

"LITTLE, EVIL BUSH" MEETS THE "HOMICIDAL DICTATOR":

An Analysis Of The Factors Affecting The International Mediation Process

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INTRODUCTION

"Saddam Hussein is a homicidal dictator who is addicted to weapons of mass destruction." – George W. Bush¹

"...little, evil Bush." – Saddam Hussein²

The current conflict between Iraq and the coalition led by the United States has been brewing for many years. During the inter-war period between the first Gulf War in 1991 and the present armed conflict, the level of tension between the parties never fell below a highly charged state. Neither side made any serious attempt to negotiate a settlement. As the quotations above demonstrate, the positions taken by the parties were inflexible and extreme. Instead of separating the people from the problem, as Roger Fisher and William Ury suggest, the people themselves became the problem through their mutual distrust and demonization.³ The conflict between the U.S. and Iraq thus serves to illustrate some of the unique features of international as opposed to domestic conflicts, and the corresponding challenges international conflicts present to mediators. In this paper we will enumerate the many factors that affect the international mediation process, and use them to analyze how (and whether) mediation could have averted the current war.

We begin with a general overview of the many contrasting theories about the factors affecting the outcome and process of conflict resolution on the international level. Much has been written on the subject, and there are almost as many theories as there are theorists. Part of the reason for this diversity is that it is virtually impossible to predict which factors will be most significant in any given case. Conflicts are as varied as the issues and the personalities involved in them. Indeed, certain conflicts

¹ George W. Bush, 7 October 2002 in a television address to the U.S., quoted in Canadian Broadcasting Corporation, "Bush says he will Disarm Hussein" in *CBC News* online: <www.cbc.ca/storyview/CBC/2002/10/07/bushspeech021007>, last viewed 17 April 2003.

² Saddam Hussein, 20 March 2003 in a television address to Iraq, quoted in Canadian Broadcasting Corporation, "Saddam Calls Attack Shameful Crime" in *CBC News* online: <www.cbc.ca/storyview/CBC/2003/03/19/iraqreaxn030319>, last viewed 17 April 2003.

are simply not amenable to mediation, such as those where settlement would compromise fundamental justice or deeply rooted cultural values. Nonetheless, we argue that there is always value in attempted mediation, even when such efforts prove fruitless in a material sense.

International conflicts are complicated by the fact that third party interests are always prevalent. The international system is anarchic compared to a domestic system, since there is often no mutually agreed upon higher authority, and to that extent all international players are affected by instability. Third party interests include economic stability, environmental protection, human rights, and peace itself. These interests affect the role of third parties as mediators: whereas domestic mediation in our culture is typified by mediator neutrality, this is rarely true in international mediation. Furthermore, as Raymond Cohen argues, some of our mediation values are culturally specific, and therefore are less appropriate in the international context. We argue that in contrast to domestic mediations, a degree of mediator interest can assist the international mediation process, if the mediator's assumptions are brought to the foreground. We also adopt Cohen's view that an awareness of the cultural-specificity of the mediator's own values will assist in the process of finding common ground.⁴

We group the variables that affect the outcome and process of mediation according to where they enter the process: at the conflict level, at the party level, and at the mediator/process level. Each section begins with a general overview of the major theories, followed by a brief application of those theories to the Iraq/U.S. conflict. We attempt both to understand why the parties failed to reach a non-violent resolution, and to suggest ways in which interventions by different mediators, at different times and using different strategies may have facilitated such a result. The primary focus of this paper is

³ Roger Fisher and William Ury, with Bruce Patton. *Getting to Yes: Negotiating Agreement Without Giving In* 2d edition (New York: Penguin Books, 1991), 17-40.

⁴ Raymond Cohen, "Cultural Aspects of International Mediation" in Jacob Bercovitch, ed. *Resolving International Conflicts: The Theory and Practice of Mediation* (Boulder and London: Lynne Rienner Publishers, 1996), 107-128.

international alternative dispute resolution in general; therefore, a complete analysis of the long and complex relationship between the parties in the current war is beyond the scope of this paper. Nonetheless, we hope that our discussion of the Iraq/U.S. situation renders our analysis of the factors more concrete, and so sheds light on how mediation can avoid armed conflict in general, as well as help to rebuild relationships after the war ends.

We conclude with some observations about how our own worldview affects our analysis. Both authors believe that the preservation of human rights is of vital importance, and is itself a reason for which to find non-violent solutions to international conflicts. This view necessarily shapes our analysis, and we bring it forth in the spirit of making third party assumptions (i.e. the analysts' own assumptions) both contextually informative and, we hope, useful.

Finally, we have included an appendix that reflects on the challenges involved in the collaborative writing process, and how we met those challenges through ADR-related techniques. We developed a process to take advantage of our shared interests and goals (having first discovered what those interests were), using various techniques such as timelines, brainstorming, and the generation of options (combined, of course, with such intangible inherent characteristics as flexibility and effective communication). We hope that the product of the process is a paper that reads like one not written by two individual authors, but rather by a collaborative authorship team.

FACTORS AFFECTING THE OUTCOME OF INTERNATIONAL CONFLICT MEDIATION

A great number of studies analyze specific attempts at international mediation, in order to evaluate how and why these attempts resulted in a particular outcome. Most of these analyses frame their inquiries in terms of which factors are prerequisites for "success," although success itself is defined in various ways. Some analysts consider mediation to have been successful if both parties

formally or informally accept a mediator or meditative attempt, while others consider success to be indicated only by some improvement over the pre-mediation state of the conflict.⁵ Some theorists rely on the objectives of the mediator to measure success; and others see success in terms of resolving what disputants see as the underlying roots of the conflict.⁶ In general the only consensus appears to be that success is not black and white, but rather should be seen as resting on a complex continuum, where many different outcomes are possible.

Magic formulas for mediation success do not exist. Our interest in this paper is therefore less in measuring success than in describing what factors have an effect on the international mediation process, although as we have already acknowledged, we see non-violent resolutions to be preferable to violent ones. In looking at how the variables played out in the current Iraq crisis, we aim to illustrate how the factors interact, and how they suggest mediation approaches that may have had a chance of avoiding war. These factors can be broadly grouped into three categories: variables regarding the conflict, variables concerning the parties, and variables regarding the mediator and the mediation process. We will examine each of these categories in turn.

Variables regarding the conflict:

The variables regarding a specific international conflict can be subdivided into two further groups: 1) variables pertaining to the type of conflict or the nature of the interests, and 2) variables

⁵ Marieke Kleiboer surveys the various theories of success, and cites D. Frei for the former position and J. Bercovitch for the latter in Marieke Kleiboer, The Multiple Realities of International Mediation (Boulder and London: Lynne Rienner Publishers, 1998), 13; D. Frei, "Conditions Affecting the Effectiveness of Mediation," *Peace Science Society (International) Papers* 26 (1976): 67-84; J. Bercovitch, "Introduction: Thinking about mediation" in Bercovitch, *supra* note 4, 1-9.

⁶ Kleiboer, 13, cites Inbar as an example of the former position and Burton for the latter. E. Inbar, "Great Powers of Mediation: The U.S. and the May 1983 Israeli-Lebanese Agreement," *Journal of Peace Research* 28;71-84; J.W. Burton, "Conflict Resolution as a function of human needs" in R.A. Coate and J.A. Rosati, eds. The Power of Human Needs in World Society. Boulder: Lynne Rienner Publishers, pp. 187-204.

relating to the level of intensity the conflict has reached, which help determine how “ripe” the conflict is for mediation.

