

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 5

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Future of Dispute Resolution Mediation a Pathway for Resolving National and International Dispute

ABHISHEK TRIPATHI¹ AND BHAVUK NARULA²

ABSTRACT

Mediation is one of the oldest and most common dispute resolution mechanisms in international dispute. When it is applied correctly it can help to manage or settle a dispute. Many questions about the process can be posed, but the most interesting questions relates to the need to understand when a mediation effort succeeds or fails to settle or resolve an international dispute and how mediation helps in resolving the international dispute. This article answers these questions, including the relationship between strategies employed by a mediator, and mediation outcomes. A number of attempts to explain the association between the choice of mediation strategies and mediation outcome have been made; few, however, have provided specific conditions where the effectiveness of certain mediation strategies becomes noticeable. This paper also attempts to fill this gap and also deals with effective strategies of mediation, Tashkent declaration, Algiers Agreement in 1975 and Algiers Accords.

Keywords: *International Dispute, Tashkent declaration, Algiers Agreement in 1975 and Algiers Accords.*

I. MEDIATION

Managing international disputes has become a priority on the global agenda. The devastating consequences of dispute in an increasingly globalizing world order cannot be ignored. There are several peaceful ways to manage disputes. These include avoidance, negotiation, mediation, arbitration, and adjudication. Of these mediation offers many advantages. Mediation is fast becoming a standard tool for resolving legal disputes, both in and out of court: *there is nothing alternative about mediation in the courts anymore.*³ It has been studied by scholars and students of political science, psychology, business management, and law as well as practitioners. All have proposed various definitions of the process with very little consensus on any of these.

¹ Author is a student at Lloyd Law College, Delhi, India.

² Author is a student at Lloyd Law College, Delhi, India.

³ Jennifer W. Reynolds, *Judicial Reviews: What Judges Write When They Write about Mediation*, 5 Y.B. ON ARB. & MEDIATION 111, 112 (2013).

The main characteristics of mediation which comprise its definitions are mediation is a voluntary process⁴. It takes place when disputants seek the assistance of third parties⁵. The right to accept or reject an offer of mediation or a mediation outcome rests entirely with the disputants⁶. The fact that mediation is a voluntary process is directly related to its success or failure. Without a high level of disputants' willingness to concede, and motivation to engage in dispute management, a successful mediation outcome is unlikely to be achieved. Secondly, the outcome of mediation is non-binding. Mediation's non-binding nature distinguishes it from other forms of external intervention such as arbitration and adjudication. In mediation, third parties have no authority over disputants' compliance with a mediated outcome. Indeed, most disputants would not accept mediation in the first place if mediation bound them to an outcome. These two characteristics mean that, for the most part, the outcomes of all mediation attempts depend entirely on the disputants' willingness to resolve their dispute and to abide by the mediator's terms. In other words, mediation cannot be successful if the disputants do not see any reason to resolve the dispute quickly, or if they refuse to adhere to the terms of an outcome. Disputants' motivation is a crucial factor, which affects many aspects of the process. It is also amongst the important factors affecting the choice of a strategy.

Mediation is defined here as a pacific approach to dispute resolution in which impartial third parties help disputants resolve disputes through a process of information and social influence, without using violence or invoking the authority of a legal system. The objective of disputants in inviting or accepting mediation is to reach compromise in a dispute, or at least to indicate willingness to do so⁷. The third party in mediation may be an individual, organization, or country that is not a direct party to the dispute. For a mediation to be successful and for a compromise to be reached, an effective strategy must be employed by a mediator.

II. EFFECTIVE MEDIATION STRATEGIES

Adopting one or more of the following strategies can help mediators when they're acting as intermediaries.

1. Procedural Strategies

According to the Beyond Intractability Knowledge Base Project, the mediator controls the

⁴ Bercovitch 1992; Moore 1996

⁵ Bercovitch 1992; Bercovitch and Houston 1993

⁶ https://www.gmu.edu/programs/icar/ijps/vol8_1/Bercovitch.html#:~:text=Of%20these%20mediation%20offers%20many%20advantages.&text=The%20right%20to%20accept%20or,to%20its%20success%20or%20failure.

