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Resolving armed conflict: The Acehnese experience of mediation

Noelle Higgins, Brenda Daly

(School of Law and Government, Dublin City University, Dublin 9, Ireland)

Abstract: A growing number of armed conflicts are ending in negotiated and mediated settlements. While mediation has been acknowledged as an effective means of dispute resolution in many areas, such as family law, medical law and commercial law, it has only quite recently been employed for the resolution of armed conflicts. It is the aim of this article to analyze how mediation was successfully employed in resolving conflicts in the region of Aceh in Indonesia. After 25 years of armed conflict, a peace deal was signed in 2005 between the government of Indonesia and an armed Acehnese group, the Gerakan Aceh Merdeka (GAM). This article will detail the history of the conflict and the mediation process, focusing on the mediation strategies and characteristics.

Key words: international armed conflict; mediation; Indonesia; Aceh

1. Introduction

Since its foundation Indonesia has faced numerous challenges to its sovereignty from groups demanding independence and self-determination in various regions of the state such as West Papua, Kalimantan and the South Moluccas. One of the most intense and violent challenges to the sovereignty of Indonesia came in the form of a war of national liberation waged by the *Gerakan Aceh Merdeka* (Free Aceh Movement)/the GAM in an attempt to win independence for the region of Aceh (*Nanggroe Aceh Darussalam*). Aceh, with a population of just over 4 million,¹ is situated in the north of the island of Sumatra. The violent conflict waged between the GAM and the Indonesian armed forces lasted for 25 years until a peace deal was mediated between the GAM and the Indonesian government by Martti Ahtisaari, former president of Finland and founder of Crisis Management Initiative, in 2005. This 'Memorandum of Understanding' (MoU) has been implemented relatively successfully and the region has been reasonably peaceful since then, although a number of flaws can be identified in both the mediated instrument itself and in the implementation process.

This article aims to analyse the mediation process which resulted in the MoU, examining the usefulness of mediation as a conflict resolution technique. The first section of the article examines the history of Aceh from the time it was an independent state through to the creation of Indonesia and the incorporation of Aceh into this state. The second section investigates the conflict between the GAM and the Indonesian armed forces, as well as the reasons behind the conflict. The third section focuses on the various attempts made at negotiating and mediating peace between the GAM and the Indonesian government, and discusses the peace deals which emanated from these peace talks. The fourth section examines the mediation strategies employed by mediators, including Ahtisaari, in creating the MoU and other peace agreements in Aceh.

Noelle Higgins, lecturer, School of Law and Government, Dublin City University, Ireland; research field: international law, conflict and security law, international peace mediation.

Brenda Daly, lecturer, School of Law and Government, Dublin City University, Ireland; research field: medical law, international peace mediation.

¹ The last census of Indonesia was carried out in 2000 put the total population of Aceh at 4,010,486. This information is available at: http://www.unescap.org/Stat/cos12/cos12_indonesia.pdf, retrieved March 01, 2010.

2. A history of Aceh

2.1 Early history

Aceh was once an independent and free state and an important trading centre.² However, this importance was much reduced when the colonial powers arrived in the area.³ Britain and the Netherlands both showed an interest in Aceh and its natural resources and both became embroiled in conflict with the people of Aceh in their search for wealth in what became known as the Dutch East Indies.⁴ The Anglo-Dutch treaties of 1814⁵ and 1824⁶ attempted to resolve the conflict between Britain and the Netherlands regarding the region and essentially divided it into two spheres of influence. Britain had actually recognized the independence of the Sultanate of Aceh in 1819 and had exclusive trading rights with Aceh. The independence of Aceh was again recognized in the 1824 treaty, under which the Dutch guaranteed independence of Aceh.⁷ However, the sovereignty of Aceh was soon breached again when, in 1873, after several parliamentary debates on the issue of invading a sovereign state, the Netherlands declared war on Aceh, allegedly to respond to acts of piracy committed by the Acehese on Dutch trading ships.⁸ The Netherlands failed to gain full control over the region and conflict continued between the Dutch army and the Acehese for a number of years. In 1898 a Dutch army major, major van Heutsz, became governor of Aceh and the Dutch army attempted to bring the region definitively under its control. Conflict continued between the army and the Acehese people, and it is estimated that between 50,000 to 100,000 Acehese were killed during the conflict with 1 million wounded.⁹ The Dutch army controlled most of the region by 1904, without the consent or acquiescence of the people of Aceh.

2.2 The creation of a new state

Conflict continued between the Dutch army and the Acehese intermittently until the Dutch were conquered by Japan in 1942.¹⁰ When World War II ended the Japanese surrendered to the Allied Powers. However, Aceh was not to regain its independence. Rather, a new state was created, when the Republic of Indonesia was proclaimed and Sukarno became leader of the new republic.¹¹ It is unclear what exact geographic area was covered by the new republic, although in a speech made around the same time as the independence of Indonesia was proclaimed, Sukarno included the territory from Banda Aceh to Ambon in the Moluccas as falling within the jurisdiction of the Republic of Indonesia.¹²

However, after the War, both the Netherlands and Britain returned to the region in an attempt to regain their former colonies, although the Netherlands avoided Aceh this time. The future of the region was decided in legal

² D.K. Basset (1989). British 'country' trade and local trade networks in the Thai and Malay Straits. C.1680-1770', *Modern Asian Studies*, 23, 625.

³ Priyambudi Sulistiyanto (2001). Whither Aceh? *Third World Quarterly*, 22, 437-438.

⁴ Ibid.

⁵ The Anglo-Dutch Treaty of 1814 was also known as the Convention of London. It was signed between the United Kingdom and the United Kingdom of the Netherlands in London on August 13, 1814.

⁶ The Anglo-Dutch Treaty of 1824 was also known as the Treaty of London. It was signed between the United Kingdom and the United Kingdom of the Netherlands in London on March 17, 1824.