Nature of the Interests at Stake in the Conflict:

Each conflict has at least three major components: parties, actions the parties have taken with respect to each other, and some sort of incompatibility between the parties (which can relate to divergent interests or to divergent positions with respect to mutual interests).⁷ In analyzing the nature of a particular instance of incompatibility, Peter Wallensteen argues that we should analyze both conflicting interests and the relationship between interests, positions and needs. This approach is similar to that of Fisher and Ury in *Getting to Yes*, where focussing on interests rather than positions is a crucial step in their mediation method.⁸

Analysts agree that some international conflicts are more amenable to mediation than others, depending on the nature of the interests that present incompatibilities. For instance, as Jacob Bercovitch writes, conflicts over territorial or security interests appear to be more amenable to mediation than interests in ideology or independence, and, as Fisher suggests in another work, interest-related issues are more amenable to mediation than deep-rooted value issues.⁹ This assessment does not mean that mediation should not be attempted in the less amendable situations, however. Rather it means that conflicts resting on these types of interests present especially complex challenges to mediators.

In the current Iraq/U.S. conflict, for instance, the U.S. interest in security might have lent itself to mediation in the same way these concerns did after the Gulf War of 1990-1991: that is, U.S. and

⁷ Peter Wallensteen, *Understanding Conflict Resolution: War, Peace and the Global System* (London: Sage Publications, 2002), 13-31.

⁸ Fisher and Ury, *supra* note 3, 40-55.

other nations' security interests were addressed by requiring Saddam Hussein to dismantle any weapons of mass destruction in his arsenal, and to verify that he had via weapons inspections conducted under United Nations supervision. These solutions operated as an alternative to waging more war, and as such are the outcome of mediation. Iraq's violation of these conditions, however, undermined the efficacy of the previously mediated solution, making the U.S. less willing to accept these same methods for safeguarding their security interests, which had reached new heights after the September 11 terrorist attacks on New York and Washington in 2001. We will address these factors again in our discussion of variables concerning the parties below.

From Iraq's point of view, sovereignty and independence are at issue in the current conflict, a category of interests that Bercovitch says inclines states more toward intractability than compromise. Certainly U.S. demands for regime change go directly to the issue of independence, and Iraq's ability to determine its own political system, which is far more difficult to accommodate than the options available to assuage security interests. U.S. positions with respect to Saddam's regime also took on a highly value-laden quality, invoking freedom and justice for the Iraqi people, which according to Fisher are also less likely to be open to mediation efforts than more needs-based issues like security.¹⁰

As we will discuss further below, the nature of the interests at stake affects the efficacy of workable options for resolving the conflict: including whether it is even possible to agree on objective criteria (a practice which Fisher and Ury suggest is a way out of a positional impasse).¹¹ Providing

⁹ Jacob Bercovitch, "International Mediation," *Journal of Peace Research* 28 (1991), 1; Roger Fisher, *International Mediation: A Working Guide* (Boston: International Peace Academy, 1978).

¹⁰ Jacob Bercovitch and Allison Houston, in an article pulling together many of the case studies done on international mediation attempts, similarly say that if *vital* interests are at stake (like sovereignty) then intermediaries are not likely to have an impact. The authors' statistical compilation shows that national security and sovereignty are in fact the most prevalent issues at stake in international disputes (36.3% sovereignty and 23.6% national security). Interestingly, they find that ideological disputes have a greater chance of mediation success (50.4%) than security disputes (where 40.7% had at least some success) and sovereignty disputes (44.7% success). Where disputes are over resources or ethnicity, chance of success is higher (70% and 66.7% respectively). Jacob Bercovitch and Allison Houston, "The Study of International Mediation: Theoretical Issues and Empirical Evidence" in Bercovitch *supra* note 4, , 11-35 at pp. 24- 25.

¹¹ Fisher and Ury, *supra* note 3, 81-94.

objective criteria is the function of fact-finding missions that often accompany mediation efforts, like the weapons inspection program. The reaction to the weapons inspectors' reports, however, shows how difficult it is to find satisfactory objective criteria in the face of vital and value-laden interests. The U.S. would not accept the lack of proof found by the weapons inspectors that Saddam's regime was indeed building weapons of mass destruction, and instead argued that Saddam's regime was merely hiding them too well to be found. Iraq, meanwhile, insisted that the inspectors' empty hands proved their innocence. Both sides thus tried to rely on the weapons inspectors' reports as objective criteria to evaluate the reasonableness of options for solutions to the conflict, but did so in decidedly unobjective ways. Each side's interpretation of the findings was deeply informed by the interests each party had in the conflict: namely sovereignty, security, and fundamental values.

Conflict ripeness/level of intensity

Conflict ripeness refers to the timing of mediation attempts, which can be measured either via real time (that is, how long the conflict has been going on) or via event time (i.e. what has occurred in the conflict, regardless of how long it took). Jacob Bercovitch and Allison Houston's assessment of the many studies of conflict ripeness shows that there is little agreement between analysts as to when a conflict is ripe for mediation, and that statistically the only significant real time indicator is that after 36 months of conflict there is a notable drop off in the likelihood of mediated agreements.¹²

The event time approach to ripeness typically includes an evaluation of the level of intensity, by which some people mean level of violence, others degree of threat or tension, and still others merely the number of fatalities.¹³ Analysts have presented contradictory views on whether mediation is more effective if the intensity of the dispute is greater (in other words, parties may be willing to cut

¹² Bercovitch and Houston, *supra* note 10, 23.

their losses), or whether greater intensity results in greater polarization of positions and so less likelihood of mediated alternatives to violence.¹⁴ When one party is willing to concede defeat in an armed conflict, then opportunities for mediation do open up again, however, as they did with Iraq after the Gulf War.

The contingency approach to international conflict tries to match the type of third-party intervention to the stage of the conflict, and so avoids the task of having to determine when a conflict is *most* ripe for mediation. Laraleigh Keashly and Ronald J. Fisher, for instance, set out four distinct phases of a conflict (though not all conflicts go through all four phases), which proceed to greater escalation of the tensions between the parties, and then describe the kind of intervention that is most appropriate to trying to de-escalate the conflict back down through the stages.¹⁵ The lowest level of tension features discussion and debate between the parties that focuses on substantive interests, relatively accurate or at least benign perceptions of each other, and trust, respect and commitment to their relationship. At this stage, mediation is most appropriate, since joint-decision making and a perception of mutual gain are possible. The next level of tension features less reliance on direct discussion and more reliance on interpretation of the actions of the other party fuelled by concerns over the relationship. Parties often hold rigid or simplified stereotypes, and perceive the other party as difficult, though the relationship itself remains important enough to try to maintain. Mediation is still appropriate at this stage, though more active mediation strategies may be necessary to bring the parties back down to the first stage of communication.

¹³ Kleiboer, *supra* note 5, 20; Charles Hauss, *International conflict resolution: international relations for the 21st century* (New York: Continuum, 2001), 21.

¹⁴ Similarly, Bercovitch and Houston's statistical analysis found that situations where there had been between 100-500 fatalities had a 64% chance of success, while those with over 10,000 fatalities had only 39% success. Bercovitch and Houston, *supra* note 10, 24.

¹⁵ Laraleigh Keashly and Ronald J. Fisher, "A Contingency Perspective on Conflict Interventions: Theoretical and Practical Considerations" in Bercovitch, *supra* note 4, 235-261 at 244.

