

International mediation and the United Nations

Code name: Wings

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Law 343 S02 Mediation and Lawyers -
Spring Term 2002, Faculty of Law,
University of Victoria]

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In this essay international mediation will be discussed. I will pay special attention to the United Nations and mediation. But first, I want to discuss the reason why I choose this subject. The reason why I choose this subject is that in these days the increasing importance of international relationships in a heterogeneous environment, which is characterized by a fairly loose structure, absence of generally accepted rules or norms, or a centralized authority and increasing ethnic dissidences, the opportunities for conflict are multiplied. Throughout history individuals, groups, communities, societies and states have sought ways to contain their destructive behaviour and to ensure a measure of order and peace. It seems that mediation has been and remains one of the most significant ways to ensure order and peace. The reason why I will pay special attention to the United Nations as a mediator is that it is the most active body in international mediation. I hope that this will become clear later on in my essay, but now I first want to explain what international mediation is.

Definition of international mediation

There is little consensus in the literature as to what constitutes mediation. For example Jacob Bercovitch approach to mediation is largely suggested by the parameters set by

Carl Stevens. Stevens states that mediation, like other social phenomena, is susceptible to systematic analysis. The key to analysis is in recognising that were mediation is employed it is an integral part of the bargaining process... an analysis is not possible except in the context of general analysis of bargaining negotiations¹. Another definition comes from Christopher W. Moore, he describes mediation as the intervention in a negotiation or a conflict of an acceptable third party who has limited or no authoritative decision making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute². In my opinion, there is not a best definition of mediation and is it hard to describe what mediation really is, because I think the mediation process depends on the disputing parties, their relationship, the mediator and other factors such as social norms, political institutions and economic pressures. International disputes are not static or uniform events. They vary in terms of situations, parties, intensity, escalation, response, meaning and transformation. The specific rules, beliefs, attitudes, behaviours and symbols that make up international conflict influence the process of mediation. The structure and practice of mediation reflects the context of the situation and the nature of the parties. Although mediation will be shaped by the context and characteristics of the situation, there are some assumptions or characteristics on which a general analysis of the full diversity of mediation may be based. For example:

- 1) Mediation is an extension and continuation of the parties' own conflict management efforts.
- 2) A mediator enters a dispute in order to affect, change, resolve, modify or influence it in some way.

¹ Jacob Bercovitch, *Mediation in International relations*, (New York: St. Martin's press, inc., 1992) p. 3

² Christopher W. Moore, *The Mediation Process*, (San Francisco: Jossey –Bass Publishers, 1996) p.15

3) Mediation is a non-coercive, non-violent and ultimately non-binding form of intervention and the last characteristic I want to mention is that

4) Mediation is a voluntary form of intervention. This means that the parties retain their control over the outcome of their dispute, as well as their freedom to accept or reject mediation or mediator's proposals³.

As I have stated above, international mediation as a form of conflict management has become increasingly important, because conflicts are aspects of international relationship. As a form of international conflict management over the process and low control over the outcome, mediation is likely to be used when a) a dispute is long, drawn out and complex. b) The parties' own conflict management efforts have reached an impasse. c) Neither party is prepared to countenance further costs or loss of life. And d) both parties are prepared to co-operate to break their stalemate⁴.

Who are the mediators in an international conflict?

Mediators can be private individuals, these are most of the times official representatives of his or her government. But there are also individual mediators who don't fulfill an official, representative function. Individual mediation can be carried on as informally or formally. Informal mediation refers to the efforts of practitioners who have a long-standing experience of, and a deep commitment to, in international conflict resolution. Such individuals approach an international dispute as private citizens only, not as official representatives, and their efforts are designed to utilize their competence, credibility and

³ Jacob Bercovitch, *Mediation in International Relations*, (New York: St. Martin's press, inc., 1992) p.4

⁴ Jacob Bercovitch, *Mediation in International Relations*, (New York: St. Martin's press, inc., 1992) p.8

experience to create contexts and occasions in which communication may be facilitated, and a better understanding of a conflict may be gained⁵.