⁷ See *Aceh chronology: Follow key events in the history of this conflict*. Retrieved May 18, 2006, from <http://www.abc.net.au/4corners/content/2003/transcripts/s936216.htm>.

⁸ See Sulistiyanto. Supra note 3.

⁹ Ibid.

¹⁰ Evelyn Colbert (1972). The road not taken: Decolonization and independence in Indonesia and Indochina. *Foreign Affairs*, 51 (3) 608-609. And Anthony Reid (1975). The Japanese occupation and rival Indonesian elites: Northern Sumatra in 1942. *Journal of Asian Studies*, 35, 49.

¹¹ See Colbert. id and Reid. id.

¹² Retrieved August 06, 2006, from <http://w3.rz-berlin.mpg.de/~wm/PAP/afterWPC.html>.

form by the Linggadjati Agreement, which was drawn up and signed by the government of the Republic of Indonesia and the Government of the Netherlands.¹³ Under this agreement, the Government of the Netherlands recognised the sovereignty of the newly proclaimed Republic of Indonesia over Java, Sumatra (including Aceh) and Madura, without the consent of the Acehese people, or indeed, the people of the other areas included in the Republic. Following on from the Linggadjati Agreement, the United Nations organized discussions on the future of the Dutch East Indies. These discussions concluded in the Round Table Conference Agreements. Despite the fact that the Netherlands had not actually occupied or controlled Aceh during their return to the region after World War II, it was still included as part of the Republic of Indonesia in the Round Table Conference Agreements.¹⁴ The new government of the Republic then deployed troops with the mandate of annexing Aceh by the use of force in order to incorporate it into the Republic. Aceh was not happy with its incorporation into the Republic of Indonesia and its leaders agitated for autonomy. Autonomy was initially granted to the region with Teungku M. Daud Beureu'eh as province governor; however, it was amalgamated with the province of North Sumatra in 1950.¹⁵ The amalgamation caused a rebellion against the Indonesian Republic in Aceh and the sustained Acehese violence over the next number of years led to the granting of 'special territory' status to Aceh in 1959.¹⁶ This meant that Aceh could make decisions by itself in religious, educational and cultural matters and also allowed for "a higher-than-usual official Indonesian respect for Islamic law and custom."¹⁷ Although the granting of 'special territory' status was welcomed in Aceh, it was not adequate for the Acehese as Indonesia still controlled the region's abundant natural resources and the presence of the Indonesian army was a constant reminder to the Acehese people that they were not independent. Although the Indonesian government made many promises to the Acehese concerning autonomy, natural resources and power, these were never implemented. This led to unrest and resentment among the Acehese people, many of whom still wanted independence from Indonesia and resented Indonesia's reign. The GAM was born out of these feelings of resentment and discontent.¹⁸

3. Conflict in Aceh

3.1 The creation of the GAM

The GAM rose up against Indonesian rule over Aceh and its challenge to the Indonesian military, the *Tentara Nasional Indonesia* (TNI),¹⁹ which began in the 1970s and continued until the MoU was signed in August 2005, engendered much violence and bloodshed. The GAM was founded by Hasan di Tiro, and it proclaimed the

¹³ Linggadjati Agreement, between the Government of the Netherlands and the Government of the Republic of Indonesia, signed on 25 March 1947. See Colbert, *supra* note 10. See also Ali Sastroamidjojo and Robert Delson, The status of the Republic of Indonesia in international law(1949).*Columbia Law Review*, 49, 344; Charles Cheney Hyde(1949), The status of the Republic of Indonesia in international law, *Columbia Law Review*, 49, 955 and M.C. Ricklefs (1993), *A Modern History of Indonesia Since C.1300*, 2nd ed., Stanford University Press,224-225.

¹⁴ Priyambudi Sulistiyanto comments that "in 1947 President Sukarno persuaded Aceh to join the Republic of Indonesia, promising that Aceh would be given autonomy within Indonesia, and allowed to implement Islamic law."—*supra* note 3, 438-9.

¹⁵ See id. 438.

¹⁶ See id. 438. See also *Global Security Report on Aceh*. Retrieved September 27, 2005, from <http://www.globalsecurity.org/military/world/para/aceh.htm>.

¹⁷ *Ibid*.

¹⁸ See Kirsten E. Schulze. The free Aceh movement(GAM): Anatomy of a separatist organization. *Policy Studies 2* (East-West Center Washington 2004). See also M. N. Djuli and Robert Jereski, Prospects for peace and Indonesia's survival, 9. *Brown Journal of World Affairs* 35, 41-43, 2002(3), in relation to the type of violence used by the GAM.

¹⁹ See Lex Rieffel, *Indonesia's quiet revolution*, 83. *Foreign Affairs* 98,104-106 (2004) in relation to the military in Indonesia. For a discussion on the role of the police in Indonesia see Adrianus Meliala, *Police as military: Indonesia's experience*, 24. *Policing: An International Journal of Police Strategies and Management*,420, (2001).

independence of Aceh in December 1976. This proclamation was not accepted by Indonesia, or indeed, by any other state. The Indonesian government cracked down on the Acehese freedom fighters and forced key GAM personnel to leave Aceh in 1979 when the military began to arrest and kill GAM members. However, the GAM did not disappear and on the political front, an Acehese government in exile was created in Sweden. On the military front, some GAM members were sent to be trained in Libya. When they returned in the 1980s to recruit and train more members, the organisation grew and attracted broad popular support in Aceh. The Indonesian government reacted to the new, expanded organisation by declaring Aceh to be a Military Operational Area/*Daerah Operasi Militer* (DOM) and launched a counter-insurgency campaign.²⁰ This only served to encourage the GAM's demand for Acehese independence.²¹ President Habibie lifted Aceh's DOM status in 1998, but the conflict between the GAM and the TNI continued. The demand for independence further increased with President Habibie's announcement that there would be a referendum on the issue of self-determination in Timor Leste in 1999. This led the GAM, and other groups, to call for a referendum for Aceh. The request was denied however, and rather than discuss the Acehese independence demand and the reasons for such a demand, the government made the decision to deal with the Acehese situation militarily and sent additional troops to Aceh to counteract the GAM.²² Entire villages were punished in retaliation for GAM action and pro-referendum groups were targeted.²³

