

International Dialogue

A 'Westphalia' for the Middle East?

# Reinventing 'Westphalia'

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Historical Lessons for a  
Future Peace in the Middle East



“The Peace of Westphalia is not a blueprint for peace in the Middle East. But if we look at it closely enough, we will see that it does offer us a number of instruments, methods and ideas. It is up to us to identify these, to extract them, refine them and make use of them in our diplomacy today.”

FRANK-WALTER STEINMEIER, Federal Foreign Minister

(12.07.2016 at the Osnabrück Peace Forum)

“The Thirty Years War provided a crucial lesson: a proxy war needs a proxy peace. Just as external powers upheld the Westphalian Peace after 1648, any sustainable peace agreement in Syria will depend on the willingness and ability of both Syrians and external actors to serve as guarantors for stability.”

STAFFAN DE MISTURA, Special Envoy of the Secretary

General for Syria, United Nations

“The Peace of Westphalia, which ended the Thirty Years War in 1648, has provided enduring lessons for similar endeavors ever since. In view of that, it is great to see the Körber Foundation revisit that endeavor for insights that might help guide development of creative approaches to resolving the conflicts in Syria and the greater Middle East.”

GENERAL DAVID H. PETRAEUS, fmr. Director, Central Intelligence Agency of the United States of America

## Executive Summary

# A ‘Westphalia’ for the Middle East?

› A series of parallels between European conflict and religious strife during the Thirty Years War on the one hand, and contemporary conflict in the Middle East on the other, vindicates the endeavour of seeking lessons for current peacemaking in early modern history. However, one must acknowledge the different historical contexts of the Thirty Years War and the current Middle East.

› Similar to the Thirty Years War, the current Middle Eastern conflicts are comprised of a set of interlocking political-religious struggles at local and regional levels. These are complemented by external interference in the context of asymmetrical power conflicts, which in turn have exacerbated and prolonged the conflicts.

› Peacemaking lessons include the value of an all-inclusive multilateral peace congress. Neither a ceasefire, nor a state of exhaustion should be a prerequisite for the convening of such a congress. Diplomacy works and should be allowed to run its course. There needs to be more effective perception-management, because more-or-less justified fears about the other side’s perceived quest for hegemony stifle trust and represent an obstacle towards a settlement. Therefore, all sides need transparently to set out their own core security interests and ‘red lines’ in great detail at the outset of a peace conference. Trust between the different parties is not a precondition for successful negotiations.

› In order for a future peace settlement to be effective in the longer term, it needs to be mutually and reciprocally guaranteed by the

contracting parties themselves. Ideally, there should be a two-tier system of regional and international guarantees. The next step could be to establish “neutralised zones”, in which minority rights would be safeguarded, armed force would be largely banned and which would be taken out of ongoing geopolitical rivalry.

› The guarantors should include regional powers who are themselves signatories to the peace settlement and therefore have a pressing interest and a stake in the peace. International guarantors will be more effective if they also share an interest in upholding the peace settlement and its terms, such as preventing a spill-over effect of disturbances from the region.

› The guarantors – both regional and international – must not only police norms of behaviour between states, but also within the states of the Middle East covered by the peace settlement and hence the guarantee.

› These norms of behaviour within states should, first and foremost, enshrine the protection of religious and ethnic minorities. The internal arrangements, based on these norms, should be subject to guarantee, i.e. in case of non-compliance, they could be enforced by the guarantors.

› If sectarian rivalries are to be resolved and replaced by peaceful religious coexistence, all sides will have to forgo attempts to define or impose absolute religious truth.

# Reinventing 'Westphalia'

## Historical Lessons for a Future Peace in the Middle East

Like the conflicts in the Middle East today, the Thirty Years War developed into a highly complex set of events. Its main geographical focus was the Holy Roman Empire of the German Nation, the political management and constitutional arrangements of which were among the chief contested issues over which the war was fought. The Empire was a highly decentralised mixed monarchy in which functions of statehood and sovereignty were shared among the princes (Imperial Estates) and the Emperor, who was their feudal and judicial overlord. But the Emperor was by no means an absolute ruler over a centralised monarchy. According to the Empire's constitutional laws, the Imperial Estates possessed considerable prerogatives associated with statehood. These included

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the ability to conduct individual foreign policies (including the right to wage war, conclude peace and alliances, and dispatch embassies), and the right to rule over their territories' subject populations. The Emperor himself was an Imperial Estate in his hereditary lands of Austria and Bohemia (the Habsburg Monarchy). The fundamental problem of how to integrate the 100-year-old religious schism into this political-legal framework was a core element of the Thirty Years War. Another was a competing vision of the constitutional balance between the prerogatives of the Emperor and those of the princes, as well as the balance between the princes and their respective subject populations within their territories. The war was triggered in 1618 by local events within one of the Empire's constituent territories, the rebellion of the Protestant noble estates of Bohemia against their Catholic Habsburg rulers, who also provided the emperors in this period. The fact that this local rebellion spread so quickly and escalated into a general civil war of the Empire can be explained by the grow-

ing political and confessional crisis in central Europe from the late sixteenth century.

In 1555 the political elites of the Empire had reached a working compromise in the religious question which brought many decades of peace by shelving intractable questions of theological truth for the time being, instead managing confessional co-existence legally and politically. But by the late sixteenth century, increasing confessional polarisation contributed to a paralysis of the consensus-based mechanisms and institutions which had hitherto been able to manage confessional cohabitation. The growing sense of mutual mistrust and antagonism was related to several factors, including:

- ▶ The assertiveness of the Tridentine Catholic reform movement and counter-reformation, driven by clerics such as Jesuits, and supported by Catholic princes.
- ▶ The emergence of a new generation of more radical Catholic and Protestant princes who had no personal experience of the times of religious unity and were less willing to compromise.
- ▶ The fading of the unifying effect of hostility to a shared external enemy after the end of the long war against the Ottoman Turks – a parallel to the Middle East could be construed here with a similar fading potency of the unifying bracket of hostility towards Israel.
- ▶ Another factor was a growing power vacuum in the Empire resulting from dynastic and personal problems in the Emperors' Habsburg dynasty – a vacuum that was filled by new sectarian alliances in the Empire.