Formal mediation on the other hand, takes place when a political incumbent, a government representative or a high-level decision maker, acts in an individual capacity to mediate a dispute between the official representatives of other groups or states⁶.

Individual mediation is not very common in international relations. States and international organizations are the two actors who carry on the most mediation activity. When a state is invited to mediate a dispute, or initiates mediation itself, it normally engages the services of one of its top decision makers. Representatives of all states interact formally international policy-making bodies. International mediation by such individuals depend on a) the position they hold in their own country, b) the leeway given to them in determining policies, and c) the different resources, capabilities and political orientations of their countries⁷.

Another international mediator can be institutions and organizations. In my paper, later on I will pay special attention to the United Nations as an international organization who operates as a mediator. International organizations, especially the United Nations, are very active participants in the search for institutions and proposals to keep peace. There are 3 types of organizations. These are; a) regional organizations, b) international organizations, and c) transnational organizations

⁵ H.C. Kelman, 'the Problem – Solving Workshop in Conflict resolution' in R.L. Merritt, *Communication in International Politics* Hobson, Ill. ; University of Illinois press, 1972), pp.168-204; and A.V.S. de Reuck, 'A theory of conflict resolution by problem solving', *Man , Environment Space and Time*, 3 (1983) pp.27-36

⁶ Jacob Bercovitch, *Mediation in International Relations*. (New York: St. Martin's press, inc., 1992) p.11

⁷ Jacob Bercovitch, *Mediation in International Relations*. (New York: St. Martin's press, inc., 1992) p.12

Regional and international organizations represent local or global collections of states signifying their intention to fulfill the obligations of membership as set forth in their formal treaty. Transnational organizations represent individuals across countries that have similar feelings, knowledge, skills or interests, who meet together to promote the special interests of their members. The main difference between regional or international organizations and a transnational organization is that the first organizations are governmental in origin, imbued with political purposes and largely staffed by original official representatives. Transnational organizations on the other hand are 'non-governmental' in origin. These organizations operate independently of states and are not really 'public' organizations. They can be more creative and less inhibited in the policy positions⁸.

Motives and interests

Most of the times mediators are motivated by self-interests. They often will not intervene automatically but only when they think a conflict threatens their interests, or when they perceive an opportunity to advance them. The motives differ from the type of mediator.

The interests of superpowers in mediation appear inspired by the mixture of defensive and expansionist motives. For example, The United States was a mediator in the Rhodesia/ Zimbabwe conflict. The United States feared that the newly independent Zimbabwe provided opportunities for the former Soviet Union to gain influence by supporting the African nationalists. But because the African groups were already politically close to the Soviet Union and China, you can see the interest of the United

⁸ Jacob Bercovitch, *Mediation in International Relations*, (New York: St. Martin's press, inc., 1992) p.14

States to be a mediator. It was an attempt to win over, or at least improve, relations with these groups, instead of abandoning them to the exclusive influence of its political rivals. Mediation by the medium-sized states appears to have been motivated largely by the desire to enhance their influence and their prestige.

The international organizations mediated basically because it was their *raison d'être*. But the regional organizations also become involved for defensive purposes: Their own involvement reduced opportunities for external intervention and interference within their regions⁹.

International organizations initiate mediation somewhat differently than states. International organizations are required to intervene whenever certain situations, defined in their charters occur. In theory their mediating services are permanently available. States, on the other hand are not permanently on call as mediators. But in theory it seems that organizations also aren't. Their charters and rules require someone to take the initiative; and as the definition states: mediation requires the consent and cooperation of the parties involved.

There are different motives for parties; conflicting parties, call on or allow in mediators because they are seeking a better solution to their conflict than they are able to achieve alone. The parties are willing to entertain the proposals that appear to have a greater benefit than its current unilateral attempts can achieve. Other motives for conflicting parties to initiate a mediation process are costs and time.