In the third stage, the conflict has escalated to the point where communication between the parties takes the form of threats, where each party uses stereotypes to cast the other as the evil part of the battle of good and evil, and the relationship between the parties is one of mistrust and disrespect. Vital interests or core values are often perceived to be at stake at this stage, and the outcome of the conflict is typically conceived as a win-lose prospect by both sides. Without de-escalation, this stage is not particularly receptive to mediation. De-escalation can potentially be achieved via third party conciliation (where a trusted third party provides the communication link between the parties in order to lower tensions and move them towards direct communication via shuttle diplomacy) or by means of what Keashly and Fisher call “power mediation” (where the third party mediator uses leverage or coercion to move the parties toward direct mediation, via promised rewards or threatened punishments).

Prior to March 20, 2003, the current Iraq/U.S. conflict was stuck at this third stage of escalation. Whenever the Bush Administration demanded that regime change was the only acceptable solution, they closed off the possibility of de-escalation. Saddam was cast as an evil dictator bent on leading his people to destruction, and dragging down the rest of the world around him. In the final days before U.S. and British troops moved into Iraq, President Bush demanded that Saddam and his son leave voluntarily in order to avoid war. Framed as a threat, this option cannot be characterized as a good faith mediation attempt. The UN Security Council, meanwhile, attempted to continue to treat the conflict as if it were at stage two: where the relationship between Saddam’s Iraq and the rest of the UN member nations was perceived as one that, while difficult, was important to maintain. The disconnection between the approach of the U.S./British to the conflict and the approach of the rest of the members of the UN Security Council made it impossible for the Security Council as a whole to agree on the appropriate way to proceed with negotiations with Iraq.

After March 20th, the current Iraq/U.S. conflict of course tipped over into the final and most intense stage: war. War involves little or no communication and violent attacks between the parties, perceptions of each other as dispensable, and the abandonment of any hope of improving relations. The foremost interest becomes survival of one or both parties, with the accompanying goal of minimizing losses and maximizing the damage inflicted on the other party. Mediation is not possible at this point, unless there is some change of circumstances: either military victory for one of the parties, or “hurting stalemate” (where significant losses are inflicted on both sides and no end is in sight).¹⁶

Variables concerning the parties:

We have subdivided variables concerning the parties into the following categories: 1) political context; 2) power differentials; 3) the prior relationship between the parties; and 4) cultural differences.

Political context

Many analysts note that the type of regimes involved in a conflict can have an effect on the mediation outcome: in particular, democracies don't generally engage in conflict with each other, though they have been party to about 30% of the conflicts involving non-democratic states.¹⁷ Clearly the conflict between the U.S. and Iraq falls into this latter category. Bercovitch and Houston, however, stress that the kinds of political systems involved do not greatly affect the chances that a mediation attempt will produce a settlement, though mediation is certainly easier when the parties share a political system or have similar political values.

¹⁶ William Zartman and Richard Haass, as cited in Haass, *supra* note 13, at 28; W. Zartman, *Ripe for Resolution*. 2nd ed. (New York: Oxford University Press, 1989); R. Haass, *Conflict Unending* (New Haven: Yale University Press, 1990).

The structure of political power within the party nations can also affect the mediation process: particularly the stability of the political structure, and whether there are significant domestic constituencies that have competing interests of their own. If there are such constituencies, then parties can try to create alliances with their opponent's internal factions, for instance, or the internal factions can make it difficult for the state to proceed in a particular direction (if, for example, domestic opposition to war is strong enough to make war an undesirable alternative to mediation). Anti-war demonstrations all over the world continue to attempt to make their presence known to the parties in the present conflict, though ultimately without deterring the U.S. and Britain from pursuing the war.

Power Differentials

Opinion among analysts is likewise split over how power parity or power differences between the parties affect how they will proceed and the outcome that will result (with power measured by using objective indices like gross national product, military strength, physical size, or other non-objective indices like will and skill). William Zartman and Jeffrey Rubin identify two schools of thought here: one which claims that power asymmetries are evened out by the negotiation process (in other words, the act of negotiation produces rough symmetry, since each side needs the other side's assent), and a second one in which differences in power are deemed to make a difference insofar as more powerful parties can control the process and obtain the results they desire.¹⁸ The latter school of thought further asserts that asymmetry indisposes the less powerful to agreement and causes delays.

Bercovitch and Houston's statistical analysis supports the idea that symmetric dyads are more likely to reach an agreement (53%) than asymmetric dyads (41%). The authors' further find that where the power difference is small there is a 51.4% chance of a mediated solution, while where the

¹⁷ Bercovitch and Houston, *supra* note 10, 20.

difference is great there is only a 33.3% chance.¹⁹ These raw findings are tempered by Zartman and Rubin's study, however, which compiles observations from a series of case studies where the parties had an objective power differential, but where specific negotiation strategies were used by the weaker party to move both parties toward a mutually satisfying solution.

Zartman and Rubin find that stronger parties do typically attempt to dominate the exchange, and approach the mediation with a take-it-or-leave-it attitude, since they do not perceive much incentive to reach a settlement. If the weaker party hesitates, then the stronger party tends to ratchet up the pressure to a take-it-or-suffer approach, whether by threatening use of force or economic sanctions.²⁰ This is the approach the UN Security Council asserted toward Iraq after its invasion of Kuwait; it is also the approach that the U.S. took towards Iraq in the lead up to the current war, despite the fact that this time there was no consensus among the members of the Security Council that this was the appropriate approach.

Strategies available to weaker parties include letting the stronger party control the framework while gaining significant concessions in the details and borrowing power from the stronger party by focussing on aspects of its nature that support the weaker party's own demands. Iraq employed this strategy when it appealed to U.S. respect for legal process, asserting that a war not approved by the UN would be an illegal act of aggression. Borrowing power from the context is another strategy open to weaker parties, an example of which is Iraq use of the deliberations of the UN Security Council (of which it is not a member) as an opportunity to present its viewpoint and to appeal to a higher authority. This strategy is akin to that of borrowing power from third parties. This latter strategy was of limited availability to Iraq due to its ideological isolation, but officials could have tried to build a

¹⁸ I. William Zartman and Jeffrey Z. Rubin, "The Study of Power and the Practice of Negotiation" in I. William Zartman and Jeffrey Z. Rubin, eds. *Power and Negotiation* (Ann Arbor: University of Michigan Press, 2000), 3-28 at 4.

¹⁹ Bercovitch and Houston, *supra* note 10, 22.

coalition with the parties in the UN Security Council opposed to the use of force, or to link up with the anti-war movement within the U.S. itself, thus using domestic U.S. public opinion in their favour. Other third party alliances, like joining up with the stronger party's enemies, would not be a particularly advisable route for Iraq, since allegations that Saddam was in league with the terrorist organization Al Qaeda already formed part of the U.S.'s rhetorical justification for initiating the war.

Fisher and Ury suggest that there is power in having a good BATNA (Best Alternative to a Negotiated Agreement).²¹ When applied to the Iraq/U.S. conflict, clearly war was a better BATNA for the U.S. than for Iraq, given the former's larger and more powerful military resources. Further, Iraq's task of coming up with a better alternative was surely skewed by unclear messages from Washington regarding the options the U.S. was endorsing (i.e. disarmament vs. regime change). Without a clear BATNA, Iraq's already objectively weaker status in relation to the U.S. was exacerbated, potentially making it difficult for Iraq to negotiate at all.

