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UN Sanctions and Mediation Project

International Mediation¹

Mediation is a method of settlement of disputes enumerated in Article 33 of the UN Charter, along with negotiation, enquiry, conciliation, arbitration, and judicial settlement. More specifically, in its Guidance for Effective Mediation, the UN defined international mediation as “a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements.”² Against the background of this definition, four key features of mediation can be highlighted, setting mediation apart from other approaches to negotiate international peace and security.

First, mediation involves the intervention of an outsider, or ‘third party,’ in a conflict between two or more parties with the aim of mitigating tensions between these parties. The UN often plays this third-party role, as do states, regional and sub-regional organizations, and, increasingly, non-governmental organizations and eminent individuals. The roles that third parties play differ widely – see the discussion below on different mediation approaches. However, mediation requires by definition the involvement of an actor that is not directly a party to the conflict. This sets mediation apart from ‘negotiation’ as per Article 33, which are parties interacting directly with each other without the involvement of a third party.

Second, mediation, broadly speaking, pursues the aim of lessening tensions and promoting international peace and security. However, the specific objectives of mediation differ, ranging from early engagement to prevent conflict before it escalates, conflict management to reduce its harmful effects, and full-fledged conflict resolution or even the transformation of structural causes of conflict laying the foundation for reconciliation.

Third, contrary to measures in Chapter VII of the UN Charter, including sanctions, mediation is a voluntary form of intervention that relies on the consent of the conflict parties. According to the UN Guidance on Effective Mediation, “mediation is a voluntary process that requires the consent of the conflict parties to be effective. Without consent it is unlikely that the parties will negotiate in good faith or be committed to the mediation process.”³ Consent has different components, including the parties’ consent to participate in peace negotiations, acceptance of the mediator, agreement to the agenda and design of the process, and acceptance of agreements.⁴

Fourth, mediation is distinct from measures such as arbitration and adjudication in that the primary decision-making power remains with the conflict parties. This means that parties retain control of the substance of negotiations, whereas the mediator is in charge of structuring the process. However, within these parameters, there is great diversity in mediation approaches. Zartman and Touval distinguish three main approaches: facilitative mediation, where the mediator stays out of substance and focuses on enabling communication between the parties; formulative mediation, where the mediator makes suggestions and tries to persuade the parties of the need to make compromise; and manipulative mediation, where the mediator openly uses sticks and carrots with the parties, “pushing and pulling them away from conflict and into resolution.”⁵ In facilitative mediation, impartiality is the mediator’s most important resource. In formulative mediation, impartiality is also important, in conjunction with the expertise the mediator brings to the table. In contrast, manipulative mediation relies on the leverage of the third party, even if the evenhanded treatment of parties during the process continues to be relevant.

There is a rich body of literature analyzing different aspects of international mediation. For the purpose of the SMP, four insights from mediation literature are particularly relevant.

First, mediation is usually not the only international intervention. It is often accompanied by other measures, including sanctions. According to Biersteker, between 1991 and 2015 the UNSC imposed sanctions in 23 conflict situations, and in 97% of these cases there were also peace negotiations.⁶ Likewise, Nathan found that of the 15 coup d'états that took place in Africa in 2000-2015, 87% were mediated by African organizations, 67% were subject to AU sanctions and 92% were subject to wider international sanctions.⁷ Despite the many interactions between sanctions and mediation, the existing literature tells us very little about the effects of such interactions and under what conditions they undermine or reinforce each other. As outlined in the introduction, this gap is the main rationale of the SMP.

Second, since decision-making power rests with conflict parties, their calculations are key to understanding the success or failure of mediation. In this connection, Zartman identified different conditions for a conflict to be "ripe for resolution" via negotiation and mediation.⁸ First, the parties must perceive a 'mutually hurting stalemate' in the form of a belief that they cannot win the war on the battlefield and that the costs of hostilities have become too high. This makes them receptive to a compromise solution. The second condition for ripeness is that the parties perceive negotiations as a feasible way out of the stalemate that they find themselves in. The parties do not have to feel certain that negotiations will succeed, but they must recognize the potential of negotiations to deliver a satisfactory agreement. Third, parties must have sufficiently strong leadership that is both able to negotiate on behalf of the party and to ensure compliance with agreements. In the context of the SMP, researchers should pay particular attention to how sanctions influence the strategic calculations of parties, in particular the three conditions of conflict ripeness.

