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Isak Svensson

*Department of Peace and Conflict Research, Uppsala University*

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## RESEARCH ON BIAS IN MEDIATION: POLICY IMPLICATIONS

*Isak Svensson\**

### INTRODUCTION

One of the most important and disputed questions within the field of international mediation concerns the issue of *bias*. Can mediators be partial, sympathetic and supportive of one but not both of the main disputants, or should mediators always be neutral? Is it possible to be strictly impartial? Although neutrality is only one aspect of the mediators' characteristics important to bringing about peaceful settlement of violent disputes, the question of bias cuts to the core of what mediation is and the ways in which mediators can help the parties reach peace. It is therefore crucial for academics and researchers, as well as policymakers and practitioners, to understand the occurrence, function, and effect of mediators' bias in international conflict resolution processes.

Summarizing the growing field of mediation research, Tom Woodhouse states:

[a]s the literature on mediation has grown, and as knowledge has increased from an accumulating base of case studies and reflections, one of the most significant questions which has emerged is that related

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\* [Isak Svensson](#), Faculty Member, Department of Peace and Conflict Research, Uppsala University.

to the relative merits . . . between two contrasting types of mediation: firstly that of a biased mediator . . . and secondly that of the unbiased mediator.<sup>1</sup>

Yet, the issue of bias in international mediation is a complex one: a simple yes-or-no-answer to the question of whether mediators should be biased or neutral is not sufficient. It depends on a set of circumstances, which are discussed in this article. The question of mediation and bias is a core discussion within international mediation research.<sup>2</sup> This article does not aim to summarize this rich research field, nor even explicitly situate my own work within this larger field. Its more limited ambition is instead to draw out the policy implications of my own empirically-based work on the role of bias in the mediation of internal armed conflicts.<sup>3</sup> My main contribution to mediation research has been to explore the role of neutrality and bias in international peace diplomacy in civil wars.

A first basic question to pose is whether mediators can be biased. If they are biased, do they not cease to be mediators? It is a common perception that mediation requires unbiased third parties. Some scholarly definitions require impartiality of the mediators, and hence, mediators are unbiased by definition. For instance, a classical

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<sup>1</sup> Tom Woodhouse, *Adam Curle: Radical Peacemaker and Pioneer of Peace Studies*, 1 J. OF CONFLICTOLOGY 1, 5-6 (2010).

<sup>2</sup> See generally I. WILLIAM ZARTMAN, *ELUSIVE PEACE: NEGOTIATING AN END TO CIVIL WARS* 2-29 (1995); I. William Zartman & Saadia Touval, *International Mediation*, in *LEASHING THE DOGS OF WAR: CONFLICT MANAGEMENT IN A DIVIDED WORLD* 437-454 (Chester A. Crocker et al. eds., 2007); Saadia Touval, *Biased Intermediaries: Theoretical and Historical Considerations*, 1 JERUSALEM J. OF INT'L REL. 51 (1975); Bernd Beber, *International Mediation, Selection Effects, and the Question of Bias*, 29 CONFLICT MGMT. AND PEACE SCI. 397 (2012); Andrew Kydd, *Which Side Are You On? Bias, Credibility, and Mediation*, 47 AM. J. OF POL. SCI. 597 (2003); Burcu Savun, *Information, Bias, and Mediation Success*, 52 INT'L STUD. Q. 25 (2008).

<sup>3</sup> For work on bias in international conflicts, see generally Christopher Gelpi, *Alliances as Instruments of Intra-Allied Control*, in *IMPERFECT UNIONS: SECURITY INSTITUTIONS OVER TIME AND SPACE* 107 (Helga Haftendorn et al. eds., 1999); Stephen E. Gent & Megan Shannon, *Bias and the Effectiveness of Third-Party Conflict Management Mechanisms*, 28 CONFLICT MGMT. & PEACE SCI. 124 (2011). See also Stephen E. Gent, [The Politics of International Arbitration and Adjudication](#), 2 PENN ST. J.L. & INT'L AFF. 66 (2013).

definition of mediation suggests that mediators have a relatively “impartial stance with regard to the opposing sides in a crisis.”<sup>4</sup> Thus, by definition, impartiality is conceptually linked to mediation. Yet, with a definitional approach such as this, it is not possible to examine the extent to which bias helps or hinders peace processes. A more fruitful approach is to leave the question of bias as an open empirical question: to use mediator’s bias as an explanatory factor—that is, the degree and type of bias—and examine empirically the relationship between bias and how the process unfolds and the outcome is impacted.