Prior relationship between the parties

As our discussion of the Iraq situation has implied, the history and nature of previous and ongoing interactions between the parties is also a significant factor shaping mediation efforts. Bercovitch and Houston found that where relations had previously been friendly, the probability of a mediated agreement was 80%, but where parties had one or more previous disputes, the probability of reaching agreement dropped to only 40-46%.²²

The history of the relationship between Iraq and the U.S. (and Britain) is a long and complicated one. At one time the U.S. supported Saddam's regime in its war against Iran. But clearly

²⁰ I. William Zartman and Jeffrey Z. Rubin "Symmetry and Asymmetry in Negotiation" in Zartman and Rubin, *supra* note 18, 271-293 at 275.

²¹ Fisher and Ury, *supra* note 3, 97-106.

²² Bercovitch and Houston, *supra* note 10, 22.

in the last twenty years, the relationship can be characterized as one of distrust, featuring the kind of demonization of leaders we quoted at the head of this paper. American distrust of Saddam was particularly acute since, as a dictator, he has been closely and personally identified with his regime's actions for the past 24 years, while U.S. presidents change every 4 or 8 years. The U.S.'s focus on Saddam and the position that his regime must be overthrown meant that it was impossible to "separate the people from the problem," as Fisher and Ury suggest in their method.²³ Indeed while conflict between the U.S. and Iraq has been ongoing since the Gulf War, with minor U.S. military actions taking place virtually every year since 1991, the current conflict was exacerbated by the fact that George W. Bush is the son of George Bush, Sr. who was president of the U.S. during the Gulf War. Consequently, the Iraq/U.S. conflict has had both a national and a personal dimension, on the one hand involving a long history of conflict between two nations (or at least one nation and one regime), and on the other hand involving a confrontation between Saddam and the Bush dynasty.

Cultural differences

Cultural differences also have an impact on the mediation process. As Raymond Cohen writes, many mediation attempts fail because the parties make different assumptions about the process and have different expectations about the outcome.²⁴ Cohen suggests that prerequisites to successful cross-cultural mediation include the exchange of meanings (i.e. different ideals, goals and values about social reality), finding shared common ground, and developing awareness of cultural differences. Cohen describes the differences between Western and Middle Eastern approaches to the mediation process as follows:

North American mediators are expected to be impartial, trained professionals. Their job is not to preach, but to provide such services for the protagonists as assisting communication and

²³ Fisher and Ury, *supra* note 3, 17-39.

²⁴ Cohen, *supra* note 4, 107.

inventing alternative options... In contrast, the Middle Eastern *wasta* has an ascriptive, not professional role, and is chosen from among local notables. He – for women do not qualify – is expected to separate the adversaries, scrupulously protect their honor, and restore equilibrium between them, if necessary by preferring the claims of the weaker party. His strongest appeal is not to ethics but to the good of the community. Although culture does not predetermine behaviour in detail, it does assign meaning, establish norms, and define roles.²⁵

Clearly these sorts of expectations affect the ability of a mediator to help the parties reach an agreement. For this reason, regional organizations or third party nations from similar cultural backgrounds are generally better mediators than international organizations or distant third party nations. In cases where the U.S. is open to such culturally sensitive mediators, the mediation process has a better chance of reaching a agreement in some measure satisfying to both parties -- such as when the U.S. accepted Algeria as a mediator in the negotiations over debt and hostages with Iran in 1980. In that conflict, Algeria recognized the importance of saving face within the Iranian culture, which precluded Iran from making direct concession to the Americans. Algeria's recognition of Iran's cultural concerns allowed Iran to instead make promises to their compatriot Algeria, while the U.S. was still able to secure compensation for Iranians in the U.S. who had court-ordered claims against the Iranian state.²⁶

No similar attempts seem to have taken hold in the most recent conflict with Iraq, although several Arab states and the Arab League met with the Iraqi leadership in the course of the twelve years since the Gulf War: mainly to encourage Saddam to comply with UN weapons inspections. If the U.S. had really wanted to avoid war, its leadership could have endorsed this type of culturally sensitive mediation process. Ultimately, however, war was clearly the Bush administration's preferred solution, and so cross-cultural mediation efforts – indeed mediation efforts in general – were thwarted.

²⁵ *Ibid*, 107-108.

²⁶ *Ibid*, 115.

Variables concerning the mediator and the mediator's process

In the international context, mediators can bring many different types of power to the table: the power to give rewards (typically as an incentive for a party to enter the process), coercion, expertise, legitimacy, referent power (power derived from the mediator's status), and informational power.²⁷ Some of these powers are inherent characteristics of the mediator him or herself, while others can be either introduced or limited by the process.

Mediator Characteristics

A finite number of players exist on the international scene, each with a complex history of political alliances, cultural similarities and differences, and economic links to every other player.²⁸ These characteristics, together with the anarchical nature of international relations, must be considered both in determining the cause of a conflict and in planning for possible mediation. Wallensteen describes this situation as the "conflict complex," wherein the interconnected relationships of states and other participants to each other tie conflicts together. Thus any conflict of seemingly limited, internal scope may be connected to a vast array of other actual and potential conflicts on the world scene.²⁹

The interconnectedness of international conflicts means that finding a completely neutral third party mediator may not only be impossible, but undesirable. In many other situations, mediators are expected to be neutral, as is suggested in the very definition of mediation by Allan J. Stitt in his

²⁷ Jeffrey Rubin, as quoted in Chester A. Crocker, Fen Osler Hampson, and Pamela R. Aall, "Multiparty Mediation and the Conflict Cycle" in Chester A. Crocker, Fen Osler Hampson, and Pamela R. Aall, *Herding Cats: Multiparty Mediation in a Complex World*. (Washington: U.S. Institute for Peace Press, 1999), 19-46 at 29; Jeffrey Z. Rubin, "International Mediation in Context" in *Mediation in International Relations*, ed. Jacob Bercovitch and Jeffrey Z. Rubin (New York: St. Martin's Press, 1992).

²⁸ The UN has 191 member nations, which, along with NGOs and international coalitions such as NATO and the United Nations constitute the major players in international conflicts.

²⁹ Wallensteen, *supra* note 7, 203.

Alternative Dispute Resolution for Organizations.³⁰ In the international context, however, historical, cultural and economic links, combined with the common desire of the world community to avoid war, can create almost unavoidable predispositions toward one party or another. States, including those acting as mediators, cannot disregard their own interests. Furthermore, as Bercovitch and Houston write, mediators are often more effective when they are persuasive. Parties accept powerful, opinionated mediators precisely because of their power to influence or protect the interests of the parties.³¹

The requirement of neutrality is based on an assumption of equality between parties in the mediation process. Such equality is often an unrealistic assumption in the international context, where one or both parties may rather go to war than negotiate an agreement, and where objective power differentials cannot be ignored when parties come to the bargaining table, even though, as discussed above, some analysts argue that the mediation process itself levels power imbalances. Generally, the more powerful party will not tolerate being treated as the weaker party's equal, and the weaker party will be suspicious of a mediator professing neutrality in the face of the other party's strength. Such an impasse can be broken by abandoning the strict rule of impartiality in favour of acknowledging a perceived advantage for one side.

A mediator sharing a regional or cultural link with the weaker party, for instance, may be more readily trusted by that party than a strictly neutral third party or one sharing cultural or political features with the stronger party. On the other hand, leverage can be an important tool in allowing the mediator to work towards a settlement. The U.S., for example, with its overwhelming military and

³⁰ Stitt writes "Where the disputants cannot negotiate a solution to the problem, they may engage the assistance of a neutral third party or mediator to assist them to overcome the barriers to a negotiated agreement." Allan J. Stitt, *Alternative Dispute Resolution for Organizations: How to Design a system for Effective Conflict Resolution* (Toronto: John Wiley and Sons Canada, 1998), 16.