Third, mediation research has produced multiple, and sometimes contradictory, findings about which style of mediation is most effective.⁹ Some authors find that the ability of mediators to use leverage, rewarding parties for cooperation and inflicting pain in the case of non-cooperation, makes for the most effective mediation.¹⁰ Others claim that soft mediation, which relies on impartiality, rather than the use of leverage, is most successful, because parties are more likely to place their trust in impartial mediators.¹¹ Related to this is a suggestion that actors other than the mediator should exert pressure, so that the perceived impartiality of the mediator is maintained.¹² A quantitative study conducted by Beardsley et. al found that manipulative approaches are most effective in reaching a formal agreement, whereas facilitative mediation is more successful at long-term crisis reduction.¹³ Beardsley explains this outcome with a "mediation dilemma:" mediation with leverage creates strong short-term incentives, encouraging parties to sign a peace agreement, but when the incentives disappear, agreements reached through leverage often collapse.¹⁴ If sanctions are used as part of a coercive strategy, SMP researchers should pay close attention to the short-term and long-term effects on mediation processes. They should also investigate who imposed the sanctions and if it was the mediating organization, what effect this fact had on the mediator's standing among the parties.

The fourth insight from the mediation literature is that who participates in peace talks matters. Excluding conflict parties for reasons of expediency or because of political pressure is dangerous, as it pits these parties against the mediation process.¹⁵ In the worst case, this may precipitate the outbreak of armed conflict, as the excluded actors push back against their marginalization.¹⁶ At the same time, as Stedman argues, if an actor is intent on 'spoiling' a process, international mediators have to devise strategies to sideline such actors.¹⁷ Finally, the size of the table is relevant. Negotiation theory confirms that the larger the table the more difficult it becomes to reach an agreement that is mutually satisfactory. Vice versa, an exclusive process in which only the main belligerents participate lacks legitimacy at the national and international level.¹⁸ For the SMP, this means that researchers should be attentive to the effects of sanctions on who participates in peace negotiations. If sanctions are used to justify the exclusion of certain actors, it is important to investigate the effects of this strategy.

Endnotes

1. This section draws on a background paper commissioned by the SMP partners and written by Laurie Nathan: Background Mediation Paper, prepared for the UN Sanctions and Mediation Project, 5 June 2017.
2. UN Guidance for Effective Mediation, 2012, page 4.
3. UN Guidance for Effective Mediation, 2012, page 4.
4. This section is based on Laurie Nathan's background paper, p.
5. William I. Zartman and Saadia Touval, 'International Mediation', Chester A. Crocker et al., eds., *Leashing the Dogs of War: Conflict Management in a Divided World*, Washington, DC: USIP Press, 2007, pp. 437-454, at p. 446.
6. Thomas Biersteker, 2015, 'UN sanctions and peace negotiations: possibilities for complementarity', Oslo Forum Papers 4, Centre for Humanitarian Dialogue, 2.
7. Laurie Nathan, Trends in mediating in Africa coups, 2000-2015, presented at the International Studies Association Annual Convention, Atlanta, 16-19 March 2016.
8. This section is based on Laurie Nathan's background paper, pp. 13-14. The original reference for the ripeness framework is I. William Zartman, 'The timing of peace initiatives: hurting stalemates and ripe moments', *The Global Review of Ethnopolitics* vol. 1, no. 1, 2001, pp. 8-18.
9. This section is based on Laurie Nathan's background paper, pp. 8-9.
10. Saadia Touval, 'The superpowers as mediators', Jacob Bercovitch & Jeffrey Rubin, eds., *Mediation in International Relations: Multiple Approaches to Conflict Management*, New York: St Martin's Press, 1992, pp. 232-248.
11. Randa Slim, 1992, 'Small-state mediation in international relations: The Algerian mediation of the Iranian hostage crisis', in Bercovitch & Rubin, *Mediation in International Relations*, pp. 206-31.
12. Laurie Nathan, 'When push comes to shove: The failure of international mediation in African civil wars', *Track Two* vol. 8, no. 2, 1999, pp. 1-23.
13. Kyle Beardsley, David Quinn, Bidisha Biswas & Jonathan Wilkenfeld, 'Mediation style and crisis outcomes', *Journal of Conflict Resolution* vol. 50, no. 1, 2006, pp. 58-86.
14. Kyle Beardsley, *The Mediation Dilemma*, Ithaca, NY, Cornell University Press.
15. David Lanz, 'Who Gets a Seat at the Table? A Framework for Understanding the Dynamics of Inclusion and Exclusion in Peace Negotiations', *International Negotiation*, vol. 16, 2011, pp. 275-95.
16. Christopher Clapham, 'Rwanda: The Perils of Peacemaking', *Journal of Peace Research* vol. 35, no. 2, 1998, pp. 193-210.
17. Stephen J. Stedman, 'Spoiler Problems in Peace Processes', *International Security* vol. 22, no. 2, 1997, pp. 5-53.
18. Lanz, 'Who Gets a Seat?'