⁹ William Zartman and Saadia Touval, *International mediation in theory and practice*, (Colorado, Westview Press, Inc., 1985) p.252

International organizations and mediation

As I have already stated above, mediation has been used to settle international conflicts ranging from sovereignty disputes between old enemies, to battles over the independence of colonies, to struggles over the use of natural resources. Mediation by international organizations have become increasingly important and popular, because successful mediation can result in the cessation of violence: agreements that allow each party to save both internationally and domestically; good precedents in the eyes of the world community; arrangements that will insure implementation of whatever agreements have been reached; and better relationships among the disputing parties.

There are several features about the involvement of international organizations as third party actors in efforts to resolve international conflicts or disputes; First, international organizations are usually used, because no other actor has been able, or is in a position to be an effective intermediary. As a result of this is that international organizations are often presented with the thorniest or most intractable of problems. Second, in acute crises, where the risks are great, international organizations carry the hopes of the world that, somehow a way should be found to prevent the worst from happening. This means that international organizations usually act under great pressure; especially where what is at stake is preventing or stopping a war. From the point of view of the parties to the dispute or a conflict, international organizations have certain advantages. First, they do

not represent any vested interests. Second, the involvement of the international organization can be a face-saving device, especially if a party is in a position to offer or to accept a compromise but prefers to present it as a concession to the international community. Third, a representative from an international organization can more easily be disavowed if necessary, than can an intermediary acting in the name of a powerful state¹⁰.

The United Nations as a mediator

As described above, international organizations, such as the United Nations have a potentially very important role to play as interveners in international conflict. The United Nations seems to be the most active mediating body; this organization has offered good offices or mediation in over a lot of disputes. The founding of the United Nations unfortunately coincided with the emergency of the cold war; as a result, to date the United Nations has largely been used as a platform for rhetorical exchange between the two superpowers. Since the founding in 1945, it has been the hope of many that the United Nations might emerge as the pre-eminent agency for the prevention and settlement of cross- border disputes.

The Security Council of the United Nations has primary responsibility under the UN Charter for the maintenance of international peace and security, and its resolutions are binding on all member states. During the first forty-five years of its existence, the Council was largely paralysed by the Cold War, but since 1990 and the thawing of the global political climate, it has been very active.

¹⁰ James O.C. Jonah, *The United Nations and International conflict in Mediation and International Relations*, (New York: St. Martin's press, inc., 1992) p. 177

The Security Council is composed of fifteen United Nation member States, five of which are permanent members (The United States, United Kingdom, France, The Russian Federation and China). The permanent powers have the power to 'veto' a substantive decision of the Council by voting against it. The veto is cast much less often now than it was during the Cold War, but it is still very much in use as a threat which blocks Council action. The other ten members of the Council are elected by the General Assembly to two-year non-renewable terms, with five new members elected each year. The ten elected members, known in Charter language as "non-permanent," are selected according to a distribution formula from each of the world's major regions. In addition to recommending the name of new secretaries-general, the Council recommends new State members of the UN, and it elects judges to the International Court of Justice, jointly with the General Assembly. In the key realm of peace and security, it performs three main functions. First, it assists in the peaceful settlement of disputes. Secondly, it establishes and oversees UN peacekeeping forces. And thirdly, it takes enforcement measures against recalcitrant States or other parties.

The Security Council acts under Chapter VI of the Charter, which says that: the Council 'shall, when it deems necessary, call upon the parties' to a dispute to settle it by peaceful means such as negotiation, *mediation*, conciliation, arbitration, or judicial settlement (Article 33). And it may, if all parties to a dispute request make recommendations to the parties with a view to a peaceful settlement (article 38). In practice, the Council often asks the Secretary-General or one of his Special Representatives to mediate or negotiate under guidelines the Council has established. Increasingly the Council members

themselves have travelled to conflict areas in an effort to directly negotiate settlements or mediate conflicts.¹¹

To be effective as a mediator, the United Nations must have knowledge and understanding of the issues in the negotiation. The role of the third party is significantly enhanced by its thorough acquaintance with the vital interests of the parties. In a sense the third party should, as far as possible, vicariously experience the situation as the parties¹². The United Nations can accomplish this by absorbing the nature of the history of the dispute; the main personalities involved in the negotiating process, the peculiarities of the home front of the parties, as well as the general impact of other third parties such as the superpowers. Also timing and ripeness have been assessed as important elements in determining when to commence negotiations¹³. Equally important during the process of negotiation is the third party's acute sense of timing and the utilization of its comprehensive knowledge to recognize when a matter is ripe to intervene either to suggest a pause, or time to allow the parties to engage in informal, direct contacts.

