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Mediation-Negotiation: A Template Therapy for Global Conflicts

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Abstract:

This article examines mediation and negotiation as a remedy to conflicts happening around the world. Based on the fact that human beings and conflicts are inseparable, it is imperative to seek out for methods in resolving these disputes without spilling blood. Mediation which alters the dynamics of negotiation has proven to be an important tool in resolving conflict at various fields. It involves a neutral third party working with the disputants to resolve their dispute by agreement rather than imposing his own decision on them. The article takes account of certain conflicts such as the Iraq-Iran conflict, Kuwait-Iraq invasion and the Nigerian-Cameroon border disputes and examined the interplay of mediation and negotiation in resolving such complex disputes. This article concludes that these Alternative Dispute Resolution processes should be utilized more often as it more advantageous coupled with the successive outcomes it guarantees.

Keywords: Mediation, Negotiation, Conflicts, Alternative Dispute Resolution

1. Introduction

John Burton asserts that conflict is a generic phenomenon that knows no system boundaries.¹ Whether we are dealing with interpersonal, community, ethnic, or international relations, we are dealing with the same ontological needs of people, requiring the same analytical processes of conflict resolution.² Anything that would lead to a disagreement produces conflicts. Owing to attendant divergence in aims, objectives, ideas, beliefs, norms, values, customs and traditions fuels the inevitability of conflict.

In our world today, there exist countless conflicts which threaten global peace. From the United Kingdom (UK) and the United States of America (USA) engaged at war in Afghanistan and Iraq, through to insurgencies in Algeria, Burma, Nigeria, Columbia, civil wars in African nations, as well as conflicts between the people in China, Iran and Israel³, depicts the unwholesome state of things globally. The particular cause of these conflicts are not uniform in themselves as they differ based on either ethnicity, religion, governance, politics resource allocation etc. The main issue of contention is on how these conflicts may be resolved in the bid of achieving global peace.

The use of negotiation as an Alternative Dispute Resolution (ADR) process has proven itself as a viable tool in managing and resolving conflicts around the world. However, negotiations may fail owing to greed, intransigencies, poor relations etc. thus making a third party neutral intervention eminent. The intervention of third party to facilitate communication and help the disputants to search for a solution is known as mediation. This paper undertakes negotiation which will in certain circumstances migrate into mediation as a therapy to most of the global conflicts provided the parties in disputes are willing to resolve their differences.

2. Negotiation and Mediation

It is imperative to assert that negotiation and mediation are Alternative Dispute Resolution (ADR) processes that are non-violent by nature. Negotiation involves disputants exploring solutions to their mutual problems independently without any intervention from a third party. The disputing parties have firm control of the entire discussion as there is no third-party facilitator. Negotiation could be a

¹ John W. Burton, Conflict resolution as a political theory

<http://cardata.gmu.edu/docs/teaching/TEACHING%20PLATFORM/course%20501/UNIT%203/Burton%20-%20Conflict%20Resolution%20as%20a%20Political%20Philosophy%20copy.pdf> accessed 21st July 2014

² Ibid

³ Vikas Shah (2009): Thought Economics: Global Conflict: Causes and Solutions for Peace, an interview with Kristiina Rintakoski Executive Director of the Crisis Management Initiative http://thoughteconomics.blogspot.com/2009/07/global-conflict-causes-and-solutions_16.html accessed August 12, 2014

fast and inexpensive mode of managing and settling conflicts at whatever level. Fisher and Ury⁴ argues that we negotiate because we desire an outcome better than what we would have had without negotiating.

However, circumstances arise where direct negotiation between disputing parties will fail. For the purpose making the disputes resolved as soon as possible, the next logical step is to seek the assistance of a third party neutral. The third party assists the disputants to reach an agreement as he/she doesn't stand in the position of a judge or an arbitrator imposing a solution on the parties in disputes. This method is known as 'mediation'. Mediation is the broad term used to describe the intervention of third parties in dispute resolution process.

