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On the Ethics of Inclusion of Human Rights Abusers in Track Two Processes

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Abstract

Track Two diplomacy is a field of conflict resolution that has been, since its inception in the 70s, known to be a potentially effective complement to official diplomacy in protracted conflicts. However, in such conflicts, parties dehumanize each other over time, to the point where human rights violations are committed and, in the social constructs that are the causes and products of those conflicts, justified. We analyze, through the evolution of ethics in peacebuilding in general and Track Two diplomacy in particular, how interactions with human rights abusers should be viewed and handled. We come to the conclusion that situations and actors are varied enough that no generalization can be made, but along the way we identify useful tools and frameworks to better tackle this moral conundrum.

Introduction

Since the end of the Cold War, the conflict resolution field has notably changed, because the nature of conflicts has changed. Where armed conflicts mostly revolved around material interests and were more or less managed by one of the superpowers, the more violent armed conflicts and humanitarian emergencies of today are born of long-standing ethnic and/or religious disputes. Tensions of that nature have always been present in the areas where they are present today, of course, but were repressed or managed by the two poles of power. The dislocation of the Soviet Union and the disinterest of the United States means that such long-standing issues can now be "handled" by states without the fear of forceful intervention (or, indeed, forceful dispute resolution) from one of the poles of power. One such example is the war over Nagorno-Karabakh, which was put on hold for most of the 20th century; it has been a point of contention between Azerbaijan and Armenia since the 1920's, when the Soviet Republics were divvied up by the central government in Moscow, but tensions flared up again shortly the

Soviet Union broke down[1]. This is a textbook example of an intractable conflict, as ceasefire agreements are signed only for clashes to resume months later.

The academic field of Track Two Diplomacy has, since its more formal inception in the 1980's[2], been the subject of many ethical discussions. As one would reasonably expect from a practice that presents great potential rewards, as well as equally great risks, these discussions involve all aspects of the field – from the nature of the participants and the third parties, or how the workshops are conducted, to more "meta" aspects, such as who provides funding for Track Two activities, and how it is managed and disclosed[3]. Obviously, discussions on ethics are never truly closed, especially for the more complicated aspects of the practice that pertain to social sciences – talks about the inclusivity agenda are a testament to that[4]. Nevertheless, some general ethical guidelines have been drawn over the years, such as the inclusion of a valid theory of change before workshops are even planned[5], or the idea that the third party should be as transparent and honest as possible. Since there is no certification for becoming an unofficial third party, practitioners operate with much freedom in how they implement (or not!) the established guidelines of due diligence and good conduct.

The academic landscape of Track Two diplomacy has thus changed and become more sophisticated in the last few decades; as stated above, even if some ethical challenges are unresolvable, most have been debated enough that there is a mostly solid code of good conduct,

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[1] « Armenia - Modern Armenia | Britannica », https://www.britannica.com/place/Armenia/Lesser-Armenia, consulté le 22 septembre 2022a.
[2] Tamra Pearson d'Estrée et Benjamin B. Fox, « Incorporating Best Practices into Design and Facilitation of Track Two Initiatives », *International Negotiation*, 26, 1 (2020), p. 7.
[3] Cf. pages 87-164 in Peter L. Jones, *Track two diplomacy in theory and practice*, Stanford, California, Stanford University Press, 2015, 237 p.
[4] Studies on the necessities of informal diplomacy to address concerns other than those of the elites date as far back as Boutros Boutros-Ghali, *An Agenda for Peace*, New York, United Nations, 1992; articles pertaining to inclusivity in peace processes continue to be published to this day.
[5] Peter L. Jones, *op. cit.*, 2015, p. 54.

at least for the time being. In the last decade, however, world trends have tremendously changed and have brought about new ethical challenges. One such change is the contestation of the "liberal world order", which was thought to be the logical endpoint of the fall of the Soviet Union[6]. Rapid globalization and impotence from multilateral organizations has resulted in growing discontent and nationalism in Western democratic nations, while elsewhere, there has been a rise in power and number of authoritarian regimes. This means that not only is the democratic trend backsliding in these countries, but also that there now exist anti-democratic proponents in Western democracies who look up to powerful authoritarian regimes like China[7]. This is without mentioning that the omnipresence of unregulated social media opens the door to all sorts of nefarious practices, such as public opinion manipulation through disinformation.

Obviously, the ideas behind a "liberal world order" and the "rise of illiberalism" are quite loaded and imply favouritism for a world where the United States and European powers make the rules. The multilateral institutions which are the pillars of the rules-based liberal order were created by Western powers, and their rules have been upheld by these same powers, who sometimes refused to bend to these same rules, because they could. This is not a critique of liberalism; rather, this explains why non-Western nations, particularly in the Global South, may be perfectly happy to now have the possibility to assert themselves in their own region. This is why there is much talk of a multipolar world, in opposition to the bipolar world of the Cold War.

This new multipolar world, the rise of sometimes irreverent authoritarian regimes, as well as the increased influence of public opinion in politics, mean that nations around the world must navigate a very difficult foreign policy environment. For Track Two practitioners, this is nothing

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[6] As prophesized by Francis Fukuyama, *The end of history and the last man*, New York, Free Press, 1992, 418 p.
[7] Nina Græger, « Illiberalism, geopolitics, and middle power security: Lessons from the Norwegian case », *International Journal*, 74, 1 (2019), p. 85.

new; most workshops are held in or around states where democracy ranges from middling to non-existent. Nevertheless, no matter how detached from their own countries practitioners are in theory, in practice it is always more complicated, as there is always some link between states and Track Two practitioners, be they the states they hail from or the ones they work in. The "transfer" phase of Track Two processes, particularly, is where the link between informal and formal diplomacy, that is to say, the link between third-party practitioners and states, is the strongest.

Transfer of ideas and/or new policy avenues from problem-solving workshops into other spheres of society and into policy-making is arguably the most crucial step of any Track Two process. However, whether an outcome is good or bad is often left to the interpretation of the practitioners themselves, some considering that the cessation of recurrent violence and the return of stability is good enough, while others argue that this form of illiberal peace should not be the end, as other societal issues have not been addressed[8]. This is one of the aforementioned ethical debates that are still ongoing; however, considering the decline in quality and quantity of Western-style liberal democracies, and the sometimes rightful contestation surrounding them, the debate parameters have changed.

This bears multiple questions for Track Two diplomacy. What are the ethical implications of engaging with people who have committed abuses of human rights? Should Track Two practitioners use their processes to promote positive peace, or should they push parties to seek an agreement, foregoing accountability for villainous acts? First, I will review the literature on ethics in Track Two diplomacy, and how such discussions were initiated. Then, I

[8] Reina C. Neufeldt, « Ethics of Peacebuilding », *Oxford Research Encyclopedia of International Studies*, 2017, p. 19, http://oxfordre.com/internationalstudies/internationalstudies/internationalstudies/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-86, consulté le 30 septembre 2022.

will present recent ethical guidelines and tools that scholars have suggested to contend with these issues. Finally, I will insert Track Two in the larger debate of peace vs. justice in international conflict resolution.

1. Early Ethics in Track Two

Much of the raison d'être of the academic field of Track Two diplomacy can be attributed to the elaboration of the "protracted social conflict" theory, as first theorized by Edward Azar in the late 70s, even though some Problem-Solving Workshops had been conducted before then by Herbert Kelman or John Burton, for example. According to this theory, the earlier frameworks of conflict studies had placed much emphasis on inter-state relations, and had failed to properly evaluate the importance of such societal aspects as identity-based groups and inter-communal relationships[9]. Persistent conflicts between groups or states, instead of being viewed as independent events, were now being viewed as a cycle of violence that came and went. Periods of peace were only ever temporary, because there were always unresolved or unmet societal needs such as security and recognition.

As mentioned above, the Problem-Solving Workshop predates the elaboration of Track Two diplomacy proper, as well as the protracted social conflict theory[10]. Initially, these

[9] Oliver Ramsbotham, « The Analysis of Protracted Social Conflict: A Tribute to Edward Azar », *Review of International Studies*, 31, 1 (2005), p. 114. – Edward E. Azar's work spanned the 70s notably, with several book and article publications related to peace studies and conflict analyses. This ultimately culminated in the elaboration of the Protracted Social Conflict, the most definitive version of that being in his last published monograph, titled "The Management of Protracted Social Conflict: Theory and Cases", in 1990.
[10] Peter L. Jones, *op. cit.*, 2015, p. 13.

workshops were held to facilitate discussion between Israel and Palestine, in the 1960s, and were run by only a handful of conflict resolution scholars keen on applying more constructivist theories to the field, in opposition to official diplomacy which operates on a strictly realist framework. Gradually, more scholars became interested in elaborating on Burton's work and making it the foundation of a new field of peace studies; in particular, Ronald J. Fisher extensively studied the potential of the PSW and the effective transfer of ideas into the official realm in the 90s and early 2000s, using the term "Interactive Conflict Resolution"[11].