Experience would suggest that it is essential that those representing the organization in its third-party role should, beside being experts in the area and proceedings, be also imbued with a true understanding of international civil service, particularly the requirement under the UN Charter that no advice be sought or received from governments in the performance of their official duties. If this requirement is fulfilled, the parties in negotiations may learn gradually to trust UN third party representatives. Trust is a very precious, unique commodity for any breakthrough, perhaps a neglected concept in theory

¹¹ Dr Danesh Sarooshi, Security Council, <http://www.globalpolicy.org/security/gensc.htm>

¹² Jacob Bercovitch, *Mediation in International Relations*, (New York: St. Martin's press, inc., 1992) p.179

¹³ Richard N. Haas, 'Ripeness and the Settlement of International Disputes', (Survival, 1998) p. 232-251

and practice, and parties can very easily sense any deviation from unwritten rules of behaviour. Therefore, UN officials should at all times strive to be impartial, but sensitive to the positions of parties in their mediator role¹⁴.

Conflict Prevention Peacekeeping and Peacemaking

By virtue of its role as the pre- eminent forum for diplomatic activity, the UN is uniquely placed to prevent, manage or resolve conflicts through negotiation or mediation.

Conflict prevention describes efforts to prevent the localized disputes and conflicts, which are inherent in every society from escalating into wider confrontations. It addresses and attempts to alleviate all the factors, which cause conflicts to develop. Some of these factors, which cover a wide range of issues, include poverty, corruption, and lack of accountability in government and in the military¹⁵.

Peacekeeping was developed as a response to conflict and a means to promote international peace and security. Conflict is present in every society, however; only in certain circumstances does it lead to violence. Peacekeeping is a technique, pioneered and developed by the UN, which defies simple definition. The term is not found in the UN Charter. Dag Hammarskjold referred to it as belonging to " Chapter Six and a Half" of the Charter, placing it between traditional method of resolving disputes peacefully, such as mediation and fact finding (Chapter VI) and resourceful action, such as embargos and military intervention (Chapter VII). In 1992 in a report to the Security Council, the UN

¹⁴ James O.C. Jonah, *The United Nations and International conflict in Mediation and International Relations*, (New York: St. Martin's press, inc., 1992) p. 199

¹⁵ [http:// www.dfait-maeci.gc.ca/peacekeeping/conflict-e.asp](http://www.dfait-maeci.gc.ca/peacekeeping/conflict-e.asp), p1

Secretary General Boutros Boutroutros Ghali defined peacekeeping as: the deployment of a United Nations presence in the field, hitherto with the consent of the parties concerned, normally involving United Nations military and/ or police personnel and frequently civilians as well. Peacekeeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace. Traditionally, peacekeepers have been placed between hostile states to supervise cease-fires and, on occasion, the withdrawal of forces. In most cases prior to 1990s, peacekeeping were purely military in character. In recent years, and particularly after the end of the Cold War, intra- state conflict has become a much greater problem than conventional wars between states. Peacekeeping resources are now employed to perform a wide variety of tasks. For example, in Somalia (1992-1993) and the Former Yugoslavia (1992-1995), peacekeepers were deployed not to maintain a cease-fire but rather to ensure the distribution of relief supplies and to stabilize the situation.

In his annual report on the work of the Organisation for 1999, Secretary- General Kofi Annan defined *peace making* as: The use of diplomatic means to persuade parties in a conflict to cease hostilities and to negotiate a peaceful settlement of their dispute. Peacemaking describes a range of political activities, which attempt to bring parties in conflict together by peaceful means. As stated above, Article 33 (1) of Chapter VI of the UN Charter, which provides for the pacific settlement of disputes requires for peaceful means to settle a dispute. Peacemaking can only take place when there is a genuine desire to avoid further violence among all of the significant parties to a dispute. This means that, while the UN is able to call upon the parties to settle their differences in a peaceful manner, to recommend appropriate procedures, or to refer the dispute to the Security

Council or the General Assembly, the effectiveness of peacemaking may in part rely on factors not provided for in the Charter.