Negotiation is the most flexible, informal, and party-directed method; it is the closest to the parties' circumstances and control, and can be geared to each party's own concerns⁵. Mediation arises either based on the agreement of the disputants that a mediator should intervene or where after direct negotiations had already taken place but broke down, parties in disputes can subsequently agree for the intervention of a third party neutral (mediator). In a mediation procedure, the third party plays the role of adviser to both parties. He works with the parties to resolve their dispute by agreement, rather than imposing a solution⁶.

The term 'conciliation' is sometimes used to describe the same process of involving third parties, usually in the context of labour relations when neutral intervention is used to break a stalemate, domestic relations or international commercial matters. However in recent times mediation and conciliation have been used interchangeably. On the usefulness of mediation, Northrop F.S.C states that:

*"The "first best" and socially proper way to settle disputes used by the "superior man," was by the method of mediation, following the ethics of the "middle way". This consisted in bringing the disputants to something they both approved as a settlement of the dispute, by means of an intermediary. This middle man served largely as a messenger. Proper behaviour prescribed that he refuse even to arbitrate the differences at the request of the disputants. "Good" dispute settling consisted in conveying the respective claims of the disputants back and forth between them until the disputants themselves arrived at a solution which was approved by both."*⁷

Mediation is negotiation carried out with the assistance of neutral third-party at the instance of the parties⁸. Mediation is an alternative to adjudication in which a neutral third party who has no final decision-making authority intervenes in negotiations to assist resolution of conflict⁹. It is imperative to note that mediation alters the dynamics of negotiation¹⁰. Negotiation which involves just the parties in dispute talking directly to each other in private, employing strategies and tactics such as the integrative (win-win) and distributive (win-lose) approach as well as going through different phases¹¹ to reach an agreement, automatically changes when the parties seek the help of a mediator to settle their difference. However, in mediation, mediators work with the disputants in reaching a common ground through revealing areas in their conflict that shows weaknesses in their cases as well as proffering ways of reaching an agreement.

It has been said that mediators often view the alternative process as serving a variety of objectives beyond merely facilitating settlement.¹² In addition mediation has been viewed as a problem-solving aid that helps parties to reach more satisfying resolution through generating 'win-win' solutions¹³. Moreover, some claim that mediation may work to achieve social justice by cultivating self-help skills, empowering communities, and reallocating power among groups.¹⁴

As stated earlier, mediation was originally used in labour or industrial disputes. Moreover as a result of its acceptance in this field, mediation was used in an increasingly broad range of non-labour disputes: divorce, environmental, housing, institutional (including prisons, schools, and hospitals), small-claims, personal injury and insurance, and general business disputes, as well as claims involving governmental agencies¹⁵. However, mediation acts as a potential for responding to urban conflicts.

⁴ Roger Fisher, William Ury et al (1991): Getting To Yes: Negotiating Agreement Without Giving In, 2nd ed., New York: Penguin Books p.100

⁵ Lew Julian et al (2003): Comparative International Commercial Arbitration, Netherland: Kluwer Law International, p. 13

⁶ Ibid p. 13

⁷ Northrop F.S.C (1958): The Mediatonal Approval Theory of Law in American Legal Realism, Virginia Law Review Vol. 44 347, 349

⁸ MacFarlane J.: An Alternative to What? In MacFarlane (ed) Rethinking Disputes: The Mediation Alternative p.1

⁹ See Center for Dispute Resolution (CDR) Associates, Mediation 1 (1989) (defining mediation in manual for mediators); Linda R. Singer (1994): Settling Disputes: Conflict Resolution in Business, Families, and the Legal System 2nd Ed.

