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THIRD-PARTY MEDIATION OF INTERSTATE CONFLICTS:
ACTORS, STRATEGIES, SELECTION, AND BIAS

By
Scott Sigmund Gartner*

Abstract:

While arbitration remains more common than mediation as an alternative to litigation in domestic legal disputes, the opposite occurs in resolving violent interstate conflicts, where third-party mediation represents the most frequently employed method of conflict resolution. In order to understand the similarities and differences between international and domestic mediation, this article identifies key attributes of international conflict management generally and third-party mediation of violent disputes specifically, and four critical patterns commonly found in third-party mediation of international conflicts. These patterns, each of which is illustrated with a vignette involving US foreign policy, include: 1) the complex role of mediator bias in interstate conflict mediation, 2) the multiple actors and actions frequently associated with interstate conflict resolution, 3) mediator strategy and outcomes and 4) the importance of selection effects for understanding the deceptive appearance of interstate conflict mediation's effectiveness. Understanding these processes and recognizing these patterns helps to develop a better understanding of the strengths and weakness involved in the third-party mediation of interstate disputes.

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Mediation is fast becoming a standard tool for resolving domestic legal disputes, both in and out of court: “there is nothing alternative about mediation in the courts anymore.”¹ Although both mediation and arbitration rely on self-determination,² it is likely that domestic legal scholars and practitioners are more familiar with arbitration and adjudication than mediation. Interestingly, in the resolution of violent interstate conflicts, the opposite is the case; scholars and practitioners tend to be much more familiar with mediation which is widely utilized³ and less familiar with arbitration and adjudication, which are less frequently employed.⁴

In particular, third party mediation of violent interstate disputes has led to both spectacular successes (e.g. the more than thirty years of peace between Egypt and Israel following the mediation of American President Carter that led to the Camp David accords)⁵ and costly failure (e.g. the inability of the 1948 UN Commission for India and Pakistan to facilitate peace, a conflict that remains ongoing and deadly).⁶

Many interstate conflicts involve the use of, or threatened use of force, which can lead to high stakes and costly mistakes for both the chief belligerents and their allies. Unlike domestic legal systems that have enforceable obligations, international conflict resolution occurs in a world of international anarchy with no guaranteed enforcement mechanisms. As a result, all outcomes have to be self-sustaining.⁷ That is, mediation success requires that after a voluntary agreement is reached, actors continue to believe that it remains in their interest to implement the peace settlement. Yet despite these

¹ Jennifer W. Reynolds, *Judicial Reviews: What Judges Write When They Write about Mediation*, 5 Y.B. ON ARB. & MEDIATION 111, 112 (2013).

² See Nancy A. Welsh, *Introduction*, 5 Y.B. ON ARB. & MEDIATION v, vii (2013).

³ Although there appears to be increasing familiarity among the legal alternative dispute resolution (ADR) community with international economic negotiation procedures, many remain unfamiliar with the processes and procedures involved in the management of violent interstate conflicts. For an introduction to international dispute mediation, see generally J. MICHAEL GREIG & PAUL F. DIEHL, *INTERNATIONAL MEDIATION* (2012). For an introduction to recent research on international dispute mediation, see generally JACOB BERCOVITCH AND SCOTT SIGMUND GARTNER, *INTERNATIONAL CONFLICT MEDIATION: NEW APPROACHES AND FINDINGS* (2009).

⁴ Some of the few publications that address international conflict arbitration and adjudication include: Stephen E. Gent, *The Politics of International Arbitration and Adjudication*, 2 PENN ST. J. L. & INT’L AFF. 66 (2013); Catherine A. Rogers, *The Politics of International Arbitrators*, 12 SANTA CLARA J. INT’L L 223 (2014); There are of course exceptions, see Catherine A. Rogers, *Proposals to Expel Palestinians from the Occupied Territories as Catalyst for a Civil Adjudication Campaign*, 7 J. GENDER RACE & JUST. 167 (2003); Christine Gray, *The Eritrea/Ethiopia Claims Commission Oversteps Its Boundaries: A Partial Award?*, 17(4) EUR. J. INT’L L., 699 (2006); Catherine Rogers, *The Politics of International Investment Arbitrators?*, 12 SANTA CLARA J. INT’L L. 223 (2013). For an in-depth analysis of the role of arbitration in addressing international violent disputes, see generally Stephen E. Gent & Megan Shannon, *The Effectiveness of International Arbitration and Adjudication: Getting Into a Bind*, 72 J. POL., 366 (2010)

⁵ For a discussion of the successful Camp David mediation process, see WILLIAM B. QUANDT, *CAMP DAVID: PEACEMAKING AND POLITICS* (1986).

⁶ For a discussion of the extensive but ultimately failed, mediation process between India and Pakistan, see SUMIT GANGLY, *CONFLICT UNENDING: INDIA-PAKISTAN TENSIONS SINCE 1947* (2001).

⁷ See ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* 174 (1984).

demanding requirements, mediation is by far the most common form of violent international dispute conflict management.⁸

What can we learn from studying international conflict mediation? Developing a better understanding of the conduct, role and influence of third-party mediation of violent or potentially violent disputes between nation-states helps to clarify its unique and common attributes and as a result, sheds light on its relationship to domestic mediation.

Comparing third-party mediation of interstate conflicts and the domestic mediation legal disputes, one sees that the two forms of dispute resolution contain attributes that are:

- 1) *Similar* (e.g. both emphasize consensual agreements)
- 2) *Seemingly Similar, but Actually Different* (e.g. both can result in agreements, but they have categorically different enforceability)
- 3) *Seemingly Different, but Relationally Similar* (e.g. contrasting the threat of war and litigation)
- 4) *Different* (e.g. an international dispute mediator's mandate has no clear applicability in domestic mediation).

To examine the dynamics of interstate mediation I analyze four critical topics: 1) the complex role of mediator bias in interstate conflict mediation, 2) the multiple actors and actions frequently associated with interstate conflict resolution, 3) mediator strategy and outcomes and 4) the importance of selection effects for understanding the deceptive appearance of interstate conflict mediation's effectiveness.

A central attribute of international dispute mediation is its lack of formulaic procedures and the wide variation in procedures and practices conducted by mediators in different disputes and management efforts. I use vignettes from United States' foreign policy to illustrate the wide-range in mediation practices. Focusing on the variation that occurs within one country helps to make clear the dramatic differences observed derive from the nature of mediation and not the culture, legal practices, or circumstances of a particular country. The vignettes include: 1) mediator bias (US-Iran/Algeria), 2) multiple actors and actions (Yugoslavia/Dayton Accords); 3) strategy and outcomes (Russo-Japanese/Roosevelt) and 4) selection effects (Israel-Palestine/Clinton & Obama). Before looking at these four topics and their examples, however, it is necessary to explore both the process of international conflict management generally and the specific attributes of international conflict mediation in greater detail.

I. INTERNATIONAL CONFLICT MANAGEMENT⁹

Conflict is without doubt one of the most pervasive and costliest of all social processes. It represents the systematic and organized employment of force and violence.

⁸ See JACOB BERCOVITCH & SCOTT SIGMUND GARTNER INTERNATIONAL CONFLICT MEDIATION: NEW APPROACHES AND FINDINGS 5 (2009).

⁹ This section is drawn from BERCOVITCH & GARTNER, *supra* note 3.

Conflict management is an attempt to do something about reducing, limiting or eliminating the level, scope and intensity of violence in conflict, and building a structure where the need to resort to violence in future conflicts is controlled. Conflict management takes on various forms. It can be unilateral, where one party simply avoids conflicts or withdraws from any emerging conflict or it can be bilateral and involve the disputants in direct or tacit negotiations. Conflict management can also be multilateral, where an outside party, organization or states intervene peacefully to help the adversaries with their conflict management efforts. Whereas conflict can be largely a coercive interaction, conflict management is largely non-violent and incorporates a considerable degree of voluntary coordination and joint decision making between the parties in conflict. Hence, the importance scholars attach to understanding conflict management.

A. Conflict Management

How then does mediation fit into the overall framework of conflict management? Many policy tools are available for parties in conflict, these include, conflict prevention, conflict management (e.g. reaching a political settlement), and conflict resolution (e.g. resolving all outstanding issues in conflict). Some of these methods are enumerated in Article 33 (1) of the United Nations Charter, and they generally fall into four different categories: (i) the use of force and coercive measures (ii) judicial and legal processes (iii) formal and informal bilateral methods, and (iv) various forms of non-coercive third party interventions (these may be undertaken by a host of actors). These four ways of managing conflicts correspond roughly to power-based approaches to conflict (deterrence, sanctions), rights-based approaches (appeals to legal norms), and interests-based approaches (searching for common interests through bilateral negotiation & third party mediation). Each approach has different features, characteristics, objectives, consequences, each entails different costs and resources, and each may be appropriate for different conflicts.

Mediation is by far the most common form of peaceful third party intervention in violent international conflicts. It is predicated on the need to supplement conflict management, *not* to supplant the parties' own efforts. Although mediation has become an integral part of many systems (e.g. labor-management, family disputes), it is a form of conflict management that is particularly well suited to the international conflict environment with its numerous and diverse political actors all interacting in an anarchic environment to obtain scarce resources or achieve influence, and where each guards its interests and autonomy jealously, and accepts any outside interference in their affairs only if it is strictly necessary and explicitly circumscribed.