3.2 The GAM's campaign

The GAM began to take matters into their own hands and rather than try to discuss issues with the Indonesian government, they took *de facto* control over parts of Aceh, sometimes through the use of force,²⁴ and reorganized village administrative apparatus. The concept of a council of village elders that had operated before Aceh had been incorporated into Indonesia was reinstated. The GAM also began to impose 'war taxes' on individuals and on businesses within the region.²⁵ The GAM never dropped the demand for independence from Indonesian rule and the Indonesian government insisted on unity and sovereignty. For many years, rather than discussing issues such as self-determination and independence with the GAM, and indeed with separatist groups in other parts of the state, the Indonesian government met independence demands with force. However, after many years of violent conflict between the GAM and the TNI, the Indonesian government eventually conceded to peace negotiations in 1999.

4. Peace talks

4.1 Attempt 1: The humanitarian pause

In November 1999, then Indonesian president, President Wahid, approached a Geneva-based conflict resolution organisation, the Henri Dunant Centre, later renamed the Humanitarian Dialogue Centre (HDC), with a

²⁰ See A Brief History of Aceh, 7. Estafeta (2001). Retrieved September 26, 2005, from:

<http://www.etan.org/estafeta/01/winter/6aceh.htm>. See also, the structure of military abuse, Inside Indonesia, (No. 62, April-June 1999), retrieved November 08, 2005, from: <http://www.insideindonesia.org/edit62/dom2.htm>, (last visited).

²¹ See Human rights watch report, Indonesia: The war in Aceh (Volume 13, Number 4 (C), August 2001) 8.

²² See id. 10.

²³ See id.

²⁴ See id. 10. This states: "Sometimes through persuasion, sometimes through abduction and a kind of reeducation of local government officials, GAM gradually took control over most governmental functions from the district level down in wide swathes of districts...".

²⁵ See id.

view to offering its good offices in negotiating a peace deal in Aceh.²⁶ This was done secretly on the part of the Indonesian President, as the majority of the government at that time were against entering into talks with the GAM. A fear pervaded that by negotiating with them the government would be conferring a level of legitimacy on the group. Up to that point, members of the GAM had always been dealt with as rebels and terrorists by the Indonesian government, so an invitation to sit down with the government, in a formal setting, with the aim of resolving conflict, was a big step for both sides. The HDC was accepted as a facilitator in the talks with the potential to successfully mediate a peace deal because it was a small, neutral non-governmental organization. The Indonesian government did not want state or UN intervention as they did not want to internationalise the conflict.²⁷

The Humanitarian Pause (HP) was signed by Dr. Hassan Wirajuda, representing the government of Indonesia, and Dr. Zaini Abdullah of the GAM in Bavois on May 12, 2000.²⁸ The Indonesian government refused to call it a cease-fire agreement because it feared that this term might be perceived as recognition of the GAM as an equal and legitimate international actor.²⁹

There are six articles in the agreement, which is short and clearly articulated. The preamble to the document affirms the “imperative to reduce tension and suffering of the population” and establishes the “common endeavour” of the signatories “towards achieving a peaceful solution to the conflict.”

Article 1 sets out the objectives of the HP, i.e. the delivery of humanitarian assistance to the Acehese population and the promotion of confidence-building measures. Article 2 outlines the components of the agreement and Article 3 establishes the organizational structure, allowing for the creation of (1) a Joint Forum, (2) a Joint Committee on Humanitarian Action and (3) a Joint Committee on Security Modalities. A monitoring team was set up to monitor the actions of each committee and report back to the Joint Forum, the highest organ of the Humanitarian Pause. Article 4 deals with the timeframe of the Pause, establishing that the first phase would last three months and would enter into force three weeks after it was signed. Article 5 affirms that there would be no violence from either side between the signing of the document and its entry into force, and finally, article 6 establishes that both parties agreed to use the media to launch the initiative.

Reasons for failure:

The HP did not bring lasting peace to Aceh for a number of reasons. First of all, although the peace talks had been approved and supported by Indonesian President Abdurrahman and some of his ministers, many in the government were dubious of negotiating with the GAM and the TNI were downright opposed to discussions, believing that military might was the only way to defeat the GAM and restore peace to the region.³⁰ The agreement was not accepted and was largely ignored by Indonesian security forces in Aceh and violations of the agreement were commonplace. There were also reports of GAM members violating the terms of the agreement. Although the negotiations, which took place in Switzerland, seemed to be going well enough, this did not reflect the reality on the ground, where neither side behaved as if they believed that the cease-fire would last.³¹

Second, the agreement did not deal with the politics of the conflict and avoided discussion of the position of

²⁶ T. Kivimali and D. Gorman(2008). *Non-governmental actors in peace processes-The case of Aceh*. Switzerland: Henri Dunant Centre for Humanitarian Dialogue, 8.

²⁷ Id, at 9.

²⁸ *Joint understanding on humanitarian pause for Aceh*, May 12, 2000, Retrieved March 01, 2010, from <http://www.hdcentre.org/files/JoU%20FINAL.pdf>.

²⁹ Edward Aspinall and Harold Crouch(2003). *The Aceh peace process: Why it failed*. East-West Center Washington, 15.

³⁰ See id. 14-20 and Edward Aspinall. *Aceh/ Indonesia—Conflict analysis and options for systemic transformation* (Berghof Foundation for Peace Support 2005).

³¹ Aspinall and Crouch, 14, supra note at 29.

both sides, i.e. the GAM's desire for independence and government of Indonesia's sovereignty.

