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The Role of Mediation in International and Intra-national Conflict

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Abstract

This essay explores whether mediation can play a constructive role in resolving international and intra-national conflict, whether an increased role for mediation is warranted as a mechanism for resolving such conflicts, and what challenges and constraints mediations of international and intra-national conflict face. It investigates the impact of the inherently long-term nature of these conflicts upon mediated peace agreements, before concluding on the transformative role of creativity.

Introduction

Mediation as a technique is uncomplicated in definition – it the use of a neutral and impartial third party to assist two adversarial parties to resolve a conflict. The power of mediation is that although it is *conceptually* simple, it has the ability to resolve highly complex and emotionally charged conflicts.

In 1994, Gareth Evans highlighted the integral role of mediation as a tool for diplomats, especially for the purposes of peace-building:

Peace-building, then, has to be supplemented by active preventive diplomacy. That term embraces a variety of strategies to resolve, or at least contain, disputes by relying on non-military methods – essentially the “peaceful means” (including negotiation, inquiry, mediation, conciliation, arbitration, and judicial settlement) described in Article 33 of the U.N. Charter.²

Evans' reference to the United Nations was prescient – the United Nations, having increasingly recognised the significant potential of mediation in resolving international and intra-national conflict, has recently established³ the Mediation Support Unit within its Department of Political Affairs. This team is deployed primarily for the purposes of preventive diplomacy – that is, the pacific settlement of international disputes *before* they devolve or erupt into civil or international conflict or war.

The United Nations has not been alone in escalating the importance of mediation. There has also been a small but marked proliferation of non-government international conflict mediation organisations such as the Centre for Humanitarian Dialogue, the International Peace Institute, Search for Common Ground, and the Oslo Forum. However, governments have been slower to take up the opportunities afforded by mediation, with the notable exception of a few countries such as Norway and Finland.⁴

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2 Own emphasis; Gareth Evans, 'Cooperative Security and Intrastate Conflict' (1994), *Foreign Policy*, No. 96, 12. In 2008.

4 For a compelling treatise on why Australia should adopt Norway's proactive approach to conflict resolution, see: John Langmore and Jan Egeland, 'Learning from Norway', *Griffith Review* (2011), Edition 32.

This essay explores whether these burgeoning efforts towards an increased role for mediation in resolving international and intra-national conflict are indeed warranted, and what challenges and limitations mediation faces in these contexts.

A Constructive Role?

Whilst mediation can be used as a tool to help resolve a wide gamut of international and intra-national conflicts, it is when faced with the dichotomy of peaceful versus violent conflict resolution that the benefits become particularly stark.

Both states and individuals have, as good international citizens, an unambiguous moral responsibility to reduce the level of suffering and number of brutal deaths in the world. Thus any attempt to resolve violent conflict should be encouraged for clear and compelling humanitarian reasons. However, to be truly applauded, these attempts at conflict resolution must also have a real chance of success.

Certainly the sheer breadth of the use of mediation is an encouraging indication of its continuing success:

...the United Nations has been involved in offering mediation... [in] Afghanistan, Angola, Bougainville, the Central African Republic, Colombia, Cyprus, East Timor, El Salvador, Equatorial Guinea/Gabon, Georgia, Guatemala, Guyana/Venezuela, Haiti, Iran/Iraq, Myanmar, Nepal, Nicaragua, Nigeria/Cameroon, Tajikistan, the former Yugoslavia, the former Yugoslav Republic of Macedonia, and Western Sahara.⁵

This list almost doubles in length when including countries in which the United Nations has played a supporting rather leading role in mediation efforts. One could only expect the list to lengthen further still if it were to include efforts that did not directly involve the United Nations.

A clear example of recent successful mediation is Kenya during the Presidential election crisis in 2007:

...one shudders to think what might have been had the African Union [the lead mediators] not stepped in.⁶

However, there are also many examples of failed mediations, in particular, peace agreements that were mediated successfully but later fell apart when aspects of the agreement failed to be implemented.⁷ Somalia is one such unfortunate and chronic example.⁸

However, any cessation of armed conflict, however short-lived, must count as at least a partial success. Also, the track record of mediated peace agreements is improving – there has been a distinct increase in the percentage of peace agreements which have not been followed by a resumption of conflict

5 United Nations, *Report of the Secretary-General on enhancing mediation and its support activities* (2009), S/2009/189, 4.

6 Elisabeth Lindenmayer and Josie Lianna Kaye, *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya* (2009), International Peace Institute, 23.