B. Mediation in Different Types of Conflicts

It is critical to differentiate between interstate conflicts (between two or more states) and civil conflicts (also known as intrastate conflicts) when examining conflict management.¹⁰ As Melin and Svensson put it, “international mediation in intrastate and

¹⁰ See Scott Sigmund Gartner, *Signs of Trouble: Regional Organization Mediation and Civil War Agreement Durability*, 73(2) J. POL. 380 (2011).

interstate conflicts are substantially different.”¹¹ While recent scholarly attention focuses on the mediation of intrastate, or civil disputes, such as the civil war in the Democratic Republic of Congo,¹² interstate disputes, such as the conflict between India and Pakistan over Kashmir,¹³ represents 40% of modern conflict management efforts¹⁴ and are the focus of this analysis.¹⁵

C. Defining Mediation

Mediation represents a form of joint decision making in conflict in which an outsider controls some aspects of the process, or indeed the outcome, but ultimate decision making power remains with the disputants. Mediation is best seen as an extension of bilateral conflict management. It is a rational, political, though at times risky, process with anticipated costs (e. g. time spent mediating) and benefits (e.g. achieving a reputation as a successful mediator). It operates within a system of exchange and social influence whose parameters are the actors, their communication, expectations, experience, resources, interests, and the situation within which they all find themselves. Mediation is a reciprocal process; it influences, and is in turn influenced by and responsive to, the context, parties, issues, history, and environment of a conflict.¹⁶

A satisfactory definition of mediation has to capture the broad and comprehensive features of the process and be relevant to studies of disputes, wars, and crises, such as those included in this book. Here I use Bercovitch’s definition of international dispute mediation as a “process of conflict management, related to but distinct from the parties’ own efforts, whereby the disputing parties or their representatives seek the assistance, or accept an offer of help from an individual, group, state or organization to change, affect

¹¹ See Molly M. Melin & Isak Svensson, *Incentives for Talking: Accepting Mediation in International and Civil Wars*, 35(3) INT’L INTERACTIONS 249, 250 (2009).

¹² For a discussion of civil war conflict management research, see generally Scott Sigmund Gartner, *Civil War Conflict Management*, in PEACE AND CONFLICT 71-84 (J. Joseph Hewitt et al. eds., 2012).

¹³ For a discussion of the ongoing rivalry between India and Pakistan and American efforts to manage the conflict, see BRUCE RIEDEL, *AVOIDING ARMAGEDDON: AMERICAN, INDIA, AND PAKISTAN TO THE BRINK AND BACK* (2013).

¹⁴ The systematic collection of data requires the existence of critical similarities across observations. “No two states are alike, nor are two civil wars. However, enough similarities may exist between given states and civil wars to enable mediators to build appropriate strategies and resources needed to bring an end to those wars through robust agreement implementation.” See Karl DeRouen et al., *Civil War Peace Agreement Implementation and State Capacity*, 47(3) J. PEACE RES. 333, 344 (2010). The key then is to locate these similarities, and code and quantify them in a reasonable manner given both the need for replication and the recognition of the importance of unique attributes present in every event.

¹⁵ The data in this study came from, JACOB BERCOVITCH, THE INTERNATIONAL CONFLICT MANAGEMENT DATASET (2002). The *International Conflict Management* dataset is still considered by some – more than twenty years from its inception – as “the best and most complete collection of data on international conflict management.” PAUL DIEHL & GREIG, *supra* note 3, at 31. The *International Conflict Management* dataset originally collected critical information about mediators, disputes and disputants on 184 mediation cases between 1945 and 1989.

¹⁶ See BERCOVITCH & GARTNER, *supra* note 3, at 5.

or influence their perceptions or behavior, without resorting to physical force, or invoking the authority of the law.”¹⁷ This is a broad definition indeed that includes a wide range of conflict resolution actions.

The mediation of international conflict represents a process whereby disputants work with a third party to reach a mutually acceptable peace agreement. Mediation is voluntary and contractual, differing significantly from other third party resolution processes such as arbitration, which are binding and judgmental. In particular, in mediation the third party assists the disputants in their search to find a peaceful outcome but cannot “impose a solution.”¹⁸ As a result, the disputants’ adherence to any settlement is also voluntary and needs to be self-sustaining in order to endure. The lack of enforceable outcomes fundamentally differentiates international dispute mediation from legal-based dispute adjudication. As Carbonneau states, “Enforcement is a lifeblood of any adjudication.”¹⁹ The role of binding, enforceable outcomes is elemental to arbitration: “Final and binding awards are critical to the very utility and systemic effectiveness of arbitration. The inability or failure to enforce awards robs the arbitration process of its core practical value. Without the likelihood of conclusive finality, there is little, if any, reason to consider, let alone choose, arbitration.”²⁰ Mediation in contrast is completely voluntary as both a process and an outcome. While this non-binding process may sound tentative, the mediation of international disputes is the most common and, in many ways, the most powerful and profound form of international conflict resolution, peacemaking and conflict prevention.

The practice of settling conflicts through a third party has a rich history in all cultures.²¹ In international relations, mediation is likely to be used in some, though by no means all, conflicts. It is particularly useful when a conflict has gone on for some time, when the efforts of the parties involved have reached an impasse, when neither party is prepared to countenance further costs or escalation of the dispute, and when both parties are ready to engage in direct or indirect dialogue, and are prepared to accept some form of external help and surrender some control over the process of conflict management.²²

Because international conflict mediation follows no formulaic set of procedures, it is especially important to explore its patterns to gain an understanding of its dynamics. Jacob Bercovitch’s, *The International Conflict Management*, dataset (2002), codes 5,066 conflict management efforts from about 1950 through 2000 and represents one of, if not the best dataset on interstate conflict mediation. Putting this all together one can see by the numbers the importance of mediation in international conflict management. Conflict

¹⁷ See Jacob Bercovitch, *The Structure and Diversity of Mediation in International Relations*, in *MEDIATION IN INTERNATIONAL RELATIONS* 8 (Jacob Bercovitch & Jerry Rubin eds., 1992).

¹⁸ See Nancy A. Welsh & Andrea K. Schneider, *Becoming “Investor-State Mediation*, 1(1) *PENN ST. J. L. & INT’L AFF.* 86, 90 (2012).

¹⁹ See Thomas E. Carbonneau, *The Assault on Judicial Deference*, 23 *AM. REV. INT’L ARB.* 417, 419 (2012).

²⁰ See *id.* at 419-20.

²¹ See generally P. H. GULLIVER, *DISPUTES AND NEGOTIATIONS* (1979).

²² BERCOVITCH & GARTNER, *supra* note 8, at 6.

management efforts include: no management (1.3% - an offer to manage was made but not accepted), mediation (59.3%), direct negotiation (32.2%), arbitration (.6%), referral to international organizations for processing (3.6%) and multilateral conferences (3%). States are more likely to negotiate together without third-party assistance: bilateral negotiation represents 46.6% of interstate but only 22.5% of intrastate resolution events. Conversely, mediation represents 70.2% of intrastate, but only 43.2% of interstate conflict management efforts. States versus state disputes are more than three times more likely to employ arbitration than disputes involving non-state actors, but the figures are very small (1.1% vs. .3%).

II. International Conflict Mediation

Mediation, domestic or international, consists of Mediators (also known as third-parties), Disputants, a Dispute, and Outcomes. Examining mediation's actors, actions and context together facilitates the development of an understanding of conflict management in general and mediation specifically. "To gain a better understanding of mediation we must study the mediator, the disputing parties and their relationship."²³

A. Mediators

Disputants can choose from a variety of types of mediators: individuals, (e.g. Jimmy Carter), states (e.g. New Zealand), regional organizations (e.g. Organization of African States), and international organizations (e.g. the UN). Mediation by individuals who do not represent their government (like former President Carter's current actions) is rare. In the post-Cold War, the United Nations has become active in dispute resolution, undertaking about a third of all conflict management efforts as shown by recent efforts in Somalia, Bosnia, Cambodia, Liberia, Afghanistan, Angola, East Timor, and Rwanda. Regional organizations, such as the European Union (EU), the African Union (AU), and the Arab League act as mediators about half as often as international organizations. State mediation usually involves the official services of current or former leaders. For example, Presidents Roosevelt and Carter and Secretaries of State Kissinger and Christopher each represented the US as dispute mediators. States, through their representatives, are the most common mediators, accounting for approximately half of all mediation efforts.

B. Disputants

International conflict can occur in almost any combination involving states and non-state actors. Here, because the focus is on interstate conflict, the disputants are states. Most disputes start with two main belligerents, each of which may invite in allies to support their case (who tend to honor prewar agreements in the majority of conflicts).²⁴ Third parties can act as allies or mediators. Looking solely at variation between states, the key attribute is regime type: democracy or non-democracy. While definitions of

²³ Jacob Bercovitch, *International Mediation*, 28(1) J. PEACE RES. 3, 6 (1991).

²⁴ Brett Ashley Leeds et al., *Reevaluating Alliance Reliability: Specific Threats, Specific Promises*, 44(5) J. CONFLICT RESOL. 686, 697 (2000).

democracy vary, it is well documented that democratic and non-democratic states fight wars with similar frequency, but democratic states rarely, if ever, fight each other.²⁵ Interestingly, in only two percent of the interstate mediation efforts are both of the belligerent states a democracy; while in 34.8% both are states are non-democracies.