There were several other issues that hampered negotiations, such as whether flying GAM flags constituted a breach of the agreement and the government of Indonesia's insistence that security forces would not withdraw from Aceh and would continue their routine patrols.³² The committee structures established in Article 3 were also too weak to enforce the HP or punish those responsible for violations.³³

While there was a marked decline in violence in the immediate aftermath of the agreement, this did not last long because both sides began accusing each other of violations and retaliated. Violence escalated as the initial three-month phase came to an end and though talks continued in Geneva, the substance of discussions began to reflect less and less the violent reality on the ground in Aceh.³⁴ The HP was renewed twice and was renamed "moratorium on violence" and "peace through dialogue", but retained its basic purpose of providing a platform for discussion between the GAM and the Indonesian government.³⁵

The HP eventually ended in mid-2001. President Wahid issued Presidential Instruction (Impress) No. 4³⁶ which stated that attempts to resolve the conflict with the "armed separatists" had failed and that the government had decided to respond to the situation with "a more comprehensive approach, and to address the political, economic, social, law and order, security and information and communication aspects of the problem".³⁷ The government then devised a new security structure, aimed at regaining control over Aceh and increased army and police presence in the region to over 30,000 people. In November 2001, General Bambang Yudhoyono of the Indonesian army stated that there would be "no more compromise with separatism" and no more dialogue with the GAM,³⁸ and the government also ended HDC's involvement in the mediation process. On the other side GAM assaults on military and police posts increased.

In the absence of a negotiation/mediation process the conflict between the GAM and the government exacerbated in 2002. In April of that year GAM leaders announced that the Indonesian offer of "special autonomy" for Aceh was inadequate and once again began to demand full independence.³⁹ In late July the government planned to send in thousands of extra troops in an attempt to finally crush the GAM and Minister Susilo Bambang Yudhoyono even put forward the idea of imposing a state of civil emergency in Aceh. However, these plans came under attack amid fears that they would further exacerbate the situation.⁴⁰

Ultimately, the Indonesian government's commitment to the territorial integrity of Indonesia was at odds with the GAM's insistence on independence. This was never addressed in the peace agreement and meant that peace could never last.

4.2 Attempt 2: Cessation of Hostilities Agreement⁴¹

Representatives of the HDC returned to Aceh in mid-November 2002 in order to monitor the conflict situation and attempt to broker a peace plan between the two sides once again. This peace agreement, a Cessation

³² Id at 15.

³³ Id at 17.

³⁴ Id at 18.

³⁵ See *Human Rights Watch Report*, supra note 21 at 10.

³⁶ See id at 11.

³⁷ Ibid.

³⁸ Aspinall and Crouch, supra note 29 at 24.

³⁹ See <http://www.globalsecurity.org/military/world/para/aceh.htm>. Retrieved September 27, 2005.

⁴⁰ See id.

⁴¹ *Cessation of Hostilities Framework Agreement between Government of the Republic of Indonesia and the Free Aceh Movement*, 9th December 2002. Retrieved March 01, 2010, from http://www.usip.org/library/pa/aceh/aceh_12092002.html.

of Hostilities Agreement (COHA),⁴² was signed by both the Indonesian government and GAM leaders on December 9, 2002. As with the HP, the Preamble to the COHA establishes that “the priority in Aceh (Acehnese spelling of Aceh) is the security and welfare of the people.” As well as declaring the objectives of the agreement, the preamble changes the mandate and mission of the BRIMOB (*Brigade Mobil*; Special Operations unit of the Indonesian national police force) so that it now only covers regular police activities and no longer carries out “offensive actions” against the GAM.

Article 1 deals with the objectives of the agreement, stating enmity between the GAM and the Indonesian government “should be considered a thing of the past”, and that the objectives are to (1) proceed to the next phase of the peace agreement, (2) continue the confidence building process to create a feeling of mutual cooperation and (3) provide humanitarian, rehabilitation and reconstruction assistance. Article 2 establishes the commitment of both sides to the agreement and states that they are in full control of parties on the ground (e.g., TNI, BRIMOB and GAM members). Article 3 covers the creation of a Joint Security Committee, similar to that established by the HP but with more authority and a more comprehensive mandate. Article 4 defines and describes the function of “peace zones” while Article 5 deals with timeframes for implementation.

The COHA involved two principle demilitarization steps. The GAM agreed to hand in weapons and arms to designated “placement sites” as part of disarmament measures and the government of Indonesia agreed to a phased reduction of TNI forces and a reformulation of their mandate from a strike force to a defence force. Demilitarization was due to begin after a “confidence-building” phase of two months, meaning that it was scheduled to begin on February 9, 2003 and be completed by July 9, 2003.⁴³ However, the COHA also failed to bring peace to Aceh.

Reasons for failure:

The COHA was a far more comprehensive agreement than the HP and seemed to have learned and built on lessons learned in 2000. For example, one of the reasons that the first agreement failed was because of the difference between what was going on at the negotiation table in Switzerland and what was happening on the ground in Aceh. Article 2 of the COHA seemed to realise the importance of that lesson, establishing that each side was in full control of all parties (e.g., the TNI and BRIMOB). This was meant to ensure that the substance of negotiations impacted directly on the conflict, reducing violence and bringing peace. Indeed, the HDC reported that the number of civilians killed dropped from 87 to 12 during the first two months following the agreement.⁴⁴ However, it was not long before both sides began to engage in activities which would eventually prove fatal to the peace agreement.

As the agreement was only the first step in the “confidence-building” process, it only provided for an immediate reduction in hostilities to improve conditions on the ground, and did not attempt to resolve the root causes of the conflict, similar to the HP process. The goal was to proceed to the “all-inclusive dialogue” once violent clashes and hostilities had decreased. However, this phase was not reached for several reasons. First of all, within a week of the agreement, both sides were already accusing each other of violating the terms of the agreement.⁴⁵ Leaders on both sides involved in the mediation process could also not agree on the interpretation of several of the provisions, for example, the Indonesian government implied that the GAM had given up its claim of

⁴² *The cessation of Hostilities Agreement*. Retrieved September 27, 2005, from <http://www.hdcentre.org/index.php?aid=43>.