#### BIAS—AND ITS DIRECTION—MATTERS

My research has shown that biased mediators, in some situations, outperform neutral mediators. Yet, in order to understand the role of bias in mediation, we first need to understand the context of contemporary armed conflicts. Most contemporary armed conflicts are fought between governments and rebel-groups.<sup>5</sup> In other words, they are *intrastate* armed conflicts. Yet, until very recently, statistical analysis on mediation focused almost exclusively on *interstate* conflicts. Government and rebel-groups are different types of actors, a fact that implies that mediation plays a different type of role than in interstate conflicts, for the following basic reason: the government is internationally recognized, stronger in terms of capabilities and military might, and has many other obligations beyond pursuing a conflict with rebel groups. By contrast, rebel-groups typically are unrecognized (and strive for recognition), materially weaker, but exclusively focused on achieving their aspirations in the conflict with the government-side.

This also means that a mediator’s bias plays a different role depending on whether it is directed towards rebels or governments. I have suggested that there is a *rebel-sided commitment problem*, meaning that governments may fear giving recognition and power to rebels due to a belief that they will misuse it and exploit their advantaged

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<sup>4</sup> ORAN R. YOUNG, *THE INTERMEDIARIES: THIRD PARTIES IN INTERNATIONAL CRISES* 52 (1967).

<sup>5</sup> See generally PETER WALLENSTEEN, *UNDERSTANDING CONFLICT RESOLUTION* (2011).

positions. This commitment problem occurs primarily when parties are about to conclude negotiated peace deals (as opposed to that which occurs primarily in the implementation phase of agreements).<sup>6</sup> A negotiated settlement implies asymmetric opportunities for exploitation on the rebel-side, and rebel-groups therefore have commitment problems. They can, however, mitigate these problems by accepting a mediator that is biased for the other (government) side. In support of this reasoning, I found empirically—exploring data on mediation in internal armed conflicts during the time-period 1989-2003—that government-biased mediators are particularly effective as peacemakers in bringing about negotiated settlements to armed conflicts.<sup>7</sup>

Yet, not all peace settlements are the same and therefore should not be treated alike. Instead, peace settlements should be disaggregated into different peace institutional arrangements. When policymakers engage in crafting peace agreements, they need to ask themselves what type of peace they aspire to reach. Different types of mediators are associated with different types of institutional arrangements. I have found that rebel-biased mediators tend, in comparison with neutral mediators, to create peace settlements that include political-power sharing arrangements and third-party security guarantees. In contrast, government-biased mediators are more likely to create stipulations for government-sided amnesties, and territorial power-sharing arrangements.

Furthermore, I argue that because biased mediators have incentives to protect their protégés, they will ensure that there are stronger mechanisms in the peace agreements. Exploring the content of all peace agreements since 1989, it becomes evident that biased mediators actually outperform neutral mediators in bringing about important institutional peace arrangements, such as stipulations for power-sharing, repatriation of civilians, and third-party security guarantees.<sup>8</sup> This insight is important because it shows that biased

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<sup>6</sup> See BARBARA F. WALTER, COMMITTING TO PEACE: THE SUCCESSFUL SETTLEMENT OF CIVIL WARS 67 (2002).

<sup>7</sup> Isak Svensson, *Bargaining, Bias and Peace Brokers: How Rebels Commit to Peace*, 44 J. OF PEACE RES. 177, 183-85 (2007).

<sup>8</sup> *Id.* at 185, 187.

mediators are not only more likely to be successful in bringing about settlements, but also in some sense, produce “better” agreements.<sup>9</sup>

Finally, it is also important to understand what makes biased third parties so effective. In previous work, I have identified four mechanisms that help explain the effectiveness of biased mediators: biased mediators can act (1) to protect their side, (2) reveal information, (3) deliver their side, and (4) counterbalance concession cheating.<sup>10</sup>

This article calls into question some of the underlying assumptions in the contemporary international approach to conflict resolution. When it comes to the quality of peace, there is a difference between biased and neutral mediators. If we define quality in terms of stipulations of institutional arrangements that previous research has identified as important for deals to stick and peace to become durable, then biased mediators tend to be more effective in bringing high-quality agreements about.<sup>11</sup>

