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# **WHAT CAN WE LEARN FROM COMPARING MEDIATION ACROSS LEVELS**

**Tom W. Milburn**

The worlds of international and interpersonal mediation rarely intersect. Practitioners do not interact with one another; scholarly commentaries on mediation in one sector seldom cite material from the other sector. This tendency to treat each sector as an independent preserve diminishes the potential to develop new insights for mediation theory and practice. Many insights might come from "thinking outside the box" of assumptions imposed by conventional practice.

To what extent are the international mediation processes and interpersonal mediation processes similar or dissimilar? What can scholars learn from comparing them? Can mediators of international conflicts learn from examining the mediation of interpersonal disputes, and can mediators of interpersonal disputes profit from learning about mediation in international contexts? How do we approach the comparison?

In the following pages we shall attempt to suggest the potential of such comparisons by focusing on several fairly conventional dimensions. For each dimension we ask what the implications of the differences and similarities are. We will focus on the characteristics of disputants, the nature of effective mediators, aspects of the process, some of the subtleties of mediation and the success of using these in enforcing settlements.

## **Social Context of Disputing**

Mediation in some form has served as the central method of conflict management in small-scale societies the world-over (Merry, 1982, 1989). It appears to have primacy in societies where hierarchical and differentiated government and legal systems do not exist. Equally important, interdependent community members locked together in continuing relationships find mediation useful in reducing the costs of conflict to the community. Increasingly, members of the global community as well as local communities have perceived themselves as interdependent and thus likely to be influenced by what happens within their venues. A collection of ways to aid in the resolution of disputes can prove useful to any level of community.

## **The Disputants**

Disputants are sometimes divided into complainants and respondent, the initiators of and responders to conflictual action, but disputant is the generic term. Disputants may negotiate with one another or their representatives may do so for them. Both disputing and mediation take different forms and have different meanings depending on whether or not principals or representatives are involved. The roles of principals and representatives are further complicated by whether the disputants are individuals or groups or states. When individuals engage

inmediation they often represent themselves, but on occasion they have lawyers or other advocates appear with or instead of them. Nation states and groups, unless they are very small, must be represented in mediation by individuals in positions of authority. There are times when group leaders such as Chief Executive -Officers (CEOs) or dictators may have such authority in their groups that they embody the group in their person. Representatives play important roles in international mediation, but they may account for little in interpersonal mediation except in those cases where attorneys represent parties.

From the standpoint of mediation, the two questions regarding the role of representatives are whether a representative has binding authority to make agreements and whether a representative is able to "sell" the agreement to the group or individuals he or she represents. Principals can make binding decisions and need not make explicit the rationales for their agreements. When rationales are not articulated, the logic of internal justification can be loose and inconsistent in a way that articulated rationales cannot be. On the other hand, the need either to sell or justify an agreement to a larger audience creates a special burden for mediation. That need is compounded if a group must formally approve any agreement.

A gap can grow between the experience and perspectives of representatives in mediation and of their constituents or constituencies. Since the constituents seldom have direct contact with the "other side" or with the shifting definitions and understandings that emerge through the mediation process, how can constituents possibly "keep up"? In interpersonal mediation with individuals the solution is relatively easy and complete: the represented party can attend and participate in the mediation process itself. In international mediation this solution obviously is impossible. Other routes are taken to apprise nonparticipants of progress. But the more important the approval of those outsiders, the more thorough these updates must be.

The potential for gaps to grow between representatives and their constituencies raises interesting questions about the privacy or secrecy of mediation sessions. In order to keep constituencies up to date, much of the content of mediation discussions, especially the step-bystep or staged agreements, should be made public. In fact, the organization of steps for release of information to constituencies may be among the most important parts of the mediation process. When individuals are directly involved or when representatives embody the organization, such concerns, of course, do not arise.