The variety of activities that can be encompassed under Track Two diplomacy make the term evade easy definition. The term was coined by an American diplomat, Joseph Montville, in the 80s; by then, many more workshops had been conducted, in more varied settings, and by all kinds of people. Academically, the field had also become a hot topic, creating more scholars who fashioned themselves practitioners of unofficial conflict resolution. However, as this new form of conflict resolution boomed, standardization did not follow – nor should it have, as unofficial conflict intervention remains a field in which practice is centered on pragmatism, and every individual situation is unique. As Track Two diplomacy encompasses a plethora of different kinds of activities in various parts of the world – and even in one conflict zone, a practitioner may encounter wildly different types of people - building a rigid flowchart would be counter-productive. There nevertheless have been efforts to establish a code of good conduct, following harsh critical comments made by one Track Two scholar, Nadim Rouhana, frustrated by the incoherent and very disparate forms and practices of unofficial intervention[12]. The diagnosis was

[11] On this subject, we use in this essay the eponymous 1997 monograph; however Fisher also later published a collective work, Ronald J. Fisher, *Paving the way: contributions of interactive conflict resolution to peacemaking*, Lanham, Md, Lexington Books, 2005, 251 p.; we could also mention the work of Chris R. Mitchell, who was also involved in Track Two studies at that time. In fact, he contributed a chapter to the above cited work.
[12] Cf. Nadim N. Rouhana, « Unofficial Third-Party Intervention in International Conflict: Between Legitimacy and Disarray », *Negotiation Journal*, 11, 3 (1995), p. 255-270.

that the field of unofficial conflict resolution was at a crossroads between legitimacy and disrepute (as the title of the article implies), as the theories and method of the field had become well-known enough that they were noticed and actively used, but the lack of certification or required qualifications meant that anyone could try their hand at it, provided they had contacts and money. The eclectic nature of Track Two also made creating such certification very arduous, if not outright impossible, and pointless besides.

a. Critique of the methodology of Track Two, or the lack thereof

Since one of the crucial steps of Track Two processes is transfer of ideas to official diplomacy, this loss of legitimacy of unofficial practitioners towards state representatives was potentially lethal to the field. Rouhana does state that one way to regain legitimacy is to standardize terminology and to normalize practitioners having a valid theory of change[13]. More important than the risks to legitimacy, however, were the real, physical risks presented to the population in conflict zones, caused by a free-for-all influx of unofficial conflict resolution practitioners who lacked clear guidance or standards. Mistakes made by such practitioners could cause "damage to participants' credibility, short- or long-term psychological harm, diminishing participants' belief in the possibility of arriving at a settlement with the adversary, or even threats to some participants' lives[14]". This assumes, of course, that practitioners are well-intentioned – which there is no way of knowing. Perhaps the most infamous example of the problems stated by Rouhana comes from a series of conflict intervention activities held around the African Great

[13] *Ibid.*, p. 256-260.
[14] *Ibid.*, p. 261.

Lakes during the eponymous crisis, which has been covered extensively in the collective work *Herding Cats: Multiparty Mediation in a Complex World*.

More particularly, one section penned by Fabienne Hara about the unofficial diplomacy projects held around Burundi in the early 90s is telling. During the crisis, a large quantity of unofficial practitioners, either individuals or international organizations, tried to make themselves mediators or facilitators. They were encouraged by the fact that a religious organization, the Community of Sant' Egidio, had successfully brokered a peace agreement between the government forces and the rebels in Mozambique just a few years prior[15][16]. Furthermore, states had been thus far unable (or unwilling) to properly contain the unraveling situation in the Great Lakes region, which further emboldened unofficial practitioners, thinking they could make a difference. Unfortunately, the response was so fragmented and uncoordinated that the entire process was more destructive than helpful: "Although non-governmental organizations proved to have competitive advantages in dealing with the conflict and had accomplishments to their credit, they also augmented the fragmentation of the international response[17]". This is repeated in more severe terms further in her analysis:

> Private agents have certainly been eager to compensate for official diplomatic mistakes, but their motives, despite being widely and enthusiastically applied, not only failed to solve the problems of

[15] « The relevance of Mozambique's peace agreement | COMMUNITY OF SANT'EGIDIO », https://www.santegidio.org/pageID/30384/langID/en/The-relevance-of-Mozambique-s-peace-agreement.html, consulté le 8 octobre 2022b.
[16] On this subject, Cf. Andrea Bartoli, « Mediating Peace in Mozambique: The Role of the Community of Sant'Egidio », *Herding Cats: multiparty mediation in a complex world*, Washington, D.C, Institute of Peace Press, 1999, p. 245-274.
[17] Fabienne Hara, « Burundi: A Case of Parallel Diplomacy », in Crocker, C. et al, dirs., *Herding Cats: multiparty mediation in a complex world*, Washington, D.C, Institute of Peace Press, 1999, p. 139.

> communication gridlock but also have contributed to the harmful cacophony of competing, incompatible messages[18].

This problem of uncoordinated response and mixed messages is made of greater importance by the fact that the parties in conflict can, and do, profit from it. Modern conflict zones, especially those that face humanitarian crises, are notorious for the information wars that take place on them; we have been made painfully aware of this by the recent Ukrainian conflict, where both sides engage in propaganda and misinformation dissemination, which makes it virtually impossible to ascertain the legitimacy of what reaches us. One of the more prominent figures of the Great Lakes crisis, Paul Kagame – the man who would end the Rwandan genocide and later support several rebel invasions in neighboring countries – is widely believed to have been trained in information warfare in the United States[19][20].

In the case of Burundi, Hara confirms that this overload of both official and unofficial mediators and practitioners did have negative consequences: "The Burundians were clearly able to profit from this confusion, with agents manipulating the different negotiators in order to gain maximum legitimacy[21]". In this regard, one well-known negative effect from an overload of different discussion workshops is that parties in conflict may participate only as a façade, so as to appear to be attempting to work towards peace, when they in reality they have no intention to. They may also engage in "forum-shopping", in which parties pick and choose the discussion

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[18] *Ibid.*, p. 147.
[19] Gordon Smith et John Hay, « Canada and the Crisis in Eastern Zaire », *Herding Cats: multiparty mediation in a complex world*, Washington, D.C, Institute of Peace Press, 1999, p. 103.
[20] A. Walter Dorn, « Intelligence at UN headquarters? The information and research unit and the intervention in Eastern Zaire 1996 », *Intelligence and National Security*, 20, 3 (2005), p. 403. The fact that Kagame was trained at Fort Leavenworth is widely known; whether he really was trained in information warfare is unclear but certainly plausible
[21] Fabienne Hara, *op. cit.*, 1999, p. 149.

workshop(s) which best fit the agenda they are looking to push. In both cases, the intention is not to actually work towards peace, but to gain legitimacy while making practitioners believe that they are achieving something constructive.

On the other end, states (by which we mean states outside of the conflict zone) that once viewed unofficial mediators sceptically had, by then, turned around to viewing them as cheap, useful tools. As mentioned in the introduction and more eloquently by scholars, states are often pushed to action by domestic public opinion, which is shaped by new forms of media: "Television images of human suffering […] can now be counted among the determinants of foreign policy conduct in a democracy[22]"; however, their desire to actually intervene may be very low, depending on how the violence actually affects their interests. Hara makes this new relationship very clear: "For states, the recent upsurge in private conflict prevention and resolution activities is welcome because it reduces the costs of intervention that states would otherwise have to undertake[23]". In essence, emotionally-driven decision-makers inside foreign governments could be pressed to action individually, out of compassion or else, and they could also be subject to outside pressure from their constituencies; however, a state often cannot, in the realist sense, justify a full military or humanitarian intervention when no material interests are at stake. Furthermore, as we come to learn in Gordon Smith and John Hay's account of Canada's involvement in Zaire, an intervention by a multi-national task force backed by the United Nations is extremely difficult to organize and has absolutely no guarantee of success. States also need to contend with political considerations; Canada was chosen to lead this intervention in

[22] Gordon Smith et John Hay, « Canada and the Crisis in Eastern Zaire », in Crocker, C. et al, dirs., *Herding Cats: multiparty mediation in a complex world*, Washington, D.C, Institute of Peace Press, 1999, p. 87.
[23] Fabienne Hara, *op. cit.*, 1999, p. 151.

Zaire because unlike its other Western companions, it did not have a reprehensible past in Africa, but also because it served the Secretary-General in his bid for re-election[24].

In this situation, NGOs and scholar practitioners who were asking for funding to intervene in the conflict represented a cost-beneficial alternative and allowed the state to affirm that they were doing something. The problem, at the time, was that states - and other funders - did not coordinate efforts and types of projects, nor were there any checks in place to make sure that unofficial conflict interveners actually knew what they were doing (theory of change, valid moral reasoning for their intervention, familiar with the conflict setting, etc.). This practice also led to the rightful criticism that these practitioners were trying to impose their own Western style of peace, instead of empowering local communities to reach peace their own way. This situation lead to this often quoted passage from Hara's article:

> For the sake of attracting the attention of financial backers, and thus ensuring institutional survival, several organizations desperately want to be seen at the forefront of the conflict resolution and prevention "industry". […] Agents of parallel diplomacy are, for the most part, the inventors and players of a new kind of intervention by Northern countries. It is still a case of agents from Western civil society crossing over borders, no longer to save people, but this time to make peace and reach a Western-style consensus. […] The field of conflict resolution until now has been dominated by Anglo-Saxon influence and marked by the rationale of democratic systems. Its operating concepts and lexicon are mostly inspired by theories developed by Americans. All these methods aimed at conflict resolution by means of dialogue are based on the precept that it is legitimate to include the authors of a violence perceived as obscene and primal in a rational process leading to a consensus[25].

[24] Gordon Smith et John Hay, *op. cit.*, 1999, p. 91.
[25] Fabienne Hara, « Burundi: A Case of Parallel Diplomacy », in Crocker, C. et al, dirs., *Herding Cats: multiparty mediation in a complex world*, Washington, D.C, Institute of Peace Press, 1999, p. 151.