**“In a most dramatic fashion, history is compelling us to bear witness once more to the agonizing process of a region falling apart and reassembling its constituent pieces. The contagious tragedy unfolding in the Middle East today bears a number of parallels to the problems which haunted Central Europe in the early 17th century. Once**

**more, a diverse mix of cultures find themselves grappling with socio-economic retardation, weak cohesion, savage totalitarian regimes, widespread elite failure, fanatic ideologies, deadly vicious circles perpetuated by warlords as well as the greedy intrusion and hostile alliances of external powers. Amid this crisis, the spirit of 'Westphalia' is, in fact, a precious well of visions and experiences in terms of conflict resolution, the use of diplomatic tools, and the balancing of great-power interests. However, the question remains, whether we are ready yet to embrace its lessons?”**

SAMIR ALTAQI, Director General, Orient Research Centre, Dubai

All this by no means made war inevitable, but it does help explain how the local rebellion could turn into a general war after the prince-elect of the Palatinate accepted the Bohemian crown which the rebels had wrested from the Habsburgs. This broader conflict compelled the Austrian Habsburgs to call on the support of their Spanish cousins, which 'Europeanised' the conflict at an early stage. It points to a structural element of the war, namely its embedding into concurrent geopolitical struggles among the Great Powers in the region – particularly the contest for supremacy between the Habsburgs (Spain and Austria) and France, the war between the Netherlands and Spain, and the conflicts for dominance in the Baltic region. These constellations of rivalry all contained a German dimension which helps to explain why foreign powers were sucked into the war in Germany, again similar to the way in which instability in the Middle East today attracts outside intervention. During the Thirty Years War, Spain, Denmark, Sweden and France intervened because of a combination of geopolitical security concerns, a desire to uphold a favourable political balance within the Empire, and, ostensibly at least, confessional solidarity. Similarly, outside powers such as Iran, Saudi Arabia, Russia, the United States have interfered in the Syrian war partly by use of smaller proxies to fight out their grievances and contain the others' influence.

By the mid-1630s the belligerents within the Empire had largely come to an accommodation with the Peace of Prague. The Emperor suspended his previous maximalist confessional agenda, and was thereby able to reconcile most princes in a settlement which might well have turned the Empire into a more centralised monarchy. However, this was anathema to the intervening powers, Sweden and France, whose military involvement in Germany therefore continued and increased.

Ending the war thus required an inclusive, European peace congress which would conclude an international peace treaty, and simultaneously be a constitutional convention for the Empire under international guarantee. Such a dual settlement was necessary precisely because the domestic affairs of the Empire and its territories had been central to the foreign interventions, and because the interveners would not stop fighting until these concerns had been adequately met. After five years of negotiations at the congress towns of Münster and Osnabrück, which constituted a completely unprecedented innovation in the law of nations, and during which the delegates resorted to pragmatic and innovative diplomatic techniques, the Thirty Years War was finally brought to an end, and religious war banished forever from central Europe. Contrary to what is still frequently asserted in political science and the media, 'Westphalia' did not inaugurate a modern system of equal nation states, nor did not it enshrine the principle of non-intervention in other states' domestic affairs. Actually, it had quite the opposite effect, because by placing the religious rights

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of subject populations under international guarantee it provided new channels for the intervention, or at least supervision, by external guarantor powers to defend constitutional arrangements within the territorial states of the Empire; thereby limiting, rather than increasing, the governmental prerogatives of the princes in confessional affairs. Detailed research by historians over the last twenty years has convincingly debunked the myth of the so-called Westphalian system. The history of the 'real' Westphalia is potentially more useful for the contemporary Middle East,

precisely because it is there that the old sovereign nation-state model – incorrectly attributed to Westphalia – is widely perceived to have failed.

### From ‘Westphalia’ to the Middle East

While there are numerous historical precedents of wars and peacemaking efforts, that could serve as an inspiration to analyse today’s conflicts in the Middle East, the number of parallels between the Thirty Years War then and conflicts in the Middle East now is striking. The most obvious one is the daunting complexity of the conflicts, with numerous actors of varying status fighting asymmetrical power conflicts in a multipolar international environment. In Bohemia as well as in Syria, hostilities began with internal rebellions, and then escalated incrementally into broader conflicts through the involvement of outside powers, starting with proxy wars, before moving on to direct military intervention. In both cases local conflicts which concerned an assertion of political participation or autonomy (the state-building war of the Bohemian nobles as well as many Imperial Estates’ desire for greater autonomy vis-à-vis the Emperor, and the Syrian opposition’s quest for greater political freedom) became subsumed into the great powers’ broader struggles for hegemony, or rather, the perceived threat thereof. Another important parallel is the role of religion, which in both cases returned as a destabilising factor after its relative absence during the later sixteenth century, and the later twentieth century respectively. Both then and now, sectarian tension tended to merge with, and exacerbate, political and constitutional conflicts, while also taking on its own dynamic. While sectarianism was not the main cause of divisions in the conflicts in Syria and Yemen, both conflicts have developed a confessional dimension, which is closely linked to a geopolitical competition. Similarly, in the Holy Roman Empire, disputes which were largely political and concerned competing corporate and estates-based rights, assumed a debilitating confessional dimension in the years preceding the Thirty Years War.

Other parallels were also cited over the course of the workshops, including the existence of hereditary monarchical dynasties in both cases; the importance of the Emperor as the head of the Imperial hierarchy and the analogous importance of the King of Saudi Arabia as the Custodian of the Two Holy Mosques; the role of refugee crises in both cases; and the impor-

tance of both regions in terms of resources (the soldier trade then; oil now) with the implication that the Middle East, just as Germany then, cannot be ignored by outside powers.

The analogy between the two epochs and periods naturally demands an imaginative leap, in light of the intervening four centuries and contrasting political, socio-cultural and economic contexts. It was occasionally mentioned that the Thirty Years War involved the direct military confrontation of the great powers in state-on-state wars, whereas this has not occurred in the Middle East. This does not imply that such a phase of destructive conflagration needs to take place in the Middle East before a settlement as all-encompassing as Westphalia can succeed in the region. Instead, we draw the parallel here between the negotiations which occurred in fits and starts throughout the Thirty Years War before the opening of the Westphalian congress, and the similarly abortive sets of negotiations that have occurred recently in Astana, Geneva and elsewhere. Apart from the aforementioned parallels, another reason why the Peace of Westphalia lends itself so promisingly to being a potential guide towards a new settlement in the Middle East, is its highly ambitious nature. It solved a complex nexus of conflicts, many of which were very deep-rooted, and which seemed at the time to be equally, if not more, insurmountable than the obstacles to general peace in place in the contemporary Middle East. Some of the negotiating parties never even recognised the status of their counterparts, such as the French who refused to recognise the validity of the election of Ferdinand III as Emperor. He, in turn, was forced to accept the Imperial Estates – his own subjects and vassals – as negotiating parties in an international peace congress, which he perceived as a slight to the dignity of his office. Yet the peace for central Europe was achieved despite the fact that not all of the warring parties had reached a state of exhaustion yet; despite the fact that it became clear during the negotiations that the hoped-for all-encompassing peace covering all related wars in Europe would not be attainable – France and Spain continued fighting for another 11 years – and despite the fact that there was not even a cease-fire in place during the negotiations. The successful conclusion of the peace was deemed a ‘world wonder’ by contemporaries and this ambitious character of the peace congress makes its instructive potential all the more valuable.