7 Nico Colombant, *African Mediation Efforts have Mixed Results* (2011), Voice of America, <www.voanews.com/english/news/africa/African-Mediation-Efforts-Have-Mixed-Results-95278874.html>, at 28 June 2011.

8 LM Makhubela, *Conflict Resolution in Somalia: Learning from Failed Mediation Processes* (2010), University of Pretoria.

within five years.⁹ Mediated peace agreements are the most stable form of conflict termination, despite continuing risks of reversal and challenges to implementation.

Besides which, as Evans points out, mediation successes can be harder to identify for good reason:

Preventive diplomacy succeeds when things do not happen; it is thus not surprising that its many quiet successes should have gone both unnoticed and unheralded. It is most successful when used early, well before eruption into armed conflict appears likely.¹⁰

Certainly the United Nations remains optimistic in the prospects for mediation, describing mediation as the ‘most promising’¹¹ peaceful way to resolve disputes.

The cost involved in conflict resolution is another important and highly practical consideration. Enforcing peace through military operations – especially the deployment of ‘boots on the ground’ necessary for effective peacekeeping – is a very expensive option. By comparison, mediation is a cost-effective alternative to armed force, as John Langmore asserts:

It is far more cost effective to resolve disputes peacefully where possible than to try and settle them through war. The cost of mediation is a tiny fraction of the cost of military intervention.¹²

The United Nations agrees:

Mediation can provide a cost-effective alternative at a time when peacekeeping resources are facing an unprecedented demand and available military capacities are scarce.¹³

The steadily internationally accepted doctrine of the Responsibility to Protect also lists mediation in its ‘toolbox’ for the direct prevention of widespread violent conflict,¹⁴ understanding that the failure of prevention can have ‘wide international consequences and costs’.¹⁵

It is thus clear that there is definitely a role for mediation in the resolution of international and intra-national conflict which warrants closer examination. Of particular interest is the question – how can we make such mediation efforts more effective? Understanding the challenges and constraints will help us to provide an answer.

Challenges and Constraints

Mediation faces many challenges and constraints when responding to international and intra-national violent conflict.

9 Martin Griffiths and Teresa Whitfield, *Mediation Ten Years On: Challenges and Opportunities for Peacemaking* (2010), Centre for Humanitarian Dialogue, Geneva, 6.

10 Evans, above n2, 14.

11 United Nations, above n5, 3.

12 Langmore and Egeland, above n4, 11.

13 United Nations, ‘Conflict Mediation by the United Nations: Examining the Past, Charting the Future’, *Bulletin of the United Nations Department of Political Affairs* (2010), 19.

14 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (2001), 23-24.

15 *Ibid.* 19.

There must first be the international will and at least limited consensus in order to launch a sustained attempt at mediation. It is true that mediation efforts can be led from within or between troubled countries, usually from civil society groups such as religious and non-governmental organisations. However, usually only external parties possess both the necessary resources and perceived impartiality to be acceptable to all opposing parties. The international community must handle the internationalisation of the dispute carefully, taking care not to appear to be legitimising rebel factions simply by offering them a seat at the table.

However, once the mediation is underway, a common interest in resolving the conflict is critical to avoid fragmenting the conflict. As the International Peace Institute comments:

*...complex cases such as Darfur and the Democratic Republic of the Congo have proved that unity is not always a sufficient condition, but it certainly is a necessary one.*¹⁶

International coordination is also important in order to ensure that otherwise disparate efforts are complementary and thus more effective. Different approaches and foci of international efforts can create division between mediators, but can also lead to the opposing parties to vie for mediators that they perceive are likely to be more favourable to their cause. As is well-recognised by the United Nations, this can lead to more conflict, delays, and increase the complexity of the conflict:

*Multiple actors competing for a mediation role create an opportunity for forum shopping as intermediaries are played off against one another. Such a fragmented international response reinforces fragmentation in the conflict and complicates resolution.*¹⁷

The Kenyan presidential election in 2007 provides a practical example of this rhetoric:

*In the face of escalating violence, other mediators also began rushing to the scene. Multiple and parallel mediations, in what appeared to create the possibility of 'mediator shopping' for the most favourable outcome, complicated the subsequent attempts to find a diplomatic solution.*¹⁸

Thus for mediation to be successful, it must be ultimately guided by a lead actor. The choice of lead actor itself is a vexing one and can be the subject of heated disagreement within the international community. However, one fundamental criterion should be well-shared – the mediator should be the party that has the most chance of being able to help resolve the conflict.