Arguably, this is the turning point at which Track Two diplomacy scholars attempted to seriously evaluate the risks of their practice, study its ethical implications, and establish a loose set of guidelines. Rouhana's 1995 article, of course, established a list of practical and ethical considerations of unofficial conflict intervention that have since been refined. One such consideration is that the intervention of outsiders to a conflict, especially Americans, may be "raising unrealistic expectations and hopes[26]". This is a point that Hara also raises, in a more nuanced manner, in her own critique:

> Every project does diversify and enrich relations between the international community and the victim populations, creating sympathy for the victims' plight; but every project also gives victim populations false hopes and hides the fact that their suffering is in competition with an array of other tragedies fighting for foreign attention and prioritized according to cynical agendas[27].

b. Motivation for Intervention

This raises the interesting and important point of the motivations behind conflict intervention. Obviously, private mediators or Track Two practitioners do not have the same motivations for conflict intervention as states do. Depending on their status, states may not even have the same motivations as other states – great powers, for example, do not have the same impetus towards intervention as middle powers do. Same goes for liberal and illiberal states.

However, NGOs and individual practitioners have true motivations that may be unique and only truly known to themselves[28]. Where states may invoke anything from national security or interests to a desire to enforce international rules, individual mediators are "motivated by

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[26] Nadim N. Rouhana, *op. cit.*, 1995, p. 266.
[27] Fabienne Hara, *op. cit.*, 1999, p. 152.
[28] "Unlike seasoned politicians […] who act according to the logic of the political world, private entities are usually driven by a variety of quite different motivations". Hara evidently meant this in a negative manner, as saying that individual interveners have nebulous intentions; today the statement still rings true but better oversight and peer reviews make sure that bad actors are made apparent. Cf. *Ibid.*, p. 147.

personal interests. Their biggest motivation is the belief that they have something to contribute towards peace, which is their expertise[29]". Of course, the main issue with this at the time when Rouhana and Hara wrote their criticisms of private conflict resolution was the absence of a verifying mechanism, or rather, that there was missing a way of making sure that these people truly had something to contribute. One of the ethical discussions that has been undertaken relevant to this issue is that of accountability and authenticity in Track Two processes.

2. Accountability and Authenticity

a. Accountability Circles

Fast, Neufeldt and Schirch, in a paper titled "Towards Ethically Grounded Conflict Interventions", worked on addressing the ethical issues of private conflict resolution by combining the legal framework of human rights and some relevant elements from the ethics of care. The rationale behind this work is that there did not exist, at the time, a widely discussed and operationalized ethical code for international conflict intervention; there were codes of conduct for dispute resolution or mediation, and even some specifically for international conflict intervention, but most were ill-suited, did not appropriately draw on ethical theory, and/or "reflected a Western legal perspective[30]". As such, the authors attempted to create guidelines for conflict intervention based on ethical principles; "These principles, like a weathervane, point

[29] Mohammed Omar Maundi, *Getting in: mediators' entry into the settlement of African conflicts*, United States Institute of Peace Press., Washington, DC, United States Institute of Peace Press, 2006, p. 22.
[30] Reina C. Neufeldt, Larissa A. Fast, et Lisa Schirch, « Toward Ethically Grounded Conflict Interventions: Reevaluating Challenges in the 21st Century », *International Negotiation*, 7, 2 (2002), p. 187.

conflict interveners in a direction of best practice, right action, and good conduct. Our focus throughout the article is on the *process* of intervention and not on outcomes[31]".

The first half of these guidelines is based on the legal framework of human rights, which are codified in the United Nations Charter. "According to international law, human rights are inherent and universal, and belong to all individuals by virtue of their humanity. […] Each person has an inherent right to live and be valued. […] Conflict interventions, intended to stop or prevent violence, seek to uphold the value of human life within both those communities who send and those who receive interveners[32]". Despite the fact that this passage encompasses all human life, the tenets of human rights are deeply individual. The authors combine this with ethics of care, which are collective, communal; thus are introduced the idea of the "common good" as defined by communities, and authenticity of relationships. In this case, the concept of accountability – with respect to intervention processes - is born of this amalgamation, and not only does it provide a useful guidepost for interveners in three points, but it draws legitimacy from both the law and morality. If an international conflict intervention process:

- Respects the worth and dignity of those involved;
- Incorporates participatory decision-making to achieve a community-defined common good; and
- Is marked by authentic relationships,

Then, the process is ethically grounded and, necessarily, it would have to be accountable to sending and receiving communities[33]. In fact, the authors developed the concept further, introducing the concept of "accountability circles" (Fig. 1), a series of concentric Venn diagrams

[31] *Ibid.*, p. 188.
[32] *Ibid.*p. 188.
[33] *Ibid.*, p. 190.

describing accountability of parties to their communities and those of others, as well as to the global community. Interveners, by adopting these criteria and making themselves accountable, would avoid suffering the problem of motivations mentioned before, and receiving communities would avoid being submerged by private conflict resolution practitioners trying to impose their form of peace: "[Accountability circles] can limit the negative effects of competition. Competition for funding often inhibits fruitful exchange among interveners about the content of interventions and success of their efforts as interveners strive to show 'their way' is best[34]".

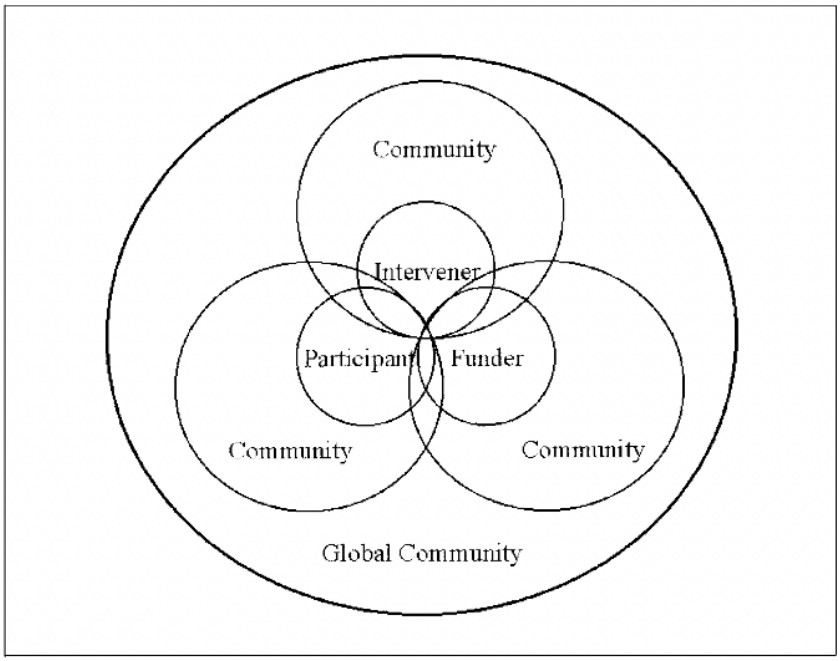

Fig. 1 – Accountability Circles[35]

Of course, there is significant leeway for individual practitioners to define how their activities are accountable. In any case, Fast, Neufeldt and Schirch did not pretend to be devising a form or strict code, but as they themselves write, a "guidepost". For Track Two diplomacy, the existence of anything stricter would be pointless, as the activities and the problems encountered

[34] *Ibid.*, p. 195.
[35] *Ibid.*, p. 191.

can be so varied in type and scale. Jones does note that for Track 1.5, the issue of accountability runs into a significant problem because of the necessary secrecy of processes[36], and as such, the community-based definition of common good is virtually inexistent. Perhaps the ethical yardstick for Track 1.5 should resemble more that of official diplomacy than that of other unofficial diplomacy practices, since the processes are closer to official diplomacy and are more elite-focused[37].

For other types of Track Two processes, however, accountability is not a problem so much as it is more complex. To be effective, Track 2 and 3 processes usually have to be very long-running; their results depend partly on the third party, and greatly on things outside of its control. Months or years of discussion workshops or peacebuilding activities may be undone by outside events or even by the parties themselves, even if the third party did everything right. Third parties may also have been blind to the fact that discussion was never possible. Track Two diplomacy in general is eclectic in its founding theories, but a large part of its theory soup is constructivism; social psychology, identity theory, and community relationships are the basis of the Problem-Solving Workshop. In fact, the link between Azar's protracted conflict theory and Track Two diplomacy is, in large part, the theory of social contact – that internalized prejudices accumulated over time in a community group concerning the other can be dispelled by means of sustained contact between its respective members. Ethnic and/or religious conflicts often feed off a monolithic perception of the other group, and Track Two discussions are a way to bring

[36] Peter L. Jones, « "Paved with Good Intentions:" Best Practices in the Ethics of Track Two Interventions », *International Negotiation*, 26, (2021), p. 45.

[37] A refinement on the idea of the Multi-Track diplomacy and other forms of identification, today Track Two diplomacy tends to be divided in three groups: Track 1,5, composed of tight, secret discussion groups between the elites of a conflict, very close to power; Track Two, composed of discussions between influential stakeholders facilitated by an unofficial third party, and Track Three, generally involving grassroots activities and local leaders. For clearer info on this subject, cf. Peter L. Jones, *op. cit.*, 2015, p. 22-23.

members of the groups in conflict, in constructive, facilitated discussions – as simple, uncontrolled contact can indeed have negative effects[38].

For the purposes of this essay, accountability of the third party towards the sending and receiving communities becomes a particularly difficult moral conundrum when the perpetrators of atrocities are involved. How does the interaction of an unofficial third party with such people affect the accountability of the former? Whether these people should be invited or not in unofficial diplomacy activities is a separate question entirely that will be discussed further.