## Lessons from ‘Westphalia’ I Peacemaking Mechanisms and Diplomatic Techniques

When discussing which concrete lessons can be drawn from Westphalia over the course of the workshops, the participants distinguished between two kinds of lessons – firstly, peacemaking tools, in other words, diplomatic techniques that have proven to be effective in facilitating and enabling an eventual peace treaty, whatever the treaty terms might be. This also includes, crucially, methods of securing the success and longevity of the peace in the future. Secondly, the instruments of peace, in other words, the treaty terms themselves. The participants deemed the first category to be the most useful, because on the whole, it was not considered helpful or viable to simply transfer treaty content wholesale from a different epoch and region. However, there are some treaty terms that warrant our attention, that we believe to be potentially transferable.

### Congress diplomacy

One of the striking features of the Peace of Westphalia was its innovative character in many areas of international law. While the features that were innovative then (notably, the multilateral congress convened at two different locations, and the mutual guarantee) would naturally no longer be innovative if they were to be applied now, this does not detract from their potential value as peacemaking tools in the Middle East, given the analogous nature of conflict constellations in both cases. One overarching lesson is the importance of actors being willing to adopt and discover innovative means of diplomacy in pursuance of peace. The complexity and multi-layered nature of the conflicts in the Thirty Years War meant that attempts at solving parts of them individually failed – such as negotiations only for the Catholic powers in Cologne, or a settlement based on the Peace of Prague (1635) which included only the Emperor and the German princes without the external powers. So, one of the chief lessons that we established at the previous workshops has been that, as was the case in early seventeenth-century Europe, the range of conflicts and grievances in the Middle East now is too complex

and interwoven to be successfully solved with piecemeal negotiations aimed at addressing individual territorial parts of the broader regional crisis. Thus, while it might be useful to start negotiations on Syria in the context of separate formats such as the Astana and the Geneva talks, they should in the end merge into one comprehensive peace congress. Otherwise

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it may not be possible to satisfy a multitude of other involved state and non-state actors. An inclusive peace congress that draws in all parties to conflict could help to negotiate a new security order for the region under regional and international guarantee, as occurred at Westphalia after about 5 years of negotiations. At that time this was the first multilateral peace congress of its kind. While it should strive to be as all-inclusive as possible, certain irreconcilable or unpalatable actors may be excluded from the negotiating table, such as the rebel exiles from the Habsburg hereditary lands then, or the Islamic State now. While the French had wanted the universal congress to achieve a ‘universal’ peace for the whole of (Christian) Europe, rather than a particular settlement just for Germany, but had instead received an intermediary, ‘Westphalian’ solution, so one could also aim for a neutralised ‘de-toxified’ Middle East which is taken out of international geopolitical competition, while international rivalry continues elsewhere, just as the Franco-Spanish war continued in Western Europe until 1659.

Another parallel between the Thirty Years War and the Middle East now leads to a further lesson, namely the more-or-less-justified security fears about the opponent’s suspected hegemonic goals. This fear of the other side exploiting one’s own weakness in order to establish regional dominance, or what was then termed ‘universal monarchy’, afflicted the Habsburgs and France then,

just as it stifles trust between Iran and Saudi Arabia now, and requires more effective perception-management. This was deemed important because changing hostile perceptions might be more difficult than changing facts on the ground. To reach a settlement, the negotiating parties need to transparently set out their core security interests. Participants discussed what these might be for the powers in question. What is more important for the leading states in the region is less direct territorial expansion than maintaining their own perceived zones of informal influence. Turkey has a special interest in preventing the emergence of a Kurdish state. For Saudi Arabia, limiting Iran's regional influence is a core interest, as is the effective assertion of leadership among the GCC. Iran in turn seeks to defend its regional interests by continuing to assert its influence in key countries, especially neighbouring states, but also Syria and Lebanon.

Participants noted that there is a widespread and mutual lack of trust on the part of the main regional adversaries in the Middle East. A similar situation prevailed in Europe at the outset of the Westphalian peace negotiations; there was little or no mutual trust.

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It was the major powers' signalling of their willingness to place the whole settlement under guarantee that encouraged a degree of confidence in the viability of the negotiations. Following the conclusion of the peace, it took about two generations for trust to be re-established in the Holy Roman Empire among Catholics and Protestants – largely fostered through peaceful co-existence. This is a vital and central lesson from Westphalia: the absence of trust should not prevent negotiations from getting started – the peace process itself has to generate trust, not the other way around. The Westphalian experience demonstrates that the results of negotiations can be fruitful if congress participants are willing to explore unknown diplomatic terrain and to be daring in their choice of interlocutors. Informal modes of communication were as important as formal ones among the congress diplomats. Over the years these diplomats formed their own peace party and shared community of fate with a strong desire to make progress and push their masters towards an accommodation. Some

of the participants noted that negotiators for a Middle Eastern peace should similarly stay at the congress location and negotiate until they have thrashed out a settlement, even if this takes months or years, as was the case in Münster and Osnabrück. Others agreed that the process itself can over time sort out the 'end-state' which is to be aspired to – which is what occurred at Westphalia, where the congress participants did not from the outset share a clear vision of the kind of peace that was to be achieved. Flexibility was important. Westphalia also taught the workshop participants that mediators can be useful and need not even be neutral. During the Franco-Spanish negotiations, the Dutch – allies of France and themselves at war with Spain – proved to be more effective mediators than the (formally) neutral Pope, precisely because they had more of a vested self-interest in the success of the negotiations, than the more distant Pontiff.

The treaties of Westphalia are often erroneously portrayed as a peace of exhaustion, which can lead to the depressing conclusion that the Middle East must first go through further bouts of destructive warfare before a similar peace settlement can be achieved. Actually, the situation in the Middle East is more similar in this respect to the end stages of the Thirty Years War than might be thought. The historians present at the workshops explained that while many of the smaller players, primarily the Imperial Estates, had indeed reached a state of exhaustion and became the most committed peace party, several of the larger powers were able to continue fighting, as the French and the Spanish did for another 11 years. Crucially, Germany was removed from the warzone thanks to the Westphalian guarantee. Similarly, although many of the war-ravaged states in the Middle East have reached a state of exhaustion, the conflict could continue almost perpetually with the potentially endless inflow of martial resources from external great powers. The lesson to be drawn here is that diplomacy works, and steps towards an overall settlement must be undertaken sooner rather than later, even if there is not yet a catalogue of principles upon which all parties can agree. The Westphalian example also shows that the absence of a cease-fire should not necessarily be seen as a major stumbling block in the way of the commencement of negotiations: the war continued in parallel to the negotiations throughout the entire duration of the Westphalian peace congress. Negotiations in Geneva and Astana have similarly taken place despite ongoing hostilities.