³¹ Bercovitch and Houston, *supra* note 10, 26.

economic power, is often sought as a mediator but is never impartial.³² Again analysts have varying opinions as to the effect of this partiality: Lea Brilmayer sees it as a “serious moral problem,”³³ while Chester Crocker *et al.* argue that it is exactly this characteristic that causes parties to actively seek out (or, in some cases, to actively avoid) U.S. involvement as a mediator.

Mediators undeniably gain the trust of the parties through their legitimacy and/or status. If a third party represents the support of a constituency – for example a coalition of states – or can be seen to represent widely-held world or popular opinion, then its participation as mediator will carry a high degree of legitimacy. Such mediators may further carry more persuasive and referent power (i.e. the power that comes from having enough status that the parties will want to preserve their relationship with the mediator). Legitimacy may also be gained through the status of the individual or his or her organization. Respected expertise or experience, a strong reputation, or organizational authority may give an individual both a higher likelihood of being accepted by the parties, and a higher likelihood of being able to help the parties reach a resolution.³⁴ The mediator’s previous relationship with the parties will also affect both the mediator’s behaviour during mediation, and the possible outcomes of mediation.³⁵

Several parties attempted to enter the Iraq/U.S. conflict as mediators prior to the outbreak of war. We will focus on the four-month period immediately preceding the current hostilities, and therefore concentrate on the conflict within the UN Security Council over how to respond to Iraqi defiance. We will examine three of the parties closely: the UN itself (both in the form of the Security Council and the Secretary-General’s office), Canada, and the UK. Arab nations also attempted

³² Chester A. Crocker, Fen Osler Hampson, and Pamela R. Aall, “The Role of the High Commissioner in Conflict Prevention” in Crocker *et. al.*, *supra* note 27, 65-84 at 68.

³³ Lea Brilmayer, “America: The World’s Mediator?” 51 *Ala. L. Rev.* 715, at 731.

³⁴ Chester A. Crocker, Fen Osler Hampson, and Pamela R. Aall, “Rising to the Challenge of Multiparty Mediation”, in Crocker *et. al.*, *supra* note 27, 665-701.

³⁵ Bercovich and Houston, *supra* note 10, 22.

mediations in the course of the twelve years between the Gulf War and the current crisis, but had less of a role in the months immediately preceding the war. We have only been able to find scant information on the content of the meetings held between Iraqi officials and members of the Arab League, for instance, so we will only be able to refer to these sorts of mediations in a general sense.

The United Nations

The UN Secretary-General, according to Kjell Skjelsbæk and Gunnar Fermann, is an office whose tremendous moral status is drawn in large part from its neutrality and impartiality.³⁶ Skjelsbæk and Fermann argue that this moral status, combined with the personal communication skills of the office-holder, confers a special capacity on the Secretary-General as a uniquely neutral international mediator. The authors point to a third factor that can also account for successful negotiations by the Secretary-General, however: the degree of cooperation between the permanent members of the Security Council (which, as a body, is not expected to be neutral). Balancing the interests of the members of the Security Council may itself require neutrality on the part of the Secretary-General, whose views ideally transcend state interests to embody global concerns.³⁷ As Wallensteen notes, however, the UN Security Council has had success as a *partial* mediator as well. UN Security Council mediations should thus be distinguished from the desired impartiality of the Secretary-General's office.³⁸ As stated above, a requirement of strict neutrality limits the reward and coercive power of an international mediator and may render the mediator less desirable to the parties.

In the case of Iraq, the UN Security Council supported the use of force to expel Iraq from Kuwait in the Gulf War, and after that war the Security Council imposed conditions on Iraq in

³⁶ Kjell Skjelsbæk and Gunnar Fermann, "The UN Secretary-General and the Mediation of International Disputes" in Bercovitch, *supra* note 4, 75-104 at 85-86.

³⁷ *Ibid* at 75.

³⁸ Wallensteen, *supra* note 7, notes at 81 that in the Iran-Iraq conflict of 1980 the UN favoured Iraq.

exchange for the removal of troops and economic sanctions.³⁹ These were clearly not impartial actions, but rather condemned Iraq's invasion of Kuwait. Meanwhile the Secretary-General orchestrated meetings with Iraqi officials in order to express the UN's concerns over Iraq's lack of compliance with the conditions, but without personally expressing a particular view on UN retaliation. The inter-war period thus affords examples of both an impartial UN official acting as a mediator, and the UN Security Council acting as more of an arbiter than a mediator.

Most prominent of the conditions imposed on Iraq after the Gulf War were the UN-supervised weapons inspections, meant to serve as an objective measure of whether Iraq was complying with the requirement to dismantle its weapons of mass destruction, as discussed above. In the course of the inter-war years, Iraq's cooperation with these inspections varied, due, in large part, to Iraq's distrust of the weapons inspectors, whom they accused of spying for Israel and the U.S. In 1998, Saddam's regime refused to allow the inspectors further access, after three days of air strikes by U.S. and British forces against alleged military installations. The current war is thus an outgrowth of U.S. and British military responses to Iraq's behaviour toward the weapons inspections, a response that does not analyze or address the cause of either party's behaviour.

While the UN surely was in a good position to act as an objective supervisor of the decidedly unobjective process of insuring Iraq's disarmament, persistent U.S. agitation tainted the weapons inspections process. In the months preceding the current war, further negotiations with Iraq – and threats by the U.S. – led Saddam to allow weapons inspections to resume in November, 2002 as an effort to stave off war. The weapons inspections were again meant to serve as an objective measure of Iraq's compliance with the conditions imposed after the Gulf War. As discussed above, the U.S. refused to accept the findings of the weapons inspectors however, and this led to a schism between countries supporting the U.S.'s proposal to use military force to enter Iraq and disarm Saddam (mainly

³⁹ UN Security Council Resolution 687.

Britain and Spain), and the members of the Security Council opposed to using force and in favour of allowing the weapons inspections to continue to serve their ostensibly objective function (mainly Germany, France, and Russia).

When the U.S. and Britain invaded Iraq without the Security Council's approval, the UN lost control of the situation entirely. Whether there will be any consequences to the U.S. or Britain for these extra-legal measures remains to be seen, but is doubtful. The UN can certainly play a role again now that the armed conflict is drawing to a close, but its reputation as a mediator has been tarnished: not by its partial behaviour against Iraq, which was entirely called for after that country's invasion of Kuwait, but by its inability to control the actions of its members and to act as a unified body. This war has sent the message that even if you do comply with the conditions laid out for you by the Security Council, rogue members may still defy the Council's processes and lash out against you on their own.

Canada

Canada was among the nations opposed to using force against Iraq without proof that Saddam was indeed building weapons of mass destruction, and opposed to using force without Security Council consensus. Canada (which is not a member of the Security Council at the moment) attempted to act as a mediator between the U.S. faction and the rest of the Security Council by making various compromise proposals that centred on allowing the UN weapons inspectors more time to complete their task. These were modest proposals, and while not completely mutual-gains solutions to the conflict, they would have served as an entry point to mediation and would have possibly defused the tension between the parties. As Wallensteen suggests, sometimes merely gaining time can make an issue less significant without forcing a party to lose face.⁴⁰

⁴⁰ Wallensteen, *supra* note 7, 33-60.