In protracted conflicts, there is generally quite an overlap between the Venn diagrams of the people who matter in negotiations and those who commit atrocities, especially if the conflict has been during for long enough and the respective communities have become jaded or cynical. As such, most official negotiations must include them if peace is to be achieved, unless there is a conscious effort by a great power mediator to do otherwise, as was the case during the Dayton negotiations to end the war in Bosnia[39]. Mediators working with parties in conflict are often not motivated by the same practical or ethical considerations as unofficial practitioners, and as such, their accountability "calculus" is different. If we consider a realist point of view, they are only accountable to the state that sends them, and its material interests; even if we adopt a liberal point of view, their accountability lies with the liberal world order and the sanctity of democratic principles, which may not preclude them of negotiating with war criminals if peace can be

[38] Esra Cuhadar et Bruce Dayton, « The Social Psychology of Identity and Inter-group Conflict: From Theory to Practice », *International Studies Perspectives*, 12, 3 (2011), p. 277.

[39] "Of special importance, I argue, was the Dayton negotiators' insistence on justice – that individuals indicted for wartime atrocities would play no role in negotiating or implementing the peace agreement. This novel, normative approach to negotiations kept key spoilers from the negotiating table and prepared talks for the endgame". Perhaps it's interesting to note here that Milosevic, the man who started the whole ordeal, was leading the Yugoslav delegation. So it remains debatable whether this was really ground-breaking… Cf. James C. O'Brien, « The Dayton Agreement in Bosnia: Durable Cease-Fire, Permanent Negotiation », in Zartman, I. W. and V. Kremenyuk, dirs., *Peace versus Justice: Negotiating Forward- and Backward-Looking Outcomes*, Lanham, MD, Rowman & Littlefield, 2005, p. 90.

restored. Even if mediators have their own ideas about certain circumstances or actors, and have significant margins of maneuver during their deployments, they act according to orders from the state from which they hail.

b. The Impartiality Matrix

Unofficial conflict interveners act using their own moral compass, methods, and credibility; and, before ethical guidelines were adopted, "tend[ed] to operate in a judicial haze and answer only to their financial backers[40]". Before engaging with perpetrators of atrocities, Track Two practitioners must be very honest with themselves as well as the sending and receiving communities on how they view and justify this engagement, to stay accountable to them. One way in which this can be done is by defining how impartial one is towards sides of a conflict, its events, and particular participants.

For this, Jones has devised an impartiality matrix that allows third parties to be cognizant of their biases towards parties and actions within a conflict, as well as the loosely predicted outcomes of being in a given quadrant. For example, a practitioner who is impartial to the sides of, as well as actions committed during a conflict, will be involved in a maximum number of disputes, and is more likely to produce an agreement to stop the fighting, although not permanently[41]. This matrix does not provide answers to ethical dilemmas obviously, but constitutes a reflection tool for how and why third parties act and react.

[40] Fabienne Hara, *op. cit.*, 1999, p. 151.
[41] Peter L. Jones, *op. cit.*, 2021, p. 52.

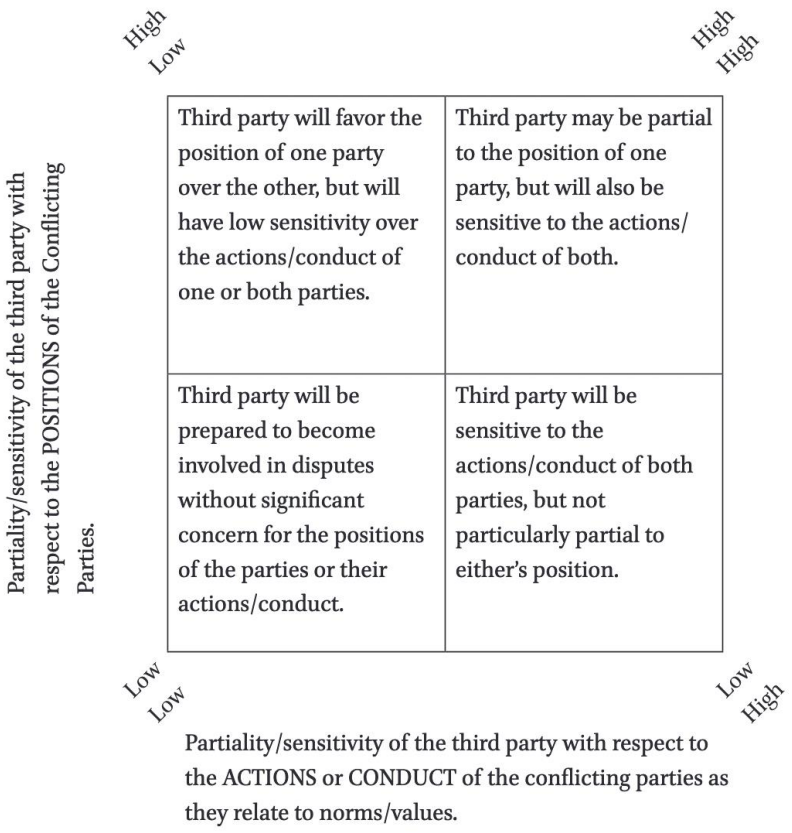

Fig. 2 – The Impartiality Matrix[42]

Of course, practitioners should not be rigid in where they situate themselves on the matrix. Conflict situations are all unique, and even different phases of an intractable conflict may challenge how truly impartial a practitioner may believe themselves to be. Same goes for actions; practitioners may find that they can be impartial with either party's conduct until one commits an action so egregious (subjectively) upon the other that they renounce their impartiality. This is ethically acceptable as long as the third party is conscious of the changes, and is honest with everyone involved (i.e. maintains an authentic relationship).

[42] *Ibid.*, p. 53.

Another aspect of ethically conducting processes involving individuals who have committed atrocities concerns the respect of the worth and dignity of the people involved. In the case of extremists, if they have committed actions which violated human rights and/or targeted civilians, it does not strip away their dignity and value as human beings. In fact, armed conflicts, especially protracted ones, bring out the worst in peoples and individuals. People sitting around the discussion table may have been perfectly respectable people in a normal setting – short of them being actual psychopaths - but have been pushed by their community or governing authority to commit an atrocity or other; or, they may even have committed it of their own free will, because of the current prejudice they harbor towards the other group. A well-known symptom of the protracted conflict is the increasingly radical polarization that is constantly reinforced with language centered around identity and dehumanization. In an article entitled "The Identity Trap", Donohue attempts to identify recurring patterns in language that leads to genocide. He describes: "The building of an identity trap is best viewed as a process that begins with a steady drumbeat of grievances or criticism against the out-group while simultaneously forging the identity of and praising the in-group as a counter to the threat. The process escalates with the use of symbolization language as a means of making the out-group threat more concrete and significant. The symbolization then leads to dehumanization and the call to action aimed at eliminating the out-group[43]". Another earlier article by genocide scholar Gregory Stanton identified eight stages in the process that led to the Rwandan genocide[44].

In any case, the polarization process that takes place during a protracted conflict engulfs entire societies, and even though there are some people that commit irredeemable atrocities and,

[43] William A. Donohue, « The Identity Trap: The Language of Genocide », *Journal of Language and Social Psychology*, 31, 1 (2012), p. 16.
[44] Gregory H. Stanton, « Could the Rwandan genocide have been prevented? », *Journal of Genocide Research*, 6, 2 (2004), p. 211-228.

more appallingly, profit from them, extremists remain products of their environment. As Fast, Neufeldt and Schirch have argued, "Valuing the inherent worth and dignity of extremists may help bring them to the [negotiation] table and, ultimately, defuse their potential to block a peace process[45]". Furthermore, the shift to violent extremism that is born out of a feeling of hopelessness can be reversed by sustained, constructive, controlled discussion with members of the other party, which may result in planting the seeds of hope for a peaceful outcome. This may sound overly optimistic, but that is inherent to Track Two diplomacy. As Jones has pointed out, in the case of Track 1.5 diplomacy specifically, "the field has a built-in bias in favour of dialogue, an intrinsic belief that progress can be made if people can be brought together for structured discussion with the intention of reducing misunderstanding and searching for possible compromises. […] Simply put, the field suffers what might be called a 'problem of optimism': a deeply-held belief that its services can be helpful in almost any situation[46]".

However, depending on the circumstances within a conflict, parties may not be open to discussion. This could be due to the specific timing in the conflict cycle, or even the people who happen to be in power. Whether this optimism is partly warranted by the fact that even in the worst of a conflict cycle, there is room for some form of discussion, is up for debate; there are indeed situations when the fighting must go on, but in the case of protracted conflicts, no Track Two practitioner believes that they have the power to stop fighting at any given time. Not even Track One diplomats really have that power. Third parties engaged in Track Two activities are long-term optimists, conscious of the fact that if protracted conflicts are developed over deep-rooted problems, ending those conflicts may take an equal amount of effort and time.

[45] Reina C. Neufeldt, Larissa A. Fast, et Lisa Schirch, *op. cit.*, 2002, p. 199.
[46] Peter L. Jones, *op. cit.*, 2021, p. 51.

c. On Extremists and Villains

What about the individuals who have crossed the line between extremists, being somewhat redeemable products of their environments, and being 'villains'? This line is incredibly hard to define accurately, and may be different for everyone; peace researcher and mediation scholar Laurie Nathan describes it best, and defines the term for the purposes of his essay: "I use the term 'villains' as a shorthand for conflict parties, whether governments, leaders or opposition groups, that international peacemaking actors have adjudged to bear primary responsibility for the conflict and to be guilty of gross human rights violations and excessive or inappropriate use of force. The notion of "villainy" is a social construct. In any particular conflict, it may be perceived differently among international actors and there may be degrees of villainy among the conflict parties[47]". More than the notion of perceived responsibility, villainy in our case should be characterized by individuals who have used their power and influence to instigate mass atrocities such as genocide; individuals whose personal involvement has considerably deteriorated the social fabric, and enabled extremists.