⁴³ Aspinall and Crouch, *supra* note 29 at 32.

⁴⁴ *Id* at 34.

⁴⁵ *Id* at 35.

independence upon signing the agreement, and thus any further mention of a demand for independence would be considered a violation of the agreement. The GAM had never agreed to this. Furthermore, the GAM felt that the agreement would eventually allow for a referendum on Aceh's future and would also allow the GAM to form an official political party and run in the elections. However, the government of Indonesia made it clear that this would never happen.⁴⁶

The TNI remained opposed to any mediation attempt with GAM and took the opportunity to act as spoilers whenever the chance arose, organising and encouraging demonstrations and threatening Joint Security Council members to prevent them from reporting any violations of the agreement by TNI members.⁴⁷ Senior military officers publicly and repeatedly voiced their disapproval of the agreement. This highlighted the lack of intraparty cohesion, which while this was a feature of both sides, it was more pronounced on the government side.

The Joint Security Council was also quite weak. It could investigate violations of the agreement but only had the power to recommend action to be taken by the leaders in charge of those responsible for the violations. The GAM and the government of Indonesia also rejected the Council's findings of violations.⁴⁸

As talks continued, the GAM appeared to be increasingly cooperative. It stated that it was committed to ending the armed struggle. However, this was not enough for the government. In another draft agreement prepared with the HDC, the government demanded that, "(1) GAM fully accepts the special autonomy status provided by the Nanggroe Aceh Darussalam Law within the framework of the unitary state of the Republic of Indonesia and consequently agrees not to seek the independence of Aceh; (2) in this regard, GAM is committed to dropping the armed struggle, to disbanding the Acehese State Army, and to participating in the political process as stipulated in the COHA."⁴⁹ By demanding that the GAM disarm, accept autonomy and abandon the quest for independence, the government was effectively calling on the GAM to surrender and dissolve itself. The GAM delegation could not sign an agreement that contained such a provision and the government was not prepared to change the draft.⁵⁰

By mid-May 2003, the peace deal seemed unsalvageable. Government officials and GAM leaders met in Tokyo for negotiations but no agreement was forthcoming. President Sukarnoputri declared a six-month period of martial law in May and the Indonesian army launched an offensive involving the deployment of 35,000 troops into Aceh the following day. There was violence and casualties on both sides and the Indonesian Red Cross reported that 12 civilians were also killed.⁵¹

In May 2004 the situation in Aceh was reclassified by the Indonesian government as a 'civil emergency'. The government claimed to have had considerable success during the period of martial law in crushing the GAM and claimed that thousands of GAM members had been killed captured or had surrendered to the army. However, "critics of the military operation countered that most of those killed were civilians, and say the heart of the...GAM is still relatively untouched."⁵²

4.3 Attempt 3: The Memorandum of Understanding⁵³

⁴⁶ Id at 37-38.

⁴⁷ Id at 40-42.

⁴⁸ Konrad Huber(2004). *The HDC in Aceh: Promies and pitalls of NGO mediation and implementation*.East-West Center Washington, 36-40.

⁴⁹ Aspinall and Crouch, supra note 29 at 44.

⁵⁰ Ibid.

⁵¹ See <http://www.globalsecurity.org/military/world/para/aceh.htm>. Retrieved September 27, 2005. See also *Human rights briefing paper, Aceh Under Martial Law*, September 2003.

⁵² See supra note 51.

⁵³ *Memorandum of understanding between the Government of the Republic of Indonesia and the Free Aceh Movement*. Retrieved August 15, 2005, from http://www.cmi.fi/files/Aceh_MoU.pdf.

The Memorandum of Understanding (MoU) was signed by the Indonesian Minister for Law and Human Rights, Hamid Awaludin and Malik Mahmud of the GAM leadership in Helsinki and was witnessed by the Chairman of Crisis Management Initiative (CMI) and former Finnish President, Martti Ahtisaari on August 15, 2005. While there had been some contact between CMI and the Indonesian government with a view to peace talks earlier in 2004, it was the devastation which was wrought by the tsunami of December 26, 2004, which killed over 170, 000 people and left another 400, 000 homeless,⁵⁴ which provided the impetus for the convocation of new peace negotiations. While in the immediate aftermath of the disaster there were random episodes of violence between the GAM and the TNI,⁵⁵ in January 2005 representatives of the GAM and the Indonesian government met in Helsinki for discussions facilitated by CMI.⁵⁶ Ahtisaari chaired discussions between the GAM and the Indonesian government from January 17 to 19, 2005. Follow-up talks ensued which led to the drafting of the MoU by CMI. This instrument was signed by the GAM and the government of Indonesia on August 15, 2005. The MoU⁵⁷ begins as follows:

The Government of Indonesia (GoI) and the Free Aceh Movement (GAM) confirm their commitment to a peaceful, comprehensive and sustainable solution to the conflict in Aceh with dignity for all.

The parties commit themselves to creating conditions within which the government of the Acehese people can be manifested through a fair and democratic process within the unitary state and constitution of the Republic of Indonesia.

The parties are deeply convinced that only the peaceful settlement of the conflict will enable the rebuilding of Aceh after the tsunami disaster on 26 December 2004 to progress and succeed.

The parties to the conflict commit themselves to building mutual confidence and trust.

This Memorandum of Understanding (MoU) details the agreement and the principles that will guide the transformation process.

This instrument would not have been possible without the concession of independence for Aceh on the part of the GAM. The preamble reflects the GAM's renouncement of its demand for independence, with both parties committing themselves to an agreement that would lead to a "fair and democratic process within the unitary state and constitution of the Republic of Indonesia."

