Reflecting on the IGAD peace process

An interview with Nicholas (Fink) Haysom

Long-time legal adviser to former South African President Nelson Mandela, Fink Haysom has extensive direct experience of mediation and facilitation in a number of peace processes. From 2002 he worked under General Sumbeiywo on the IGAD peace process.

How did you get involved with the IGAD peace process?

I was asked by General Lazaro Sumbeiywo’s predecessor as mediator/facilitator, Ambassador Mboya, to provide an opinion on how to bridge the differences between the Sudan People’s Liberation Movement (SPLM) and the Sudanese government on the issues which divided them, notably their approaches to the relationship between the state and religion, and to the nature of a federal solution to the conflict in Sudan. When General Sumbeiywo assumed the mediation role he thought some of my suggestions useful and asked me to join his team in Machakos, Kenya. When I arrived, I found the parties affirming their previously held positions and maintaining close adherence to their respective position papers. The General and I recognized that it was important to generate a single negotiating text and to move the parties from their mutually contradictory position papers. We set that aim as our priority, but the question remained of how to get the parties to agree to a single text.

How did the Machakos talks achieve a breakthrough where other previous initiatives had failed?

Machakos was indeed a breakthrough. It not only generated a basis for a common text but it also saw the parties agree on both principles and details on issues that had previously seemed intractable. Firstly, the two parties agreed substantively on a way of dealing with the relationship between the Sudanese state and religion. This issue had been the stumbling block in previous talks between the parties and had served to prevent the parties from progressing to other substantive issues. It had been suggested that if this issue could be resolved other issues would fall into place. Secondly the parties agreed on a set of general principles to govern a federal Sudan. Thirdly the parties agreed significantly on the right of southern Sudan to hold a referendum on its continued union with northern Sudan after a six-year trial period. The last two
issues in essence constituted a trade-off between the parties, while the first contained an internal compromise on the part of both parties.

In order to break the pattern of simply restating previously held positions, the General suggested that I present a workshop to the parties dealing with constitutional negotiations and problem solving. The workshop format was itself useful in that it placed both parties on the same side of the table – as workshop participants – rather than in an adversarial (across the table) setting. As the subject of the problem-solving exercise it was decided that we should take the state and religion problem, canvass alternative solutions from the parties and have the parties rank them against shared criteria. Using this exercise as a basis, we prepared a single negotiating text reflecting these discussions, and from the alternatives generated in the exercise we were able to suggest the compromises that would form the basis of a protocol containing a model of asymmetrical federalism.

I should mention that at the last moment both parties seemed to draw back from reaching an agreement. It appeared to the facilitators that this was not on account of the suggested proposals but for lack of confidence, a fear on the part of the lead negotiators that they had over-reached their mandate. Out of frustration we decided to put both sides under an ultimatum, to leave them in a room together for an hour within which to secure an agreement. While we had expected the parties to engage with each other we noted that each instead sought to call their principals. This confirmed our view that for the negotiations to succeed the principals – not then at the table – would have to be constantly engaged.

As it happened the principals agreed to the proposals. The signing of the Machakos Protocol surprised both the parties and the international community and generated, on the part of the facilitation team, considerable optimism – even euphoria. We were to learn, however, that as one reaches the top of the hill new mountains become visible.

**How did you proceed after Machakos?**

When reviewing a successfully concluded agreement in retrospect, it is tempting to view the history of the negotiations as a linear progression. This is not so. There were many reverses and knife-edge moments during the negotiations. There is a fine line between failure and success.

As with other negotiations, the IGAD peace process would reveal that every solution to an apparently intractable problem would bring forth new and equally difficult differences to resolve. Whereas the Machakos Protocol implied that the remaining negotiations would simply involve the further development of the principles set out in the protocol, in fact the negotiations became more difficult, throwing up unforeseen conflicts as the parties progressed.

After the two parties returned to the negotiating table following the signing of the Machakos Protocol they both presented the mediators with a set of new issues which had not been canvassed at the Machakos round
of talks. The SPLM in particular had been told by its membership that the protocol had neglected the three conflict areas in the north (Abyei, the Nuba Mountains and Southern Blue Nile). These areas had, properly, not been counted as part of the south and they had not been considered as within the terms of reference of the mediation. The SPLM however insisted that they would be unable to reach a deal without addressing the concerns of their members in these areas. On the other hand the government became more insistent that the negotiations could only proceed if there was a ceasefire or cessation of hostilities. This issue came to a head when the garrison town of Torit was overrun, with considerable loss of life. The talks became a hostage to battlefield fortunes. The mediation eventually got back on track on the basis of an agreed cessation of hostilities by the SPLM and an agreement to convene supplementary negotiations on the three conflict areas nominally under Kenyan rather than IGAD facilitation, but still under the chairmanship of General Sumbeiywo.