Nathan defines the four dimensions of a moral dilemma as being "a necessary choice between two or more good norms; the negative consequences of violating or compromising any of the norms; the situation that gives rise to the dilemma; and the identity of the actor confronted with the dilemma[48]". His essay is destined for state-backed mediators supported by an international community, and as such, the specific moral dilemma that he is examining in his essay – ousting the villain by coercive means or including them in peace talks - does not directly

[47] Laurie Nathan, « The International Peacemaking Dilemma: Ousting or Including the Villains? », *Swiss Political Science Review*, 26, 4 (2020), p. 469-470.
[48] *Ibid.*, p. 469.

apply to us. However, the generalizations on moral dilemmas of working with villains does apply. Of particular interest, he notes:

> The peacemaking dilemma is not reducible to a choice between the respective benefits of [the norms of peace and of justice]. It also requires judgement on the respective costs of abandoning or compromising any of the norms. On the one hand, is the prize of peace and security worth the cost of allowing the villains to share power, thereby evading accountability for atrocities and diluting democratic principles? On the other hand, is the objective of defeating the villains worth the cost of prolonging the conflict by denying them the option of a negotiated solution and thereby ensuring they will fight to the bitter end?[49]

Nathan presents the cost for peace as being the evasion of accountability for the villains. As we have noted earlier, for Track Two third parties, accountability is a much more complicated calculation. Inclusion of villains in discussion workshops provides the practitioner, as well as the other party, an opportunity to delve into what pushed them to commit atrocities, and if the process has been going well, they can potentially begin discussing constructively. The problem for a Track Two practitioner, especially if the process is eventually made public, is that including these people produces expectations in all of the accountability circles.

d. Application of the Research Question to Accountability Circles

First, a Track Two process that engages with villains signals to the sending community, mainly funders and others who support the third party, that something of value can be achieved that will outweigh the legitimization of the villains by their invitation to a discussion table. The third party must be upfront and honest (i.e., maintain ethical relationships) about what they

[49] *Ibid.*, p. 472.

believe can be done; the optimism that is inherent to their practice must be heavily tempered. Being accountable to the sending community means making sure that the funders and supporters are:

- Aware of who the third party is inviting to discuss and what they have done;
- Clear on where the third party is situated on the impartiality matrix, which will influence what is said around the discussion table;
- Aware of what is in the power of the third party.

Accountability to the sending community also means that "those who aspire to be third parties must demonstrate a commitment to training and best practice. The field of Track Two is no longer in its infancy. Certain ideas and practices have emerged as recognized standards. At the least, anyone who would presume to act as a third party must demonstrate a commitment to having mastered these and being prepared to apply them in their work. A case in point is the general area known as 'theories of change'[50]". Whether reasoning with the villain and including them in discussion workshops should be included in the theory of change is a worthwhile discussion, but in any case, a commitment to best practices by the third party show that they recognize the inherent worth and dignity of the people who fund the process, of its other supporters, and to the field as a whole.

For Track Two and 1.5 specifically, processes are held in situations of confidence and secrecy. As Jones points out, this poses an ethical problem that is inherent to these processes (how to reconcile secrecy with accountability and a democratized process). This is, unfortunately, a problem that third parties cannot solve: generally, the only way parties to a conflict will agree to discussions with the other side (short of an actual negotiation table) is

[50] Peter L. Jones, *op. cit.*, 2021, p. 47.

secretly. For Track Two processes, trust is essential; at first, the third party must act as a repository of trust for both parties, until they start to trust each other and can begin exploring alternative options. For this secrecy to be somewhat ethical in the end, however, it should be understood for all parties involved that the process at some point should be made public: "The key would be that one was not aiding officials in escaping scrutiny forever, but rather assisting them in exploring the possibilities for compromise and the adoption of new positions which would then be subject to public scrutiny[51]".

Accountability for the receiving community raises other issues entirely. As pointed out earlier, a vast majority of Track Two third parties are outsiders to conflicts; preconceptions about what the peace should be like for a particular conflict should be avoided. Besides, parties in a conflict may already have preconceived notions about what a third party is here to do, depending on where they come from and who is financing them; the third party should be honest about those points, while doing their best to dispel those notions. Otherwise, as was pointed out by Fast, Neufeldt and Schirch, respecting the inherent worth of local communities in peacebuilding is essential. To that end, it is essential that the local population be included as much as possible in the peace process, be that in the definition of the "common good" that the processes are attempting to achieve, or in the people and ideas included. Of course, this is in consideration of what any process is attempting to achieve – conflict management, resolution or transformation. Track 1.5 processes centered on secret, high-level dialogues may end up instilling the sense that the community-defined common good is very narrow, whereas Track Three initiatives – in all their scale and scope – will necessarily include a much larger swath of the local population, including the more marginalized groups; in that case, the community-defined common good will

[51] *Ibid.*, p. 55.

be much broader. Whether this definition is seen as more inclusive and definitive, or vaguer and more nebulous, is ultimately the reason why a third party engages in Track 1.5 or Track Three in the first place.

It should be noted that some issues can be seen as overlaps between the different accountability circles. For example, the imperative to coordinate all the varieties of Track Two processes taking place in a particular conflict falls on the shoulders of the different third parties, in all their forms, since no governing authority oversees the processes. Those third parties are accountable to their sending communities to run processes that are in line with the good norms of unofficial diplomacy, and they are accountable to the receiving communities to not, as Hara has metaphorized, flood conflict zones with uncoordinated Westerners doing things their way and making the conflict worse. In the dimension that is of interest to us, that is dealing with those who have committed atrocities, third parties should be clear with one another on who is open to run processes with these people, and at the same time, not allow them to engage in "forum shopping". There should be, at no point, one third party who gives a villain some sense that the atrocities they have committed were justified, nor should they hint at any outcome they cannot make happen. As Jones remarks, "It is also likely that at least some of the people around the table will have certain objectives from any process they agree to take part in – an amnesty being one example, and even a place in a transitional government. As a practical matter, it is of course entirely beyond the scope of Track Two, and that of a third party to grant any sort of amnesty or future official role. These can only be given by nations, peoples, or international organizations. But one must be conscious that one is putting in place a process ultimately intended by at least some of the participants to lead to those outcomes should the process come up with solutions that

transition to Track One[52]". In a similar order of ideas, the third party should be conscious of the fact that whatever discussion between the parties, or activity involving them - including the villains - is had, will have repercussions on what happens in official policy.

Finally, as we pointed out in the introduction, the international community is much more aware than before of the atrocities that go on in the world. Radio and television were the first mass media on which atrocities could be relayed accurately, albeit with some selection by the people who were in control of these channels. With the internet, however, every single thing that is filmed using a barely functioning cellphone with a connection finds its way onto the web. Ukrainian and Russian war crimes are filmed and used as propaganda by the other side, relayed in mass media platforms such as Reddit – or even darker corners of the internet. This is without mentioning the fact that it is now possible to modify images and videos can be distorted to pass as the truth. As such, the international community is much more aware of the horrific events that are the products of protracted war, as well as the people behind them. World leaders and influential figures who are keen on upholding international liberal values (on appearing as such) are also much more outspoken about crimes against humanity on various media platforms. Conversely, there are now many more such people who question liberal values and condemn interventionism, invoking violations of sovereignty or other principles. This is without mentioning the inscrutable world of organized disinformation campaigns and propaganda from illiberal authoritarian regimes.

This does not change the moral dilemma of peace vs. justice for an unofficial conflict intervener, but it does make public discourse about any conflict more polarized. It can also have an impact on how hard an outcome is to reach – generally that of justice. In turn, there has to be

[52] Peter L. Jones, *op. cit.*, 2015, p. 79.

an understanding between practitioners and the international community if one particular norm is chosen, that this outcome was desirable both for the people involved as well as the international community.

As an example to illustrate this point, Prime Minister of Canada Justin Trudeau, who has over 8 million followers on Facebook, posted this statement on October 12th, 2022:

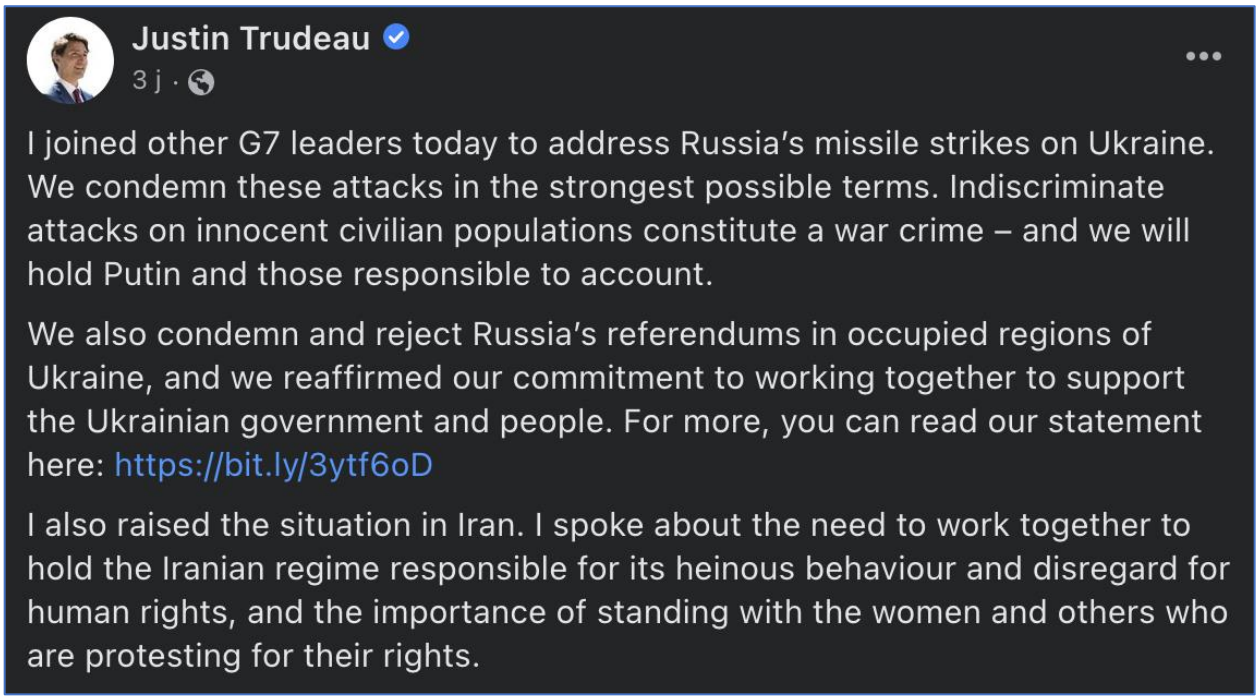

Fig. 3 – Public Statement from Canada PM Justin Trudeau on 12-10-2022

Public statements like these do reinforce the idea that Canada, as a middle power, is committed to upholding the principles of international liberalism. For unofficial third parties who are engaged in Track Two initiatives in Ukraine, Russia (or Iran) however, it means that Russian representatives will be less likely to want to engage in constructive dialogue, as they are progressively shunned by the international community and backed into a corner. Official diplomacy may ultimately differ from the grandstanding being displayed here, but the

international community will expect the Russian president to be held accountable for his crimes, and in turn, will expect conflict intervention activities to be working towards that end.

3. Peace vs Justice

Much of the literature on the moral dilemma of peace vs. justice comes from official peacemaking and negotiation studies. It is understood, from this perspective, that the principles edicted in these articles will be applied by negotiators and mediators who are envoys of states. Nevertheless, some of these principles are general enough that we can translate them into Track Two diplomacy. As a starting point, we could start with the aforementioned definition of the moral dilemma as stated by Nathan, the necessary choice between two or more good norms and the opportunity costs of each; Zartman, in a collective of essays named "Peace vs. Justice", introduces this moral dilemma in more metaphysical terms: "It is human nature to want to get on with one's business after a conflict and let bygones be bygones; it is also human nature to want to see the perpetrators of injustice punished. Both demands arise in the human psyche… Impunity may be the price exacted by villains for ending violence, and villainy prevents reconciliation[53]". Ultimately, mediators make that choice when they undertake conflict management or resolution processes (conflict transformation through civil society, which isn't the domain of official diplomacy); we must not forget that a management initiative (e.g., a ceasefire) can lead to conflict resolution if proper intrastate mechanisms are put in place, as was

[53] I. William Zartman et Victor Kremeniuk, *Peace versus Justice: Negotiating Forward- and Backward-Looking Outcomes*, Lanham, MD, Rowman & Littlefield, 2005, p. 5.

the case in South Africa in the 1990s[54]. It could just as well lead to consolidation of power on one or both sides, leading to renewed violence.

A. The Inclusivity Agenda

For a conflict intervener, the choice between peace and justice in the intended process ultimately depend on the moral inclinations of said intervener, as well as their assessment of the conflict situation. Since the last decade, Track Two diplomacy has also been the subject of a new scholarship on inclusivity – to be ethical, processes must include the wishes, culture and traditions of the local population. This means, however, that the moral dilemma is as much theirs to contend with as that of the practitioner. This could be seen as another moral dilemma, a corollary of the first: should practitioners create processes that make a choice between peace and justice, and disregard the wishes of the local population on this matter? Or should the practitioner offload that responsibility on the population, who may not have a unified opinion on the matter anyway? This, ultimately, is a moot point in any case; the local communities are as confronted with the moral dilemma of peace vs. justice as the practitioners, who in any case will be conducting processes at all track levels.

Since the last decade, new scholarship in peace studies has considered an inclusive approach to conflict intervention, officialised by a United Nations report in 2012: “An inclusive process is more likely to identify and address the root causes of conflict and ensure that the needs of the affected sectors of the population are addressed. Inclusivity also increases the legitimacy and national ownership of the peace agreement and its implementation. In addition, it reduces the

[54] Robert B. Lloyd, « Expecting Satisfaction: Negotiating a Durable Peace in South Africa », in Zartman, I. W. and V. Kremenyuk, dirs., *Peace versus Justice: Negotiating Forward- and Backward-Looking Outcomes*, Lanham, MD, Rowman & Littlefield, 2005, p. 222.

likelihood of excluded actors undermining the process[55]". The design of an inclusive peace process by a mediator remains a difficult task, especially if the conflict is of the intractable nature, and the report does make mention of the "potential tension between inclusivity and efficiency[56]", as well as the wrangling of local consultants and civil society groups, which leads us to believe that cooperation with Track Two practitioners was not thought of as particularly relevant – where realistically, the different tracks should be linked to create a comprehensive peace process: "More successful track 2 processes consider the importance of diverse stakeholders, work to fill in the gaps of the larger peace effort, and address power asymmetry among participants. They'll also manage expectations across participants, and—increasingly important—establish and implement what are called "transfer" mechanisms[57]".

b. On the Normative Turn, and Transfer

This inclusivity norm is very much part of the newer literature in Track Two diplomacy, and is part of the larger "normative turn" that the field of international conflict resolution is experiencing. In a review of the literature that documents this normative turn in Track Two diplomacy specifically, conflict resolution scholar Julia Palmiano Federer describes the normative turn in conflict resolution as such: "Mediators are increasingly mandated to incorporate rights-based norms such as gender equality and transitional justice into their interventions[58]". Glimpses of this need for inclusivity in peace processes can be seen in Zartman and Kremenyuk's collective: Robert B. Lloyd's account of the negotiated peace in South Africa

[55] Ban Ki-moon, *UN Guidance for Effective Mediation*, New York, United Nations, 2012, p. 11.
[56] *Ibid.*, p. 12.
[57] « A Primer on Multi-track Diplomacy: How Does it Work? », *United States Institute of Peace*, https://www.usip.org/publications/2019/07/primer-multi-track-diplomacy-how-does-it-work, consulté le 15 octobre 2022c.
[58] Julia Palmiano Federer, « Toward a Normative Turn in Track Two Diplomacy? A Review of the Literature », *Negotiation Journal*, 37, 4 (2021), p. 436.

is followed by a detailed account of some oral interviews in the local population, asking them if they were satisfied with the post-conflict situation. He asks: "Were people satisfied? This is an important question because "success" (defined as a durable agreement that overcomes the conflict) ultimately depends on the people's satisfaction with both process and outcome[59]". In time, conflict resolution scholars realised that for a peacebuilding process to be ethical and successful, this line of thinking had to be applied the other way around.

In the case of our research question, this normative turn is especially important when we consider the participants to Track Two processes as well as the objectives they are aiming for. In the past, participants were chosen for workshops based on their potential for effective transfer into official diplomacy. However, the concept of transfer has itself very much changed over time, and our understanding of its processes has become more sophisticated. One article by Cuhadar and Paffenholz details the new shared understanding of transfer as "Transfer 2.0", which the authors define as such: "the transfer of outcomes (e.g., recommendations, proposals, positive relationships, ideas, and insights) generated in any inclusion modality to contribute to any stage (prenegotiation, agreement phase, and implementation) of negotiations (i.e., upward transfer), as well as transfer of information from specific groups to the populace writ large (i.e., downward transfer)[60]". This is a refinement on the transfer mechanisms that Ronald Fisher had schematized in his 1997 monograph titled "Interactive Conflict Resolution" (Fig. 3). And, as Palmiano Federer argues, "Track Two dialogues are no longer primarily about gathering unofficial actors who can influence Track One for quiet problem-solving discussions, but about influencing society as a whole[61]". Where civil society actors were previously relegated to

[59] Robert B. Lloyd, *op. cit.*, 2005, p. 230.
[60] Esra Cuhadar et Thania Paffenholz, « Transfer 2.0: Applying the Concept of Transfer from Track-Two Workshops to Inclusive Peace Negotiations », *International Studies Review*, 22, 3 (2020), p. 660-661.
[61] Julia Palmiano Federer, *op. cit.*, 2021, p. 438.

conflict transformation initiatives, they are now considered an integral part of conflict resolution. This fact is also reflected in the objectives of normative Track Two processes: "Transfer into Track One official processes remains the priority, but the normative imperative of inclusive peace processes has cemented Track Two actors' role as equally important in the durability, legitimacy, and sustainability of the implementation of peace agreements at the Track One level[62]".