The agreement itself focuses on the governing of Aceh, including a new law on the governing of Aceh, political participation, the economy and the rule of law. Under the MoU, the GAM had the right to form an official political party. Article 2 deals with human rights and the establishment of a Human Rights Court and a Commission for Truth and Reconciliation. The third section covers Amnesty and Reintegration into Society, whereby the government of Indonesia agree to grant amnesty to all persons who have engaged in GAM activities and agree to release all political prisoners and detainees.

Article 4 deals with Security Arrangements and Article 5 covers the Establishment of the Aceh Monitoring Mission (AMM).⁵⁸ The European Union and ASEAN contributing countries were to establish the AMM, which

⁵⁴ See After 29 years, an Aceh peace pact, *Christian science monitor*. Retrieved August 30, 2005, from <http://www.csmonitor.com/2005/0718/p06s02-woap.htm>.

⁵⁵ Arie, K. (2005). *Crisis Profile: Deadlock in Indonesia's Aceh Conflict*. Retrieved March 10, 2006, from <http://www.alertnet.org/thefacts/reliefresources/110745210652.htm>.

⁵⁶ See official website of the organisation at <http://www.cmi.fi/>. Retrieved March 01, 2010.

⁵⁷ *Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement*, supra note 53.

⁵⁸ The website of the Aceh Monitoring Mission is: http://www.aceh-mm.org/english/info_menu/archive.htm. Retrieved July 27, 2007.

would be responsible for monitoring, among other things, disarmament and demobilisation of GAM members and the relocation of Indonesian non-organic military and police forces. Article 6 tasked the AMM with settling any disputes that may arise and makes their rulings binding on all parties. The AMM was the European Union's first monitoring mission in Asia. The Mission completed all of the tasks assigned to it under the Memorandum and withdrew from the region on December 15, 2006.

4.4 Current situation in Aceh⁵⁹

It has been claimed that the peace process in Aceh is working "beyond all expectations."⁶⁰ Decommissioning of weapons has gone smoothly, as has the release of amnestied GAM prisoners,⁶¹ and TNI personnel have withdrawn from the area. The MoU has been adhered to such an extent that the AMM fulfilled all of its obligations under the instrument and withdrew. However, there have been number of instances of violence in the region since 2007, attributed to independence groups.⁶²

Voting took place on December 11, 2006 to elect the governor and vice-governor of the province and its districts. These were historic elections as they were the first ones ever to directly elect the region's rulers as previously these positions had been filled by the Indonesian government. The GAM was successful in the election with Irwandi Yusuf and his running mate Muhammed Nazar winning 38% of the vote and another GAM pair coming in second place with 17%. Irwandi,⁶³ a member of the GAM, was elected governor and was sworn in on February 8, 2007. He had previously been centrally involved in GAM activities, having trained in guerrilla warfare in South America⁶⁴ and entering the GAM central command on his return home. He had actually been in prison when the tsunami hit the region, having been arrested for treason in 2003. He escaped when the prison was flooded and then began to work behind the scenes in the peace talks.⁶⁵

The strength of support for the GAM in the elections was worrying to some who thought that it would provoke renewed independence demands. Hillman comments:

Some in Jakarta are worried that GAM will build on its political victories to continue its struggle for independence. Mr. Irwandi will have to show Jakarta that GAM is serious about working within the new autonomy framework. Giving post-election interviews in front of a GAM flag, as he has done, offends the spirit if not the letter of the peace deal.⁶⁶

A new organization, The Preparatory Committee of the Free Aceh Democratic,⁶⁷ highlighted that separatist demands were not dead in Aceh when it issued a press release on January 15, 2006. It states:

We, the Preparatory Committee of the Free Aceh Democratic, would like to declare that we will continue our struggle for broader democratic environment in our ancestral land with respect for international laws.

It goes on to say that the peace process and the MoU are "politically and democratically unsounded [*sic.*],

⁵⁹ See Statement of the-Secretary-General of the United Nations, Kofi Annan on situation in Aceh-SG/SM/10289, 30/12/2005.

⁶⁰ Aceh: So Far, So Good (International Crisis Group Asia Briefing Number 44, Jakarta/Brussels, December 13, 2005). See also Aceh: Now for the Hard Part (International Crisis Group Asia Briefing Number 48, Jakarta/Brussels, March 29,2006).

⁶¹ Aceh: So Far, So Good, id at 2.

⁶² See World Bank/Decentralisation Support Facility, Aceh Conflict Monitoring Update 1–31 May 2007, Retrieved July 27, 2007, from <http://www.conflictanddevelopment.org/data/doc/en/regCaseStudy/aceh/mon/Aceh%20Conflict%20Monitoring%20Update%20-%20May%202007.pdf>. See also Fabio Scarpello, Bombs shake fragile Aceh peace, South Chian Morning Post August 04, 2007.

⁶³ See Aceh's Local Elections: The Role of the Free Aceh (International Crisis Group Asia Briefing Number 57, Jakarta/Brussels, November 29, 2006).

⁶⁴ Id. See also How Gam Won in Aceh (International Crisis Group Asia Briefing Number 61, Jakarta/Brussels, March 22, 2007).

⁶⁵ See TAPOL (Tuesday, December 12, 2006).

⁶⁶ See id.

⁶⁷ The website of this organization is available at: <http://www.freeaceh.info/>, (last visited July 17,2007).

morally unjustifiable, and therefore, in the longer term unsustainable” and that the group, who are “loyal to the struggle for an independent nation state have decided to unite and establish this Committee for the following purposes: to continue our struggle for independence; to reclaim the Achenese state and its sovereignty; to lay the groundwork for the establishment of a democratic and free government in Aceh and to provide the voice for the many Achenese voices that have been left unheard.” This Declaration was signed in New York by 25 members of the Preparatory Committee of the Free Aceh Democratic, based in various places, including Aceh, the US, Sweden, Norway and Malaysia.⁶⁸ However such separatist ideas have not been reignited across the region.