C. Disputes

Interstate disputes cover a range of topics: territory (27.5%), ideology (5.8%), security (32.5%), colonial (7.9%), resources (5.5%) and ethnicity (20.8%). States tend to mediate other states; interstate dispute mediators are: individuals (2.3%), regional organizations (19.5%), international organizations (28.4%) and other states (49.8%). Over 47% of the interstate disputes mediated are in the highest category of fatalities (10,000 dead or more). There is a preventative theme though, as 28.8% of the mediated disputes are in the lowest level of fatalities (0-500), with the remainder in between. Interstate mediation occurs throughout the world; regional frequencies are: Central and South America (11.2%), Africa (16.8%), South West Asia (9.1%), East Asia and the Pacific (15.1%), the Middle East (33.6%) and Europe (14.9%).

D. Outcomes

Conflict resolution efforts lead to some type of an agreement in 45.5% of interstate and an almost identical 44.3% of intrastate disputes. The nature and durability of these agreements, however, vary considerably. The conflict management of interstate disputes results in more than twice as many ceasefires (9.9%) as intrastate disputes (4.8%), and slightly more full settlements and fewer partial agreements. Interstate disputes agreements, however, are more robust. Almost twice as many intrastate as interstate agreements fail immediately (5.9%) compared to (3.2%). Critically, while 25.6% of interstate disputes last eight weeks, only 17.2% of intrastate disputes last that long.²⁶

²⁵ Extant literature provides a compelling assessment that while democratic dyads rarely (if ever) go to war (using a variety of definitions of democracy). Democracies and non-democracies are equally war-prone. For a discussion of these patterns, see generally Patricia L. Sullivan & Scott Sigmund Gartner, *Disaggregating Peace: Domestic Politics and Dispute Outcomes*, 32(1) INT'L INTERACTIONS. 1 (2006); Scott D. Bennett & Allan C. Stam, *The Declining Advantages of Democracy: A Combined Model of War Outcomes and Duration*, 42(2) J. CONFLICT RESOL. 344 (1998); William J. Dixon, *Democracy and the Peaceful Settlement of International Conflict*, 88(1) AM. POL. SCI. REV. 14 (1994); Zeev Maoz & Nasrin Abdolali, *Regime Types and International Conflict, 1816-1976*, 33 J. CONFLICT RESOL. 3 (1989); Zeev Maoz & Bruce M. Russett, *Normative and Structural Causes of the Democratic Peace, 1946-1986*, 87AM. POL. SCI. REV. 624 (1993); JAMES RAY, *DEMOCRACY AND INTERNATIONAL CONFLICT* (1995); Dan Reiter & Allan Stam, *Democracy, War Initiation, and Victory*, 92 AM. POL. SCI. REV. 377 (1998).

²⁶ Rothchild calls the time immediately following a settlement the "treacherous transition period." DONALD ROTHCHILD, *THE TWO-PHASE PEACE IMPLEMENTATION PROCESS IN AFRICA AND ITS IMPLICATIONS FOR DEMOCRATIZATION* 3 (2002). A critical aspect of the peace process is to "make it over the hump" and give settlements time enough to take hold and alter the underlying political situation fueling the dispute. Gartner, *supra* note 10. Short-lived dispute settlements fail to provide the political space and time necessary for the new institutions and policies to gain traction. Eight weeks is considered a critical duration for peace treaties. For an example of a study that employs the eight week duration period, see Jacob Bercovitch &

III. PATTERNS OF INTERSTATE CONFLICT MEDIATION

Recent studies of mediation have identified critical new patterns that reflect important concepts and approaches and dramatically improve our understanding of the roles and effects of international dispute mediation.²⁷ I focus on four key insights: 1) the conflicting expectations of the impact of mediator bias, 2) the roles of multiple mediators and mediation efforts and agreements; 3) the influence of mediation strategy on dispute outcomes, and 4) the obfuscation of the actual mediation dynamic created by selection effects.

A. *Bias*²⁸

Impartiality and fairness in conflict resolution rely upon two pillars of natural justice: *nemo iudex in sua causa* (no one should be judge in his own cause), and *audi alteram partem* (no person should be judged without the right to be heard).²⁹ Bias derives from a mediator's interest in the conflict.³⁰ The term "bias" is often used interchangeably with "prejudice" and is typically defined as a tendency that affects an actor's capacity to act impartially. The U.S. Supreme Court refers to bias in its capacity for influencing judicial prejudgment.³¹ Bias, in turn, can create a harmful conflict of interest whenever there is the possibility that a judge or mediator might lack independence and impartiality. Even the appearance of bias alone can undermine voluntary conflict resolution.³²

Traditional and alternative dispute resolution systems have developed a toolbox of methods to address actual or suspected bias. Judiciaries depend on upon voluntary recusal standards which in turn rely upon self-policing by the decision maker whenever there is a question of bias. In arbitration each party often appoints an arbitrator and together the two party-appointed arbitrators select a third who serves as the chair. It is assumed that the two party-appointed arbitrators will be biased but that an independent and impartial chair will mitigate this bias.³³ Domestic mediation is often supported by these bias

Scott Sigmund Gartner, *Is there Method in the Madness of Mediation? Some Lessons for Mediators from Quantitative Studies of Mediation*, 32(4) INT'L INTERACTIONS 329 (2006).

²⁷ For a more extensive discussion of these new concepts, see BERCOVITCH & GARTNER, *supra* note 8.

²⁸ This section draws from the writing of Benjamin Premack in Scott Sigmund Gartner & Benjamin Premack, *Mitigating Conflicts of Interest in Regional Governmental Organization Civil War Mediation*, 31(4) WISC. INT'L L.J. 785 (Winter 2014).

²⁹ Chan Leng Sun, *Arbitrators' Conflicts of Interest: Bias by Any Name*, 19 SING. ACAD'Y. L.J. 245, 245 (2007).

³⁰ For a discussion of mediator interests, see Molly M. Melin, *The Impact of State Relationships on If, When, and How Conflict Management Occurs*, 55 INT'L STUD. Q. 691 (2011).

³¹ *Caperton v. AT Massey Coal Co., Inc.*, 129 S. Ct. 2252, 2267-68 (2009) (citing *Withrow v. Larkin*, 421 U.S. 35 (1975)).

³² Sun, *supra* note 29, at 251; see also DAWN M. EVANS, *How to Identify and Avoid Conflicts of Interest*, STATE MICH. BAR (2011), <https://www.michbar.org/opinions/ethics/Articles/conflictsofinterest.pdf> (last visited May 25, 2014).

mitigation tools, as well as others such as the creation of screening walls to control the spread of confidential information within an organization.³⁴

But, unlike domestic mediation, there are opposing views about the effects of mediator bias on peacemaking.³⁵

On the one hand, traditional views hold that neutrality of the third-party intervener is absolutely crucial to any mediation; neutrality, it is argued, is vital to the promotion of trust between disputants and third-parties.³⁶ This view claims that impartiality remains as necessary for an effective judiciary internationally as domestically.³⁷ The United Nation's *Universal Declaration of Human Rights* (1948) article 10 declares that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."³⁸ This reflects the common law ideal that conflict resolution decision makers should reach their conclusions "utilizing facts, evidence, and highly constrained legal criteria while putting aside personal biases, attitudes, emotions and other individualizing factors."³⁹ In these arguments, mediation legitimacy is contingent on the neutrality of the third-party. Analyzing the effect of a biased mediator on conflict management, some claim that third-party bias can decrease disputants' willingness to participate in conflict resolution,⁴⁰ limit peacemaking effectiveness,⁴¹ and restrict disputants to less effective conflict management processes.⁴²

³³ Robert D. Taichert, *Why Not Provide for Neutral Party-Appointed Arbitrators?*, 57 DISP. RESOL. J. 22, 22-23 (2003).

³⁴ Paul M. Lurie, *Alternatives to the High Cost of Litigation: Using Screening Walls and Advance Waivers to Manage Mediation Conflicts of Interest*, 24 INT'L INST. FOR CONFLICT PREVENTION & RESOL., March 2006 at 1, 56-58; see also Christopher J. Dunnigan, *The Art Formerly Known as the Chinese Wall: Screening in Law Firms: Why, When, Where, and How*, 11 GEO. J. LEGAL ETHICS 291, 291-306 (1998).

³⁵ For a discussion of this topic, see Sinisa Vukovic, *Strategies and Bias in International Mediation*, 46 COOPERATION & CONFLICT 113 (2011).

³⁶ Gartner, *supra* note 10, at 3.

³⁷ Debra Lyn Basset & Rex R. Perschbacher, *Perceptions of Justice: An International Perspective on Judges and Appearances*, 36 FORDHAM INT'L L.J. 136, 138-39 (2013) (citing R. Matthew Pearson, *Duck Duck Recuse? Foreign Common Law Guidance & Improving Recusal of Supreme Court Justices*, 62 WASH. & LEE L. REV. 1799 (2005)).

³⁸ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III), art. 10 (Dec. 10, 1948).

³⁹ Donald C. Nugent, *Judicial Bias*, 42 Clev. St. L. Rev. 1, 2 n.5 (1994).

⁴⁰ Melin & Svensson, *supra* note 11, at, 255. For a broader discussion of mediation bias see J. Michael Greig & Patrick M. Regan, *When Do They Say Yes? An Analysis of the Willingness to Offer and Accept Mediation in Civil Wars*, 52 INT'L STUD. Q. 759 (2008).

⁴¹ For an example of an analysis that employs this perspective, see Bernd Beber, *International Mediation, Selection Effects, and the Question of Bias*, 29 CONFLICT MGMT. & PEACE SCI. 397 (2012).