## The 'Third Party'

The peace congress was convened in 1643 – 1645 in order to produce a universal peace which would solve all inter-connected European wars and conflicts in one stroke, according to the conception of the French premier Cardinal Richelieu. Yet the resulting peace, as is well known, fell short of this ideal, as the French and the Spanish failed to reach an accommodation at Münster. The fact that the congress nevertheless succeeded in securing the peace for central Europe and in solving all other conflicts was in no small measure thanks to the efforts of the so-called Third Party of smaller princes. For it was precisely during the crisis of the congress, when it became clear that France and Spain would not reach an agreement and that the congress was threatened with dissolution, that this grouping of smaller actors, who had suffered most from the war and who were guided by an unconditional desire for peace, assumed the initiative. This informal grouping was unprecedented because it was cross-confessional and characterised by a mutual willingness to compromise. It signalled the end of automatic confessional solidarity and was held together solely by the aim of a lasting peace. By uniting in this fashion, they reached a critical mass which allowed them to force their more powerful allies to reach an accommodation, or risk isolation. They acted as a go-between for France and the Emperor, who then agreed to a peace that did not include Spain, thereby ensuring that the war would no longer be fought in the Empire.

During the workshops there was a considerable amount of discussion about the possibility of such a diplomatic technique in a congress for a Middle Eastern peace. It was agreed that such a third party should consist of powers that have a self-interest in peace by being directly affected, and would therefore not act as separated and neutral mediators would. They should be guided by the ultimate aim of peace and be willing to co-operate with anyone. They should also, however, carry enough clout – either in terms of geopolitical capabilities, or in terms of legitimacy – to enable them to effectively apply pressure. But the discussants also recognised that the analogy was not straightforward, because the Third Party consisted of Imperial Estates which helped them to put institutional and constitutional pressure on the Emperor within a framework that does not exist in the Middle East. Whereas the idea that the EU or some of its member states could form such a third party seemed promising

at first sight, as they were indirectly affected by the conflicts in the region in form of terrorist attacks and migration influx, the discussion revealed that Europe was in fact lacking the political will and leverage to do so. Others argued that Middle Eastern states, whose lands and people had been laid to waste, should themselves form such a third party – though it was also recognised that at the moment they lacked the unity of the Westphalian Third Party.

## Securing the peace: the mutual guarantee

Perhaps the most crucial aspect of the Peace of Westphalia was its mutual guarantee. Treaties had been guaranteed in the past, but according to early modern theories of the law of nature and nations, guarantors should be powerful non-involved third parties, usually mediators, or higher-ranking persons such as the Pope. The Westphalian guarantee was innovative in the sense that this was the first time that because the warring parties and contracting signatories themselves became the guarantors of their own peace settlement in a mutual and reciprocal set-up. Also, the solution adopted at Westphalia provided not only for powerful, non-neutral guarantors (France, Sweden, and the Emperor), but also weaker non-neutral ones, namely the German princes, who had been most severely affected by the war. Because each signatory was also

### The Westphalian guarantee was innovative because the warring parties and contracting signatories themselves became the guarantors of their own peace settlement.

a guarantor, strictly speaking, there were no 'external' guarantors supervising the adherence to the settlement by the contracting parties. Instead, each contracting party as a guarantor pledged to defend and uphold – by armed force if necessary – every aspect of the peace treaty, even those that did not affect them individually. This amounted to a collective security system for central Europe among the contracting parties of the treaty. If one were to draw lessons for today's Middle East, it would make sense to conceive of internal and external guarantors as comparable now to regional (Middle Eastern) and international (global) guarantors. This is because, in addition to being an international peace treaty, Westphalia was also a fundamental constitutional law for the Holy Roman Empire, to which most of its stipulations pertained.

Therefore, it makes sense to think of the Emperor and the German princes as the internal guarantors, while France and Sweden were the external ones, despite the fact that they were also themselves contracting parties. However, most of the political-constitutional terms of the peace did not apply to them, but only to the neutralised zone of the Empire.

In addition to being innovative, the guarantee was also highly successful because the knowledge among the negotiating parties, that it was on the agenda and would likely be adopted as a means of securing the peace, was a key factor in persuading them to sign the peace treaty in the first place. The fact that the external powers, especially France, had signalled

### Not only international, but also local and regional actors need to guarantee the peace settlement.

early on that they attached great importance to such a guarantee, helped persuade the smaller actors, particularly the Protestant princes, that the settlement as a whole was viable. In the context of the absence of trust, many Protestants suspected that the Emperor and the Catholics would resume confessional depredations after the withdrawal of the foreign armies from Germany. With the prospect of the guarantee, however, they received assurance that the French (or the Swedes) would march back into Germany to prevent such an eventuality. Furthermore the knowledge that the Emperor was signing an agreement which gave the external crowns a legitimate legal title to intervene in such cases was believed to act as a deterrent against breaches of the peace, thus fostering trust in the adopted mechanisms of peace conservation. France, on the other hand, gained assurance that a collective effort could be launched by all the parties against the Habsburg Emperor if he helped Habsburg Spain in the ongoing Franco-Spanish war in violation of treaty stipulations.

The guarantee not only contributed to the successful conclusion of peace in 1648, it was also crucial in maintaining the peace in the longer term. By setting up a collective security system for central Europe, the guarantee was very important in acting as a deterrent against obvious breaches of the peace, and against clear violations of rights enshrined at Westphalia further down the line. The guarantee was effective

precisely because the guarantors themselves had a geopolitical self-interest in ensuring that the terms were upheld. The guarantee model was adopted subsequently at the Treaty of Oliva in 1660 and the Treaty of Kuchuk-Kainardji in 1774, which included provisions for the safeguarding of minority rights in Poland and the Ottoman Empire respectively. It was not only durable, but also adaptable, as the composition of the guarantors shifted in line with shifting power constellations: the rising power Russia acquired the status of a guarantor in 1779. Participants at the workshop recognised that Not only international, but also local and regional actors themselves need to similarly guarantee their own the peace settlement, as they would be most interested in the upholding of its terms and the securing of the peace in their region. There was a general agreement that Saudi Arabia, Iran, Turkey and Egypt would need to form the core of a regional guarantee structure. There was also discussion of the important role that Jordan might have especially in southern Syria, while some argued that Russia should be considered a regional, rather than an international actor. Regarding the role of the regional guarantors, it was argued that they would be tasked with securing the peace especially in light of the anticipated continued existence of numerous militias, ensuring the integrity of existing borders, providing assistance in the rebuilding of more inclusive regimes, and protecting the rights of minorities within states.