Legislative elections were held in Indonesia on April 9, 2009 for 132 seats of the Regional Representative Council (DPD) and 560 seats of the People’s Representative Council (DPR). The elections were a chance to gain an insight into how Aceh was functioning in a post-conflict environment and what support remained for the GAM and independence demands. Many of the former GAM members created a new party, *Partai Aceh* (PA), and used a variation on the GAM flag. A number of alternative ‘local’ parties were also formed in Aceh to contest the elections. The PA was viewed as a threat in some quarters who believed that it would return to the GAM’s independence demands. Indeed, in the run up to the elections there were many instances of violence directed against the PA.⁶⁹ In Aceh the PA dominated the elections, although there were reports of intimidation at the polls. Barter comments:

There is little doubt that PA dominance is partially owed to intimidation by former GAM members and funding from grey-market construction contracts. But even with these significant shortcomings, there can be no doubt that the election was a resounding indicator of continued rebel popularity in much of Aceh.⁷⁰

The results of the elections also seem to illustrate a satisfaction with the MoU as there was also strong support for President Yudhoyono’s Partai Demokrat (PD) throughout the region. It seems that the elections were an endorsement of the *status quo* in the region.⁷¹

4.5 Comparing the mediation attempts

It is clear that the peace process in Aceh was complex and complicated. While the COHA and its precursors succeeded in opening up channels of communication between the GAM and the government, they failed to bring about a lasting peace in Aceh. Numerous reasons have been given for the failure of the COHA such as uncertainty concerning the meaning of its detailed provisions (GAM did not feel that it had given up its independence demand whereas the Indonesian government felt this was implied in the agreement), a weak enforcement mechanism (the Joint Security Council could investigate violations of the agreement but only had the power to make recommendations as to what should be done, which were rejected by the GAM and the Indonesian government⁷²) and a lack of agreement within the GAM and the Indonesian government.

On the surface, the provisions of the MoU seem to give Aceh a lot of powers; however in reality, most of these powers merely repeat or reinforce provisions already contained in the Special Autonomy law and other laws passed on Aceh.⁷³ There are, however, some new additions, including the right to set interest rates differing from those of the Central Bank and the requirement that any national laws with the potential to affect Aceh must be

⁶⁸ The text of the declaration was retrieved July 27, 2007, from <http://freeaceh.info/?to=Declaration>.

⁶⁹ See Shane Joshua Barter, A deeper look into the recent elections in Aceh, *Jakarta Post*, 28/04/2009.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Huber, *supra* note 48 at 36-40.

⁷³ Edward Aspinall(2005). *The Helsinki Agreement—A more promising peace for Aceh?* East-West Center Washington, 43-44.

approved by the province's legislature.

One big difference between the MoU and previous agreements is the Memorandum's provision allowing for local political parties. This issue represents one of the major concessions of the Indonesian government, comparable to the GAM's abandonment of its demand for independence.⁷⁴ As mentioned above, it is doubtful whether the GAM would have conceded on its demand for independence if the tsunami had not devastated the region. However, independence was never up for discussion in the peace talks mediated by Ahtisaari.⁷⁵

The MoU also allows for a much stronger monitoring and enforcement mechanism than the COHA, in the form of the AMM which was assigned a broad range of duties. Whereas the HDC lacked the sufficient political authority to enforce their decisions on violations of the agreement under the COHA, Ahtisaari was in a strong position when mediating the MoU and was able to get the support of the EU to monitor the implementation of this instrument.⁷⁶ Violations of the MoU were settled by the impartial AMM, whose rulings was binding on both parties and was backed by the EU and ASEAN. CMI saw the design of a much stronger monitoring and enforcement mechanism than had been incorporated into the COHA as one of their greatest and most important challenges, with Ahtisaari himself stating that NGOs should not be responsible for monitoring peace agreements.⁷⁷ This led to the ASEAN states and the EU becoming part of the AMM.

5. Mediation actors and techniques in Aceh

5.1 The Henri Dunant Centre for Humanitarian Dialogue (HDC)

The HD Centre was established in August 1999 and in November 1999, was approached by Indonesian President Abdurrahman Wahid to attempt to open peace talks in Aceh.⁷⁸ As a majority in the Indonesian government were not in favour of dialogue with the GAM at that time, the role of HDC was not made public. The HDC was preferred as a mediator over states and regional organisations such as the UN or EU as it was a small, unknown non-state actor.⁷⁹ UN involvement in Timor Leste had gone badly wrong and the president chose a completely different type of actor to help with the case of Aceh. As a small, neutral, independent organisation, he felt that the HDC would be acceptable to both the GAM and the government as an impartial actor, capable of facilitating dialogue between the parties. HDC's role changed over the course of negotiations, as the organisation moved from facilitators to mediators to monitors of the peace agreement with responsibilities for implementation.⁸⁰ However, HDC eventually proved to lack the authority and leverage necessary to enforce the provisions of the MoU and the COHA, and this lack of political clout was one of the main challenges facing CMI in 2005.⁸¹

5.2 Crisis management initiative

At the same time that Wahid approached HDC in 1999, a small splinter group from GAM approached Martti Ahtisaari to ask him to help facilitate a peace agreement for Aceh.⁸² However, at this time Ahtisaari was the president of Finland which was hosting its first EU presidency at the time. This meant that the Indonesian

⁷⁴ Ibid at 42.

⁷⁵ See Edward Aspinall. *Peace without justice? The Helsinki peace process in Aceh*, 12,(Centre for Humanitarian Dialogue, 2007).

⁷⁶ Edward Aspinall supra note 73 at 46-47.

⁷⁷ Ibid at 47.

⁷⁸ HDC website, available at <http://www.hdcentre.org/about> and Kivimaki and Gorman, supra note 26.

⁷⁹ Kivimaki and Gorman, supra note 26 at 9.

⁸⁰ Ibid at 13.

⁸¹ See Huber, supra note 48.