With respect to the U.S., Canada shares very close regional, cultural and economic ties that held potential influence in gaining American trust in the process. Canada had an incentive to offer the U.S.: its direct participation in any potential military conflict against Iraq, and the legitimacy that Canada's participation would bring to the American position. Canada's history as a peacekeeper may also have given it some status with respect to the Germany/France/Russia faction. Canada thus had the characteristics of an appropriate mediator for the conflict between the various factions of the Security Council.

Canada is not likely to have been an appropriate mediator in any direct mediation between Iraq and the U.S., however, precisely because of its close ties to the American side, as well its direct participation in the first Gulf War against Iraq. Indeed Canada's economic interests are so closely linked with those of the U.S. that neutrality would likely be impossible. For this an Arab nation would have been more appropriate, similar to the role that Algeria played in the conflict between Iran and the U.S., insofar as any concessions that Iraq made could have been made to a fellow Arab nation, rather than to the Western foe.

The United Kingdom

The United Kingdom also attempted to extend the deadlines assigned to the weapons inspectors, and should have had more pull with the U.S. than Canada, given the UK's active military role in previous flare-ups of the conflict. In other words, the U.S. desired the UK's participation not only for the legitimacy it brought, but also for the military strength that it had promised to lend a U.S. military action. The UK had constituency issues of its own, however: despite the Blair government's support of the U.S. position, there was tremendous domestic public opposition to the war with Iraq.

Thus the U.S. had every reason to respect the UK's wish to extend deadlines, but still refused to do so. Such was the strength of U.S. domestic support, and the Bush administration's desire for war.

We have mainly analyzed the current war as a failure of the UN to serve as the neutral administrator of an international legal system that had imposed certain conditions on a nation guilty of violating its laws (namely Iraq's invasion of Kuwait). This failure was occasioned by the conflict between the members of the Security Council over how to control Iraq's military activities: continue with a system of inspections, or invade and destroy the alleged weapons by force. Ultimately the superior military strength of the U.S. led it to act on its own, with only the material support of the UK and Spain, and in direct defiance of the rest of the members of the Security Council. Efforts by Canada and the UK to mediate between members of the Council failed, mainly because the U.S. was intransigent on its position that the only way to insure that Iraq did not have illegal weapons was to remove Saddam from power – a position not shared by the rest of the Council. The U.S. goal could never be achieved by negotiating with Iraq and thus required the use of force. The war, in this sense, was inevitable and mediation efforts doomed.

Process variables

In addition to characteristics of the mediator, there are several variables related to the mediation process that can affect the outcome. These include the timing of the mediation, the mediation environment, and the various mediation strategies employed by the mediator.

Initiation of mediation

Because of its voluntary nature, mediation is most likely to be successful when both parties initiate it, as opposed to only one party requesting it.⁴¹ Mediations initiated by regional organizations are also well received, perhaps because of shared cultural values and interests between the parties to the conflict and the mediator. Mediations initiated by a more distant third party mediator or an international organization are not nearly as conducive to a mediated solution, perhaps because the attempt is perceived to be an external imposition rather than arising from the parties themselves.⁴²

As noted above, timing can be vital to international conflict resolution, though analysts do not agree on precisely what the most auspicious time for mediation might be.⁴³ Some commentators, like Crocker *et al.*, suggest that mediation is ideally started early in the process, before tensions escalate to the point of violence, because positions have not yet hardened and compromises can be reached without a party being seen to concede a weakness.⁴⁴ Other analysts have suggested that mediation is most successful when begun late in the conflict, when the parties have reached a “hurting stalemate” and unilateral solutions have been blocked. At this point both parties are again motivated to find a common solution.⁴⁵ Mediation at a later stage is typically official, though other less formal “shuttle-diplomacy” channels are still commonly used to reduce the risk of appearing to concede.⁴⁶

In the Iraq situation, various parties attempted mediation throughout the twelve-year interwar period, which may be credited with staving off of a second war for that extended period of time. After the Gulf War, Iraq was willing to negotiate with the UN regarding conditions under which sanctions

⁴¹ Bercovitch and Houston, *supra* note 10 at 28.

⁴² *Ibid.*

⁴³ Crocker *et al. supra* note 27, note at 47-66 that, even if we were able to predict the optimum time to begin mediation, the mediator him/herself may not at that time have assembled the resources, political backing and institutional support required to commence the process.

⁴⁴ *Ibid.*, 19-46.

⁴⁵ Kleiboer, *supra* note 5, at 20. Kleiboer cites the following authors for the late entry theory: F.S. Northedge and M.D. Donelan, *International Disputes: The Political Aspects* (London: Europa Publications, 1971); D. Frei, “Conditions Affecting the Effectiveness of Mediation,” *Peace Science Society (International) Papers* 26 (1976): 67-84; J. Z. Rubin, “Introduction,” in J.Z. Rubin ed, *Dynamics of Third Party Intervention: Kissinger in the Middle East* (New York: Praeger,

would be lifted and troops retracted. After Iraq lost faith in the neutrality of the weapons inspections, Arab nations and the Arab League held numerous meetings with Iraqi leadership in order to encourage Saddam's regime to comply with the UN inspections. The aggressive stance of the U.S. towards Iraq's violation of these conditions were perhaps intended to put pressure on Iraq to comply: but if we accept that the U.S.'s real position has long been that it would not be satisfied until Saddam was deposed, it is unlikely that any mediation attempts would have been successful in the long term under those circumstances, regardless of when they were initiated and by whom.

Mediation Environment

Empirical evidence shows that conducting mediation in an environment perceived as neutral ground by both parties is very important to the effectiveness of mediation.⁴⁷ A party is more likely to trust the mediator and focus on the problem, as opposed to his/her suspicions about the people involved, if the site of discussion is neutral.⁴⁸ Since the U.S. and Iraq never entered into direct mediation, a site was never chosen, though the UN offices in some measure served as such neutral ground.

Strategies of mediation

Many theorists believe that mediation strategy is the single most significant predictor of the outcome of mediation.⁴⁹ Marieke Kleiboer compiles complimentary claims about mediator behaviour that point to consensus among analysts that active strategies have a more positive impact on the

1981); C.W. Moore, *The Mediation Process* (San Francisco: Jossey-Bass, 1987); and T.T.B. Koh, "The Paris Conference on Cambodia: A Multilateral Negotiation that 'Failed,'" *Negotiation Journal* 6 (1990): 81-87.

⁴⁶ Hauss, *supra* note 13, 91.

⁴⁷ Bercovitch and Houston, *supra* note 10, 29.

⁴⁸ Crocker et. al., *supra* note 27, 19-46

⁴⁹ Bercovitch and Houston, *supra* note 10, 29.

mediation than less active ones.⁵⁰ Bercovitch and Houston, for instance, suggest that mediators who have the ability, opportunity and resources to take an active and directive role in the mediation are more likely to get positive results than those relying on communication strategies alone.⁵¹ As T.A. Kochan points out, however, premature use of active strategies can ruin a mediator's credibility and acceptability to both parties, so again timing may be crucial.⁵²

Louis Kreisberg notes that significant mediation strategies include electing the parties that will participate (especially in complex conflict situations), defining the issues that will be the focus of the mediation, and reframing the conflict so that it can be seen as a problem to be solved.⁵³ Wallensteen similarly suggests that one useful strategy involves relegating some issues for later resolution or as outside the mandate of this particular mediation.⁵⁴ Other mediation tactics include communicating each side's view to others (including via the media), suggesting new options, and giving solutions legitimacy and visibility. The process can also be shaped to augment any of Jeffrey Rubin's six powers held by the mediator: reward power (i.e. providing incentives), coercive power, expert power, legitimate power (i.e. from coalition among nations or from international law), referent power (when parties want to maintain a good relationship with the mediator), and informational power. The mediator in turn can shape the process by using these powers. Reward power and informational power, for example, are commonly used to entice the parties to enter the negotiation process. Trust is built when the mediator holds legitimate, referent or expert power.⁵⁵

⁵⁰ Kleiboer, *supra* note 5, 22.