“Searching for peace in the Middle East is a noble cause. Studying historical peace-finding experiences, such as the experience of the Peace of Westphalia, is intellectually and politically stimulating. However, one of the problems facing our situation today is the lack of strategic vision for all players on the Middle East stage. Every player seeks either to defend his achievements, such as Iran and Russia, or seeks to regain what he has lost or abandoned for one reason or another, such as the Kingdom of Saudi Arabia and the United States of America. How to convince them to bargain or negotiate on what will be less than what they

aspire to is a very difficult task. The social, economic, political and religious factors that made parties to the Westphalia conference concede to each other are absent from today’s Middle East. The absence of a dominant visionary player to lead is a major obstacle to bring parties to grand peace in the region.” PRINCE TURKI AL-FAISAL, Chairman, King Faisal Center for Research and Islamic Studies, Riyadh

While regional actors would determine their own peace terms, international powers would then be called upon to guarantee the settlement. There was general agreement that international guarantors would be required to complement a regional guarantee structure. In this context, participants discussed the question of what would move global powers, such as the USA and Russia, to take on the responsibilities of guarantors for the peace of the region. Here the parallel with the external guarantee of Westphalia by France and Sweden proved to be instructive. The foreign crowns, particularly France, were aware of the critical importance of the Holy Roman Empire in the European state system and were intent upon preventing the Empire falling under the dominance of the Habsburg Emperor. France’s external guarantee furthered this goal. Similarly, the Middle East today cannot be ignored by global powers; its geostrategic salience, its oil reserves, and its dangerous capacity as a geopolitical flashpoint ensure that. It would be in the interests of the US and Russia for the Middle East to be taken out of ongoing international rivalry, and to prevent a spill-over effect of conflict in the Middle East spreading beyond the region, just as it was in the interests of the ‘foreign crowns’ to prevent a spill-over effect from central Europe by neutralising the Empire. The Westphalian experience shows that self-interested warring parties such as Russia and the US in the Middle East can take on the mantle of effective guarantors of peace in the post-conflict era if the settlement is calibrated to be mutually acceptable. The Westphalian example also demonstrates that the guarantee can be effective even when guarantors included former enemies (France and the Emperor), just as relations between some of the proposed guarantors today are poor (US and Iran; Saudi Arabia and Iran; US and Russia). But some pointed out that

the US was less willing to sign up to the commitments of a guarantor than many regional powers would be. Similarly, although the EU was said to have a genuine self-interest in a regional settlement and in avoiding spill-over, it nonetheless, lacked real influence and the willingness to use force, which would be a prerequisite for a guarantor. As for Russia, participants maintained that it had established itself as a major player in Syria and the wider region and therefore was a key power in negotiating peace.

The guarantee clauses were also among the most controversial features of the Westphalian peace treaty because many, especially the Catholics, were wary of giving the external powers, especially France, a legal title to intervene in the German Empire. Nowadays, especially since the American-led invasion of Iraq in 2003, the idea of external intervention is highly unpopular in the Middle East. Yet the Westphalian model shows how destructive foreign interventions such as those that occurred during the Thirty Years War could be subjected to clearly stipulated legal mechanisms and parameters, and thereby become guarantees for peace. Westphalia thus led to a ‘juridification’ of intervention, despite France’s extensive abuse of guarantor status under King Louis XIV. On other occasions it was beneficially activated, such as by Sweden against the Emperor in 1707, in defence of the minority rights of the Emperor’s Protestant subjects in Silesia, and in 1756/57 as a collective effort by all guarantors against Prussian aggression towards Saxony.

The formal procedure of the guarantee, as stipulated in the treaty text, was rather impractical and lengthy. Following a breach of the treaty terms, three years of failed remonstrations, good offices and litigation would first need to pass before a military effort could be launched by the guarantors, either collectively or individually. This unrealistic three-year grace period was perhaps the reason why the guarantee was never implemented in exactly this form. One of the elements missing from the Westphalian guarantee was an adjudicating body to determine when a breach of the treaty terms had indeed taken place, and whether the guarantee could therefore be activated. In the contemporary scenario, participants discussed the role that the UN might play in this respect. While the UN structure had a high degree of legitimacy this to some extent came at the cost of effectiveness.

# Lessons from ‘Westphalia’ II

## Treaty Content

A recurring theme in the discussions during the workshops was the supposed lack of normative consensus in the Middle East, in comparison to the Holy Roman Empire. While this is true – there was an overall consensus in the Empire, including among Protestants, that the Imperial constitution was an order of peace and legality that needed to be reestablished with the Emperor at the apex of the judicial-political hierarchy – the Middle East should not be regarded as a blank slate, as pointed out by several participants. The unifying factors of Islam and the awareness of a post-Ottoman space could foster a certain degree of cohesion. Some discussants argued that common norms ought to be encouraged in order to make an overall settlement more viable. Dealing collectively with transnational problems, such as the humanitarian fall-out of the regional conflicts, or terrorism, could help to foster regional connectivity and norms. Such normative consensus would make it more plausible to contemplate applying Westphalia’s political-constitutional and religious terms for the Holy Roman Empire to the Middle Eastern region as a whole. Nevertheless, several of the basic principles underpinning the political and religious terms of Westphalia were deemed to be worthy of discussion and possibly transferable to the Middle East:

### The juridification of sectarian conflict

One of the most impressive diplomatic masterstrokes of the Westphalian peace was the adjusted religious constitution for the Empire. It improved the juridification of sectarian conflict – in other words, providing legal rather than military means for resolving disputes. The religious clauses developed a basic framework that had existed in the empire since 1555, which tried to manage religious coexistence legally and politically, while bracketing out contentious and intractable questions of theological truth. The Westphalia treaties did this by extending legal protection to Calvinists as a third recognized confession, and by reducing the authority of the princes over their subjects in religious matters, thereby addressing the concerns of subject populations. Confessional rights of worship and church ownership were fixed according to a bench-

mark year (1624), while a graded form of tolerance was secured for adherents of the three main confessions, according to the same normative year. The treaty also introduced parity of representation and political weight in the Empire’s institutions for Protestants and Catholics.

These terms had nothing to do with enlightened notions of universal religious toleration (Westphalia predates such ideas); achieving a viable security order was the primary objective. Confessional disputes were a main obstacle to peace, as mutual mistrust prevailed after generations of sectarian strife. Thus, confessional arrangements needed to be settled in meticulous detail and placed under the umbrella of the guarantee in order to instil a measure of trust in the viability of the settlement, especially on the part of the Protestants who feared a resumption of confessional persecution and a counter-strike by the Catholics after the war.