The existence of an agent who represents a principal often means that each party follows a scenario and thus has much less discretion in arriving at an agreement than does a principal. The relationship between principals and agents tends to be similar in mediations between states and in mediation between individuals. However, in international mediation, there usually are several levels of representatives and others who instruct the representatives. In a dispute between individuals where an attorney represents each principal, that attorney typically must check back with the client before any final agreement can be made. Similarly, representatives of governments must check frequently with their political superiors, often after every negotiating session.

Summit meetings between world leaders have principals as leading actors in negotiating processes. Thus these meetings do not follow standard procedure in negotiating international

agreements, where governmental representatives must negotiate with other agencies within their own governments as well as with one another. In the 1977 Camp David mediation arranged by President Jimmy Carter, Carter mediated a complex set of disputes between Israel's Menachem Begin and Egypt's Anwar Sadat. Begin and Sadat served as principals in the negotiation, although their staffs were sometimes present as well and some staff members occasionally acted as their representatives.

Concerns of face, honor, and status may be particularly important to each party in a dispute between states, thus increasing the rigidity of their positions and their consequent intransigence in moving toward agreements. States may look and plan farther in the future than do individuals. Certainly the stakes at issue may be particularly weighty in conflicts between states and often the issues far more complex.

### **Power Asymmetry**

In both interpersonal and international mediation there can be an imbalance of power between disputants which creates special problems for mediators (Milburn & Klimoski, 1996). There were, for example, asymmetries in the Israel-Egypt mediations. Israel was militarily, economically, and politically more powerful than Egypt, yet Sadat's position was a more powerful one within the government of Egypt than was Begin's within the Israeli government. Begin frequently observed that he had to get his agreements supported by his cabinet and by the Israeli Knesset, a democratic process which arrived at crucial decisions slowly. Of course, once given his government's support, Begin's position was very strong indeed. Sadat's power permitted him to make decisions on his own, but Arab opposition to his actions led to his assassination (Carter, 1982; Bercovitch, 1986; Telhami, 1990).

This mediation suggests the complexity of the mix among the variables of concern here. International disputes between heads of state with final decision-making authority may resemble more closely interpersonal mediation. Personal rapport or antipathy, ego, and perceptions of slight or insult may play a much larger role in relation to the substantive issues than they do when representatives are involved. It is often the case that mediators feel some need to decrease the power differences between disputants so that neither is in a position to overwhelm the other. Power asymmetry is usually greater in international mediation; so the international mediator has a larger role in balancing power and acting to decrease power asymmetry than does the interpersonal mediator. International mediation is thus more like labor management mediation where the mediators accept power imbalances as part of the reality with which they must deal. In contrast, the mediator for interpersonal disputes tries to increase the perceived fairness of the process.

### **The Mediator**

There are generic aspects to the mediation process and mediator characteristics that tend to remain similar across societal levels and sectors. To function well as a mediator, that person ought to have some sense of similarities and differences in issues and in necessary skills and

procedures. The mediator must learn what the disputants consider the central factors of their dispute. This means the mediator must grasp how the dispute got started and the direction it is moving. The mediator must actively listen to each disputant, one at a time, and then attempt to elicit one or more significant factors of cognitive and affective interest to both disputants. Such must be done before the mediator can begin to help disputants explore ways to resolve and, perhaps, to settle the dispute. In the process a new contract is created in which the next steps are articulated clearly and agreed upon by all.

At least three characteristics of mediators can contribute to their effectiveness: the status of the mediator vis-a-vis disputing parties; the mediator's neutrality; and the power of the mediator vis-a-vis the parties. Central to most discussions of interpersonal mediation is the contention that the mediator should be a "neutral outsider." Yet in international disputes such a view does not accord with the common use of highly interested parties as mediators. Often representatives of powerful forces serve as mediators. For example, in the Camp David meetings, President Carter functioned as a powerful, high status, active mediator with his own agenda. It was and still is to America's advantage and to the advantage of U.S. presidents to increase the prospects for peace in the Middle East in order to protect our alliance with Israel and our sources of Arab oil. Under such circumstances it would be **difficult** for a president to remain altogether neutral. In spite of what could be seen as lack of neutrality, however, President Carter managed to be effective. Many small scale societies use knowledgeable and interested, but not necessarily neutral, community elders as mediators (Merry, 1982, 1989).