The Conflict Prevention tools of the UN

Conflict Prevention is traditionally associated with efforts to promote dialogue between disputing parties, known as Confidence Building Measures. Practitioners use both tools, which try to address the causes of conflict, and also tools which try to limit the means for conflict. Tools, which address potential causes of conflict, include:

- Poverty alleviation and development assistance,
- Democratization and good governance assistance,
- Population control policies
- Assistance in the areas of education, public health and sanitation, as well as
- Training and assistance to public security units, such as the police and armed forces

There are also tools, which control the means of conflict, these include:

- Economic sanctions
- Improving transparency in the use of development assistance
- Control of inflows and trade of weapons, particularly of small arms, and
- Control of mercenary and private military activities.

All these techniques, many of which can be effectively used through all the stages of the conflict, are applied through such means as: fact finding missions: facilitation and *mediation*¹⁶.

¹⁶ Conflict prevention, [http:// www.dfait-maeci.gc.ca/peacekeeping/conflict-e.asp](http://www.dfait-maeci.gc.ca/peacekeeping/conflict-e.asp)

The peacemaking strategies in a mediation process

As I have already made clear, peacemakers can use diplomatic techniques, such as mediation. Under the provisions of Chapter VI the Security Council is empowered, above all to determine whether a particular dispute or situation may constitute a threat to international peace and security and then, if it finds it necessary, it may recommend to the parties to take appropriate measures with a view to a pacific settlement¹⁷. Political approaches to peacemaking based around negotiation or mediation afford important advantages for conflict resolution. In particular, they offer the parties to a conflict relatively low-risk opportunity to enter into talks, which can eventually lead to peace. The role of the Secretary –General is crucial in initiating this type of peacemaking. The Secretary –General may be instructed by the Security Council to mediate personally in a dispute or to appoint a designated mediator. The Secretary –General is uniquely placed to do this since he/she is the world's foremost diplomat and is also widely perceived as neutral. A good example of the Secretary – General's mediating potential were the final-hour talks led by Kofi Annan, which succeeded in averting the outbreak of overt hostilities between the United States/ United Kingdom and Iraq in 1998. In this case, the Secretary-General used his pre-eminent diplomatic position to secure direct talks with Sāddam Hussein over the issue of UN weapons inspectors in Iraq. The Secretary- General is also well placed to appoint mediators, due to the unrivalled network of diplomats and bureaucrats at his/her disposal. Finally, the Secretary-General may provide 'good offices', allowing disputants to negotiate informally outside the restrictions of diplomatic protocol.

¹⁷ Renata Sonnenfeld, *Resolutions of the United Nations Security Council* (Dordrecht, Martinus Nijhoff Publishers, 1988), p.81

The concentration of diplomatic activity at the UN provides ample opportunities for such behind-the-scenes meetings to take place.

The special position of the United Nations and its powers

The Security Council may recommend (under article 33 of the Charter) to the parties to take appropriate measures with a view to pacific settlement, but the problem is that mediation not always works. When there is a case of a violation or even a threatened violation of the peace, the UN Charter granted to the Security Council very extensive powers. In fact these are the broadest powers ever granted to any international organ. Under Article 39 (Chapter VII) the Security Council is empowered to undertake a variety of actions. When it has determined the existence of any threat to the peace or breach of the peace it may make recommendations to states or decide to apply economic, diplomatic and finally even military sanctions. Chapter VII gives the Council almost exclusive rights as regards the choice of measures to be applied both of prevention and enforcement –whereas in Chapter VI these rights are granted above all, to the parties to a dispute¹⁸. The Security Council may take enforcement measures under Chapter VII which are more robust than peacekeeping. These enforcement powers are contained in Chapter VII of the Charter, which authorises the Council to determine when a threat to, or breach of, the peace has occurred, and authorises it among other things to impose economic and military sanctions. In exercising its enforcement powers, the Security Council has imposed economic sanctions against a number of States and other parties. The great