Timing is also important. Mediation as preventive diplomacy – before the conflict becomes violent – is of course the ideal time to intervene, and for good reason:

*...issues are less complicated; parties fewer; positions less hardened; relationships less damaged; and emotions more contained.*¹⁹

The longer a conflict continues, the more likely it is to feed upon itself and expand, increasing the

16 Lindenmayer and Kaye, above n6, 29.

17 United Nations, above n5, 6.

18 Lindenmayer and Kaye, above n6, 5.

19 United Nations, above n5, 5.

possibility it will draw in and engulf neighbouring countries and regions. Grievances between the parties understandably compound as death and suffering mounts; mutually hostile positions become entrenched. The longer the conflict, the larger the financial cost of reconstruction and the harder it is to rebuild shattered lives when peace does eventually arrive. The benefit in mediating conflicts sooner rather than later is thus clear, ideally before violence becomes widespread and endemic.

However, there are of course times at which violent conflicts appear 'riper' for resolution than others, and efforts should indeed be redoubled at these times. However, this caveat should be referred to with caution:

*As originally understood, conflicts were considered "ripe for resolution" when parties reached a "mutually-hurting stalemate". Regrettably, this led some to conclude that the international community should wait for a "hurting stalemate" to develop before offering mediation*²⁰

In addition, military exhaustion should not be confused with 'ripeness' – indeed, often it can result in more intractable conflicts.

The issue of timing also highlights the importance of sequencing. Often a lasting peace cannot be achieved all at once, but must be attained slowly and laboriously, one de-escalating step at a time. This 'ratcheting' approach to peace allows multiple and complex divisions to resolve over time by layering each small success upon another small success, creating with each layer a little more hope, fomenting a little more trust and mutual understanding, and gaining a little more momentum for peace. Hope is central here – whilst hope still remains for a peaceful and meaningful resolution to the conflict, parties have much to lose by walking away from a mediated outcome.

Resourcing mediation efforts properly with systematic planning²¹ is of course critical to their effectiveness. Not only do mediators skilled in international and intra-national conflict resolution need to be 'on-call' for rapid response, but they need to also possess the critical qualities that constitute professional mediation – commitment to the mediation process, neutrality, impartiality, and confidentiality. It is also exceedingly useful for the chosen mediators to have an understanding of the context or 'landscape' of the conflict, and ideally some preconceived *but changeable and flexible* understanding of the internal motivations of all the parties. This avoids '*giving efforts an ad hoc quality too dependent on trial and error.*'²² The mediators' relationship with the parties is of course another critical factor – a loss of confidence is usually an irrevocable setback that can unfortunately 'reset' much of the mediation process.

For these reasons, the choice of mediator or mediators is yet another decision to make prudently. Although respected international personalities can provide much-needed credibility and impetus to a mediation process, they must fulfil the professional mandate of the role and possess the appropriate skills. The International Crisis Group was, amongst others, critical of Nelson Mandela's leading mediation role in Burundi:

20 Ibid. 5-6.

21 United Nations, above n13, 18.

22 United Nations, above n5, 18.

*Nelson Mandela has often proved inflexible, stubborn and impervious to any advice or any external influence on his management of the peace process, probably trusting too much his own experience... [failed mediation efforts] gave rise to fears that Nelson Mandela had no real strategy and that he was personally exhausted.*²³

Just as mediations of violent international and intra-national conflict can fall prey to 'forum shopping', mediators must not go 'party shopping' either – all significant stakeholders, including civil society groups, need to be engaged where possible. Mediators need to adhere to that longstanding diplomatic maxim: '*Nihil de nobis, sine nobis*'.²⁴ This will ensure that the issues of all stakeholders are addressed.

Spoilers – parties who believe that a mediated peace threatens their interest and may seek to derail the mediation process – must be closely monitored and managed. Spoilers usually derive direct benefit from the armed conflict, usually by means of power, status, or economic benefit. The United Nations prescribes an interestingly dichotomous approach for handling spoilers:

*In some cases, mediators have been able to address their concerns and re-engage them in the process, for example by responding to their security fears with guarantees. In other cases, the "departing train strategy" (where the mediator asserts that the process will go forward regardless of whether a party joins or not) has been used.*²⁵

It can also be useful to distinguish whether a party is acting as a spoiler because of its leadership or its constituents, as this may help to identify the recalcitrant issues and point more clearly towards effective strategies to engage them in the mediation process. A punitive but likely effective tactic may include targeted sanctions on parties or individuals.²⁶