¹⁰ Goldberg Stephen et al (2007): Dispute Resolution: Negotiation, Mediation and Other Processes, 5th Ed. Aspen Law Publishers

¹¹ Preparation, Presentation, Bargaining and Closing or Agreement phase

¹² Robert Bush and Joseph Folger (2004): The Promise of Mediation: The Transformative Approach to Conflict, San Francisco: Jossey-Bass Publishers

¹³ See Ibid Roger Fisher and William Ury (1991): Getting Yes: Negotiating Agreement Without Giving In

¹⁴ Ibid, Bush and Folger(2004): The Promise of Mediation: The Transformative Approach to Conflict

¹⁵ Singer L.R. (1990): Settling Disputes: Conflict Resolution in Business, Families, and the Legal System, Boulder, Colo.: Westview Press

3. Mediation Process

Mediation is fundamentally a process of assisted negotiation¹⁶. Hence the strategies used in negotiation such as the integrative and distributive strategies are central to mediation. The major difference between negotiation and mediation is the presence of the mediator whose neutrality is imperative towards the success of the mediation process. A mediator is essentially a facilitator of communication between disputants, assisting them to engage in a dialogue directed toward mutual resolution of their dispute. However, the role of a mediator is never static as it varies based on the circumstances of the conflict before him. Nevertheless, the roles may include being a facilitator of communication, arranger of processes to inform and enlighten the disputants, impresario of structured dialogue, encourager of problem-solving, generator of possible solutions or shuttle-diplomat using control of the information flow to focus on areas of agreement without the risks of much face-to-face confrontation by the parties¹⁷.

The strength of mediation is predicated on the fact that the parties achieve their own resolution of dispute without being bound to a formal, and possibly inflexible, legal solution¹⁸. The benefits of mediation include:

- Parties keep control over the outcome of their own problem
- Disputes can be settled promptly. A mediation session can be scheduled as soon as both parties agree to use mediation to resolve the dispute.
- Mediation promotes better relationships through cooperative problem-solving and improved communication
- Both facts and feelings are considered with the help of an impartial mediator
- Mediation is private and confidential. The mediator and parties must maintain, to the full extent required by law, the confidentiality of the information disclosed during mediation
- Mediation is voluntary, and may be terminated at any time by a party or mediator
- Mediation costs may be significantly less than taking a case to court¹⁹.

For the management and resolution of conflicts involving nation-states, interstate or intrastate conflicts, the following process for successful mediation are stated below:

- Assess the conflict
- Ensure Mediator readiness
- Ensure conflict ripeness
- Conduct Track-I Mediation
- Encourage Track-II Dialogue
- Construct a peace agreement²⁰.

Assess the Conflict: The first step in any mediation effort should be to assess the conflict. Conflict analysis should provide a contextualized understanding of the conflict and answer questions of strategy: at what level to engage, how to gain leverage, and know whom to focus efforts. In essence, assessing the conflict at hand involves understanding the rationale behind the conflict, who are the actors etc.²¹

Ensure mediator readiness: At this point, the person acting as a mediator must satisfy himself and the parties of his readiness and competence to mediate. He or she must answer questions such as whether he/she has the right skills, the right resources, and the right support to be successful. Where the mediator through self-assessment shows that he or she can make a real contribution, then the mediator can have faith in such assessment and act accordingly.²²

Ensure Conflict Ripeness: It is imperative to note that many mediation studies give considerable attention to the concept of conflict ripeness. A conflict may become ripe for negotiation when the enemy is aware of the fact that they are in a mutually hurting stalemate and sense that a way out is possible. The mediator must ensure that the conflict is ready to be tackled.²³

Conduct Track-I Mediation: Once the mediator has assessed the conflict, determined his/her readiness to act and evaluated the conflict before him/her, the mediator can begin negotiation. Responsibilities that is saddled on the mediator at this stage include laying the groundwork, creating roles for all relevant actors, handling logistics, actually conducting negotiations, fitting the public into the process, and working with the media.²⁴

Encourage Track-II Dialogue: There is a growing consensus among both official and unofficial actors that no single actor or activity is sufficient to build sustainable peace in situations of complex conflict. Track-II, or unofficial diplomacy conducted among grassroots and midlevel opinion leaders can be a valuable adjunct to the formal peace negotiations. In addition, it can help local community

