penalise the rule breaking that is the basis for the extractive behaviour of elites.

Initially, particularly in fragile states where there is little organising power, some interesting pointers arise from a comparison between the conference's consideration of Afghanistan and Sarah Phillips work on Somaliland. Somaliland did not receive

²² P. 12 <http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/download/finalreport/Meeting-the-Challenges-of-Crisis-States.pdf>

²³ Putzel and Di John p. iii

<http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/download/finalreport/Meeting-the-Challenges-of-Crisis-States.pdf>

external support – because it lacked (and lacks) formal state status. Consequently, very few funds were channelled into the peace process and it was therefore **lead** by Somalilanders who negotiated a **balance** between different elite coalitions of ‘roughly equal’ power. What seems important here is that a wider range of elites who were anchored into a clan representative structure were brought into the negotiation. The workshop session on Afghanistan notes, by contrast, that ‘the international community wanted to pursue its own agenda in Afghanistan’, the Taliban were not included and further the engagement of the international community ensured the functioning of parallel systems. This resulted in a settlement which did not change the governance system in Afghanistan a great deal.²⁴ The Somaliland process has delivered a stable peace for 25 years, Afghanistan’s negotiations have yet to deliver a pause. In short – when interests are balanced co-operation is necessary and this in turn makes it more likely that constituencies will be engaged and peace, law and order maintained.

10. But what if this is not possible? – the fragile states conundrum In discussion about representative groups and their role a conundrum connected with fragile states emerged. Effective representative groups are often unusual in contexts which have previously been dominated by extractive institutions. This is not incidental – and is precisely because this exclusive institutions state configuration does not make organising worthwhile – ‘natural states limit the ability of individuals to form organisations’,²⁵ - and therefore to organise. In this sort of context, there are barriers to forming organisations and organising can be dangerous and does not necessarily improve things, so there is little point.²⁶ This was reflected in the working groups - one of the groups noted the pervasive weakness of civilian actors in South Sudan, whilst another observed that in Afghanistan, NGOs were included but that they were used to deliver services only. There are several ways in which this problem can be managed and they are detailed below. However, what is critical is that these approaches are temporary and that, if possible, the international community, uses its leverage to ensure that they are a stepping stone on the route to a more inclusive state. Interim possibilities that allow for the future possibility of inclusion are suggested below.

11. Bringing contentious elites into the state and creating a balance between the power of different elites within the central state structure. Both Somalia and

²⁴ See also Schirch et al

http://www.usip.org/sites/default/files/Designing_a_Comprehensive_Peace_Process_for_Afghanistan.pdf

²⁵ NWW p. 2.

²⁶ North notes that societies are “characterized by the way societies craft institutions that support the existence of specific forms of human organization” p. 1 and goes on to note that in “open access orders” impersonal categories of citizens – or organisations – are enabled to interact over wide areas of social behavior p. 2.

Zambia are examples of where contentious elites were brought into the state structure, whilst the Afghanistan case study illustrates the outcome if key groups are excluded. Again the critical notion here is that if elite interests are at least balanced, then this requires co-operation – which can act as an incentive to maintain peace. In addition when elite interests are balanced, going to war to secure wealth becomes a more expensive option and peaceful competition for resources more likely. Peaceful co-operation for resources can in turn create openings for organising.

12. Limiting executive power At the same time to preserve the space for future engagement it is important to limit the power of the executive. Putzel and Di John discuss Zambia where the power of the executive was limited first by ‘allowing and institutionalising the position of powerful non-executive actors within the party/state rather than subordinating, marginalising or repressing them. Second, abuse of power by the executive authority was limited by a “third party” enforcer by respecting the independence and abstaining from attacking the Zambian trade unions.²⁷ This assumes however, a non-state actor in the form of the trade unions. When powerful non-state actors are not present, strengthening of local governance can form a viable centre of alternate power. Negotiations that allow the space for future organisation and engagement in the economy may provide sufficient incentives to organise.

13. Outcomes matter Finally, Di John and Putzel argue that ‘while patterns of inclusion and exclusion are central to the resilience of settlements... they are important more in terms of outcomes than the formal institutional arrangements governing access to state power’²⁸. While it is clear that pure elite bargains tend to replicate themselves over time, it may be possible to disrupt these through a settlement which in outcome balances elite interests with those of the marginalized through enabling inclusion in the political and economic arrangements. These in turn generate the need for the growth of a rich network of organisations who can negotiate the future space. In terms of how to think through this, the ability to **legally** and **legitimately** organise matters. This involves agreements on the rights to assemble, to meet in groups and to be engaged in the economy.²⁹ These are norms usually included in Constitutions, but negotiations need to include a focus on what these mean and how to ensure that

²⁷ Putzel and Di John

<http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/download/finalreport/Meeting-the-Challenges-of-Crisis-States.pdf> p. 36.