One definitive limitation that should be recognised during any mediation of violent international or intra-national conflict is that any agreement is not likely to create an immediate panacea for division and violence. In fact, like spoilers, armed groups may have a vested interest in continuing violent operations where, should they lay down their arms but the mediation process fail, they would face a significant chance of losing strong military positions.²⁷ In fact, ceasefires have sometimes been used by parties to buy time and build up more strength – Muammar Gaddafi's proposed ceasefire during the Libyan civil war in April 2011 was touted as an example of an attempt at such a tactic.²⁸

The Centre for Humanitarian Dialogue further contends that:

...an early cessation of hostilities may not contribute to tangible progress towards a

23 International Crisis Group, *Burundi: Neither War nor Peace* (2000), Africa Report No 25, 16 & 36.

24 "Nothing about us, without us"

25 United Nations, above n5, 11.

26 Ibid. 11-12.

27 Luc Chounet-Cambas, *Negotiating Ceasefires: Dilemmas and Options for Mediators*, Centre for Humanitarian Dialogue, 8.

28 Xan Rice, 'Libyan rebel forces reject Muammar Gaddafi's ceasefire offer' (2011) 30 (4), *The Guardian*, <www.guardian.co.uk/world/2011/apr/30/libyan-rebels-reject-gaddafi-offer>, at 28 June 2011.

*lasting political settlement and this presents the mediation community with an acute dilemma.*²⁹

However, it seems improbable that a lasting political settlement must always be accompanied by first exhausting the military strength of all combatant groups, although it may indeed be easier to achieve if this has occurred. Additionally, any 'cessation of hostilities' does remain an inherently worthy humanitarian objective, regardless of how long-lasting it ultimately proves to be.

Unfortunately, it is this 'long-lasting' element to peace agreements that has eluded many mediations of violent intra-national conflict. Facing pressure from the international community and wishing to end the violence as soon as possible, it is understandable that mediators can be keen to simply reach a peace agreement and hope to resolve longer-term issues at a later date. Where short-term causes of intra-national conflict tend to be the immediately pressing and thus more easily identifiable, long-term causes tend to be derived from more insidious structural societal inequalities.

However, '*mediation does not end once an agreement is signed*',³⁰ nor should it. These 'iceberg' grievances need to be addressed within the mediation process so that they do not surface at a later date and threaten the peace. Not only do mediators need to sequence long-term issues within mediated peace agreements, but they can also to prepare the parties and international community for the fact that there are long-term challenges of implementing a peace agreement successfully.³¹

Mediators of violent intrastate conflict, as well as the parties themselves, also face difficult trade-offs when seeking peace. This is the perennial debate of whether 'peace with justice' is possible. Has the issuing of a warrant by the International Criminal Court for President Omar Al-Bashir of Sudan³² created an opportunity for peace, or simply closed off his peaceful exit as leader of a draconian government? The International Crisis Group summarises this type of dilemma well:

*...mediators are caught in a moral and political conundrum, forced to treat murderers, rapists and their proxies as their political peers in order to save civilians whose lives are held hostage [to the violence].*³³

Conclusion

Most certainly there is a constructive and stabilising role for mediation to play in resolving violent international and intra-national conflict. There are encouraging if slow signs that mediation is being used more and more as a tool of first resort, despite its many constraints and challenges.

Whilst I have prescribed many of the factors to consider and manage in the mediation process, there are often no simple or obvious answers to many predicaments. This complexity leads to inevitably imperfect trade-offs. However, through the enabling process of the mediation, it is from this complexity

29 Chounet-Cambas, above n27, 16.

30 United Nations, above n5, 14.

31 Katia Papagianni, *Can Mediation Transform Societies?* (2011), Centre for Humanitarian Dialogue, 5.

32 Initially on 9 March 2009 for war crimes and crimes against humanity, and again by appeal on 12 July 2010.

33 International Crisis Group, *Liberia and Sierra Leone: Rebuilding Failed States* (2004), Africa Report No 87, 22.

that the vast potential for creativity exists. Creative options and approaches really can open the door for lasting reconciliation.

Evans agrees, also noting the importance of mediating for the long-term and sustainable peace:

...while early warning and the emphasis on avoiding the destabilizing dynamics of conflict escalation are critically important, it is equally important to think creatively about the outcome, in particular the kinds of political arrangements that might contain and reverse the spread of intrastate conflicts over the long term.

Whilst 'peace cannot be imposed',³⁵ the power of talking to resolve conflicts has been always greater than that of violence. Despite its limitations, sustained advocacy for the use of mediation – and creative mediation – in violent international and intra-national conflicts will surely lead to a brighter future.

34 Evans, above n2, 14.

35 Lindenmayer and Kaye, above n6, 25.