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Research Report

Why writing a new constitution after conflict can contribute to peace

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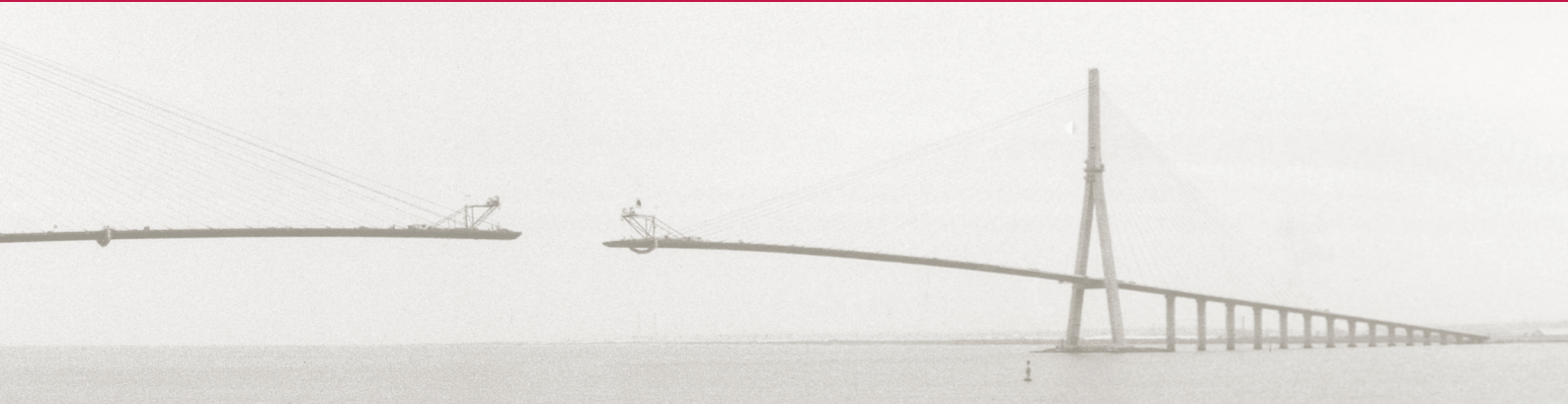
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Why Writing a New Constitution after Conflict Can Contribute to Peace

Summary

In every fourth post-conflict country a new constitution is written, but the effect of these post-conflict constitution-making processes on peace remains understudied. Constitution-making has become a corner stone of peacebuilding efforts in post-conflict societies and is widely supported by international actors. It is often seen as a main component of a political transition necessary in states that have experienced internal warfare. This is because a successful constitution-making process establishes a new and potentially permanent governance framework that regulates access to power. However, systematic analyses of the effect of post-conflict constitution-making on peace have been lacking. This Briefing Paper presents new, empirical evidence showing that post-conflict constitution-making can contribute to peace.

Countries emerging from conflict often adopt new constitutions in order to signal a clear break with the past regime and to reform the institutions that are often seen as at least partially responsible for conflict having erupted in the first place. Post-conflict constitution-making has taken place in highly diverse settings – ranging from the aftermath of civil war, as in Nepal or South Africa, to interethnic clashes or electoral violence, as in Kyrgyzstan or Kenya. And in the current peace talks around Syria the question of writing a new constitution also plays a prominent role. Since academic evidence is lacking as to whether constitution-making can contribute to peace after civil war, it remains an open question whether efforts in this regard should be pursued by international actors.

This Briefing Paper presents evidence that writing a new constitution positively influences post-conflict countries' prospects for peace (for the full analysis see Fiedler, 2019). It summarises innovative, statistical research on post-conflict constitution-making, conducted by the DIE project "Supporting Sustainable Peace". Based on an analysis of 236 post-conflict episodes between 1946 and 2010, two main results with clear policy implications emerge:

- **Writing a new constitution reduces the risk of conflict recurrence.** The analysis shows a statistically significant and robust association between writing a new constitution after experiencing violent conflict and sustaining peace. International efforts to support post-conflict constitution-making are hence well-founded. The theoretical argument behind the relationship suggests that it is important that constitution-making processes enable an extensive inter-elite dialogue that helps build trust in the post-conflict period.
- **Post-conflict constitution-making processes that take longer are more beneficial for peace.** This is likely because the trust-building effect of constitution-making only occurs when enough time enables bargaining and the development of a broad compromise. International actors frequently pressure post-conflict countries to go through these processes very quickly, in only a matter of months. The results question this approach, as very short constitution-making processes do not positively affect peace.