¹⁶ Marcel K.W & Wiseman, P. (1987): Why We Teach Law Students to Mediate, Journal of Dispute Resolution Vol. 77

¹⁷ Rau Scott et al (2006): Mediation and Other Non-Binding ADR Processes 3rd Ed., New York: Foundation Press p. 14

¹⁸ Lon Fuller (1971): Mediation – its Forms and Functions, Southern California Law Review 44

¹⁹ Mediation: Another Method for Resolving Disputes www.alabar.org/brochures/mediation.pdf accessed August 13, 2014

²⁰ Pildat Background Paper: Conflict Management The Mediation Process www.pildat.org/publication/conflict_management-themediationprocess.pdf accessed August 13, 2014

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ Ibid

engage in the kinds of tasks and make the necessary psychological changes required to generate and sustain support for peace process.²⁵

Construct a Peace Agreement: Here, it is the final step in the mediation process to produce an agreement that is acceptable not only to the parties to the conflict but also to the wider public coupled with standing a good chance of being implemented.²⁶

4. Mediation and Negotiation in Global Conflict

Conflict which is inevitable among human beings is also unavoidable among nation-states. Taking account of the Iran-Iraq war which occurred between 22 September 1980 – 20 August 1988 has been held to be the 20th century longest conventional war²⁷. The underlying cause of the conflict between these countries was based on border disputes. There was initially a 1975 Algiers Agreement which served as an agreement between Iran and Iraq to settle their border disputes and serving as bilateral treaties between the two countries.²⁸ However accusations were placed on Iran for frequent and blatant violation of Iraqi sovereignty, thus making the 1975 agreement null and void. Iraq invaded Iran in 1980 which resulted in bloodshed ranging within 200,000-400,000 killed²⁹. Negotiations between the Saddam Hussein and the Iran government for a ceasefire broke down owing to fact that Iraqi troops occupying Iran border areas would continue to hold that front coupled with the fact that Iran would receive no foreign support to pressure Iraq to withdraw, nor receive compensation, nor get an international condemnation of Iraq³⁰. The United Nations had to intervene into the conflict through resolution 598 which was unanimously accepted by Iran and Iraq. The resolution was for an immediate ceasefire between Iran and Iraq alongside sending back prisoners of war to their respective countries. This resolution became effective on August 8, 1988 thus ending the war between Iran and Iraq. The interplay of mediation and negotiation is evident here as owing to the fact that the president of Iraq Saddam Hussein and the Supreme Leader of Iran Ruhollah Khomeini couldn't reach an agreement over a ceasefire between themselves, a third party neutral which was the United Nations intervened to help the parties reach a common ground through resolution 598.

The Kuwait invasion of 1990 is worth examining based on the viability of mediation and negotiation. The Kuwait-Iraq war which was caused by inability of Iraq to repay the debt \$80billion to Kuwait being funds borrowed to finance the Iran-Iraq war³¹ as well as the request of Kuwait to OPEC to increase the country's total oil production by 50% to 1.35million bpd which brought about economic sabotage in Iraq³². Owing to the actions Kuwait, Iraq invaded Kuwait on August 2 1990 which claimed the lives of about 1000 Kuwait civilians while more than 300,000 people left the country³³. Despites numerous negotiations between the major world powers and Iraq, including the United Nations, the invasion still continue until the United States of America through the use of force in January 1991³⁴ drove Iraq from Kuwait. It may be reasonable to submit here that the use of aggression to resolve conflict is usually not the best alternative. The Kuwait invasion could have being averted if mediation was used to explore for means on how Iraq would pay their debt. Mediation as a dispute resolution alternative is interest-based. It is well established that Iraq and Kuwait have different interests. The essence of mediation is on how these divergent interests could be harmonized without giving regard to their respective rights and positions. When several negotiations have broken down between the super powers of the world including the United Nations, the United States ought to have intervened as a mediator and not using coalition forces in establishing peace.

