

Engineering Peace

Achieving the promise of mediation in the world's most difficult conflicts

Nadja Alexander¹, Michael Leathes², Tina Monberg³ and Irena Vanenkova⁴

Achieving the promise of mediation in conflicts that threaten the stability of societies and economies is one of the most important challenges of our time.

Inspiring progress has been made in the past few years by the UN, and political leaders increasingly perceive mediation as vital for avoiding and resolving conflict at all levels in society, worldwide. Yet in individual cases mediation is rarely used as an avoidance and prevention process, and left until conflicts have escalated to the point that achieving a timely negotiated outcome, or avoiding a catastrophe, is virtually out of reach.

Progress in Thought Leadership

Under Secretary-General Ban Ki-moon, the United Nations is refocusing its role from peace keeping to peace making and has consequently been strongly supporting and endorsing mediation as a practical solution to conflict.

On 8 April 2009, the Secretary-General's report to the Security Council on Enhancing Mediation and its Support Activities (S2009/189)⁵ had emphasized the importance of building local, national and regional capacity for mediation and the need for coherent partnerships between the UN, regional and sub-regional organizations, States and NGOs.

Encouraged by this, conflict resolution experts from around the world, led by Mediators Beyond Borders⁶ and co-authors Tina Monberg and Irena Vanenkova, attended the UN Climate Change Conference (COP15) in Copenhagen in December 2009 to advocate for the inclusion of language recommending mediation as an option to facilitate problem-solving and conflict transformation under the UN Framework Convention on Climate Change. Ironically, COP15 was characterised by such a high level of contention and disagreement that delegates failed to agree on most things, not least the inclusion of dispute resolution processes, and the Copenhagen Accord failed to achieve a game-changing result or even reach a legally-binding status.

In September 2010, the Governments of Finland and Turkey convened a Group of Friends of Mediation⁷ at the United Nations. The aim, as summarized by Finnish Foreign Minister Erkki Tuomioja⁸, was “(a) to raise awareness within the international community of the importance of mediation as a means of conflict prevention and resolution; (b) to help build mediation capacity and expertise both within the UN and also in regional organizations, which are often most well-placed to assume such a mediating role in their own area of responsibility; and (c) to enhance the level of coordination among different actors of mediation to minimize unnecessary duplication and complications”. The Group of Friends of Mediation currently comprises 37 UN Member States⁹ plus 7 regional multilateral organizations - the African Union, ASEAN,

Arab League, Organisation of Islamic Cooperation, European Union, Organisation for Security and Co-operation in Europe and Organization of American States

On 28 July 2011, the UN General Assembly adopted a *Resolution on Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, Conflict Prevention and Resolution* (A/RES/65/283)¹⁰. It requested the UN Secretary-General to issue a report on the implementation of the Resolution. The Secretary-General's Report was issued in June 2012 (A/66/811)¹¹ and included as an Annex the *UN Guidance on Effective Mediation*¹² prepared by the UN's Department of Political Affairs.

On 13 September 2012, the Group of Friends of Mediation issued a Statement¹³ supporting the "*promotion of contacts and links between mediation communities and networks as essential in order to improve the coordination and cooperation, and to address the challenges of a diverse and crowded field of mediation*".

All these UN developments indicate a fast-growing interest in, and desire for, peace mediation on a truly global scale. This is backed up to some degree in the real world. Mediation, in various forms and guises, has been used to achieve a number of peace agreements under the auspices of UN and other regional organisations such as the African Union, Arab League, ASEAN, EU, OSCE and independently by Sovereign States. Notable examples are Kosovo independence and the recent co-existence agreement between Kosovo and Serbia, and dispute settlements in Libya, Northern Ireland, Egypt, Namibia, Iraq, Sudan, Aceh and many others. Remarkable people have been involved as mediators, mainly former political and religious leaders and diplomats. In many, though not all, of these instances, the "mediator" represented a party with a stake or interest in the outcome - a party that may be considered "partially impartial" or "semi-neutral" and in a position to exert leverage on the parties. This is not what most people understand by "mediation", but is often referred to as such¹⁴.