Introduction

Whether or not post-conflict constitution-making contributes to peace remains an open question. The scientific debate has focused heavily on constitutional design questions and institutional engineering, trying to find the ideal institutional fit for deeply divided societies. While such discussions are certainly important, they overlook the question of whether the process of writing a constitution in itself – regardless of the specific content of the constitution – has positive effects. In policy circles, in turn, it seems that it is simply assumed that constitution-making can contribute to peace, but systematic, empirical assessments of this claim are currently lacking. This briefing paper explains why constitution-writing processes should theoretically affect peace and summarises research that shows a) that post-conflict constitution-making can contribute to peace and b) that longer constitution-making processes are more beneficial for peace.

Why do post-conflict countries adopt new constitutions?

Because intrastate conflict is often rooted in stark dissatisfaction with the political system, reforms of the state can gather widespread political support in the post-conflict period. If problematic political institutions are seen as one main reason why conflict occurred in the first place, then one peacebuilding strategy is to reform these institutions through a new constitution.

Nepal is a case in point that demonstrates that conflict can lead to the writing of a new constitution. In Nepal, Maoist rebels fought deep-rooted inequalities, including the political and social exclusion of large segments of Nepalese society, for 10 years. The war was ended through a comprehensive peace agreement in 2006 that included a provision for writing a new constitution. In its first session in 2008, the

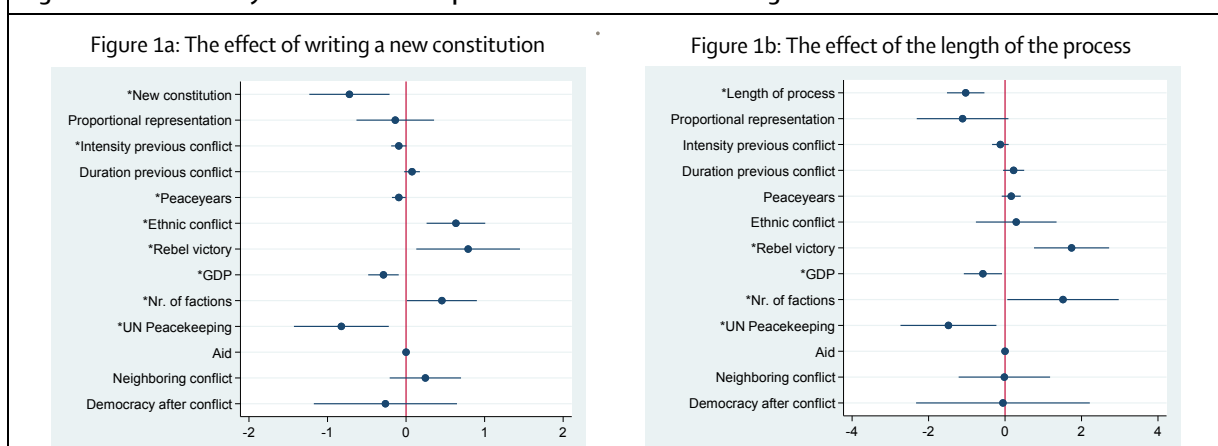
body tasked with being both Nepal's new parliament and constitutional assembly declared Nepal a democratic, secular and federal state – a clear break with the previous monarchy. There was hence widespread support for restructuring the Nepalese state through a new constitution, although the ensuing discussions on specific provisions proved extremely difficult and a new constitution was not signed until 2015.

Less intense violence can also trigger post-conflict constitution-making, as the Kenyan example shows. In 2007/2008 Kenya experienced severe violence after contested elections, which many consider brought the country to the brink of civil war. The electoral violence created a window of opportunity for those in favour of reforming the political system through a new constitution. This was because there was a strong feeling in the country that the ailing political institutions, and particularly the fact that power was strongly concentrated in the hands of the president, had contributed to the outbreak of violence. All politicians, even those previously opposed, felt they had to support a constitutional review process, which led to the adoption of a new constitution in 2010.