The workshop participants agreed that it made little sense to attempt to transfer such idiosyncratic stipulations to the Middle East, although the Westphalian stipulation banning sectarian hate speech was considered as a potentially valuable means to reduce tensions. But the essential lesson is that one must take seriously Only by taking each grouping’s security concerns seriously fears of being attacked after the conclusion of a peace treaty. Only thereby can a lasting peace be achieved. Linked to this was the Westphalian stipulation of a ‘perpetual oblivion and amnesty’ on all sides, in other words, immunity from blame and post-war

**Only by taking each grouping’s security concerns seriously can a lasting peace be achieved.**

prosecution for war crimes committed. While such a provision might well help encourage warring parties to sign a peace accord, it hardly corresponds to current political and legal culture which seeks to dispel any notion of impunity among rulers and warlords. Some form of truth and reconciliation process could conceivably be an alternative.

“In order to resolve regional conflicts such as the one between the GCC states and Iran the different parties can look at Europe for examples on how to resolve historic rivalries and how peace agreements such as the Peace of Westphalia were concluded.”

HOSSEIN MOUSAVIAN, Research Scholar, Woodrow Wilson School of Public and International Affairs, Princeton University

The idea of channelling confessional disputes into judicial channels, on the other hand, was considered useful. Instead of copying the instrument of a normative year, the hoped-for settlement for the Middle East would need to include assurances of minority religious and ethnic rights, within the context of an inclusive socio-political system, tailored to local specificities of the region.

### Conditional sovereignty

According to the myth of the Westphalian system, the treaties inaugurated the modern state system predicated upon state sovereignty and non-intervention in domestic affairs, by granting the German princes full sovereignty. In reality, Westphalia actually increased the scope for intervention in rulers’ domestic affairs. Sovereign states existed well before 1648, and rulers continued to intervene in the internal affairs of other states after 1648.

While Westphalia did confirm the princes’ right to conclude alliances and maintain armies (subject to caveat that these must not be directed against the Emperor and Empire), thus ensuring that the Empire would remain a decentralised polity, the prerogatives granted to the princes in 1648 were essentially just reconfirmed customary rights that had existed long before the war. The princes remained subject to the judicial and feudal authority of the Emperor; and the Empire remained a mixed monarchy in which sovereignty was shared between the Emperor and the princes. But in some ways Westphalia reduced the princes’ freedom to rule as they wished:

the normative year greatly hollowed out the princes’ authority over their subjects in confessional affairs, and their right to impose their own faith on subjects of a different religion was effectively abolished

the Imperial judiciary, which retained jurisdiction between and within princely territories, and to which subjects could appeal by suing their governments, was made more effective and furnished with greater legitimacy at Westphalia, by the provision for near-equal Protestant representation in the two supreme courts.

Thereby Westphalia strengthened the pre-existing judicial mechanisms through which legal interventions could be carried out, sometimes militarily, against princes that violated the rights of their subjects, their fellow-princes, or Imperial law in general. Westphalia also increased the scope of rights that could be defended by such interventions. Therefore, instead of Westphalian sovereignty, it is more apt to speak of a system of conditional sovereignty, or more accurately, conditional rights of territorial rule on the part of the princes.

While the princes were certainly not sovereign, Westphalia also underlined the lack of sovereignty of the Empire as a whole, for the simple reason that a multilateral international peace congress was not only working towards peace terms, but also determining the constitutional set-up of the Empire – foreign powers intimately involved in making domestic laws being the antithesis of sovereignty. This limitation of sovereignty was also evident in the guarantee of Westphalia, because it gave France and Sweden the authority to intervene in the domestic affairs of the Empire and its territories to enforce the treaty stipulations. It therefore tied the domestic religious-constitutional set-up of the Empire to an enforcement mechanism under international law.

The notion of formalising a similar system of conditional sovereignty for parts of the Middle East was subject to lively and contentious debate. Some argued that it was precisely this form of conditional sovereignty that ensured the protection of religious minority rights, thus encouraging stability. It was suggested that in the failed and fragile states of the region – in particular Syria, Iraq, Yemen, and perhaps Lebanon – neutralised security zones under regional and international guarantee could be established, along the lines of the Empire in 1648. In these zones the use of force between and within states would be banned and citizens given the right to appeal against their rulers to supra-statal appeals courts, modelled on the supreme judicial tribunals of the Empire. In the case of repeated breaches of treaty terms or recognised rights the

guarantors could then legally intervene in the states in question. It was argued that this might provide a safety valve against popular discontent erupting into Arab Spring-style rebellions which can easily trigger regional conflict. Other workshop participants argued that this was too reminiscent of the post-WWI mandate system, and that the lack of sovereignty was a major cause of strife. According to this argument sovereignty needed to be re-established and asserted rather than limited.

The topic was also discussed in the context of the debate on the necessity of regime change in Syria. Some of the participants from the region in particular (not Iran), insisted that this was a sine qua non of any settlement. Others pointed out that a compromise settlement along Westphalian lines might entail Assad's retention of governmental powers – albeit under imposition of strict limitations guaranteed by outside powers, just as the authority of princes over

## About the project

“A ‘Westphalia’ for the Middle East?” is a joint project and event series of the Forum on Geopolitics of the University of Cambridge and the Körber Foundation, which aims to open new, creative approaches for resolving conflict in the Middle East. The purpose of the project has been to look towards the Peace of Westphalia, which ended the Thirty Years War in central Europe in 1648, as a source of inspiration for new methods of conflict-resolution in the contemporary Middle East; not by imposing an external model, but rather by trying to encourage a settlement reached by local actors with the help of a toolbox of mechanisms and techniques that proved effective in the historical experience. The project was initiated by Brendan Simms as one of several ‘Laboratories of World Construction’ run by the newly-established Forum on Geopolitics, and convened together with Michael Axworthy and Patrick Milton.

The first four seminars were held in Cambridge and London over the course of 2016. This first phase of the project was aimed at highlighting the striking parallels between conflict in central Europe during the early seventeenth century and in the contemporary Middle East, and at investigating the early modern European experience in depth, in order to extract key insights and questions for the next phase of the project. The second phase consisted of three major events: the 163rd Bergedorf Round Table, held in Berlin on 11–12 November 2016, followed by two workshops held in Amman, Jordan on 22–23 January 2017, and in Berlin on 27–28 April 2017. In addition, the project held a discussion event on the sidelines of the Munich Security Conference on 19 February 2017. The events have brought together three groups of people which have hitherto operated largely independently of each other: historians of Early Modern Europe, specialists on the Middle East, and policy practitioners, in order to create an innovative forum for discussion and to explore and test the application of history laterally and counter-intuitively, thereby producing fruitful debate and furnishing valuable lessons for contemporary peacemaking in the Middle East. Participants included academics, journalists, politicians and senior figures from the Middle East and beyond, representing such organisations as the UN, the Arab League, the EU as well as other institutions.

the confessional rights of their subjects were severely limited at Westphalia - limitations to governmental rule which were, crucially, placed under international guarantee and therefore potentially subject to international, collective enforcement. According to a Westphalian solution of conditional sovereignty, therefore, it would be important for guarantors not only to police norms of behaviour between states, but also within states where necessary in pursuance of stability. It was recognised by many that states such as Syria, Iraq and Yemen already lacked meaningful sovereignty; de facto, if not de jure. Then and now, as argued by some participants, there was and would be a certain hypocrisy in the institution of the guarantee (at least on the part of states such as Saudi Arabia), as the external guarantor would uphold rights in other regions that were being denied under the guarantor's own domestic arrangements - as was the case with France and Sweden after Westphalia too.