Once these issues were resolved it was possible to return to the substantive issues, only to find that each new issue was, according to the parties, more important than any other. Thus we were told there could be no peace without a resolution on the modality of sharing oil revenues. Later we would be told that there could be no peace if there was no agreement on the status and treatment of the armed forces of the SPLM. And later still, we would be told that there would be no agreement unless the details on its implementation were also agreed.

Regarding the mode of negotiation, we experimented with sub-committees and technical teams, and continued to develop consensus on the agreed text, leaving the unagreed issues in bold.

When it became apparent that the parties were digging in on the details and refusing to budge, we suggested that the mediation team put forward a compromise proposal. This was accepted, and the General and his team commenced travelling through much of Sudan canvassing the opinions both of ordinary people and of leaders, north and south. There is considerable risk in advancing a mediator proposal and this was evident in the IGAD peace talks. When we unveiled our proposal it appeared that we were ahead of the parties. Although the eventual agreement would closely resemble the mediator’s proposal, at the time at which we advanced our suggested solutions the parties were not ready for the compromises put forward, and the government’s reaction against it was particularly strong. This draft produced a strain between the mediation team and the government side which was only resolved when the negotiations took a new form in which the principals, Sudanese Vice-President Ali Osman Taha and SPLM leader John Garang, directly intervened in the talks in September 2003.

**How did the talks change with the arrival of Taha and Garang?**

The talks were renewed under this new modality and from this point we were largely in the wings. The leaders negotiated and, in a sense, took ownership of the process. We came in to summarize, help formulate agendas, rewrite text and suggest compromises, but only occasionally did we perform a deadlock-breaking role. We encouraged them to use their principal advisors in sub-committees, but with an obligation on them actively to seek compromises.

Garang and Taha needed some time to get to grips with the substance of the talks and to develop their own relationship. They were both under pressure to find each other, and they responded.

Bringing the top leaders in as negotiators is risky. In South Africa there was a clear line between the top negotiators and their teams, with the teams doing the hard bargaining. This is what I would normally advise. If you bring the top leaders face to face, what happens if there is deadlock? Leaders’ meetings need to be a forum of last resort.

**What was the role played by others, beyond the negotiators and mediators?**

It’s amazing how quickly the details of substance of the agreements spread. The internet allows for involvement by the diaspora, who had access to developments in autonomy negotiations elsewhere – such as in Sri Lanka.

The observers and envoys played a mixed role. The US representatives would pressure us because they too were under real pressure to deliver because of US domestic politics but we also needed them and worked with them. They applied vital leverage. At times the parties would ask us to ‘liberate’ them from the various envoys in attendance yet at the same time of course they were arranging their own bilateral meetings with them. The General was famously quite tough with the envoys, ejecting them from the premises at certain critical stages.
What were General Sumbeiywo’s qualities as a mediator?

He was new to mediation, and accordingly he actively sought advice from a range of experts and genuinely listened to it. Crucially, the parties accepted his integrity. He could be brusque, and some accused him of punching above his political weight, but they knew he was not manipulative – which is a notable achievement, because in the low-trust world of mediation, mediators are suspected by both sides of having their own agendas. Quite correctly, he tried to be assertive on process but leave substance to the parties.

Why was reaching the point of signing a comprehensive agreement such a long process?

Negotiating the implementation details took longer than many observers wanted, but for us it was an essential element. Implementation is often the poor child of peace negotiations. The parties were embarking on this huge collaborative project, with low levels of trust and no policeman, so they needed detailed guidelines for implementation. The SPLM, as the non-state party, was understandably keener than the government.

The text of an agreement cannot itself substitute for political will. It can help impose discipline, or on the other hand can even be a source of problems, but it only goes so far. So the process elements in negotiations are vital in creating the will, the trust and the joint responsibility for the success of such a project.

Only when you’re over the hump of a negotiating process do the parties begin to believe in it, to visualize the new institutions. After the end of the negotiations the parties jointly had to negotiate a transcription of the agreement into the form of a constitutional amendment. That this agreement was reached swiftly and without third party intervention bears witness to the parties’ and mediators’ willingness to invest time in the process.