What are the effects of post-conflict constitution-making on peace?

DIE research tested whether or not post-conflict constitution-making can contribute to peace through statistical analyses. The results show that post-conflict constitution-making clearly matters: post-conflict countries that write a new constitution are statistically significantly less likely to experience conflict recurrence compared to those that do not. Data from the comparative constitutions project was used to identify whether countries had adopted a new constitution in the first 15 years after their conflict ended. Post-conflict periods and whether or not countries experienced renewed conflict were identified using the

Figure 1: Statistical analyses of the effects of post-conflict constitution-making on conflict recurrence



Note: Asterisks before variable names indicate that they are statistically significant. The dot in the graph represents the regression coefficient, the line the confidence interval. Variables whose line does not intersect with the 0 (the red line) are statistically significant. Dots to the left of the 0 indicate a variable significantly reduces the risk of conflict recurrence, dots to the right of the 0 indicate that it increases the risk of conflict recurrence. Both graphs display the results of logistic regressions, including robust standard errors and three specifications of time. These results are robust to a wide variety of model specifications and robustness tests.

Source: Author

UCDP/PRIO data (which defines internal conflict as the use of armed forces between a state and one or more rebel groups, leading to at least 25 battle deaths). According to these criteria, of the 236 post-conflict periods between 1946 and 2010, 26% (62) of the cases have gone through constitution-making. The results of the statistical analysis can be found in Figure 1a.

Why should post-conflict constitution-making processes contribute to peace?

What explains the positive effect of post-conflict constitution-writing on peace? Post-conflict societies are marked by stark mistrust. After military confrontation, former enemies have to overcome the suspicions they hold against each other and learn to work together in one political system. A post-conflict constitution-making process represents a unique opportunity to do so. This is because in a constitution-making process the major political actors of the post-conflict country *jointly* have to find a compromise on how access to power will be regulated. This means, for example, deciding whether a constituent assembly or a smaller commission will draft the constitution, working together on specific parts of the text in constitutional committees, and discussing and passing the final draft in parliament. In this last step, unanimity, or at least a 2/3 majority, is required. This means that a constitution-writing process enables an intense inter-elite dialogue. This dialogue and the compromise it creates has the potential to build trust between former adversaries.

Examples from South Africa and Tunisia demonstrate that the deliberation over a constitution can increase trust between diverse political actors. The South African armed conflict lasted from 1981 to 1988, with the government of South Africa facing violent opposition from the armed wings of the African National Congress and Pan Africa Congress, who aimed to end apartheid. The constitution-making process began in 1993 with closed negotiations and was continued through a constitutional assembly. Working together in the constitution-making process had an important effect on those involved: "South Africans started to debunk misperceptions and myths about each other. As trust increased, they began to make the political compromises necessary for a mutually acceptable future" (Barnes & De Klerk, 2002, p. 19). In the end, the process was successful and a new constitution was adopted in 1996.

The case of Tunisia, although not a classical post-conflict country, also shows that constitution-making can contribute to trust-building. After the ousting of President Ben Ali through a popular revolution, a National Constituent Assembly (NCA) was elected in Tunisia in October 2011 to draft a new constitution. Negotiations on the content of the constitution took place in constituent commissions and were highly polarised. Nevertheless, in the end a compromise was found and in 2014 a new constitution was adopted through a 2/3 majority vote in parliament. The debates within the NCA helped build bridges between political actors. For example, one participant noted that the constitution-writing

process "brought people closer together. People have learned to listen to each other... a culture of dialogue [is] emerging" (cited in Gluck & Brandt, 2015, p. 11).

These examples suggest that post-conflict constitution-making can increase trust between former adversaries. However, two important caveats exist. Firstly, although they can enable trust-building, deliberations on new constitutions rarely represent "enlightened" bargaining. Instead, they are often highly conflictual. Nevertheless, joint work on a constitution can have educative features, which Brown (2008, p. 11) describes as follows: "Messy, protracted drafting serves the underappreciated purpose of preparing various parties for the operation of normal democratic politics. (...) Forming alliances, crafting consensus (or at least majority) positions, compromising, and trading are critical elements for leaders in any democratic system." A second caveat is that constitution-writing in autocratic settings is more rarely designed as a process that allows such inter-elite bargaining. Instead, a new constitution can be used by autocratic leaders to better regulate power and expand their repressive capacities. While this can also contribute to peace (defined in the negative sense as the absence of violence), the sustainability of such an approach must be called into question.