And therein lies the largest and least-recognised blockage. People often miss the true value of mediation because they do not understand it properly. Many think that by mediating they somehow lose a degree of "sovereignty" and "control" over the matter. Actually, the reverse is invariably achieved: mediation frees the parties to be better and stronger negotiators and to control their own outcome, not have someone else do that for them. This natural misconception of the nature and operation of mediation results in too many parties turning to mediation only when their conflict has escalated to the point that it is a last resort, often proposed by an exasperated third party that wants to see peace break out. So, in almost all cases, mediation comes about very late in the life cycle of the conflict, long after substantial direct and collateral damage has been done and much blood has been spilled. Mediation is not often perceived as a conflict avoidance and prevention mechanism. It should be engaged as soon as negotiations run into difficulty.

This leads to the important question: can the increased level of interest and desire for mediation on the global level be readily implemented in practice so that *true* mediation is used far more often, and at much earlier stages?

Implementation Steps by the UN

From a structural perspective, the UN established a Mediation Support Unit (MSU)¹⁵ in 2006 in the Department of Political Affairs to provide administrative and logistical support and advice to envoys and on-the-ground mediators and negotiators. The MSU works to strengthen the mediation capacity of regional and sub-regional organizations, and is a resource on mediation knowledge, policy and best practices. Part of that important role involves the Standby Team of Mediation Experts¹⁶ set up in 2008. This is a rapid-response group of seven mediation experts that can be deployed individually or as a group to assist in mediation efforts. Standby Team members have a wide range of backgrounds and areas of expertise including power-sharing, drafting constitutions, negotiating cease-fires and other security arrangements, as well as gender issues as they relate to conflict. Current Standby Team members provide critical support to UN envoys, field-based political and peacekeeping missions and UN Resident Coordinators in such countries as Yemen, Congo, Mali, Liberia, Sierra Leone and Somalia. They also help develop UN best practices and mediation training materials and other tools. However, all seven Standby Team members are on full-time but short-term (12 month) assignments with the UN. They are not engaged to be lead mediators in any conflict, and are in-role for insufficient time to provide essential continuity from beginning to end.

But meanwhile...

Most supra-national organizations and Sovereign States have yet to develop a track record in the systematic use of mediation to resolve international conflicts.

Mediation has not, for example, so far taken off in investor-State disputes (most of which are handed through the World Bank's International Centre for Settlement of Investment Disputes - ICSID), or in international trade disputes between Sovereign States (which are handled through the World Trade Organization - WTO). Many of these disputes involve huge stakes and consequences for civil society.

ICSID's Rules include "conciliation" - a very different process from mediation, but one nonetheless designed to encourage early outcomes. However, of the 426 investor-State disputes so far filed at ICSID, only 9 have used conciliation. In October 2012, the International Bar Association published proposed Rules for Investor-State Mediation¹⁷, but they have yet to be used to help manage the resolution of a dispute.

Article V.5 of the WTO's Dispute Settlement Understanding 1994¹⁸ enables disputing States to request Good Offices, Conciliation or Mediation at any time, and the WTO Director General may ex officio provide such services if required; however, mediation has rarely, if ever, occurred¹⁹.

The pronouncements of the Group of Friends of Mediation are mainly directed to disputes that can or do result in war, but are surely not intended to exclude trade wars or battles between corporations and States over major infrastructure projects that go wrong.

There must be a reason why States support the Group of Friends of Mediation at the UN in urging greater take-up of mediation, yet decline to use mediation to resolve disputes among themselves on trade issues or with major investors. It is important to identify what is holding them back, and then take appropriate action to remove the blockages.

Changing Mindsets

Blockages - to anything - typically include force of habit, old ways of thinking, ignorance, fear of loss, sacrifice and inconvenience, denial, disinformation, and cynicism. Although, individually and collectively, these negative sentiments frequently impede the progress of any dispute resolution mechanism, it is more productive to examine the likely practical hurdles to getting people in conflict to spontaneously agree to come to mediation.

Three fundamental factors are critical to bridge the gap between the strong collective policy demand for peace mediation on behalf of almost every country and the *systematic* implementation of mediation in the real world at an early stage. The first is to generate a proper understanding of what mediation is and how and why it works. The second is to instil widespread confidence in the quality of mediators and provide the tools to select the right mediators given (as the Group of Friends of Mediation has put it) mediation's *diverse and crowded field*. And the third factor is the enhancement of convening skills to bring parties to the negotiating table instead of escalating hostility.