²⁸ Putzel and Di John, p. 18

<http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/download/finalreport/Meeting-the-Challenges-of-Crisis-States.pdf>

²⁹ Douglas North notes in this regard that political rights, more transparent institutions structuring decision-making processes and legal support for a wide range of organizational forms including political parties and economic organisations.” P.2

they are protected. It is critical also to include not just the ability to engage in politics but also the ability to engage in the economy.³⁰

Once the initial crisis has ended, a window of stability opens. This can be very brief – in South Sudan only two and a half years elapsed before the initial agreements collapsed into renewed conflict – this time along South-Sudanese ethnic faultlines. One of the critical failures of the international community in fragile states has been to assume that the peace process completes the critical business and to disengage at that point³¹. A second mistake has been to assume that once there is a formal government, that the design and particularly the efficiency of **formal** state institutions determines political or economic outcomes. This assumption has meant that many development partners have concentrated expertise and resources principally on formal institutions of the central state. This has had the impact of consolidating executive power and exacerbating (or introducing) patterns of excluding those outside the central state. In some instances this focus has also been reflected in geographical exclusion. The case study on Nepal noted that the pattern of excluding people in the was deliberately reversed with the entry of indigenous people into government. In Sri Lanka, by contrast, the military remains in the north perpetuating patterns of distrust and exclusion. The key takeaway here is that the international community, needs to in the words of group 3, remember that transitions are not like a photo but like a movie, with a successful negotiation only the introduction to the main narrative – which is fraught with continuing distrust. The balance of this section sets out the key lessons on how to maintain the social contract after the critical juncture.

In addition, as groups noted, power is not confined to the central state and depending on the history and context, informal or regional institutions can be very influential and therefore important in developing governance.³² The more familiar NGOs by contrast may be capital city based and not relevant to marginalised communities.

14. Institutions, institutions, institutions... If peace agreements, national dialogues or reform processes are critical to establishing the new rules of the game, it is Institutions that reproduce, reflect and reinforce these rules. Often understood as a

³⁰ Sheelagh Stewart's study makes it clear that political inclusion is insufficient in the absence of economic inclusion.

³¹ This is most strikingly obvious during the Soviet War in Afghanistan where the US spent US\$ 9.5 billion supporting the Afghans in the war, but Congressman Wilson failed to raise small sums for reconstruction and stabilisation in Afghanistan. Other examples include Zimbabwe and most recently South Sudan where reports note that critical work post conflict has been slow and that international actors have focused on support the the Central State business as usual rather than on continuing the work to include minorities.

³² Moore, op cit discusses the importance of informal institutions in contexts where a small bureaucracy has managed large territories through a chain of hierarchical relationships and illustrates how this is key to citizen voice and engagement with the state in these contexts. P. 55.

specific and specialised type of organisation, institutions are better understood as **the rules of the game**. They operate in society in a way which is analogous to the way in which rules operate in a game of football. Organisations, both formal and informal, public and private – are the teams that play the game. And the state's role suggested by a focus on the social contract is in some ways like that of a referee – a neutral mediator who governs how the game is to be played and enforces the rules. The referee is listened to - or has legitimacy - because everyone agrees the rules and 'buys in' to the game. Peace over the longer term therefore depends on how the rules agreed in the deal between the state and citizens, are institutionalised and how well the different teams play the game. International actors can be important in supporting the process of institutionalisation – or institution building, and a focus on the social contract suggests several new directions.

A constant element of the discussion was the importance of institution-building. The state does not have to do everything. Groups noted that institution-building, which is commonly conceived as a technical task which is similar to organisation-building is in fact a politically sensitive endeavour. It takes a long time and is focused on building and maintaining rules of the game which reflect and reproduce the new deal and supporting the different organisations or teams as they play this game. Transitions can generate social contracts, but long term stability and maintenance of new understandings depend on institutions which reproduce the social contract across all areas of life. An open economy does not result from a constitution but from the removal of barriers which have prevented participation in the economy in the past. Without new rules, and practices, it is easy to slip back into the old way of doing things. A good example is that of emergency powers legislation. Often introduced in fragile states which are politically volatile, emergency powers are the institutional reflection of dictatorship, allowing arbitrary arrest and detention without trial. If they are not abolished when a new order starts, they provide a convenient and quick way of dealing with difficult questions and troublesome opponents. The use of emergency powers in a state which has prioritised voice and inclusion, is a breach of the social contract which erodes state legitimacy and trust.

In states which have developed a new deal with their people, it is important to work gradually and as collectively as possible - through the rules of the game to ensure that these reflect, reproduce and reinforce the new order, and do not enable a slip back to the old ways of doing things.

- 15. Capacity development:** This in turn suggests that capacity building is not a technical endeavour focused on building efficient Weberian democracies. If core capacities are to include, enable buy in – and for those included – to negotiate the new deal and to hold governments accountable for delivering it, then the core capacities of the

state include the related set of skills. A focus on the social contract suggests a different approach to capacity building. If the objective of government is to rebuild and refresh a social contract then one of the most important core functions of governance is the maintenance and renewal of the relationship between the state and its people. This means that core government skills in the domestic arena are the peaceful mediation of ongoing disputes over power and resources in society, incentivising open competitive engagement in both the economy and politics and ensuring a fair distribution of public goods across society.

In fragile states, which are often fragmented, this will involve the capacity to negotiate with a wide range of diverse actors. This might include a private sector with international linkages, diverse political parties and movements, severely disadvantaged, marginalised and vulnerable constituencies, armed opposition groups, and typically a proliferating groups of multilateral and bilateral donors, national and international NGOs.