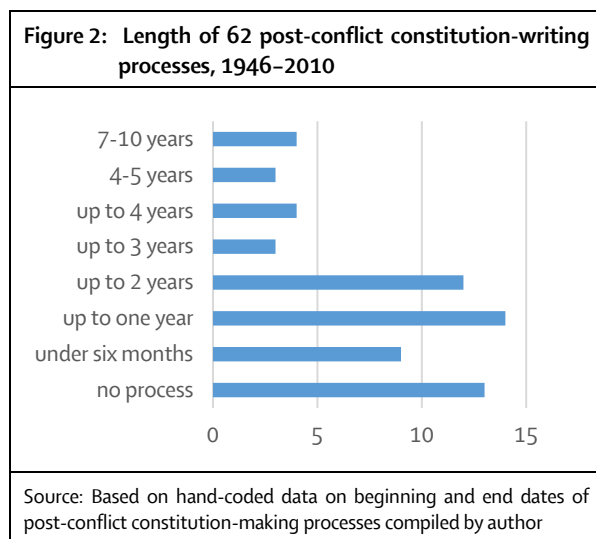
Why does the length of the process matter?

The effect of the length of the constitution-making process on peace was also analysed. While a long constitution-writing process might seem more complicated and difficult, and therefore less desirable from the point of view of efficiency, the argument can be made that sufficient time for bargaining, the finding of compromise and for trust-building is crucial. Furthermore, shorter processes might be problematic because they could involve a new constitution being quickly pushed through by a small elite or autocratic ruler, denying the opportunity for a new and inclusive political framework for the post-conflict state to be jointly built through extensive deliberation.

Data collected in the DIE project "Supporting Sustainable Peace" reveals that while some constitution-making processes are very short, occupying only a few weeks, and others very long, taking up to ten years, on average, post-conflict constitution-making takes about two years. More specifically, the data show that most post-conflict constitutions are written in up to one year (38%), a considerable share in up to two years (19%) and 17% in three to five years. Outliers with particularly long constitution-writing processes above five years are Cuba (10 years), Chile (7 years), Angola (7 years), and Laos (7 years). Finally, a considerable share of constitutions, particularly those written in authoritarian contexts, are adopted without any process (21%). Figure 2 displays the length of the constitution-making processes for the 62 cases analysed.

The results of a statistical analysis clearly show that longer processes are more beneficial. There is a negative, statistically significant and robust relationship: the longer the

constitution-writing process, the lower the chance that a country will experience conflict recurrence (see Figure 1b for a visualisation of the regression results). At the same time, the results do not suggest that extremely drawn-out processes are particularly beneficial, as there are only very few such cases (see Figure 2). Although the analysis cannot identify an ideal length of time these processes need, the distribution of the values suggests that constitution-making without any process and those that only occupying a couple of months do not affect peace, whereas longer processes significantly increase countries' chances for peace.



Conclusion

This Briefing Paper presents the first research to show that a) post-conflict constitution-making is robustly associated with peace and b) longer constitution-making processes are good for peace. The second finding is particularly noteworthy because international actors frequently pressure countries to write new constitutions very quickly. The analysis, instead, demonstrates that it is vital to allow enough time for these often very complicated processes, and that applying pressure for a particularly swift process might be counterproductive.

These insights into post-conflict constitution-making have strong policy implications. Post-conflict countries' chances of peace are heavily influenced by factors that cannot be easily impacted, such as the ending, intensity or duration of the previous war. Writing a constitution, however, can be encouraged and supported both by the post-conflict regime and international actors, which is why these findings can be directly relevant to efforts to stabilise post-conflict countries. While the results give reason for the international community to support constitution-making processes, apart from the length of the process, the effect of several other conditions remains to be better understood. Factors that warrant further cross-national analysis are, for example, the inclusivity of the constitution-making process, the degree of public participation, international support for the constitution-making process, and how the process and content of the constitution interact.

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