Understanding for the what, how and why of mediation

There is a dismally low level of appreciation of *real* mediation. This is particularly true at State level - among politicians and administrative staff in national governments who have come to understand "mediation" as shuttle diplomacy, political wrangling dressed up as neutral intervention, and arm-twisting by interfering third nations with the power to impose sanctions. None of these things is *real* mediation. There is a need for education on what *real* mediation actually is. It is not a difficult concept to grasp. Mediation is merely *negotiation facilitated by a trusted, neutral person*.

The comprehension issue needs to go beyond distinguishing *real* mediation from the preconceived misconceptions. Beyond the universe and religion, people rarely accept what they do not understand. Explaining how and why mediation works is not difficult in practice.

Quality & Selection of Peace Mediators

Mediation is a far more advanced, highly sophisticated skill than most people realise. Great mediation - and anything less than *great* is inadequate in conflicts that can lead to war - places an enormous strain on mediators to get their role and interventions exactly right at every step. Skills that are beyond mediation are also required - in particular intercultural proficiency. Mediation is a job for very special, highly trained people who are well-experienced in the science, art, psychology and basic grit of mediating.

There is now a huge body of training expertise in the world, but it needs to be geared to the type of conflicts that can result in damage to societies and economies. Experience always gives the best lessons, but can be replicated through roleplays in well-constructed mediation training. The roleplays need to be appropriate for facilitated peace negotiations. These should be based on real-world case studies as far as possible. A network of the world's best trainers, collectively capable of delivering programmes in a vast number of languages and cultural settings, is needed.

The competency of a mediator needs to be appreciated by the parties before they get engaged in the mediation process. They need to *trust* their mediators, and building that trust begins with what they know about the mediator. Trust is a fickle, irrational, thing. It is about relationships, respect, reputation, authority, confidence, wisdom, reliability and integrity. Mediators cannot expect parties to have blind faith about their credentials; they need to disclose much more about themselves in advance. Their profiles must credibly recite their experience in mediation. They need to open up about how other parties for whom they have mediated perceive their conflict resolution skills. Such insights into their credentials build rapid respect and trust and develop a feeling that this mediator is truly competent, which in turn exudes a positive inclination towards mediation itself.

But competency at all these levels is not the only attribute of quality. Equally important is suitability. The mediator, and his or her support team, needs to be genuinely accepted by all constituencies involved in the dispute in order to perform their role effectively. Their personalities, prior achievements and experiences and philosophical attitudes, all have a subtle yet powerful bearing on being accepted by disputing parties.

In addition, inter-cultural management and communication competency is necessary in almost every case. A deep knowledge of all relevant cultural frameworks, patterns and perspectives, the ability to adjust and interpret communication styles and manage the mediation process across different cultural norms, and a detailed appreciation of cultural focus areas is all essential.

Capturing all this systematically is readily achievable through appropriate training, experience generation arrangements and independent performance assessments. It would be valuable to all parties for all peace mediators to be part of a global, high-level credentialing scheme through which the profiles of all qualifying mediators were searchable online. The International Mediation Institute²⁰ has already developed such a credentialing scheme that can be readily applied to international peace mediators.

Convening the Parties

Getting conflicting parties to the negotiating table in the right frame of mind - convening them - requires the intervention of a third party having position, strength, humility and persuasion ability. It is an important professional skill.

Often, people locked in conflict situations are not on speaking terms, or if they are, there are unspoken limits on what might be proposed. Each side becomes obsessed with their own tactics and goals and the weaknesses of their opponent. In this game of pretence, bluff, tactics, positioning, demands and threats, to propose negotiation is to blink. Blinking suggests weakness and uncertainty. In a Mexican stand-off, nobody dares do it first. Parties then plough on regardless, unable to stop pouring more oil on already troubled waters. Ultimately, the eventual winner often ends up a joint loser, nursing a Pyrrhic victory. As Professor Friedrich Glasl expresses it in his nine-step conflict escalation ladder, "*Do you have a conflict, or does the conflict have you*"²¹.

The role of the Convenor is to anticipate and break that mindless spiral of self-destruction. Convenors generally need to be outside the epicentre of a dispute, be perceived as impartial, and have the skills and insights to persuade warring parties to talk. A Convenor can end up as the mediator, but can also simply be one who proposes mediation, gets the principle accepted by the parties, helps find the right process and identify the right mediators.