The Nigerian-Cameroon border dispute over the Bakassi peninsula is another dispute which could have being resolved through negotiation and mediation without going through the rigors of litigation at the International Court of Justice (ICJ). A voyage of arguments has been expended on whether the peninsula should be ceded to Nigeria or Cameroon but the judgment of the ICJ has ceded the Bakassi to Cameroon. The *Greentree Agreement* had to be signed to resolve the Cameroon-Nigeria border dispute on June 12, 2006. It is however imperative to assert that the Bakassi peninsula is an oil and gas rich area which could bring about economic development in Nigeria, Cameroon and Bakassi itself. Assuming the leaders of Nigeria, Cameroon and Bakassi negotiated on how the area would be co-habited and agree on the ways in which the natural resources would be exploited, there would have being no cause for clashes between Nigeria and Cameroon. A clear example is the Joint Development Zone between Nigeria and Sao Tome e Principe, which was an agreement entered into over an overlapping maritime boundary.

²⁵ Ibid

²⁶ Ibid

²⁷ Weiss Martin: War of Blackmail www.safehaven.com/article/7228/war-of-blackmail accessed August 12, 2014; Carlisle Rodney P.(2003):Persian Gulf War (American at War(Fact on File)), New York: Facts on File.

²⁸ Iraq-Iraq War http://en.wikipedia.org/wiki/iran%E2%80%93Iraq_War accessed August 13, 2014

²⁹ Hiro Dilip (1991): The Longest War: The Iran-Iraq Military Conflict, New York: Routledge p 205

³⁰ Ibid, Iraq-Iraq War http://en.wikipedia.org/wiki/iran%E2%80%93Iraq_War

³¹ Middle East Report : Stork Joe, Lesch Ann M. (1990): Background to the Crises: Why War? www.middleeast.org accessed August 12, 2014

³² OPEC pressures Kuwait to moderate quota demand New Strait Times 7 June

1989 <http://shelf3d.com/i/Iraqi%20invasion%20of%20Kuwait> accessed August 11, 2014

³³ See Jafi (2005): The Use of Terror during Iraq's invasion of

Kuwait <http://jafi.org/JewishAgency/English/jewish%20education/Compelling%20Content/Eye%20on%20Israel/Current%20Issues/Pace%20and%20Conflict/The%20Use%20of%20Terror%20in%20Kuwait.htm> accessed August 13, 2014

³⁴ See Fairhall, David; Walker, Martin (1991): Allied planes bomb Iraq: Kuwait's liberation begun, says US, The Guardian London <http://www.theguardian.com/world/1991/jan/17/iraq.davidfairhall> accessed August 13, 2014

It is imperative to note that there is no universally acceptable strategy to the practice of negotiation. The most important thing is finding a way to resolve the contentious issues between the disputants. There are other numerous conflicts which could just be solved through negotiation and mediation without putting lives and properties of humans on the line.

5. Conclusion

According to Immanuel Kant '*Perpetual peace is no empty idea, but a practical thing which, through its gradual solution, is coming always nearer its final realization*'³⁵. World peace and development is threatened with enormous events of conflicts. There is not only political and economic breakdown but unimaginable loss of lives and properties. It is well established that human beings and conflicts are inseparable. However, these differences can be settled amicable without even shedding a pint of blood.

Mediation and negotiation are non-violent Alternative Dispute Resolution (ADR) mechanisms that are highly flexible and cost effective. Negotiation which is communication with a view to reaching an agreement is considered as the first approach towards resolution of any dispute. A neutral third party steps in when negotiation between the disputants did not bring any positive results. Such neutral third party is known as a mediator who facilitates communication between the disputants as well as helping them to reach an agreement rather than forcing his (mediator) own decision on the disputants. These flexible dispute resolution mechanisms are highly recommended in solving conflicts at whatever level owing to evident advantages it poses coupled with a guarantee for successful result.

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³⁵ Immanuel Kant "Perpetual Peace" <https://www.mtholyoke.edu/acad/intrel/Kant1.htm> accessed August 13, 2014