On the other side, mediator bias is considered to be an important positive determinant of the outcome of mediation efforts. Arguments in favor of this view highlight that a third-party with special interests in a conflict, who is close to one party, has an incentive to see its successful resolution and is likely to succeed.⁴³ Bias is not an undesirable characteristic and does not necessarily make a mediator less successful, as pro-neutrality scholars hold, rather “impartiality is neither an indispensable condition of their [mediators’] acceptability, nor a necessary condition for the successful performance of an intermediary’s function.”⁴⁴ Looking at the effect of bias on mediation, these scholars argue that bias increases the likelihood of mediation success,⁴⁵ and claim that biased mediators are more effective and more successful than neutral mediators.⁴⁶ While the role of bias continues to be debated by scholars, one thing is clear: mediator bias in international violent dispute resolution has variable and complex effects⁴⁷ as can be seen by looking at the role of bias in settling the US/Iranian Hostage Crisis.

Mediator Bias: Algeria and The US hostages in Iran

On November 4, 1979 Iranian students over-ran the US embassy and took 66 State Department personnel hostage.⁴⁸ Six months later, the United States attempted a rescue mission that failed to free the hostages and led to the death of eight Americans in the desert of Iran.⁴⁹ The US State Department personnel remained hostages for 444 days, only to be released by Iranian officials following extensive negotiations facilitated by Algeria. How did the competing roles of bias operate in these negotiations?

⁴² The suboptimal ineffectiveness of conflict management represents a common theme in the studies of Stephen Gent and Megan Shannon. See Stephen E. Gent & Megan Shannon, *Decision Control and the Pursuit of Binding Conflict Management: Choosing the Ties that Bind*, 55 J. CONFLICT RESOL. 710, 710-734 (2011).

⁴³ Recent studies that employ this approach include: Isak Svensson, *Who Brings Which Peace? Neutral Versus Biased Mediation and Institutional Peace Arrangements in Civil Wars*, 53 J. CONFLICT RESOL. 446 (2009).

⁴⁴ Saadia Touval, *Biased Intermediaries: Theoretical and Historical Considerations*, 1 JERUSALEM J. INT’L REL. 53, 53-56 (1975).

⁴⁵ Recent studies that employ this approach include: Isak Svensson, *Research on Bias in Mediation: Policy Implications*, 2 PENN ST. J.L. & INT’L AFF. 17 (2013); Andrew Kydd, *Which side are you on? Bias, Credibility and Mediation*, 47 AM. J. POL. SCI. 597 (2003).

⁴⁶ Burcu Savun, *Information, Bias, and Mediation Success*, 52 INT’L STUD. Q. 25, 44-47 (2008).

⁴⁷ The variation in these effects are nicely noted in recent studies by Svensson that include: Svensson, *supra* note 43; Svensson, *supra* note 45.

⁴⁸ JOSEPH N. KANE, FACTS ABOUT THE PRESIDENTS 301 (1981) (explaining that on November 19 and 20, the Iranians released thirteen black and female hostages).

⁴⁹ For a discussion of the decision making surrounding the military rescue decision making, see generally Scott Sigmund Gartner, *Predicting the Timing of Carter’s Decision to Initiate a Hostage Rescue Attempt: Modeling a Dynamic Information Environment*, 18 INT’L INTERACTIONS 365 (1993).

Algeria's intermediary role that led to the release of American hostages in Iran provides an interesting case of analyzing mediator bias. Algeria was known to have close ties to Iran, but despite this position, was acceptable to both the US and Iran as mediator.⁵⁰ This case has been frequently cited as supportive of the view that mediator bias can be as important as any other attribute of the third-party in determining the success of mediation efforts.

Mediator bias, it is argued, contributed to the successful outcome of Algerian mediation of the American hostage crisis in Iran. Citing this case, it was noted that "real bias can play an important role in mediation when the bias adds to the mediator's capacity and desire to influence. A mediator may have access to the other side, and the potential to deliver concessions and agreements, despite an apparent bias."⁵¹ Rather than act as a deterrent, mediator bias in this sense exerts a positive influence to the mediation process.

Following on this point, mediator bias can work to positively affect negotiations in three ways: aiding "communication", "developing creative proposals", and "bringing the two parties' positions into convergence."⁵² Thus, American acceptance of Algeria's mediation was not because the latter was thought to be impartial, rather, Algerian "ability to gain access to people close to Khomeini held promise that it might help to release the hostages."⁵³ Partiality in this particular case was the primary reason both parties, the Iranians and Americans, accepted the third-party mediation of Algeria.

Iran's acceptance of Algerian mediation can also be understood to be founded on three sources: Algeria's solidarity, revolutionary credentials and Islamic tradition. These factors all point to a perceived bias by the Iranians of the Algerian negotiating team (ostensibly in the former's favor) as a crucial determinant in the outcome of the hostage negotiations.⁵⁴ This ties in with some arguments made that cultural ties do facilitate mediation.⁵⁵ Algeria's partiality towards Iran may be understood as based on a shared cultural context. Its influence in the negotiation process may derive from this cultural connection.

In addition, Algeria's successful mediation in the hostage crisis suggests impartiality, or lack thereof, on the part of the mediator does not necessarily preclude effective mediation efforts. Rather, trust of the mediator by both parties can be equally, if

⁵⁰ For extensive discussions of this episode, see Gary Sick, *The Partial Negotiator: Algeria and the U.S. Hostages in Iran*, in INTERNATIONAL MEDIATION IN THEORY AND PRACTICE 21 (S. Touval & I.W. Zartman, eds., 1985).

⁵¹ P.J. Carnevale & S. Arad, *Bias and Impartiality in International Mediation*, in RESOLVING INTERNATIONAL CONFLICTS: THE THEORY AND PRACTICE OF MEDIATION 41 (J. Bercovitch, ed., 1996).

⁵² I.W. Zartman & S. Touval, *International Mediation: Conflict Resolution and Power Politics*, 41 J. SOC. ISSUES 36, 36 (1985).

⁵³ *Id.*

⁵⁴ Jonathan Greenberg, *Algerian Intervention in the Iranian Hostage Crisis*, 20 STAN. J. INT'L L. 259, 278 (1984).

⁵⁵ P.J. Carnevale & D.W. Choi, *Culture in the Mediation of International Disputes*, 35 INT'L J. PSYCHOLOGY 108, 108 (2000).

not more, important. The weaker party (Iran) may have viewed Algeria, a small state mediator, “as an ally who recognises the difficulty in negotiating from a weaker position.”⁵⁶ This bias notwithstanding, the Algerian negotiating team was able to earn the trust of disputant parties, which led to its acceptance as mediator and the outcome.

Another hypothesis takes it further when explaining the relationship between mediator bias and the outcome of negotiations, which is applicable to this case. Mediator bias can be an attractive option when the mediator has close ties to one party (in this case Iran) in the dispute. The other party that does not have as close a relationship (the US) with the mediator accepts the biased mediator with hopes or expectations that the mediator will use his/her partiality to influence the adversary and thereby deliver an outcome.⁵⁷ Algeria’s relatively strong ties with Iran in this case worked in getting accepted as mediator and also bringing both sides to the negotiating table.

In conclusion, the Algeria mediation case suggests that a biased mediator can be equally, or in some cases, even more effective than neutral ones, illustrating a major divergence from traditional, domestic mediation norms and practices.

B. Multiple Actors & Actions

The “final” peace settlement that we observe terminating hostilities is often the result of scores of (often invisible) earlier conflict resolution efforts, many that led to an agreement or failed, as well as dozens of broken or partial agreements all of which was facilitated by many different mediators. The large number of actors and efforts is especially prevalent after the end of the Cold War, which has seen a dramatic increase in both peacemaking actors and interventions.⁵⁸ For example, the number of international conflict resolution efforts increased 500% in the 1990s compared to the 1980s.⁵⁹

In most cases, the peaceful transition from war to peace requires a large number of conflict management efforts. Birger Heldt found that there were an average of 30 third-party conflict management peace-making attempts for every agreement reached, which given the hundreds of peacemaking attempts, efforts, results in a success rate of just over three percent for any individual conflict resolution effort.⁶⁰ But looking at each resolution effort individually is misleading. The mechanism for success varies greatly, both in duration and in outcome, with small or partial settlements hopefully cumulating into a long-lasting, full peace agreement. For most successes, it is usually the case that

⁵⁶ R. M. Slim, *Small-State Mediation in International Relations: The Algerian Mediation of the Iranian Hostage Crisis*, in *MEDIATION IN INTERNATIONAL RELATIONS: MULTIPLE APPROACHES TO CONFLICT MANAGEMENT* 206, 207-08 (J. Bercovitch & J. Z. Rubin eds., 1992).

⁵⁷ Marieke Kleiboer, *Understanding Success and Failure of International Mediation*, 40 *J. CONFLICT RESOL.* 360, 370 (1996).

⁵⁸ Birger Heldt, *The Lack of Coordination in Diplomatic Peacemaking*, 2 *PENN ST. J.L. & INT’L AFF.* 9, 10 (2013).