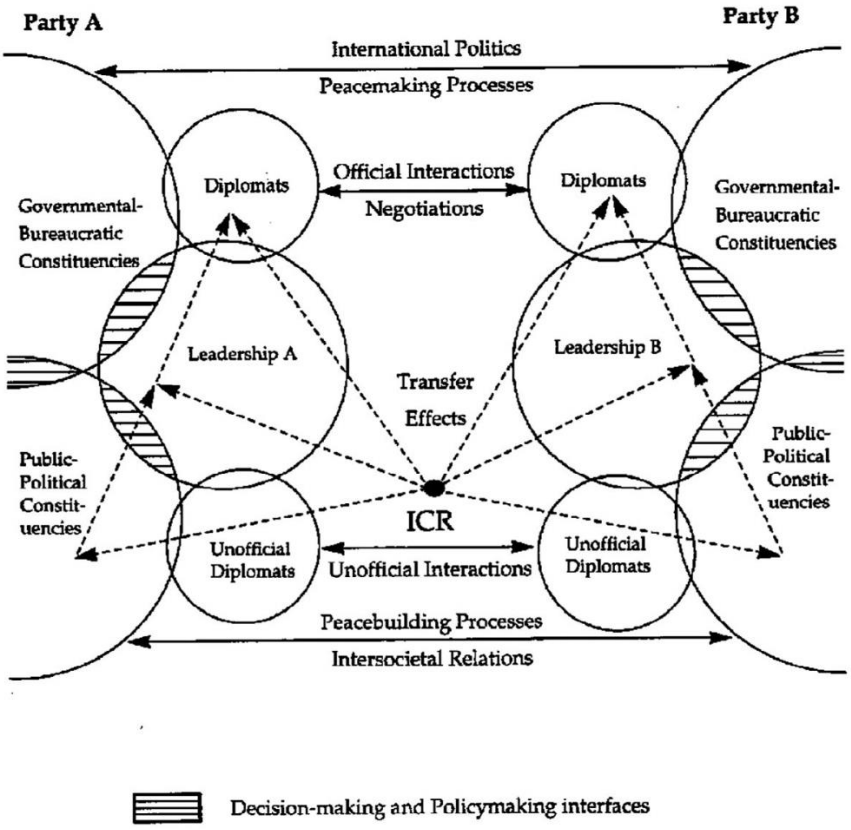

Fig. 4 – "A Schematic Model of Transfer Effects[63]"

There is a considerable problem with the normative turn in Track Two diplomacy, however. The promotion of norms and objectives in Track Two processes risks running counter

[62] *Ibid.*, p. 442.
[63] Ronald J. Fisher, « Transfer Effects from Problem-Solving Workshops to Negotiations: A Process and Outcome Model », *Negotiation Journal*, 36, 4 (2020), p. 446. Originally appeared in p. 202 of "Interactive Conflict Resolution", a 1997 monograph produced by the same author.

to the idea that these processes are run by the participants themselves, and not by an outsider with their own idea of the conflict. What norms and objectives are good (and most importantly, realistically achievable) in a conflict setting, cannot be something that the facilitator brings to the table without encountering the accountability problem that we have studied at length before. Practitioners should be careful about deciding what norms they are promoting in their processes, whether that is intentional or not. For example, transitional justice and truth commissions may seem like universally good norms, especially following their success in South Africa, but public interviews with Northern Irish people suggest otherwise: "In Northern Ireland, they gave up on this idea. They said, 'if we attempt to face the truth, we will revive all the pain we went through and our wounds will relapse'. In the same direction, another journalist […] stated: 'What I saw in Northern Ireland is that, there were difficulties in terms of evidence and in terms of creating links between perpetrators and evidence, so there were problems as there was lack of clear and just account of the crimes committed'[64]".

Of course, practitioners may decide that they are fine with running more hands-on processes guided towards certain norms, by choosing participants carefully and intervening in discussions to gently guide it towards the acceptance of a norm over another. For our research question, this may be especially effective if the local communities have recently been victims of an atrocity. A Track Two practitioner who is biased towards justice more than peace, for example, would find that at this point in time, communities are much keener on bringing the villain to justice, or at least, ensuring that such atrocities do not happen again in the near future; as such, they can work on promoting norms such as transitional justice and accountability.

[64] Esra Dilek, « Rethinking the role of Track Two diplomacy in conflict resolution: the Democratic Progress Institute's Turkey programme », *Journal of Southeast European and Black Sea Studies*, 21, 2 (2021), p. 305.

c. On Timing and Coordinated Approaches

Timing is a crucial factor in any peace process, and this specific moment could constitute a point when participants are made aware that indifference is not an option. Track Three advocacy projects could mobilize civil society leaders of various spheres and create advocacy campaigns to build momentum for accountability and justice, and apply public pressure on the perpetrators, while harder tracks could work with influential elites on both sides to erode, or at least question their support. This would illustrate the systematic linking of tracks that Palmiano Federer mentions as the necessary way forward for concerted conflict intervention[65], as well as the new ways in which transfer occurs – that is to say, instead of Track Two outcomes necessarily transferring into Track One, Track Two outcomes could feed into other Track Two workshops. Using what is described above, we could perhaps posit that there is an equivalent of ripeness, generally used to describe a moment in the conflict cycle, to the desire for justice. For example, during the Bosnian War of 1992-1995, ethnic cleansing had been committed by the Serbians to the shock of the international community. However, it was the massacre of thousands of Muslim men at Srebrenica in July 1995 that transformed this dull anger into a call to action. This massacre allowed the United States to gain diplomatic power in Europe, rally the international community, justify airstrikes, and ultimately, call the parties to negotiate at Dayton[66]. The imperative for justice was arguably already present by then, due to the mass international attention that this conflict had, and the International Criminal Court for the Former Yugoslavia had existed since 1993; but as we said before, the indictments that came from the massacre at Srebrenica gave mediators the ability to sideline the war criminals from official negotiations.

[65] Julia Palmiano Federer, *op. cit.*, 2021, p. 441.
[66] James C. O'Brien, *op. cit.*, 2005, p. 94.

In the same order of ideas, if there is such a thing as ripeness for justice, we could also posit that background work has to be done for parties to be ready for when that time comes. Readiness is not a given, even if horrible atrocities have been committed. If official mediation efforts do not feel the need to work towards backward-looking outcomes, injustices will not be rectified and those who have suffered will continue to hold on to anger and grief. One example of this is the peace process that followed a protracted conflict that had been going on since the mid-70s in Aceh, Indonesia; the latest round of violence that had begun in 1998 after the fall of the ruling authoritarian regime in Jakarta saw egregious human rights abuses committed by the Indonesian armed forces. A terrible tsunami in the Indian Ocean in 2004, which made over 100'000 victims in Aceh, permitted the opening of a negotiation window that was promptly used by the international community to mediate an agreement, signed at Helsinki in 2005. However, despite the fact that this agreement contained backward-looking provisions, such as a human rights court and the establishment of a Truth and Reconciliation Commission, very few of the human rights abusers have been brought to justice. In fact, even though some points about justice and human rights were negotiated and included in the Memorandum of Understanding, there was little care to actually implement them. A report from an NGO active in the process noted: "few of those directly involved in the negotiations clearly recollect how human rights and justice issues were dealt with in the talks. This suggests – and most participants in and observers of the negotiations agree with this assessment – that those issues were neither particularly important nor contentious in the talks, for either party. […] Participants mostly have only vague recollections on discussions concerning justice issues[67]". In this particular case, there was either a lack of inclusion of the local community in the peace process, or a deliberate attempt to

[67] Edward Aspinall, *Peace Without Justice? The Helsinki Peace Process in Aceh*, Geneva, Centre for Human Dialogue, 2008, p. 16.

promote forward-looking provisions quickly instead of possibly missing the window of opportunity for peace that the tsunami had offered. Whatever the case may be, there clearly existed human rights provisions that were accepted in the peace agreement; perhaps if there had been a concerted effort by Track Two initiatives to promote civil society group perspectives (i.e., inclusive peacebuilding), then there would have been a sense during the negotiations that human rights and justice were important to the Acehnese people; in turn, the provisions of the agreement would have been better applied.

The problem with this concerted approach to the promotion of justice norms is that it is very difficult to apply to intractable conflicts. Mutually-hurting stalemates will come and go, but villains will stay, because they are part of the social fabric of the communities that are embroiled in that conflict. What is considered atrocities for one side are, for the other party, regrettable, but justified and necessary actions. Unless there is a formal understanding that criminals will face justice on both sides at the end of the conflict (which is hard to even envision in those cases), who has committed atrocities will always remain a subject of debate that will be hard to address in any discussion workshop. Furthermore, the transfer of those peace norms to other spheres of society or Track One processes will not be effective if it is asymmetrical, as Cuhadar and Paffenholz have noted in their Transfer 2.0 article: "Cuhadar's comparative study of four Israeli–Palestinian track-two processes […] also identified conditions in which transfer is more likely (Cuhadar 2009). […] She found that asymmetrical transfer (i.e., transfer to one of the conflict parties only) is an important obstacle to an effective transfer process. When transfer is asymmetric on either side, regardless of the closeness of participants to the decision-makers, its success is hampered[68]". This is also still considering that all unofficial conflict intervention

[68] Esra Cuhadar et Thania Paffenholz, *op. cit.*, 2020, p. 657.

initiatives are attempting to promote the same norms – which is a pretty large assumption. As we know, Track Two diplomacy englobes quite a large variety of activities, third parties, and actors, some of which may have entirely different methods and outcomes.