⁵¹ *Ibid* at 30.

⁵² T.A. Kochan, "Step-by-step in the Middle East from the perspective of the labor mediation process," in J.Z. Rubin, ed. *Dynamics of Third Party Intervention: Kissinger in the Middle East* (New York: Praeger, 1981), 122-135.

⁵³ Louis Kriesberg, "Varieties of Mediating Activities and Mediators in International Relations", in Bercovitch, *supra* note 9, 219-233, at 223.

⁵⁴ Wallensteen, *supra* note 7, 54-7. Wallensteen's conflict model is based on the allocation of resources, and so his techniques range from shifting priorities to methods of sharing or externalizing control over resources.

⁵⁵ Crocker et. al., following Rubin, *supra* note 27.

Multiparty mediation is also available as a means to combine several of these strategies, either sequentially or simultaneously. Commonly, multiparty mediation will involve several “tracks” of mediation: second track mediation involves private individuals or NGOs meeting informally, to build trust between the constituents of the parties and to open a dialogue, while first track mediation is more formal and involves higher level officials. The latter track often requires an initial opening either through confidential channels or through second-track mediation.

As discussed above, Keashly and Fisher suggest a contingency approach that matches the type of intervention to the stage of the conflict, as do Crocker *et al.*⁵⁶ Crocker *et al.* suggest that less formal socio-psychological techniques, geared towards changing attitudes and perceptions, are most suitable for second track mediation, which focuses on party needs, even above interests. Such methods can also play a significant role in the pre-mediation stage of a sequential multi-track system. Whether simultaneous or sequential, the formal, more structuralist paradigm of mediation is more appropriate for the first track of mediation. This paradigm, using such methods as mediator leverage and awareness of power differentials, treats getting to the cause of the conflict as its objective.⁵⁷

Finally, mediating across cultural differences may require different mediation strategies than mediation among parties that share cultural values. As noted above, Cohen suggests that a lot of mediations fail because the parties enter the process with different assumptions and expectations, many of which are based upon cultural differences. Cohen notes that while Western cultures typically expect mediators to focus on the interests of the parties, certain Middle Eastern traditions focus on the good of the broader community above the parties themselves. The absence of shared conventions can lead to misunderstanding and mistrust between the parties. Cohen therefore suggests that in cross-

⁵⁶ Keashly and Fisher, *supra* note 15, 241-242.

⁵⁷ Crocker *et. al.*, *supra* note 27, 19-46.

cultural mediations, the mediator must facilitate three additional functions: interpretation of the parties' culturally specific behaviour, face-protection, and coordination of different expectations.⁵⁸

In the Iraq situation, second track mediation may have accomplished some of the cross-cultural bridging that was surely necessary for the U.S. and Iraq to see eye-to-eye on anything. As stated above, the inter-war period saw a continuous high level of tension between the parties, and an almost complete absence of trust. Informal mediation and problem-solving meetings may have been useful to diffuse some of the tension before the violence escalated. NGOs and regional organizations are typically the groups that undertake such ventures, facilitating communications between the parties "on the ground" as a precursor to more formal talks.

Such mediators generally take advantage of their expert and referent power, but given that the tension in this case ran so high, extremely high degrees of such power would have been necessary to yield any increased trust between parties. As we mentioned before, the Arab League and various Arab nations, as well as the UN Secretary-General, tried to intervene before the most recent escalation, but made no headway. Further, while the UN Security Council might normally serve as a partial mediator, in this case that position was complicated by the fact that in some ways the organization was more of a direct party to the conflict than a third party. As discussed above, the lack of consensus among the members of the UN Security Council also meant that the UN was not able to wield its usual referent power and bring Iraq and the U.S. to the same table in order to preserve their respective relationships with the UN. In other words, no clear message was sent to either the U.S. or Iraq as to what it would take to stay in the UN's good graces.

⁵⁸ Cohen, *supra* note 4, 124.

CONCLUSION

As our survey of the factors that affect the international mediation process and its outcomes shows, there are a much broader and less controllable set of variables involved in international mediation than in smaller-scale domestic mediations. We have stressed that an awareness of these factors can help mediators and parties match the most appropriate form of intervention to the conflict at hand, but have also stressed that precisely because of the sheer number of factors that have an influence, it is virtually impossible to come up with a “golden formula” that will work all the time. As in the domestic context, not all conflicts are amenable to mediation: when issues of fundamental justice are at stake or deeply rooted cultural values, then mediation may not be an appropriate solution. Even in these situations, however, we conclude that mediation efforts by third parties – especially neighboring nations and regional and international organizations – have value in that they reinforce a worldview which we support: that in an interconnected, globalized world, we are all each other’s keeper, with a mutual interest in the minimization of suffering and maximization of general welfare.

Revealing our own worldview brings us to a final point about the analysis of international mediation processes: an analyst’s assessment of the variables and their effect on the mediation process is always influenced by the theoretical, philosophical and/or moral orientation of the analyst toward international relations. We have revealed ourselves to have a human rights-oriented approach that sees the goal of international relations to be to work towards resolving conflicts in a way that preserves human rights both in the process and in the outcome. Our approach is close to what Kleiboer calls the

“mediation as relationship restructuring” approach, which sees the goal of international mediation to be consensual social change through facilitating dialogue.⁵⁹

Kleiboer names three other orientations to international mediation that will affect analysis of the mediation process. “Mediation as power brokerage” sees the goal of international mediation to be stabilization of the international system, without an interest in changing systemic power imbalances. This approach endorses intervention by powerful states using their leverage to ensure peace.⁶⁰ “Mediation as political problem-solving,” on the other hand, sees international conflict mainly as a problem of misperceptions and psycho-political reactions. The essence of mediation in this approach is to bring perceptions more in line with reality and to defuse the emotional aspects of the conflict.⁶¹ And finally “mediation as domination” is an approach which is the complement of the power brokerage approach: it criticizes mediation as staving off the conflicts that must happen in order to allow disadvantaged states to shed the shackles of their economic dependency on more powerful states.⁶²

We have stressed in the course of this paper that the international situation differs from domestic mediation situations in that third party interests tend to run very high in any international conflict: motored by interests in peace, in economic stability, in reducing environmental damage, or in human rights. Thus in the international context, mediators are not usually neutral, as they are in domestic mediations in our culture. Our brief overview of theoretical approaches that analysts have taken thus suggests that identifying the theoretical approach of the *mediator* can also help the mediation process, by foregrounding the assumptions that the mediator is making about the situation, the process and the expected outcome.

⁵⁹ Kleiboer, *supra* note 5, 67.

⁶⁰ *Ibid.*, 40.

⁶¹ *Ibid.*, 48.

⁶² *Ibid.*, 57.

Further, Cohen suggests that valuing reciprocity, avoidance of deliberate mendacity, and finality of agreement may be culturally specific values to the Western world, and may not be appropriate values for a mediator to expect from every international situation.⁶³ Awareness of the cultural specificity of the mediator's own values can help to open up dialogue with parties who do not share these same values, and thus help to find common ground in other values that the mediator and the parties do share.