⁵⁹ *Id.*

⁶⁰ Birger Heldt, *Process, Substance and Sequencing in Peace Making: A Pilot Study*, (unpublished manuscript at 4), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2306500 (last visited May 25, 2014).

earlier conflict management failures and partial/limited agreements efforts acted as ratchet, moving the peace process slowly forward, suggesting assessment of mediation requires not just the evaluation of the “final” conflict management effort but rather a comprehensive analysis of the sequence of efforts.⁶¹

Becoming a mediator requires approval of three key actors. Mediation involves both mutual demand (both belligerents have to agree on a mediator) and supply (the mediator has to be available and willing) – a demanding set of conditions that limits who we observe mediating particular disputes.⁶²

In addition to the large number of mediation efforts, conflict management often involves a large number of third parties. In some cases, multiple third-parties simultaneously facilitate a single-conflict management effort. Multiple mediators and numerous actors at the table can help, or as often occurs, hinder, peacemaking.⁶³ More often, the ongoing sequence of mediation efforts involves the replacement of mediators, with one mediator after another filling the third-party role. As a result, peacemaking efforts in an interstate war might involve a dozen different mediators. Some mediators have a specialty at starting or ending the peace process, while the involvement of others varies with less clarity. Sometimes within the same dispute, a mediator employed in an earlier conflict management effort will return later in the process. Because mediation represents the interaction of dispute, disputants and mediators, a repeat mediator may have similar, or sometimes quite different results, depending on what has changed in the dispute and/or among disputants.

The role of multiple mediators and conflict resolution efforts can be seen clearly by looking at US led peace efforts in the former country of Yugoslavia.

Yugoslavia

Looking at the wars and dispute resolution efforts following the dissolution of Yugoslavia show the influences of multiple actors and the impact of multiple outcomes. The conflict began in 1989 and largely involved what we now call Bosnia, Croatia, Serbia, and Montenegro. The disputes concerning the former Yugoslavia resulted in over 300,000 deaths. Aghast at the horrific intrastate, interstate, and genocidal violence in a country previously perceived as so stable that the Winter Olympics had been held there only a few years earlier, the European Union (EU), the United States (US) and United Nations (UN) worked feverishly to foster peace.⁶⁴ After repeated negotiations, a US-led

⁶¹ Bercovitch & Gartner, *supra* note 26, at 332.

⁶² Molly M. Melin, et al., *Fear of Rejection: The Puzzle of Unaccepted Mediation Offers in International Conflict*, 30 CONFLICT MGMT. & PEACE SCI. 354, 356 (2013).

⁶³ For a study of how the number of actors affects conflict management outcomes, see David E. Cunningham, *Who Should Be at the Table?: Veto Players and Peace Processes in Civil War*, 2 PENN ST. J.L. & INT'L AFF. 38 (2013).

⁶⁴ For a discussion of the larger issues involved in the response to the break-up of Yugoslavia, see Paul R. Williams & Karina M. Waller, *Coercive Appeasement: The Flawed International Response to the Serbian Rogue Regime*, 36 NEW ENG. L. REV. 825 (2002).

peace-making effort finally resulted in agreements, called the Dayton Accords, which helped to quell the violence.

The Dayton Accords were an international agreement that brought to an end the Bosnian conflict (1992-1995), the worst conflict in Europe since the Second World War. The outcome of the Dayton Accords, signed by the presidents of Bosnia and Herzegovina, Croatia, and the Federal Republic of Yugoslavia, was a General Framework Agreement for Peace that called for the mutual recognition of the sovereign equality of Bosnia and Herzegovina and the Federal Republic of Yugoslavia.⁶⁵

But the Dayton Accords followed on the heels of almost one-hundred peace agreements among the former Yugoslavian actors. 35% of these settlements failed to last a week and another 15% lasted less than two weeks. Thus, understanding the ability of the US to facilitate peace requires also examining the hundreds of earlier efforts by other actors and putting the Dayton Accords into the context of a much larger sequence.

The first EC mediation attempt was that led by Jose Cutiliero and Lord Carrington, the two chief negotiators for the body in February 1992. The mediation efforts culminated in the Cutiliero-Carrington peace plan that proposed a division of Bosnia-Herzegovina into three autonomous units along ethnic lines.⁶⁶ The Cutiliero-Carrington Plan failed to produce a lasting peace agreement, following which the International Conference on the Former Yugoslavia (ICFY) was established in September 1992 to consolidate the peace-making efforts of the European Community (EC) and the United Nations (UN). The ICFY had 2 co-chairs, Lord David Owen and Cyrus Vance, representing the 2 bodies respectively. Three separate peace initiatives for Bosnia were drawn up by the ICFY: the Vance-Owen plan, the Owen- Stoltenberg plan (also known as the Invincible plan, named after the British warship where the principals met) and the EU action plan.⁶⁷ All three plans were also unsuccessful in resolving the conflict for varying reasons.

The effect of having multiple, independent mediation efforts running concurrently was the apparent lack of a unified and consistent position on the conflict. Goldstein and Pevehouse write that: "President Clinton and the UN Security Council showed ambivalence by advocating containment in words but accommodation in deeds."⁶⁸ It should also be noted that up to this point the US was not formally party to the mediation process (former Secretary of State Cyrus Vance was a special UN envoy).

The US became formally involved in the mediation efforts through the establishment of the Five Nation Contact Group: Britain, France, Germany, and Russia were the other four members.⁶⁹ The formation of the Contact Group was in part a

⁶⁵ For a discussion of the extension series of negotiations that led to the Dayton Accords, see DEREK H. CHOLLET, *THE ROAD TO THE DAYTON ACCORDS: A STUDY OF AMERICAN STATECRAFT* (2006).

⁶⁶ Nimet Beriker Atiyas, *Mediating Regional Conflicts and Negotiating Flexibility: Peace Efforts in Bosnia-Herzegovina*, 542 *ANNALS AM. ACAD. POL. & SOC. SCI.* 185, 190 (1995).

⁶⁷ Jutta Paczulla, *The Long, Difficult Road to Dayton: Peace efforts in Bosnia-Herzegovina*, 60 *INT'L J.* 255, 258 (2004).

⁶⁸ See Joshua S. Goldstein & Jon C. Pevehouse, *Reciprocity, Bullying, and International Cooperation: Time-series Analysis of the Bosnia Conflict*, 91(3) *AM. POL. SCI. REV.* 515, 518 (1997).

⁶⁹ For a history of these discussion, see SUSAN WOODWARD, *BALKAN TRAGEDY* (1995).

realization of the need for a consolidated approach to the mediation efforts, “an attempt to institutionalize a coordinated mediation effort by building on existing cooperation.”⁷⁰ The Contact Group came into being on 19 April 1994, providing a deliberately informal framework for mediation. It comprised a committee of representatives of each of the five states plus two representatives of the ICFY co-chairmen.⁷¹

The US then assumed leadership of the conflict management efforts, which involved both peaceful and military actions. With Richard Holbrooke’s appointment as chief US negotiator, the US became much more engaged in the mediation process. Marking a departure from an earlier position of relative passivity, the US introduced ground forces into Bosnia. This strategy of using both diplomatic and military means to attain an outcome in the conflict management process has been termed “coercive mediation.”⁷² In this instance, the US did not maintain a neutral position as some literature suggests negotiators should, rather, a combination of military force and diplomacy ensured a successful outcome was realized.⁷³

NATO also played a crucial supportive role in the mediation and peacekeeping efforts to end the conflict. Its military air strikes and overall aggressive actions towards the end of the conflict highlighted the important role that regional organizations (in this case a security organization) can play in mediation efforts.⁷⁴

The US has been lauded for its decisive role in the Dayton Accords that ended the conflict, and rightly so. The involvement of the other members of the Contact Group was also important. The Dayton Accords bring to the fore two important questions for understanding conflict management: 1) how effective is multiparty mediation in resolving conflicts and 2) how do successful conflict management efforts depend on past failures? As discussed earlier, it is not always clear that having multiple actors in a mediation effort produces successful outcomes.⁷⁵ In this case however, the multiparty Contact Group was successful in delivering a peace agreement.⁷⁶

The former Yugoslavia case reflects the challenge of understanding and evaluating the complex world of peacemaking. On the one hand, third-party mediation seemed to be a largely failed process, most of the efforts resulted in no agreements, and most of the agreements failed. The world’s most powerful countries and international organizations were unable to contain the spread of violence in the Balkans. The majority

⁷⁰ *Id.* at 313

⁷¹ For a detailed description of the Contact Group, see Helen Leigh-Phippard, *The Contact Group on (And in) Bosnia: An Exercise in Conflict Mediation*, 53 INT’L J. 306 (1998).

⁷² See Saadia Touval, *Coercive Mediation on the Road to Dayton*, 1 INT’L NEGOT. 547, 548, 568 (1996).

⁷³ For a discussion on mediator bias, see the section titled, “Bias,” *supra*.

⁷⁴ MELANIE C. GREENBERG ET AL., WAR OVER WORDS: MEDIATION AND ARBITRATION TO PREVENT DEADLY CONFLICT 73 (2000).

⁷⁵ See Cunningham, *supra* note 63.

⁷⁶ See Tobias Böhmelt, *Disaggregating Mediations: The Impact of Multiparty Mediation*, 41 BRIT. J. POL. SCI. 859, 881-82 (2011).

of almost 100 treaties failed almost immediately, seemingly mocking the peace-making process. Hundreds of thousands of people died.

On the other hand, third-party mediation of the conflict did result in the Dayton Accords and the other settlements that eventually subdued the violence and drew a new, largely peaceful map of the Balkans. So, in the end, the mixed results of the Yugoslavia mediation efforts and other successes and failures convey a complex and contradictory story about the effectiveness of peace-making that both shows the importance of multiple actors and actions and deviates dramatically from most domestic mediation and arbitration scenarios.

C. Strategies

Another factor often cited as an important determinant of the effectiveness or success of mediation concerns how different mediation styles of behavior or strategies affect outcomes.⁷⁷ When attempting to peacefully resolve a dispute, third-party mediators typically employ three types of mediation strategies:⁷⁸ *Communications* (facilitate exchange of information), *Procedural* (structure the negotiation process), and *Directive* (shape potential outcomes).