Another problem with this approach is that a concerted normative Track Two that tries to actively promote justice runs the risk of losing the trust of the parties, especially the one who has more power. Track Two processes, especially at higher track levels, have difficulty running without the support of the leadership of both parties to the conflict; and, as we stated earlier, over a long period of time in a protracted conflict, there may be quite the overlap between the decision-makers and those who have committed injustices or atrocities. These people may feel (rightfully) threatened by unofficial interventions that are promoting such things as transitional justice, and they may try to obstruct the processes if not outright make them illegal. Besides, attempting to push an agenda in this manner has never been the purpose of Track Two diplomacy: "The [Problem-Solving Workshop] has never been offered as a substitute for negotiations by the parties to determine the social, economic, and political structures that will change their relationship to one of greater equity and justice. Similarly, the PSW has never been posited to be the equivalent of a truth and reconciliation commission (TRC), which attempts to ascertain the truth about past behaviors, make judgments on human rights abuses, and determine penalties, reparations, and/or compensations. The ideas generated by the PSW may open up these kinds of possibilities and conceptualize various options, but the method is not designed to deliver outcomes of the kind which negotiations and TRCs are intended to provide[69]". Unofficial conflict resolution initiatives should be more inclusive, and transfer should be more

[69] Ronald J. Fisher, « Challenges of power asymmetry and justice for problem-solving workshops », *Dynamics of Asymmetric Conflict*, 3, 3 (2010), p. 157.

sophisticated, but whether to engage in the peace vs. justice debate is not of the resort of the practitioner, but of the communities themselves when discussing during workshops.

In terms of normative processes, it is more relevant to consider the effects of engaging with villains in Track Two activities. This fact should not be normative; that is, engaging with them or not should not be normalized one way or the other, because it depends on many factors such as the moral sensibilities of the third party, the level of injustices or atrocities committed, etc. Practitioners should instead refer to the impartiality matrix (Fig.1) to determine, as well as make clear for the participants and sending communities, what is their level of partiality with respect to the people they invite. What should be normative is the interactions developed during workshops, if the practitioner chooses to invite a human rights abuser. The fact that Track Two dialogues are unofficial is a great advantage for conflict interveners in this regard, because these people would be hard pressed to find a place at an official table. As we noted earlier in the discussion on accountability, inclusion of extremists is necessary in negotiations, not simply because they may have valuable input, but because it reduces the chances that they obstruct the peace process. Inclusion of criminals, although not much different, will raise a host of questions from the international community. In fact, the UN Guidance for Effective Mediation mentioned earlier states that mediators should "limit contacts with actors that have been indicted by the International Criminal Court to what is necessary for the mediation process[70]". In this regard, Track Two diplomacy has an advantage in that it "open[s] doors not traditionally open to Track One by taking risks based on optimism and embracing possibilities for dialogue not open to traditional diplomacy[71]".

[70] Ban Ki-moon, *op. cit*., 2012, p. 13.
[71] Peter L. Jones, *op. cit*., 2021, p. 52.

It may go without saying, but Track Two practitioners, even with their unofficial advantage, should always be wary not to detract from the overall peace effort. If the conflict they intervene in is at a point where it has little attention from the international community and official negotiations are stalled, they may have a considerable range of options depending on their ease of entry; however, if negotiators and mediators are present and working with both parties, because of permissive circumstances (e.g., post-tsunami in the Aceh conflict), Track Two practitioners should be especially aware of the official processes and in what direction they are leaning. Of course, much of the success of the work of Track Two becomes visible as official negotiations are unfolding; that is, Track Two processes are successful if, at that point, parties are ready to make use of the ideas developed in unofficial processes towards conflict resolution rather than short-term management. Some of the ideas that are transferred to the official processes could have come from inviting abusers to discussions - for good or for ill. The presence of such people to a discussion workshop, without prior taking of precautions and setting of rules, could seriously damage the relationship between parties, as well as the credibility of the intervener, his sending community, and Track Two as a whole.

As such, if an unofficial third party is comfortable with including villains in discussions, they should make sure that everyone involved is notified and consulted beforehand; not only as a matter of accountability, as discussed before, but also to avoid unpleasant surprises. Third parties may also find that this allows them to reflect on their practices and morals, both as a self-imposed exercise as well as from the questions they potentially receive from the people around them. Mediators working on official negotiations may also judge that such engagement would be imprudent. Of course, unofficial practitioners should not automatically defer to official peacemakers out of simple subordination, but healthy discussion should be encouraged and

ultimately, those mediators may have much more information and perhaps even a better sense of where the negotiations are headed. As Gordon and Hay point out concerning the peace process in Zaire, "fundamentals – battlefield impasses, the strength of international opinion, fatigue – matter greatly, but no account of negotiations can be complete unless mention is made of the people who have to say 'yes' or 'no' and of the mediators who decide what questions will be asked, when, and under what circumstances[72]".

Conclusion

Ethical considerations in Track Two diplomacy are plenty, and although much work has been devoted to them in the last few decades, some challenges will remain eternally unresolved. Unofficial conflict intervention continues to play an important role in conflicts, as it opens avenues of discussion that official negotiations do not. In allowing parties in a conflict to open up and build constructive relationships, Track Two diplomacy prepares participants to enter negotiations without the seemingly eternal show of remonstrances. It also allows for non-traditional actors to enter the dialogue and thus fosters inclusivity, which leads to positive, long-lasting peace… In theory. These are vague generalizations, and in practice, every situation is unique: conflicts flare up for a variety of reasons and involve a variety of different people, and in turn, interventions are made by various people for various reasons. State-sponsored mediators or interveners may have their own moral compass when sent into a conflict zone, but they are attached to a state and ultimately, the sending state answers for that person. Unofficial conflict interveners are backed by funders and/or their academic circles, but they have a reason for

[72] Gordon Smith et John Hay, *op. cit.*, 1999, p. 89.

intervening; they bring with them their own ethical code, contacts, and credibility. They have much more freedom than official negotiators, but in turn, they face more challenges. One of those that we have identified is the relationship they must choose to have with human rights abusers – "villains" – and their own propensity towards peace or justice.

One of the ways by which practitioners can identify and contend with this particular set of ethical challenges is through accountability. Specifically, the accountability circles as defined by Fast, Neufeldt and Schirch (Fig. 1) can help conflict interveners evaluate themselves and the process they are devising, thus determining if they are ethical in how they are accountable to the sending and receiving communities – as well as the international community. By being conscious of how they remain accountable to the receiving community, practitioners are encouraged to include local civil society in their intervention, which builds a peace that better reflects the local culture and context; for sending communities, practitioners remain conscious of how their initiatives impact their financial backers as well as their academic circles, and the field of Track Two as a whole; finally, for the international community, practitioners understand that the conflict they are engaged in is subject to international scrutiny, much more than ever before, and that their work has an impact on the broad world of peace interventions. Of course, "accountability circles" have been chosen over "accountability boxes" because in practice, situations frequently fall into overlaps of two or more of those circles. Some ideas, such as the imperative to coordinate all unofficial conflict intervention activities in a given conflict, must consider accountability to all of the circles. This is equally true for the inclusion of people who have committed human rights abuses in the context of a conflict.

Inclusion of villains in a Track Two initiative is not *a priori* gauche; in fact, one of the advantages of Track Two diplomacy is that discussions can be conducted in an unofficial, honest

manner, in the hopes of eliminating barriers and devising alternate idea tracks that can be used in the peacebuilding process. Furthermore, in a protracted – and usually nasty - conflict, people who have committed atrocities and those that hold decision-making powers can very much be one and the same. However, including these people in discussions must bring difficult moral questions which can be visualized through the lens of accountability, especially considering that accountability is theorized in large part with authenticity built in. A Track Two practitioner being accountable to all concerned communities means that they maintain authentic, honest relationships with these parties. A practitioner may see it fit to include a villain in discussion, but they must be able to justify that engaging them may bring more benefits than problems, that their input may be valuable in the peacebuilding process. They must be able to justify this to their sending communities, to the receiving communities (mainly the people who have suffered the atrocities), and to the international community, but also to themselves. Necessarily, justifying this to each of those parties will require different approaches and arguments.

Track Two practitioners may find it helpful to consider how impartial they are towards parties and their actions via the impartiality matrix as shown in Fig. 2. Being partial is not a problem in itself, but to maintain ethical relationships, honesty to oneself and other interlocutors is key. This also helps practitioners devise their own codes of conduct for discussions and other processes, and fosters trust with participants. That said, considering our research question, this impartiality matrix must be considered as continuous rather than discrete, especially with regards to the acts committed. As the conflict evolves, so will the dialogue, and practitioners must reflect upon their own position on the matrix to help them navigate the discussions in good conscience.

Interveners must also stay aware of how they situate themselves and their activities in the larger debate of peace vs. justice. Should Track Two diplomacy serve to bring villains to justice,

foregoing peace in the short-term? Should it even be their prerogative, or that of the mediators, or that of the local population? As studied earlier, the role of Track Two diplomacy and the way participants and objectives are considered has changed in the last decades. Track Two should, according to certain scholars, be normative and inclusive. The inclusion of groups not traditionally considered in processes, and the subsequent inclusion of their perspectives, fear and needs in official negotiations, is a norm that has great merit and probably does lead to more resilient peace in the long-term. Concerning our research question, however, the moral dilemma of peace vs. justice is such that it is extremely ill-advised to push for one norm or the other in Track Two, not only because it might go against the wishes of the local population, and thus alienate them, but also because the choice may be maladapted.

In summary, should Track Two diplomacy engage with those who have committed atrocities? Perhaps anticlimactically, much like most things in Track Two, it depends. It depends on the parameters of the conflict, but also on those of the practitioners and their moral inclinations. We have identified what engaging villains entails, in terms of accountability, authenticity, impartiality, and what Track Two diplomacy represents today and what scholars say it should do, but no definitive answer to that question exists, because there are too many variables. Then, should Track Two diplomacy promote peace or justice? The answer is that Track Two should not be normative in this regard, because again, there are too many variables involved. Track Two should be normative in its practices, not necessarily in the outcomes it is trying to reach – this is the resort of the local communities and the negotiators who have official binding powers.

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