
Kluwer Mediation Blog

Engineering Peace Achieving the promise of mediation in the world's most difficult conflicts. Part 2.

Michael Leathes (Corporate counsel & author) · Monday, August 19th, 2013

This is the second in a series of postings written by Michael Leathes, Tina Monberg and Irena Vanenkova and Nadja Alexander. The [first post](#) appeared on the Kluwer Mediation Blog on 17 August. Yesterday we put forward our view that achieving the promise of mediation in conflicts that threaten the stability of societies and economies is one of the most important challenges of our time. We noted that the UN and political leaders increasingly perceive mediation as vital for avoiding and resolving conflict at all levels in society, worldwide and today we identify the extent to which the rhetoric about mediation matches what has been done to implement mediation in practice.

Implementation Steps by the UN

From a structural perspective, the UN established a [Mediation Support Unit \(MSU\)](#) in 2006 in the Department of Political Affairs to provide administrative and logistical support and advice to envoys and on-the-ground mediators and negotiators. The MSU works to strengthen the mediation capacity of regional and sub-regional organizations, and is a resource on mediation knowledge, policy and best practices. Part of that important role involves the Standby Team of Mediation Experts set up in 2008. This is a rapid-response group of seven mediation experts that can be deployed individually or as a group to assist in mediation efforts. Standby Team members have a wide range of backgrounds and areas of expertise including power-sharing, drafting constitutions, negotiating cease-fires and other security arrangements, as well as gender issues as they relate to conflict. Current Standby Team members provide critical support to UN envoys, field-based political and peacekeeping missions and UN Resident Coordinators in such countries as Yemen, Congo, Mali, Liberia, Sierra Leone and Somalia. They also help develop UN best practices and mediation training materials and other tools. However, all seven Standby Team members are on full-time but short-term (12 month) assignments with the UN. They are not engaged to be lead mediators in any conflict, and are in-role for insufficient time to provide essential continuity from beginning to end.

But meanwhile...

Most supra-national organizations and Sovereign States have yet to develop a track record in the systematic use of mediation to resolve international conflicts.

Mediation has not, for example, taken off in investor-State disputes (most of which are handed

through the World Bank's International Centre for Settlement of Investment Disputes – ICSID), or in international trade disputes between Sovereign States (which are handled through the World Trade Organization – WTO). Many of these disputes involve significant stakes and consequences for civil society.

ICSID's Rules include "conciliation" – a very different process from mediation, but one nonetheless designed to encourage early outcomes. However, of the 426 investor-State disputes so far filed at ICSID, only 9 have used conciliation. In October 2012, the International Bar Association published proposed Rules for [Investor-State Mediation](#) , but they have yet to be used to help manage the resolution of a dispute.

Article V.5 of the [WTO's Dispute Settlement Understanding 1994](#) enables disputing States to request Good Offices, Conciliation or Mediation at any time, and the WTO Director General may ex officio provide such services if required; however, mediation has rarely, if ever, occurred .

The pronouncements of the Group of Friends of Mediation are mainly directed to some of the world's most difficult conflicts that can or do result in war, but are surely not intended to exclude trade wars or battles between corporations and States over major infrastructure projects that go wrong.

There must be a reason why States support the Group of Friends of Mediation at the UN in urging greater take-up of mediation, yet decline to use mediation to resolve disputes among themselves on trade issues or with major investors. It is important to identify what is holding them back, and then take appropriate action to overcome the obstacles.

In the next posting we look to what is needed to bridge the gap between the strong collective policy demand for peace mediation on behalf of almost every country and the systematic implementation of mediation interventions in real world conflicts.

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This entry was posted on Monday, August 19th, 2013 at 9:02 pm and is filed under [Conciliation](#), [Cross-cultural](#), [Developing the Field](#), [Dispute Resolution](#), [Future of mediation](#), [Governments/Public Sector](#), [Growth of the Field \(Challenges, New Sectors, etc.\)](#), [International Law](#), [International Mediation](#), [mediation models](#), [Mediation Practice](#), [peace negotiations](#), [Practical Challenges for Mediators](#), [UN and International Organizations](#)

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