⁸² Kivimaki and Gorman, supra note 26 at 9.

government felt that his involvement would internationalise the conflict to a certain extent. Finland also thought that Finnish involvement would put a strain on its already overstretched resources due to the EU presidency.⁸³

However, once Ahtisaari retired as president of Finland, the Indonesian government was much more welcoming of his involvement. Preparations for negotiations lasted about 12 months, with Ahtisaari meeting many individuals from both sides, including high ranking ministers acting in a private capacity. The government was still officially opposed to negotiations at this time. Ahtisaari began working as a mediator for the parties in his role of chairman of CMI; however he retained the title and prestige of a president. The negotiations under CMI adopted the principle of “nothing is achieved until everything is achieved” and CMI also encouraged informal negotiations outside the official CMI platform.⁸⁴ When it came to implementing and enforcing the provisions of the MoU, Ahtisaari was successful in getting many states on board, including an EU monitoring team for the AMM. He felt that NGOs were not strong enough to enforce peace agreements, as witnessed in the case of the COHA.⁸⁵

5.3 Ahtisaari

The role and influence of President Ahtisaari as a mediator have been acknowledged as a significant factor in the success of the peace process.⁸⁶ An analysis of Ahtisaari’s role reveals that his mediation style echoes that of the role of the evaluative mediator, as defined within mediation literature in legal studies.

Three mediation styles have been identified within mediation literature in legal studies, facilitative mediation, evaluative mediation and transformative mediation. The classic mediation style is facilitative mediation, whereby the facilitative mediator focuses on encouraging communication between the disputing parties to help them come to an agreement as to how to reach a suitable resolution.⁸⁷ The facilitative mediator has a very limited role in this type of mediation process. In contrast, an evaluative mediator is very much involved in the process and takes on a very directive, ‘problem-solving’ approach.⁸⁸ The third mediation style identified within legal studies literature is that of transformative mediation. The transformative mediator focuses on the empowerment of the parties to assist them in gaining an appreciation and understanding of each other’s respective positions. Ultimately this style aims to transform both the parties and society.⁸⁹ Of the three styles of mediation, Ahtisaari’s characteristics and approach to mediating the dispute between the GAM and the Indonesian government fits most readily within the evaluative category. Aspinall perceived Ahtisaari’s role as “largely persuading GAM to explore ‘a narrow opening in the autonomy clause’... to encourage the movement to bend to the government’s position...”⁹⁰

Ahtisaari was very much involved in the mediation process between the GOI and GAM, making concerted efforts to direct the parties toward settlement, to the extent of setting out a strict timeframe which was rigidly adhered to.⁹¹ Not only did Ahtisaari direct the parties towards settlement, he intervened to remind the parties that they had to move forward in terms of the mediation process instead of dwelling on the past.⁹²

⁸³ Ibid.

⁸⁴ Ibid at 15.

⁸⁵ See Edward Aspinall. *The Helsinki Agreement: A more promising basis for peace in Aceh?* (East-West Center Washington, 2005).

⁸⁶ Edward Aspinall, supra note 75 at 12.

⁸⁷ S. Commeely(2001). *Family mediation in Ireland*. Dartmouth:Ashgate Publishers 21. S. Johnson(2000).The case for medical malpractice mediation 5. *Journal of Medicine and Law*, 21, 27.

⁸⁸ J. Folger and R. Bush(1994). *The promise of mediation*. San Francisco: Jossey-Bass Publishers,12.

⁸⁹ Ibid.

⁹⁰ Edward Aspinall, supra note 75 at 12.

⁹¹ Ibid at 14.

⁹² Ibid at 17.

An evaluative mediator will suggest settlement options to the disputing parties. Again Ahtisaari demonstrates traits of an evaluative mediator as he intervened during the mediation process, especially on human rights issues, and included the need for a human rights court (which the GAM sought at earlier stages in the negotiation process) in the final draft of the agreement.⁹³

Ahtisaari also put pressure on the parties to continually move the peace process forward, insisting that the parties focus on the key issues, but not allowing the parties to use the mediation process to thrash out the finer details of those issues, as Ahtisaari believed that to allow the parties to do so would prevent the parties from ever reaching a mutually acceptable settlement.⁹⁴ Again the tactics adopted by Ahtisaari as a mediator demonstrate that his particular style is that of an evaluative mediator. Even his insistence that both parties had to fully participate in the process is a characteristic pertinent to the evaluative mediation style. Ahtisaari was of the view that an agreement could deal with all of the parties issues and concerns, and that it required the parties to both commit to the process before an agreement could be reached, or indeed, be implemented.

6. Conclusion

The conflict between the GAM and the Indonesian government was violent and vicious. The actions of both parties terrorized the civilian population for 25 years. While it seems to have been the devastation wrought by the tsunami which was the impetus for commitment of both sides to peace talks, the importance of the role of the mediator in ensuring a successful peace deal cannot be denied. The GAM and the Indonesian government had worked with the HDC in the past, which paved the way for the post-tsunami peace process led by Ahtisaari and CMI. The employment of evaluative mediation techniques by Ahtisaari and CMI, offering clear guidelines and timeframes, was successful in finally bringing peace to the region.

While the role of the EU was vital to the achievement of a lasting peace deal, it is doubtful if an organisation such as the EU would have been successful on its own in bringing peace to the region. A multi-track mediation approach was necessary to address the needs of the parties to the conflict. CMI is small and neutral and was able to make both parties feel comfortable enough to enter peace talks while providing effective evaluative mediation techniques, but the power and resources of the EU were imperative to oversee the implementation of the MoU.

The Acehese peace process was complex and complicated, involving multiple mediation actors and conflict resolution techniques. The end result, however, has been an agreement which has brought peace to a previously violent region and has held strong since 2005, and which will hopefully last long into the future.

(Edited by Jane T.)

⁹³ Ibid.

⁹⁴ Ibid at 14.