Communication-Facilitation focuses on efforts that encourage the disputants to talk. The talking might be direct, belligerent-to-belligerent, or occur through the mediator (e.g. shuttle diplomacy). With communication-facilitation, a mediator solely provides information to the parties, like Norway's role in the Oslo agreement between Israel and the PLO. Communications-Facilitation is the most common strategy in interstate dispute mediation, occurring in 43.7% of the cases.

Mediators employing Procedural mediation structure the negotiations. With procedural strategies, mediators exert control over structural aspects of the meetings, interactions with the media, and communication processes, such as New Zealand mediations of the Bougainville conflict in 1995. For example, the mediator might declare topic B initially off limits while discussion of topic A commences. Procedural mediation occurs in 14.2% of the cases.

Directive mediation strategy structures an outcome. The mediator might propose a specific outcome and look to rally support for it. Or the mediator might contribute resources to make an outcome more attractive. Directive mediation strategies are employed in 29.6% of interstate conflict management efforts.⁷⁹ An example of a Directive Strategy is the billion dollar aid guarantee provided by President Carter to both

⁷⁷ For discussions of the importance of mediation strategies on conflict management outcomes, see Jacob Bercovitch & Allison Houston, *The Study of International Mediation: Theoretical Issues and Empirical Evidence*, in *RESOLVING INTERNATIONAL CONFLICTS: THE THEORY AND PRACTICE OF MEDIATION* 11, 11-38 (Jacob Bercovitch ed., 1995); see also Kyle Beardsley, et al., *Mediation Style and Crisis Outcomes*, 50 *J. CONFLICT RESOL.* 58 (2006).

⁷⁸ See Bercovitch & Gartner, *supra* note 3, at 29.

⁷⁹ The figures do not add up to 100% because the offer to mediate is rejected in 12.5% of the cases. For a discussion of the conditions when mediation offers are likely to be rejected, see Molly Melin et al., *supra* note 62, at 3.

Israel and Egypt as part of the Camp David Peace Accords, which has lasted over 30 years.⁸⁰

The three strategies can be ordered in terms of their intensity of mediator involvement: *Directive* > *Procedural* > *Communication*. “Directive Strategies constitute the most robust and intense form of mediation.”⁸¹ It is widely argued that the more powerful and intense the strategy, the more likely mediators are to achieve successful results.⁸² Summing up the view, Bercovitch and Houston argue that regarding mediation approaches, “Directive Strategies appear to be the most successful.”⁸³

The choice and effectiveness of mediation strategies is situational and depends on the actors and the dispute. For example, directive strategies are pushy. They are effective in high intensity conflicts where outcomes are unlikely to occur without a “shove” and lead to improved odds for both ceasefires and full settlements. These aggressive strategies however, are not as effective in less intense disputes, where they come off as pushy and may lead to a reactive lack of cooperation. In these less intense situations, mediators may do better with less intrusive conflict management strategies. Balance and context are the keys. The effectiveness of all peace-making and peace-keeping actions and even definitions of success are highly context-dependent,⁸⁴ a dynamic illustrated by examining the choices and effectiveness of President Theodore’s Roosevelt’s efforts to end the Russo-Japanese war.

Mediation Strategies: The Russo-Japanese War

The Russo-Japanese War of 1904-5 came to an end following the signing of the Portsmouth Treaty in 1905. The peace agreement signed in New Hampshire, settled, albeit temporarily, long-running territorial disputes between Russia and Japan in the region.⁸⁵ The negotiations that led to the agreement were conducted under the auspices of US President Theodore Roosevelt’s office. For his role in bringing the war to a conclusion, Roosevelt was awarded the Nobel Peace Prize in 1906.

There were four main issues that formed the crux of the Portsmouth peace talks: Korea, Manchuria, Sakhalin, and indemnity. The final terms reached during the negotiations on all the four issues were highly in favor of Japan,⁸⁶ somewhat a reflection

⁸⁰ Scott Sigmund Gartner & Jacob Bercovitch, *Overcoming Obstacles to Peace: The Contribution of Mediation to Short-Lived Settlements*, 50 INT’L STUDS. Q., 819, 823 (2006).

⁸¹ MICHAEL J. BUTLER, INTERNATIONAL CONFLICT MANAGEMENT 131 (2009).

⁸² See, e.g., Jacob Bercovitch & Su-Mi Lee, *Mediating International Conflicts: Examining the Effectiveness of Directive Strategies*, INT’L J. PEACE STUDS., Spring/Summer 2003, at 1 (2003).

⁸³ Jacob Bercovitch & Allison Houston, *Why Do They Do It like This? An Analysis of the Factors Influencing Mediation Behavior in International Conflicts*, 44 J. CONFLICT RESOL. 170, 175 (2000).

⁸⁴ BIRGER HELDT & PETER WALLENSTEEN, PEACEKEEPING OPERATIONS: GLOBAL PATTERNS OF INTERVENTIONS AND SUCCESS 1948-2004 (Birger Heldt ed., 2006).

⁸⁵ J. A. White, *Portsmouth 1905: Peace or Truce?*, 6 J. PEACE RES. 359, 359 (1969).

of Roosevelt's initial pro-Japanese position. American support of Japan was "a product of its political, strategic, and economic interests in East Asia."⁸⁷

President Roosevelt's decision to be actively engaged in the mediation efforts in the Russo-Japanese War, at a time when America's role as a major player in the international system was nascent, can be understood to be twofold. Firstly, there was a deliberate attempt by Roosevelt to create an outcome in the war that would benefit American national interests, i.e. to maintain a balance of power in the Far East. Such a strategy would be beneficial by expanding American commercial interests in the region, primarily in Manchuria.⁸⁸ By balancing competing Russian and Japanese interests in the region and exploiting the uneasy truce between the two nations, the US would expand its trade interests in the region. The "balanced antagonism" in the region would be the ideal outcome for ever-expanding American interests.⁸⁹ Secondly, it has also been argued that his decision to mediate was for personal reasons, i.e. "his personal motive was to establish a reputation as a world statesman."⁹⁰

Roosevelt's foreign policy in the region shifted over time as was reflected in the mediation efforts leading to the peace agreement. Initially in favor of a Japanese victory in the war, Roosevelt's position shifted somewhat as fears of Japanese dominance in the region emerged.⁹¹ In Roosevelt's view, "Japan was ""playing our game" in the Far East, and he looked increasingly to Japan not only to contain Russian imperialism but also to stabilize the Far East."⁹² Russia on the other hand was initially viewed as the 'enemy', acting against the commercial interests of America by attempting to monopolize trade in Manchuria.⁹³ It was against this backdrop that Roosevelt initiated the peace talks between Russia and Japan, with clear objectives in mind.

An examination of Roosevelt's role as a third-party intervener during the peace talks reveals an evolution from "convener to active intermediary", which allowed him, in

⁸⁶ W. B. Thorson, *American Public Opinion and the Portsmouth Peace Conference*, 53 AM. HIST. REV. 439, 446 (1948); see the section, "Bias," *supra* for a discussion of mediator bias and conflict management.

⁸⁷ ROTEM KOWNER, *THE IMPACT OF THE RUSSO-JAPANESE WAR* 139 (Rotem Kowner ed. 2006).

⁸⁸ For a detailed study of Roosevelt's interests, see Greg Russell, *Theodore Roosevelt's Diplomacy and the Quest for Great Power Equilibrium in Asia*, 38 PRESIDENTIAL STUD. Q. 433 (2008).

⁸⁹ See JOHN ALBERT WHITE, *THE DIPLOMACY OF THE RUSSO-JAPANESE WAR*. 310-11 (1964).

⁹⁰ THOMAS PRINCEN, *WOODROW WILSON SCH. OF PUB. & INT'L AFFAIRS CTR. OF INT'L STUDIES, INTERMEDIARIES IN INT'L CONFLICT* 123 (1992); see a similar motivation in the section, "Selection" *infra* when it discusses President Clinton.

⁹¹ See TYLER DENNETT, *ROOSEVELT AND THE RUSSO-JAPANESE WAR: A CRITICAL STUDY OF AMERICAN POLICY IN EASTERN ASIA IN 1902-05* (Peter Smith ed., 1959).

⁹² Charles E. Neu, *Theodore Roosevelt and American Involvement in the Far east, 1901-1909*, 35 PAC. HIST. REV. 433, 437 (1966).

⁹³ Masato Matsui, *The Russo-Japanese Agreement of 1907: Its Causes and the Progress of Negotiations*, 6 MOD. ASIAN STUDS. 33, 35 (1972).

part, to affect the outcome.⁹⁴ This evolving role enabled him to “initiate talks, propose a site, and provide legitimacy or pretenses for conciliatory moves.”⁹⁵

The Russo-Japanese case also brings to question the importance of mediator influence and/or leverage in conflict resolution. It has been noted that “when Roosevelt mediated between Russia and Japan at Portsmouth in 1905, he had relatively little leverage compared to the other great powers.”⁹⁶ Roosevelt’s role in the peace talks “demonstrates that long-term peace also can be attainable if leverage is used sparingly so that there is no need for the third party to maintain its influence over time.”⁹⁷ Roosevelt’s lack of leverage, militarily and economically, is perhaps reflected in his initial role as “convener” in the negotiating process. This behind-the-scenes role, and change in mediation strategy, however, may have ironically contributed to the success of the peace talks.