### The following participants were involved in different phases of the “A ‘Westphalia’ for the Middle East?” project:

Prof. Dr. Abdulkhaleq Abdulla, Professor, Political Science, United Arab Emirates University, Dubai; **Badr Ahmed Mohamed Adelatty**, Ambassador of the Arab Republic of Egypt to the Federal Republic of Germany, Berlin; **Dr. Philipp Ackermann**, Regional Director, Near and Middle East and North Africa, Federal Foreign Office, Berlin; **Dr. Mustafa Alani**, Senior Advisor and Director, Security and Defense Studies, Gulf Research Center (GRC), Jeddah; **Dr. Samir Altaqi**, Director General, Orient Research Centre, Dubai; **Dr. Abdel Aziz Abu Hamad Aluwaisheg**, Assistant Secretary General, Foreign Affairs, The Cooperation Council for the Arab States of the Gulf (GCC), Riyadh; **Bahador Aminian**, Director General Education, Ministry of Foreign Affairs, Tehran; **Niels Annen**, MP, Spokesman on Foreign Affairs, Social Democratic Party (SPD) Parliamentary Group, German Bundestag, Berlin; **Prof. Dr. Ali Ansari**, Professor of Iranian History, Institute of Iranian Studies, School of History, University of St Andrews; **Dr. Khalid bin Mansour Al-Aqeel**, Member, Consultative Assembly of the Kingdom of Saudi Arabia, Riyadh; **HRH Prince Khalid bin Saud Al-Faisal**, Advisor, King Faisal Center for Research and Islamic Studies, Riyadh; **HH Prince Dr. Turki bin Muhammad bin Saud Al-Kabir**, fmr. Deputy Foreign Minister of the Kingdom of Saudi Arabia; Advisor to the Custodian of the Two Holy Mosques, Riyadh; **Dr. Abdulkarim bin Hamoud Al-Dekhayel**, Director General, Institute of Diplomatic Studies (IDS), Riyadh; **HRH Prince Turki Al-Faisal**, Chairman, King Faisal Center for Research and Islamic Studies, Riyadh; **Dr. Michael Axworthy**, Senior Lecturer, Institute of Arabic and Islamic Studies (IAIS), University of Exeter; **Prof. Dr. Hüseyin Bağcı**, Faculty of Economics and Administrative Sciences, Department of International Relations, Middle East Technical University, Ankara; **Dr. Keyhan Barzegar**, Director, Institute for Middle East Strategic Studies (IMESS), Teheran; **Hamid Bayat**, Deputy Director General, West Europe Department, Ministry of Foreign Affairs, Tehran; **Ralf Beste**, Commissioner, Strategic Communication, Federal Foreign Office, Berlin; **Alireza Bigdeli**, fmr. Ambassador of the Islamic Republic of Iran to the Republic of Turkey, Tehran; **Dr. Andrew Bowen**, Visiting Scholar, American Enterprise Institute (AEI), Washington, DC; **Lakhdar Brahimi**, fmr. Minister of Foreign Affairs of the People's Democratic Republic of Algeria; fmr. Joint Special Representative of the UN and the League of Arab States on Syria; Member, The Elders Foundation, London; **Reinhard Bütikhofer**, Co-Chairman, Parliamentary Group of The Greens/ European Free Alliance, European Parliament, Brussels; **Xavier Chatel**, Head, Near East Department, Ministry of Foreign Affairs and International Development, Paris; **Alfredo Conte**, Head, Strategic Planning Division, European External Action Service (EEAS), Brussels; **Galip Dalay**, Research Director, Al Sharq Forum, Istanbul; **Raghida Dergham**, Senior Diplomatic Correspondent, Al Hayat, London; Founder and Executive Chairman, Beirut Institute, Beirut; **James Dobbins**, Distinguished Chair, Diplomacy and Security, RAND Corporation, Arlington, VA; **Mohammad Farazmand**, Director General, Persian Gulf Region, Ministry of Foreign Affairs, Tehran; **Dr. Kamal Dehghani Firouzabadi**, MP, Member, Islamic Parliament of Iran, Tehran; **Prof. Dr. Ezzedine Choukri Fishere**, Visiting Professor, Dartmouth College, Hanover, NH; **Élisabeth**