One important, but insufficiently scrutinized issue regards the tension between justice-norms and peace-norms when it comes to biased and neutral mediators. Government-biased mediators tend to mediate agreements giving the government side freedom from persecution. This is good in the sense that it decreases the cost of peace for the belligerents—it is easier for decision-makers to agree to settle the conflict if they think they will not be punished for their wrongdoing during the war—and thereby make peace more likely to stick. Yet, it can also have a negative effect in the sense that it creates a culture of impunity by letting human-rights abusers go free. Biased mediators—under some circumstances—can be effective peace brokers, but their intervention may have negative implications for the values and protection of human rights.

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<sup>9</sup> Isak Svensson, *Who Brings Which Peace?: Neutral versus Biased Mediation and Institutional Peace Arrangements in Civil Wars*, 53 J. OF CONFLICT RESOL. 446, 449, 464-65 (2009).

<sup>10</sup> *Id.* at 463.

<sup>11</sup> *Id.* at 461-62.

The policy implication of these global, comparative studies is that the direction of bias matters. When selecting mediators to negotiate a conflict assignment, policymakers must pay attention to which side a potential mediator has supported. In general, government-sided mediators outperform rebel-sided in terms of bringing about negotiated settlement,<sup>12</sup> but to some extent (for instance, when it comes to political power-sharing and third-party security guarantees), it is the rebel-biased mediators that outperform government-biased ones.<sup>13</sup>

#### THE ROLE FOR NEUTRAL MEDIATORS

What then is the role for neutral mediators in peacemaking processes? Here four clarifications need to be made. First, although biased mediators, on an aggregate level, tend to be more effective than neutral ones, this does not necessarily mean that neutral mediators are unimportant. As with all social sciences, we are talking about probabilistic tendencies rather than general empirical laws. Neutral mediators are associated with negotiated settlements and can therefore also be important. Although they may bring agreements of less quality, they are nevertheless also engaged in bringing about negotiated settlements. Nothing we have concluded so far should lead us to disregard the role of neutral mediators.

Second, there are transformations that need to occur in a peace process in addition to the peace agreements, and neutral mediators may be better positioned to support the creation of such transformations. It can be seen as a success to “just” get negotiations started.<sup>14</sup>

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<sup>12</sup> Svensson, *supra* note 7 at 181-83.

<sup>13</sup> Svensson, *supra* note 9 at 463-64; *see also* Molly M. Melin & Isak Svensson, *Incentives for Talking: Accepting Mediation in International and Civil Wars*, 35 INT’L INTERACTIONS 249 *passim* (2009) (discussing how historical ties also help explain the occurrence of mediation, which plays out differently in international and intrastate settings).

<sup>14</sup> ISAK SVENSSON & PETER WALLENSTEEN, *THE GO BETWEEN: JAN ELIASSON AND THE STYLES OF MEDIATION* 56, 67-68 (2010).

Third, coalitions of biased and neutral mediators can be an effective design for peacemaking. The presence of third-party bias among any of the mediators as the critical value for defining a mediator as either biased or neutral implies that neutral mediators sometimes work in conjecture with biased ones, and in such collaborations might be particularly effective.

Fourth, an important role for neutral mediators can be to bring on board potential mediators that will be biased due to their historical ties to one side, during the mediation process. For example, most informed observers would agree that peace between Israel and Palestine cannot be reached unless the U.S. engages as a peace broker. In fact, any progress that has been made in moving the parties' positions towards each other has been made under American auspices. Sweden played an important role in the late 1980s in bringing about U.S. engagement in the process, by mediating, not between the primary parties, but between the secondary supporting actors to the government-side (the U.S.) and the rebel-side (the Palestine Liberation Organization). The Swedish approach—neutral mediation between the main secondary supporting actors—transformed the U.S. engagement from support to peace-maker and thus structurally changed the relationships between the primary conflicting parties. This is in contrast to the direct engagement approach employed by the Norwegians in the same dispute—the Oslo Channel. The Norwegian approach was designed to engage directly with the primary parties, and although it reached a breakthrough and created a Palestinian Authority, it did not succeed in changing the underlying dynamics of the conflict. Rather, and perhaps counter-intuitively, many now view the Swedish approach as a more long-lasting achievement.