Finally, our own process of writing this paper has been a shining example of how pleasant mediation can be when the parties have a mutual goal and shared interests and values. But even with these shared goals, interests, and values, it was a challenge to come up with the best approach to getting our writing task done. Our most prominent shared interests were in efficiency, equality, and producing quality work, but we also shared an interest in showing sensitivity to other obligations that might affect our individual ability to meet interim deadlines. We have included an account of our collaborative writing process in an appendix: in reviewing our process, we can see that we most definitely benefited from our experiences doing mediation exercises, insofar as we were able to identify common interests and come up with creative options for progressing to our mutual goal of producing a quality paper.

Fisher and Ury suggest that there is virtually always something to be gained from at least attempting mediation in good faith: we agree.⁶⁴ Even if an international conflict continues to escalate and results in violence, good faith mediation efforts pave the way to post-conflict rebuilding of the relations between the parties, and ensure that if there has been a significant shift in the situation – like

⁶³ Cohen, *supra* note 4, 111.

⁶⁴ Fisher and Ury, *supra* note 3, 164. The authors suggest that only if a party has an exceptionally strong BATNA should they invest less in negotiation, but that even situations involving strong political or religious conviction, the negotiation process can have an influence, at least on the relationship between the parties.

the current regime change in Iraq – that the new regime will remember what role various international parties played in either fanning the flames of conflict or trying to find a peaceful resolution. Similarly, our positive experience of writing this paper together has not only given us new respect for each other, but has given us tools to take into any future collaborative projects with other parties. In ways both large and small, we all have to learn to work together.

APPENDIX: COLLABORATIVE PAPER WRITING

Process Timeline:

March 19: Andrea approaches David about possibly writing the ADR paper together; Andrea suggests the topic of international mediation with the current Iraq conflict as a running example. David agrees and they set up a meeting for Monday, March 24 to talk about it. Andrea promises to send David some articles and significant documents on the Iraq conflict over email (which she does).

March 20: Andrea suggests over email that she and David divide up the task of collecting research materials before Monday's meeting. She suggests that if David will go to the library and see what books are there, she will look through the various online resources to see what recent articles are available. David agrees.

March 24: David arrives at the meeting with six books from the library. Andrea arrives with several articles. They try to start talking about the various topics that they might want to cover in the paper, and about the Iraq situation, but soon discover that they are getting ahead of themselves. They decide that they need some common ground, but that some of the research can be divided up between them. They come up with the following obligations:

1. Both will read two of the articles Andrea brought
2. Both will take another look at Getting to Yes
3. Both will look at the materials online pertaining to the UN efforts to diffuse the conflict between the US and Iraq.
4. Each will take three of the books that David brought and read them, concentrating on the general theories rather than the case studies.

They set another meeting for April 1, by which time all of the above reading should be done.

April 1: Both Andrea and David have completed their promised reading and summarize the books for each other verbally. They decide that it would be helpful to write up summaries of the books for each other. David is especially concerned with starting the writing process, since he has several exams and another paper to write during the exam weeks. Andrea suggests that after they exchange summaries, they should each come up with an outline proposal for the paper and then meet again the following week to reconcile them and come up with a mutual outline. They set the following interim goals:

1. By Friday, April 4: Both will email summaries of a) the books each read; b) thoughts on where Getting to Yes fits in; and c) thoughts on how our readings apply to the Iraq situation, based on the materials from the Web.
2. By Monday evening, April 7: Both will email outline proposals to each other.
3. Next meeting will be Tuesday, April 8 to discuss the outlines.

April 4: Both Andrea and David complete their summaries of the books and of Getting to Yes, but both decide they need more time to summarize the Iraq situation. It was sheer coincidence that they both found themselves in the same boat with regard to their original deadline, but this clearly made it easy for them to agree to get the remaining summary to each other by the next day. Later in the weekend, Andrea suggests they move the meeting to Wednesday, since she

has an obligation that might cut their meeting short on Tuesday. David agrees, and suggests that in that case they should take until Tuesday to send each other the outlines. This process shows that the parties were willing to be flexible about the deadlines, but still kept to their overall goal of getting the project rolling as soon as possible.

April 9: David and Andrea discuss the outlines each of them has proposed. One of the major differences between them is that David has focused on Iraq throughout, while Andrea created a separate section of the outline to discuss that conflict. They initially decide to retain both of these features: weave in as much of the Iraq example into the theoretical discussion as appropriate, and then summarize and expand in a separate section. They also decide to go with the way that Andrea divided up the various factors that affect the international mediation process, and assign sections of the outline for writing a rough draft:

1. Andrea: will write about conflict and party variables; how the theoretical orientation of the analyst affects the assessment of the process.
2. David: will write about mediator and mediation process variables; summarize and expand on Iraq example.
3. They decide to leave the intro and conclusion for after these sections are drafted.
4. Once all sections are drafted and reviewed once by the other author, they will assemble the paper and exchange it sequentially in order to smooth out the prose.

They decide to set both short term and long term deadlines:

1. Short term: rough drafts of the above sections should be emailed to each other by Friday evening, April 11; Both will look over each other's drafts and email them back to each other by Wednesday evening, April 16 (David has an exam that morning so will be out of commission for several days prior).
2. Long term: Andrea has two exams towards the end of the exam period and David has another exam and a paper. They decide their overall goal is to complete this paper by Tuesday, April 22.

April 11: Andrea calls David on the telephone to say that she is including a lot more of the Iraq analysis in her draft than she originally thought. She suggests that maybe if David has not written that part yet, that they will not need to have a separate section on Iraq after all. She also thinks that perhaps the meta-theory section can be folded into a conclusion instead of being a separate section. David agrees, especially since both of them are finding that they are writing longer drafts than expected on the parts about the variables. They exchange drafts of just these sections by the next day.

April 14: Andrea emails David and suggests that she draft the conclusion, since she has time right now, and David can draft the intro.

April 16: Andrea emails David the draft conclusion and a rough version of the appendix.

April 17: David emails Andrea the draft introduction, and the revised version of the conclusion. David suggests that he revise the appendix while Andrea takes the first turn looking at the compiled document (minus the appendix). Andrea agrees.

April 18: Andrea emails David the compiled document, as revised.

April 19: David emails Andrea the compiled document, further revised and including the appendix.

April 23: Andrea emails David her final revision of the entire manuscript.

Reflections on the Process

In retrospect, we should have begun the process earlier in the semester. Working together had many advantages, but sharing our research took more time and effort than we had at first expected. We ultimately overcame the time pressures by imposing a series of interim deadlines on the process, and by observing those deadlines. The interim deadline approach worked well for us, because of our mutual respect for each other, which was unquestionably the main strength of our partnership.

We stumbled on April 1, when we found that the research we had done individually was incompatible in terms of argumentation and terminology. At this stage, we stepped back from the drafting stage (which we had boldly attempted to enter) and agreed to exchange written outlines of our readings so that we would be working from a single document, and with the same information. In this way we were able to work together on the drafts, making the final paper more cohesive. Without question, cohesiveness was also aided by our shared views regarding the Iraq/U.S. conflict. If we had disagreed on our approach to our organizing example, our conclusions would have been more equivocal and our process more tumultuous.

Despite our general agreement as to the topic, we still each put as much time into this paper as we would have working alone on a paper of similar length, so the process was not as efficient as it could have been. However, the continual exchange of feedback and revision of drafts made our arguments stronger: explaining an argument to a partner before drafting meant that when we did draft

the paper, our arguments had already been honed. Overall, the combination of our efforts has, we believe, resulted in a strong paper, chiefly as a result of the extra attention we each had to pay to the writing process.