⁷ Richmond, O. (1998). Devious Objectives and the Disputants' View of International Mediation: A Theoretical Framework. *Journal of Peace Research*, 35(6), 707-722. Retrieved November 5, 2020, <http://www.jstor.org/stable/425412>

agenda, timing, media publicity, release of information, meeting place and arrangements, and the amount of formality and flexibility at the meetings. This strategy is capable of reducing stress and disruption between parties with no history of peacemaking. From 2002 to 2004, the Organization of American States, the United Nations Development Program and Jimmy Carter opened a dialogue between Venezuelan President Hugo Chavez Frias, the government and the opposition. According to USIP, the mediation's purpose was to reconcile a deeply divided society and preserve democratic processes while preventing violent dispute.

2. Communication-Facilitation Strategies

This strategy involves the mediator taking a more passive role while focusing on facilitating cooperation and communication between parties. After the Kenyan post-election riots of 2007–2008, the International Center for Transitional Justice (ICTJ) reported that “a truth commission was established to examine not only the immediate violence but its root causes as well.” According to USIP and ICTJ, the Truth Justice and Reconciliation Commission consisted of four Kenyans and three foreigners.

3. Directive Strategies

With this strategy, the mediator attempts to influence the discussion and the solution either by threatening parties with diplomatic sanctions or by providing support or incentives, possibly in the form of humanitarian aid. Representatives from the European Union (EU), Japan, Norway and the United States attended the Tokyo Conference on Reconstruction and Development of Sri Lanka in June 2003. The purpose of this conference was to show support for the reconstruction and development of Sri Lanka by offering \$4.5 billion USD in financial support.

4. Other Strategies and Methods

Preventive diplomacy is another strategy that can be useful for resolving disputes. The United Nations' (UN) 1992 Agenda for Peace defined preventive diplomacy as “action to prevent disputes from arising between parties, to prevent existing disputes from escalating into disputes and to limit the spread of the latter when they occur.” Apolitical organizations are nonprofit and private voluntary organizations that help resolve international disputes by mediating informally. One example of an apolitical organization is the International Crisis Group, which is dedicated to analyzing, researching and advocating for the sake of resolving disputes.

III. VARIOUS INTERNATIONAL DISPUTES WHICH CAN BE RESOLVED WITH THE HELP OF MEDIATION.

- **Border disputes:** - A dispute in the context of sharing borders is the most extensive sort of dispute in the international community. There are several challenges faced at the border such as infiltration occupancy, espionage, smuggling, etc. Many of the borders drawn between the countries were after or during the time of revolution and disturbance; the tensions along the borders sometimes remain fresh while sometimes with the passage of time the countries evolve good relationships. Borders include all types of borders including aerial marine and land. Landmark examples of the settlement are the resolution of a border by the Vatican which successfully mediated a territorial and maritime dispute over Cape Horn and the Beagle Channel islands disputed between Argentina and Chile⁸ and the mediation sessions between Ecuador and Peru stimulated by Professor Simmons

- **Resource issues:** - Since 1946, at least 40 % of intrastate conflicts have been linked to natural resources⁹. Resource Issues include the issues of the issues regarding the mineral biological and other types of natural resources. The dispute between nations for possessing areas rich in natural resources has always been dominant. The nations have always fought for oil, mineral ore coal timber and access to fish mineral resources are important because they help in the financial development and are highly beneficial and profitable for the country.

- **Political post-colonial mediation:** - Automation of Independent national states, some of the neighboring states were at daggers drawn because of disputes ranging from territorial identity to boundary disputes their disputes sometimes took violent turn with the involvement of the military. The European states sometimes tried to resolve the disputes between these neighboring states out of the prevailing relations between them For example, Great Britain tried diplomatic efforts to defuse the Cyprus dispute between Greece and Turkey, Henry Kissinger's mediation of the 1914 Syrian-Israeli disengagement.