#### INSIDER-PARTIAL MEDIATORS

Another important policy implication to be drawn from the empirical research on mediation is the role of *internal* mediators: mediators emerged in the context of the conflicts and that culturally and positionally cannot be seen as strictly neutral. Domestic resources for peacemaking can be pivotal in peace processes. Most of the global, comparative research that has been done in the field of

mediation has focused on *international* mediators. Yet, mediators can also be insiders. Although Paul Wehr and John Paul Lederach point this out in an important 1991 piece, surprisingly little systematic research has heeded their advice and included these types of peace-actors in their analyses.<sup>15</sup> Insiders commonly carry with them certain distinct resources, which can provide important advantages in peace processes.

These insiders, I suggest, can be particularly useful in mitigating some of the informational problems that arise in conflict bargaining situations. Most notably: (1) insiders have access to information about the parties' resolve and capability to an extent that outsiders would have difficulty obtaining; and (2) insiders have significant reputation concerns as they will continue to interact with the conflicting parties after the intervention whereas outsiders often leave the scene after their intervention. Given this proximity, insiders need to be more protective of their reputations, and can ill-afford to lie, bluff or misrepresent information to the parties. Their concern for their future reputation incentivizes them to be candid during talks.

These factors should lead us to examine other types of third parties than those usually discussed in the literature. In particular, we need to explore the role of insiders such as religious representatives and civil society leaders in acting as peacemakers. An empirical analysis of the role of insiders shows that insiders increase the chance of reaching the conclusion of a negotiated settlement—but overall they tend to select the “easiest” conflict situations available.<sup>16</sup> Studies along these lines have important policy ramifications, not least by underlining the need for developing domestic resources for peacemaking.

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<sup>15</sup> See generally Paul Wehr & John Paul Lederach, *Mediating Conflict in Central America*, 28 J. PEACE RES. 85 (1991).

<sup>16</sup> Svensson, *supra* note 7.

## PERCEPTIONS OF PARTIALITY

To this point, bias has been discussed in terms of objective criteria: based on previous behavior (secondary support in terms of international mediators) or the mediator's location within the conflict (insiders in non-armed conflicts). Yet, there are also subjective aspects to bias. How do parties in conflicts *perceive* the third-party mediators? Why are strictly neutral mediators sometimes perceived as biased? Intrastate armed conflicts involve parties that are not necessarily equally strong or share the same level of international recognition. They are, in other words, asymmetric in nature. Mediators that try to mediate in such an asymmetric context run the risk of becoming trapped in the dynamics and will commonly have problems appearing neutral. This is a dilemma that mediators of civil wars often face. Trying to act in an even-handed fashion will risk undermining the weaker side in the negotiations. On the other hand, trying to equalize the parties (thereby enabling a more productive peace process) runs the risk of having the mediators be perceived as coming out in support of one side of a conflict. Either way, the mediator risks being perceived as partial. Norway's engagement in Sri Lanka is illustrative of this problem. By supporting the peace infrastructure of the Tamil Tigers organization, which was necessary for effective transformation of the conflict, Norway was perceived as more partial to the rebel-group than the Sinhalese majority.<sup>17</sup>

## POLICY IMPLICATIONS

Given the insights generated by the research on bias in mediation, what are the implications for policymakers? What are the policy lessons that can be drawn from this research?

Three basic policy implications stand out. First, mediators with ties and a history of support to one side can play a valuable role in the process of negotiating peace in intrastate armed conflicts. Biased mediators have an important function, particularly when

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<sup>17</sup> Kristine Höglund & Isak Svensson, *Damned if You Do, and Damned if You Don't: Nordic Involvement and Images of Third-Party Neutrality in Sri Lanka*, 13 INT'L NEGOTIATION 341, 351 (2008).

getting conflicting parties to agree to concessions on the basic incompatible issues at the core of the conflict.

Secondly, and more specifically, the direction of the bias matters: rebel-biased and government-biased mediators have different functions to play in intrastate peacemaking processes. Stipulations of particular peace institutional arrangements are associated with different types of biased mediators.

This point also leads to a last general policy insight: the importance of a more disaggregated perspective on mediation outcome. Since peace agreements vary considerably in their content, policy must go beyond merely trying to get the parties to reach an agreement—it also matters what kind of agreement is reached.