**Guigou**, MP, President, Committee on Foreign Affairs, Assemblée Nationale, Paris; **Tim Guldemann**, fmr. Ambassador of the Swiss Confederation to the Federal Republic of Germany, Berlin; MP, Member, Swiss Parliament; **Dieter W. Haller**, Ambassador of the Federal Republic of Germany to the Kingdom of Saudi Arabia, Riyadh; **Frank Hartmann**, Director; Head, Middle East, Africa, Asia and Latin America, Federal Chancellery, Berlin; **Hoda Abdulrahman Al-Helaissi**, Deputy Chair, Committee on Foreign Affairs, Consultative Assembly of the Kingdom of Saudi Arabia, Riyadh; **Dr. Mark Heller**, Principal Research Associate, Institute for National Security Studies (INSS), Tel Aviv; **Wolfgang Hellmich**, Chairman, Defence Committee, German Bundestag, Berlin; **Dr. Joost Hiltermann**, Program Director, Middle East and North Africa, International Crisis Group, Brussels; **Christiane Hoffmann**, Deputy Bureau Chief, Der Spiegel, Berlin; **Emile Hokayem**, Munich Young Leader 2014; Senior Fellow for Middle East Security, International Institute for Strategic Studies (IISS), Manama; **HRH Lt. Gen. Prince Faisal ibn Al Hussein**, Special Assistant to the Chairman of the Joint Chief of Staff, The Hashemite Kingdom of Jordan, Amman; **Dr. Morteza Damanpak Jami**, Deputy Head, Research Affairs, Center for International Research and Education (CIRE), Tehran; **Kiumars Javidnia**, Director, Europe Studies Department, Institute for Political and International Studies (IPIS), Tehran; **Saud Kabli**, Media Department, Ministry of Foreign Affairs, Riyadh; **Dr. Modi bint Abdullah Al-Khalaf**, Member, Consultative Assembly of the Kingdom of Saudi Arabia, Riyadh; **Prof. Dr. Christoph Kampmann**, Chair, Early Modern History, Philipps-Universität Marburg; **Prof. Dr. Saleh Al-Kathlan**, Professor of Political Science, King Saud University (KSU), Riyadh; **Jamal Khashoggi**, Writer, Doha; **Mehrdad Kiaei**, Director, Middle East Studies Department, Institute for Political and International Studies (IPIS), Tehran; **Michael Klor-Berchtold**, Ambassador of the Federal Republic of Germany to the Islamic Republic of Iran, Tehran; **Stefan Kornelius**, Foreign Editor, Süddeutsche Zeitung (SZ), Munich; **Andreas Krüger**, Head, Division Syria, Iraq, Lebanon and Anti ISIS Strategy, Federal Foreign Office, Berlin; **Arne Lietz**, MEP, Member, Foreign Affairs Committee, European Parliament, Brussels; **Hamidreza Madad**, Deputy Director General, Institute for Political and International Studies (IPIS), Tehran; **Vice Admiral John "Fozzie" Miller**, USN (ret.), Visiting Fellow, American Enterprise Institute (AEI), Washington, DC; **Dr. Patrick Milton**, Postdoctoral Fellow, Freie Universität Berlin; Research Affiliate, Forum on Geopolitics, University of Cambridge; **Staffan de Mistura**, Special Envoy of the Secretary General for Syria, United Nations, Geneva; **Igor Nikolaevich Morozov**, Member, Committee on Foreign Affairs, Federation Council, Federal Assembly of Russia, Moscow; **Rasoul Mousavi**, Advisor to the Minister of Foreign Affairs, Ministry of Foreign Affairs, Tehran; **Dr. Seyed Hossein Mousavian**, Research Scholar, Program on Science and Global Security, Woodrow Wilson School of Public and International Affairs, Princeton University; **Al-Sharif Nasser Bin Nasser**, Managing Director, Middle East Scientific Society, Middle East Scientific Institute for Security, Amman; **Dr. Robin Niblett CMG**, Director, The Royal Institute of International Affairs, Chatham House, London; **Majid Nili**, Senior Advisor of the Deputy Foreign Minister, Ministry of Foreign Affairs, Tehran; **Omid Nouripour**, MP, Spokesman on Foreign Affairs, Alliance '90/The Greens Parliamentary Group,

German Bundestag, Berlin; **Dr. Thuraya Obaid**, fmr. Under-Secretary General, United Nations, Riyadh; **Mohsen Pak Aein**, fmr. Ambassador of the Islamic Republic of Iran to the Republic of Azerbaijan, Tehran; **Prof. Dr. Volker Perthes**, Executive Chairman and Director, German Institute for International and Security Affairs (SWP), Berlin; Senior Advisor to the Special Envoy for Syria; Chairperson, Ceasefire Task Force for Syria, United Nations, Geneva; **David H. Petraeus**, General (ret.), fmr. Director, Central Intelligence Agency of the United States of America; Chairman, KKR Global Institute, Washington, DC; **Dr. Ali Al-Qarni**, Professor, Media and International Relations, Institute of Diplomatic Studies (IDS), Riyadh; **Zeid bin Ra'ad Al Hussein**, High Commissioner for Human Rights, United Nations, Geneva; **Ramzy Ezzeldin Ramzy**, Deputy Special Envoy of the Secretary General on Syria, United Nations, Geneva; **Anders Fogh Rasmussen**, fmr. Secretary General, North Atlantic Treaty Organization (NATO); Founder and Chairman, Rasmussen Global, Copenhagen; **Dr. Nobert Röttgen**, MP, Chairman, Committee on Foreign Affairs, German Bundestag, Berlin; **Dr. Seyed Mohammad Kazem Sajjadpour**, Deputy Foreign Minister for Education and Research, Ministry of Foreign Affairs; President, Institute for Political and International Studies (IPIS), Tehran; **Dr. Saud Al-Sarhan**, Secretary General, King Faisal Center for Research and Islamic Studies, Riyadh; **Helga Maria Schmid**, Secretary General, European External Action Service (EEAS), Brussels; **Dr. Sohrab Shahabi**, fmr. Director General, Institute for Political and International Studies (IPIS); Professor, School of International Relations (SIR), Tehran; **Mohamadreza Sheibani**, fmr. Ambassador of the Islamic Republic of Iran to the Syrian Arab Republic, Tehran; **Dr. Mohamad Hasan Sheikholeslami**, Dean, School of International Relations (SIR), Teheran; **Birgitta Siefker-Eberle**, Ambassador of the Federal Republic of Germany to the Hashemite Kingdom of Jordan, Amman; **Prof. Dr. Brendan Simms**, Professor, History of European International Relations, Department of Politics and International Studies, University of Cambridge; **Dr. Hadi Soleimanpour**, Professor, School of International Relations (SIR), Tehran; **Sabine Sparwasser**, Director General, Political Affairs; Special Representative of the Federal Government for Afghanistan and Pakistan, Federal Foreign Office, Berlin; **Ulrich Speck**, Senior Research Fellow, Elcano Royal Institute, Brussels; **Dr. Frank-Walter Steinmeier**, Federal Foreign Minister of the Federal Republic of Germany, Berlin; **Dr. Majid Takht-Ravanchi**, Deputy Foreign Minister of European and American Affairs, Ministry of Foreign Affairs, Tehran; **Dr. Fayez A. Tarawneh**, Chief of the Royal Hashemite Court, Amman; **Prof. Dr. Anuschka Tischer**, Chair, Early Modern History, Julius-Maximilians-Universität Würzburg; **Dmitri Trenin**, Director, Carnegie Moscow Center, Carnegie Endowment for International Peace, Moscow; **Dr. Almut Wieland-Karimi**, Director, Center for International Peace Operations (ZIF), Berlin; **Christian Wulff**, fmr. Federal President of Germany; President, Euro-Mediterranean-Arab Association (EMA), Hamburg; **Dr. Mostafa Zahrani**, Director General, Strategic Affairs, Ministry of Foreign Affairs, Tehran; **Hossam Zaki**, Assistant Secretary General, League of Arab States, Cairo; **Dr. Mohammad Javad Zarif**, Minister of Foreign Affairs, Ministry of Foreign Affairs, Tehran; **Abu Amr Ziad**, Deputy Prime Minister of Palestine, Ramallah

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### Körper-Foundation

Hauptstadtbüro

Pariser Platz 4a

10117 Berlin

Phone +49 · 30 · 20 62 67 - 60

Fax +49 · 30 · 20 62 67 67

E-mail [ip@koerber-stiftung.de](mailto:ip@koerber-stiftung.de)

[www.koerber-stiftung.de](http://www.koerber-stiftung.de)

Twitter@KoerberIP

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Dr. Lothar Dittmer

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