D. Selection

Mediation is one of the most prevalent and commonly touted forms of international conflict management. Yet, compared to other forms of peacemaking such as bilateral negotiation, international disputes that receive mediation are less likely to result in peace agreements, and mediated agreements are more likely to fail.⁹⁸ Furthermore, data seem to suggest the opposite of what is commonly believed about specific types of mediation.⁹⁹ Why does mediation seem to have such poor results? It is a problem of deceptive appearances. A concept called “selection effects” exerts powerful negative influences on what we observe; ostensibly suggesting that mediation produces poor conflict management outcomes. In reality, appearances deceive. Three aspects of international dispute mediation are critical for understanding these deceptive results: 1) participation in mediation and adherence to mediated outcomes is voluntary; 2) mediation is costly, and 3) the voluntary and costly nature of mediation combine to create Process and Selection effects that can greatly distort the inferences we make from our empirical observations.

As discussed earlier in the section on mediation mechanics, international dispute mediation is a completely voluntary process – no judge can order belligerents or a third-party mediator to participate. The third-party mediator must be willing to offer assistance, and the belligerents must be willing on their own accord to accept the third-party’s offer to mediate.¹⁰⁰ Unlike binding arbitration, mediation does not require a commitment in

⁹⁴ PRINCEN, *supra* note 90, at 123.

⁹⁵ *Id.* at 129.

⁹⁶ Kyle Beardsley, *Agreement Without Peace? International Mediation and Time Inconsistency Problems*, 52 AM. J. POL. SCI. 723, 727 (2008).

⁹⁷ KYLE BEARDSLEY, *THE MEDIATION DILEMMA* 147 (2011).

⁹⁸ See Bercovitch & Gartner, *supra* note 80, at 827.

⁹⁹ See Gartner, *supra* note 10.

¹⁰⁰ See Melin et al., *supra* note 62, at 3.

advance to accept an outcome. Adherence to a settlement reached through mediation requires the voluntary agreement of the disputants.

Mediation costs are “considerable.”¹⁰¹ The costs of mediation vary with the type of actor. Belligerents look at the human, economic, and diplomatic costs of additional violence, their likelihood of victory, and the various costs of mediation when considering conflict resolution. In an interstate war, leaders fear looking weak against both their current and possible future adversaries. For example, in 2003, the major reason that Saddam Hussein refused to agree to US demands to allow inspectors to search for WMDs (even though he didn’t have any) was that he was afraid it would make Iraq look weak against Iran – a country he feared more than the US (the two nations had previously fought a war that resulted in a million dead and ended in 1988).¹⁰² In a civil war, governments take a dim view of appearing to increase the stature of insurgents by sitting with them as apparent equals at the peacemaking table.¹⁰³ Insurgents might be concerned that they lack any control over mediation outcomes given their power asymmetry with a standing government. Thus for states actively engaged in conflict, mediation might be highly unattractive.

Mediators’ costs include: (1) forgoing other peace efforts; (2) damage to reputation from failure; (3) political costs; and, (4) operational expenses (e.g., salaries).¹⁰⁴ The voluntary and costly nature of mediation combine to create powerful *process* and *selection* effects – dynamics essential for understanding mediation outcomes.

The distinction between process and selection effects represents a critical innovation in studies of dispute resolution.¹⁰⁵ Mediators can choose among a wide variety of tools when working to resolve disputes.¹⁰⁶ Process effects reflect choices made during conflict management that *directly influence* outcomes, such as mediator strategy. For example, during the negotiations with Egyptian President Sadat and Israeli Prime Minister Begin, U.S. President Jimmy Carter guaranteed U.S. funding for military bases to both countries, a move that greatly contributed to the successful Camp David Peace Accords. Carter’s guaranty, a directive strategy, is an example of a process effect – an action that directly influences the mediation outcome. Process effects have a clear, causal effect on conflict management results – they shape dispute resolution success and failure.

¹⁰¹ BEARDSLEY, *supra* note 97, at 22.

¹⁰² Scott Shane, *Documents Show Iraqi Dictator’s Fears*, N. Y. TIMES, July 3, 2009, at A10; Ian Black, *On the Middle East, Iran and Iraq Remember War that Cost More than a Million Lives*, THE GUARDIAN (Sept. 23, 2009, 09:49 AM), <http://www.theguardian.com/world/2010/sep/23/iran-iraq-war-anniversary>.

¹⁰³ See Gartner & Premack, *supra* note 28.

¹⁰⁴ Scott Sigmund Gartner, *Deceptive Results: Why Mediation Appears to Fail but Actually Succeeds*, 2(1) PENN ST. INT’L L. REV. 27, 29 (2013). Leslie G. Terris & Zeev Maoz, *Rational Mediation: A Theory and a Test*, 42 J. PEACE RES. 563, 563-83 (2005); see also Jacob Bercovitch & Gerald Schneider, *Who Mediates? The Political Economy of International Conflict Management*, 37 J. PEACE RES. 145, 145-65 (2000).

¹⁰⁵ Gartner & Bercovitch, *supra* note 80, at 836.

¹⁰⁶ Kyle Beardsley, *Using the Right Tool for the Job: Mediator Leverage and Conflict Resolution*, 2 PENN ST. J.L. & INT’L AFF. 57, 57 (2013); Molly M. Melin, *When States Mediate*, 2 PENN ST. J.L. & INT’L AFF. 78, 84 (2013). Similar types of choices also affect other dispute resolution methods, such as arbitration and adjudication. See generally Gent, *supra* note 4, at 66-77.

Selection effects identify specific populations of cases that have particular conflict management traits. For example, imagine there are two types of disputes, *hard* (difficult to resolve) and *easy* (open to resolution). Difficult to resolve disputes typically involve higher levels of violence, greater stakes and more intransigent belligerents than easy to resolve disputes. While a great mediator might achieve success in a hard dispute and a poor mediator may fail to settle an easily resolvable dispute, on average, hard disputes are less likely to result in peacemaking success than easy ones. Thus, identifying the dispute's type (hard or easy) helps to predict the likely outcome of any conflict resolution. Selection effects identify a dispute's type. They distinguish the population to which disputes belong; but unlike process effects, they do not directly affect the conflict management process. Rather, selection effects signal the conflict's likely type and thus its odds of a peaceful outcome.¹⁰⁷

The difference between selection and process effects can be illustrated by comparing a student clinic and university hospital.¹⁰⁸ The clinic refers serious cases to the hospital. The hospital treats the high risk cases – those with a greater chance of resulting in a fatality (*selection effect*). The hospital has superior medical resources and provides better treatment (*process effect*). Given a serious illness, students go to the hospital, even if its mortality rates are higher. Students thus take into account (likely without thinking about it) selection effects; they recognize that the population of patients at the hospital is sicker and more likely to die than the population of patients at the clinic. Without consideration of the influence of selection, one would erroneously determine that the life-saving abilities of the clinic are superior to that of the hospital, when in fact the opposite is true.¹⁰⁹

Because mediation is costly, belligerents try to avoid it. Disputants who talk between themselves and resolve their differences on their own do not have to bear the costs of mediation. Thus, bilateral negotiation between disputants represents the most efficient, low cost, conflict resolution mechanism (and are especially common in interstate conflicts). If bilateral negotiations fail or their differences make them unwilling to work together (for example Sadat and Begin refused to be together in the same room after their first meeting at Camp David), then disputants who want a peaceful resolution process turn to a third-party mediator. As a result, mediators work on tougher cases than those bilaterally negotiated; disputes that, as a result of the selection process, are less likely to result in peace. Mediation itself, however, has positive process effects. An

¹⁰⁷ Scott Sigmund Gartner & Molly M. Melin, *Assessing Outcomes: Conflict Management and the Durability of Peace*, in SAGE HANDBOOK ON CONFLICT RESOLUTION 577 (Jacob Bercovitch et al. eds., 2009).

¹⁰⁸ Scott Sigmund Gartner & Aimee A. Tannehill, *Negotiating with the Dragon: The People's Republic of China and International Dispute Settlement Duration*, 12 TAMKANG J. INT'L AFF. 69, 74 (2008).

¹⁰⁹ Selection effects commonly manifest in legal contexts. For example, juvenile defendants who are not defended by a lawyer are *more* likely to have their charges dismissed and *less* likely to receive a secure confinement disposition than youth who retain lawyers. A defendant's lawyer does not have a negative effect on the case's outcome; rather, declining counsel signals a low likelihood of conviction and a low stakes case. For a discussion about selection effects, see generally Michael Alexander Roach, *Explaining the Outcome Gap between Different Types of Indigent Defense Counsel: Adverse Selection and Moral Hazard Effects* (June 2011) (Unpublished Ph.D. dissertation); Lori Guevara, et al., *Race, Legal Representation, and Juvenile Justice: Issues and Concerns*, 50 CRIME & DELINQ. 344 (2004).

identical dispute would be more likely to result in peace if it is mediated than if it is not. But in reality, disputes are not distributed randomly or evenly, among conflict resolution processes— mediators get the hardest cases, which are more likely to result in peacemaking failure. When the nature of the dispute is taken into account, analyses show that international dispute mediation has a positive process effect on reaching durable agreements.¹¹⁰

Even within mediated disputes, selection effects can influence what we observe. Selection plays an important role in understanding the frequent and continued failure of American presidents to mediate the Israeli/Palestine dispute.