In her seminal work on the subject, *Referral To Mediation*²², Judge Machteld Pel identifies the numerous challenges facing Convenors, many of which cross subject boundaries and are equally applicable to achieving peace negotiation.

The UN and other multilateral organizations have the position to be Convenors. Whether they are fully resourced to execute that function, with the appropriate range and level of skills, is another matter. The UN's Mediation Support Unit, for example, is focused on administration, which is a vital facility, but distinct from convening. Thorough training is required to develop the skills of Convenors and to recognise this as a core field of expertise.

Looking Ahead

The progress made in the past five years in recognising the principle and value of mediation in achieving peace has been nothing short of extraordinary. The demand is there. Multilateral organizations now need to translate that interest and demand into the development of their capabilities as Convenors, promoting understanding of what mediation is and how and why it works, and most critically of all developing a strong cadre of highly-trained, multi-talented inter-cultural peace mediators whose skills are certified and who can be identified and valued easily.

One of the early mediation skills books was entitled *A Sudden Outbreak of Common Sense*.²³ If appropriate resources are dedicated to addressing understanding, quality and convening, outbreaks of peace could become more common than outbreaks of war.

End Notes

¹ Nadja Alexander is Professor of Law and Director of the Institute of Conflict Engagement and Resolution at Hong Kong Shue Yan University.

² Michael Leathes is a director of the International Mediation Institute, an international charitable foundation based in The Hague. www.IMImediation.org

³ Tina Monberg is director of Mediationcenter a/s in Copenhagen. www.mediationcenter.dk
<http://www.imimmediation.org/tina-monberg>

⁴ Irena Vanenkova is Executive Director of the International Mediation Institute.

⁵ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/278/78/PDF/N0927878.pdf?OpenElement>

⁶ <http://mediatorsbeyondborders.org>

⁷ <http://peacemaker.un.org/friendsofmediation>

⁸ <http://formin.finland.fi/public/default.aspx?contentid=246342>

⁹ Bangladesh, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Colombia, Costa Rica, Germany, Indonesia, Ireland, Italy, Japan, Kenya, Lichtenstein, Lithuania, Malaysia, Mexico, Montenegro, Morocco, Nepal, Netherlands, Norway, Panama, Philippines, Qatar, Romania, Slovenia, South Africa, Spain, Sweden, Switzerland, Tanzania (United Republic of), Uganda, United States of America.

¹⁰ http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/283

¹¹ <http://www.peacemaker.un.org/node/81>

¹² http://peacemaker.un.org/sites/peacemaker.un.org/files/GuidanceEffectiveMediation_UNDPA2012%28english%29_0.pdf

¹³ <http://www.finlandun.org/public/default.aspx?contentid=257604&nodeid=35882&contentlan=2&culture=en-US>

¹⁴ For a recent overview of peace mediation, see Chapter 8 of The Political Adviser's Handbook by Frederik Wesslau, published online by the Folke Bernadotte Academy, a Swedish government agency that works to enhance the quality and effectiveness of peace negotiations.
<http://ecbook.ecweb.se/folke/Polad/handbook/>

¹⁵ https://www.un.org/wcm/content/site/undpa/main/issues/peacemaking/standby_team

¹⁶ https://www.un.org/wcm/content/site/undpa/main/issues/peacemaking/standby_team

¹⁷ http://www.ibanet.org/LPD/Dispute_Resolution_Section/Mediation/State_Mediation/Default.aspx

¹⁸ http://www.wto.org/english/res_e/booksp_e/analytic_index_e/dsu_02_e.htm#top

¹⁹ <http://www.cpradr.org/Portals/0/Across%20Borders/International%20Trade%20Disputes%20-%20The%20WTO%20Regime.pdf>

²⁰ <http://www.imimmediation.org>

²¹ see Friedrich Glasl's Nine-Stage Model of Conflict Escalation at www.mediate.com/articles/jordan.cfm. Also, Dr Glasl's book *Confronting Conflict - A First-Aid Kit For Handling Conflict* (2007)

²² <https://www.sdu.nl/referral-to-mediation.html>

²³ *A Sudden Outbreak of Common Sense: Managing Conflict Through Mediation* by Andrew Floyer Acland (1990)