¹⁸ Renata Sonnenfeld, *Resolutions of the United Nations Security Council* (Dordrecht, Martinus Nijhoff Publishers, 1988), p.89

majority of these sanctions regimes have been imposed in the post-Cold War period. The council imposed general trade sanctions on Iraq in 1990, but since then the Council has preferred to imposed more “targeted” sanctions such as arm embargoes, travel bans, restrictions on diplomatic relations, and bans on key commodities like petroleum and diamonds.

The reason for having these powers is that the United Nations relies for its effectiveness on some form of expert power. Because of their special position as *the* official international agency, the United Nations often has access to substantive expertise on a great many issues, which should lead the member nations to believe that the United Nations has special knowledge. Another source of power for the United Nations is their access to legitimate power. In principle at least, the United Nations is the official representative of the world community, and should therefore be able to speak with the authority conferred by this unique position. Article 36 of Chapter VI of the Charter makes this clear: In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Conclusion

In this essay about international mediation and the United Nations, I have tried to make clear that in these days’ international organizations, states and individual mediators play a very important role as interveners in international conflicts. Through the increasing

importance of international relationships the opportunities for conflicts are multiplied. In my opinion, the most active body that carries on the most mediation activity in international conflicts is the United Nations. The United Nations seems to be a very active participant in the search for institutions and proposals to keep peace. In my essay I have pointed out the motives and interests of the parties and the third parties. It seems that not only parties have interests and motives to initiate a mediation process (low risks, costs, time), but also states and organizations. A difference between them is, that States most of the times are motivated by self-interests and that international organizations (the United Nations) are required to intervene whenever certain situations, defined in their charters occur. It seems that there are a lot of advantages for parties to choose an international organization as a mediator (they don't represent any vested interests, an international organization can be face-saving device and an international organization can more easily be disavowed if necessary). Another reason for the United Nations popularity is the awareness of the parties in conflict that there exists, in particular, general support from the Security Council and its permanent members: they tend to encourage parties to accept the offer by the Secretary General of his good offices.

In my essay I made clear that the role of the Security Council and especially the Secretary General is crucial in initiating a mediation process, he /she has a unique role, since the Secretary General is the world's foremost diplomat and is also widely perceived as neutral. If the United Nations wants to be successful as a mediator, the mediator must have knowledge and understanding of the issues in the negotiation, which can, for example, be accomplished by absorbing the nature of the history of the dispute. Also

trust, impartiality and sense of timing appeared to be very important elements for an effective mediation process.

In my opinion, the main task of the United Nations is to prevent or resolve conflicts by mediation or negotiation. They especially try to keep or to make peace. In the last part of my essay I explained the unique role of the United Nations as a mediator in a peacekeeping process. In general, a mediator has limited or no authoritative decision – making power and assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute. I think there is a big difference between the United Nations as a mediator and other international mediators. Normally, the disputants must be willing to allow a third party to enter the dispute and assist them in reaching a solution, but Article 33 (2) of the Charter says that the Security Council shall, when it deems necessary, *call upon* the parties to settle their dispute. It also appears that the Security Council may, at any stage of a dispute recommend appropriate procedures or methods of adjustments. And it seems that the United Nations have legitimate power in contrary to other international mediators, who only have limited or no authoritative power. The United Nations even has coercive power, in the form of sanctions (economic sanctions) and peacekeeping force: such as the threat of military intervention, when the Security Council has determined the existence of any threat to the peace or breach of the peace.

I can conclude that the United Nations has a very special and unique role in the mediation process. Although, Chapter VI granted all the rights to the parties, Chapter VII gives the Security Council almost exclusive rights for prevention and enforcement. Because of this Chapter the United Nations is in my opinion a very powerful organisation that definitely

has authoritative power to make decisions for parties in contrary to other international organizations.

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