- **Refugee issues:** - The treatment of refugees and humans in general, is often the source of grave international disputes several sensitive refugee issues have arisen in different countries. For example, the Bangladesh refugee crisis, the crisis over the Rohingya Muslims, etc. There are several issues that are intertwined with the refugee problem which include

⁸ Wiegand, Krista (2016). Mediation in Territorial, Maritime and River Disputes International Negotiation 19, 343-370. 10.1163/15718069-12341281.

⁹ Amanda Kron & David Jensen. From curse to opportunity: Mediation of natural resource conflicts, Volker retch blog, 13 July 2016, 10.2174/20100220232632.

trafficking, drug abuse, rackets which are generally related to the field of human rights. The nations try to resolve the disputes by signing bilateral treaties and conventions, and mediation to shorten the process of dispute resolution. For example, the Chinese Government served as mediator in solving disputes regarding the Rohingya Muslims between Bangladesh and Myanmar.

- **Corporate Mediations**: - There are several companies with wide-scale business ventures who often get into trouble waters with each other. Mediation is the best way to encourage a solution to disputes arising between International companies having their base in a particular country.

IV. CASES OF SUCCESSFUL INTERNATIONAL MEDIATION

In the period from 1945 to 1947, according to Haas, the UN operated in a duopolistic system, with consensus between the Soviet Union and the United States facilitating its success in dispute resolution¹⁰. In the period between 1946 and 1950 “Uniting for Peace” norm of using the General Assembly to authorize dispute resolution efforts was initiated by the UN. The UN resolved 24% of interstate disputes in the 1950-55 early 1990s, the end of the ideological dispute between the East and the West not surprisingly prompted many observers to assume that the UN would enjoy greater success.¹¹

- **Tashkent declaration**: - The USSR served as the third party serving mediation between India and Pakistan over the Kashmir issue. The conference concluded in positive note where and revived hopes of the restoration of friendly relations between India and Pakistan. The declaration stated that “Indian and Pakistani forces would pull back to their pre-conflict positions, pre-August lines” no later than 25 February 1966” along with the other vows of non interference in each other’s territorial integrity, handing over the POWs between the nations and restoration of the economic ties between the nations.
- **Algiers Agreement in 1975**:- The agreement was a step taken between Iran and Iraq to settle their conflicts on border disputes Algeria is said to facilitate the talks of mediation between the two nations.

¹⁰ Shukla Kavita, "The United Nations success in resolving disputes in the post Cold War era (1999). Masters Theses 1911 from <https://scholarworks.umass.edu/theses/2582> February 2014 2552 Retrieved

¹¹ <https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=3688&context=theses>

- Algiers Accords: - These are a set of accords between the United States and Iran to resolve the Iran hostage crisis which was facilitated by Algeria. On November 4, 1979, the American embassy was surrounded by American staff there were taken, hostage.

With the advent of the various international institutions which provide mediation services to their International customers confidentiality is maintained to the highest level possible of the countless However, there are successful case counts showing internationally successful mediation sessions concerning different international parties.

V. CONCLUSION

One of the major problems in the present scenario in front of legal and judicial architecture of all the countries is the high number of pending cases in the judicial body i.e. courts and the situation like the present COVID 19 pandemic only acted as a catalyst and worsen the situation of the judiciary by increasing the number of pending cases and reducing the pace of resolving the matter in the courts. In these hard times when the access to justice is being continuously delayed, the Alternative dispute resolution like Mediation can act as a well stuffed cushion against the problem of pendency of cases both nationally and internationally. It's high time that the Mediation as a dispute resolution mechanism should gain the popularity as its not only reduce the burden on the courts but also make the access to justice feasible and tangible because it also have another latent benefit which is the "cost effective" factor associated withit, but mediation in total is not sufficient to resolve the problems addressed but key factor here is which is also the need of hour is proper framework and regulation of Mediation as a dispute resolution mechanism. Henceforth there is urgent need of mediation for resolving disputes both nationally and internationally should be adopted to resolve various disputes and reduce the burden on the judicial organs.