The Israeli/Palestine Conflict

Selection effects represent the “factors that identify the population to which disputes belong; they do not make a dispute harder or easier (they have no direct effect), but rather signal the likely nature of the dispute.”¹¹¹ As a result of selection effects “the most intractable conflicts are those that often receive attention by the greatest number of skilled mediators.”¹¹² The long-running Israeli/Palestine conflict falls in this category of “intractable conflicts.”

In the middle of his second term, President Clinton needed domestic and global prestige. The Lewinsky scandal and ensuing impeachment had cost him enormous political capital, and internationally, there was no end in sight to the US-led Kosovo military action. The enormous prestige of achieving success in the Israeli/Palestine conflict represented one of the few conflict management successes with the potential to resurrect his Administration’s domestic and foreign reputation.¹¹³ These pressures made obtaining an agreement in the Israeli/Palestine conflict tremendously attractive for Clinton politically, despite the domestic and international political risks involved in both the negotiations and a possible failed outcome. Looking beyond the present crises, “Clinton was in the last six months of his presidency, and needed the deal for his legacy.”¹¹⁴ As Swisher writes, “[t]here would, no doubt, be significant risks if he redoubled these efforts... But there could also be significant payoffs.”¹¹⁵

¹¹⁰ Gartner & Bercovitch, *supra* note 80, at 836.

¹¹¹ Gartner & Tannehill, *supra* note 108, at 73.

¹¹² MATHILDA LINDGREN, ET AL., MEETING THE NEW CHALLENGES TO INTERNATIONAL MEDIATION: REPORT FROM AN INTERNATIONAL SYMPOSIUM AT THE DEPARTMENT OF PEACE AND CONFLICT RESEARCH 6 (2010).

¹¹³ CLAYTON E. SWISHER, THE TRUTH ABOUT CAMP DAVID: THE UNTOLD STORY ABOUT THE COLLAPSE OF THE MIDDLE EAST PEACE PROCESS 3-5 (2004).

¹¹⁴ THE CAMP DAVID SUMMIT-WHAT WENT WRONG?: AMERICANS, ISRAELIS, AND PALESTINIANS ANALYZE THE FAILURE OF THE BOLDEST ATTEMPT EVER TO RESOLVE THE PALESTINIAN-ISRAELI CONFLICT 29 (Shimon Shamir & Bruce Maddy-Weitzman eds., 2005).

¹¹⁵ SWISHER, *supra* note 113, at 3-4. Regarding prestige and payoffs, remember that Israeli Prime Minister Yitzhak Rabin, Foreign Minister Shimon Peres, and Chairman of the PLO Yasser Arafat received the 1994 Nobel peace Prize for agreeing to the Oslo Accords.

During President Clinton's tenure, the strongest indication of American willingness to mediate the Israeli/Palestine conflict culminated in the Camp David talks in July 2000, a throwback to Jimmy Carter's successful initiative (which led to the prestigious Nobel Peace Prize). The talks followed the 1999 election to power of Ehud Barak in Israel. The negotiations, which lasted two weeks, did not produce a substantive outcome and were deemed a failure, with long-term, negative consequences for the region that were "momentous."¹¹⁶

Multiple reasons have been offered as to why the talks failed, amongst these are: PLO Chairman Arafat's lack of flexibility; Barak's lack of resolve; and Clinton's taking sides, applying misplaced pressure, failing to involve Arab states earlier in the process, and losing precious time before tabling his own proposals.¹¹⁷

Other views hold it that Clinton's failure to conclude a deal between the Palestinians and Israelis can be attributed to the rushed way the Camp David summit was organized. One opinion states that "by rushing into the Camp David summit, determined to resolve in a few days what are profound and long-standing differences, President Clinton created unrealistic expectations."¹¹⁸ According to US Deputy Assistant Director for Near Eastern Affairs, the negotiations were fundamentally flawed from the beginning.¹¹⁹

Given the existence of a host of nuanced, underlying issues that accompany the territorial issues of the Israeli/Palestine conflict, a rushed summit had very little chance of succeeding. Given the above backdrop, it was unlikely that Clinton, a reputed meticulous politician, would successfully conclude a peace agreement between the disputants.

Clinton made a second attempt to broker a deal, bringing the two parties together in December 2000 to the White House. This second initiative is best remembered for two things: firstly, Clinton broke tradition in making specific proposals during the negotiations and going beyond the general UN frameworks (Resolutions 242 and 338), the cornerstones of US policy in the Arab-Israeli conflict, the first time an American president had done so.¹²⁰ Secondly, Yasser Arafat walked away from a supposedly "better" proposal from the Americans. In doing so, Arafat condemned Clinton's last attempt at reaching a peace agreement a complete failure.

President Obama, who came to power on the back of election promises to restore diplomacy as the preferred American means of conflict resolution, signaled early on in his presidency the seriousness with which he regarded mediation of the Israeli/Palestine conflict. On his first day in office, the President telephoned PA President Mahmud

¹¹⁶ SWISHER, *supra* note 113, at 249.

¹¹⁷ EZZEDINE CHOUKRI-FISHERE, AGAINST CONVENTIONAL WISDOM: MEDIATING THE ARAB-ISRAELI CONFLICT 32 (2008), http://www.hdcentre.org/uploads/tx_news/4EzzedineChoukri-FishereMiddleEastWEB.pdf (last visited May 25, 2014).

¹¹⁸ CATO INSTITUTE, CATO HANDBOOK FOR CONGRESS: POLICY RECOMMENDATIONS FOR THE 108TH CONGRESS 590 (D. Boaz ed., 2003), *available at* <http://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2003/9/hb108-58.pdf> (last visited May 25, 2014).

¹¹⁹ SWISHER, *supra* note 113, at 357-58.

¹²⁰ Kenneth W. Stein, *American Mediation of the Palestinian-Israeli Conflict: A Positive Assessment of the April 2002 Powell Mission*, RIVISTA ITALIANA DI GEOPOLITICA, May 2002, at 180.

Abbas, Israeli Prime Minister Ehud Olmert, and two other Arab leaders. The intention was to “communicate his commitment to active engagement in pursuit of Arab-Israeli peace from the beginning of his term.”¹²¹ Unlike his predecessor Bush, Obama was quick to appoint a special envoy to the Middle East to lead the mediation efforts. What these moves by Obama signaled was an express intention to mediate between the disputing parties in the conflict.

However, despite active engagement and the gestures made above to break the deadlock, including the appointment of widely-respected and experienced mediator, former Senator George Mitchell, Obama has been unable to bring the two parties any closer towards an agreement. Towards the end of Obama’s first term in office, there were suggestions that he had lost the support of both the Israelis and Palestinians in the peace process because of his failure to fulfill promises made to either side.¹²²

The likelihood of success for any mediator at any time to resolve the Israeli/Palestine dispute is very low. The leaders of Israel and Palestine often display hardline stances which reduce the chances of success of any mediation efforts. After President Obama came into office, Benjamin Netanyahu was reelected as prime minister of Israel, his second stint. Netanyahu, while publicly stating his support for a two-state solution, has in practice not displayed a willingness to budge on his coalition’s position of an outcome that is highly favorable to Israel’s territorial claims in the West Bank and Jerusalem.¹²³

Both Obama and Clinton chose the dispute because of the prestige that would result from bringing peace to this long-running and globally salient dispute – factors that flow directly from the dispute’s intrinsic intractability. As leader of the most powerful country in the world, US presidents cannot offer to mediate every dispute and likely anticipate that only success in the most hard to resolve disputes will augment their prestige. Thus it is not surprising that American presidents, including most recently President Obama, continually try to mediate the dispute between Israel and Palestine and continually fail. The reasons they select this dispute for mediation and the reasons for their failure are related.

IV. CONCLUSION

Mediation represents a common and powerful method for peacefully resolving interstate conflicts. Third Party mediation, whether domestic or international, has a number of critical attributes such as disputants, mediator, dispute and outcome. How these mechanisms work, however, varies tremendous between domestic and international contexts. The lack of enforceable processes and outcomes, even in the face of increasingly powerful norms of cooperation and implementation, produces an enormous constraint on efforts to resolve violent international disputes. Given the anarchic

¹²¹ CAROL MIGDALOVITZ, ISRAELI-ARAB NEGOTIATIONS: BACKGROUND, CONFLICTS, AND US POLICY 6 (2010), available at <http://www.fas.org/sgp/crs/mideast/RL33530.pdf> (last visited May 25, 2014).

¹²² Martin Indyk et al., *Scoring Obama's Foreign Policy: A Progressive Pragmatist Tries to Bend History*, FOREIGN AFFAIRS, May/June 2012, <http://www.foreignaffairs.com/articles/137516/martin-indyk-kenneth-lieberthal-and-michael-e-ohanlon/scoring-obamas-foreign-policy> (last visited May 25, 2014)

¹²³ LOUISE FAWCETT, INTERNATIONAL RELATIONS OF THE MIDDLE EAST 262-63 (2013).

international environment, mediation represents a highly attractive dispute resolution mechanism.

The application of mediation to violent international disputes, however, generates recently uncovered patterns that diverge greatly from domestic mediation experiences. These patterns include: 1) the effective role of biased mediators, 2) the importance of numerous mediators and mediation efforts, 3) the context-dependent effect of mediator strategy, and 4) the deceptive influence of selection effects on inferences drawn from observing mediation behavior. These patterns give insight into the dynamics of interstate conflict mediation. A systematic review of both international dispute mediation mechanics as well as these four critical mediation patterns provides a critical step towards developing a richer understanding of the similarities and differences between domestic mediation and the mediation of violent international conflicts.