The status of the mediator appears important for several reasons. The status of the mediator promotes the confidence of the parties and their willingness to participate, it gives the mediator leverage, and it permits the mediator to assert control over the process. Although mediators often insist that they have no authority to impose agreements on parties, their authority must be sufficient to direct and monitor the process. The mediator may remind the disputants that they have agreed to procedural rules, may set deadlines, and may demand that parties work long hours. To have this authority, the mediator must have sufficient status in relation to the parties.

Status typically derives from community or public standing; from the auspices of sponsorship (a court, a recognized private agency, or a **powerful** nation); from an elevated position within a societal or governmental hierarchy; from appropriate training in mediation or a related course of study; or from experience in successfully mediating disputes. However, status is always relative, and it must be evaluated in relation to the status of the parties to the dispute. For example, law students may have sufficient status to mediate small claims cases sponsored by a local court, but national leaders may require another national leader or a prestigious representative of a **powerful** body to mediate a dispute between them. Thus, international mediators appear generally to be prominent officials or national leaders, such as Secretaries of State or Presidents, or representatives of the United Nations or the Vatican (Princen, 1987).

A prestigious mediator is particularly important when parties enter into mediation. At that point disputants consider it a reward for a prestigious mediator to aid in the resolution of their dispute. Since the prestige of the mediator can be indicated by past success as a mediator of serious conflicts, the use of a prestigious, successful mediator can often move mediation along rapidly. The use of respected community leaders as mediators, as occurs in small scale societies, is

generally discouraged in the United States where mediation is considered a specialized, professional skill. The availability of a mediator with a particular reputation for fairness and neutrality, who can be expected to treat each party with equal respect, can encourage parties to consider the process of mediation who would not have done so otherwise. The presence of a fair mediator can be expected to increase satisfaction of disputants with the outcome of the mediation. Such satisfaction increases compliance with the agreements reached.

Among elements common to disputes between individuals and between states are factors such as lack of trust and each disputant's desire to avoid being unduly close to the other party. Trust of a mediator may repair the lack of trust between disputants. Some disputing parties may trust one another so little that they are unwilling to negotiate with one another. A mediator who can be trusted to act fairly makes the disputants feel safe and therefore permits them to remain in an otherwise dangerous setting. If one party believes that the mediator is other than neutral, that party can move to bow out. Thomas C. Schelling's (1960) ideas on tacit bargaining, that is, manipulating a dispute by reducing the parties' power to withdraw so that they must struggle to the end, seem applicable to conflictual relations both between states and between individuals. A mediator may act to **confirm** the strength of a commitment to remain involved until the issues are resolved, as Cardinal Samore did in the Beagle Channel Dispute between Argentina and Chile (Princen, 1987). A disputant may similarly commit to stay until the dispute is resolved without saying so in so many words but by increasing the political cost to his own side of leaving.

### **Mediator Resources**

The power of a mediator is to a great extent a function of the resources available to the mediator that are also valued by the disputants. Bercovitch (1986), for example, believes that leverage (an ability to engage in "armtwisting" or to provide side payments) on the part of a mediator may contribute more to the resolution of a conflict between states than the perceived neutrality of the mediator. Certainly in some countries, such as Denmark, a judge serving as a mediator may pointedly observe that if the parties cannot work out their dispute with him as a mediator, they must face him as a judge for the same dispute. This is known as mediation leading to arbitration or as "med/arb", an approach often seen as effective in the United States (Carnevale and Pruitt, 1992). The implicit threats of Henry Kissinger and Jimmy Carter to use power were scarcely insignificant, and both of these powerful mediators used side payments to get Egyptians and Israelis to consider entering mediation. If the disputants do not value the mediator's resources, the mediator's ability to influence the parties becomes largely a function of the former's social skill as listener and summarizer. The power, i.e. potential influence, of the mediator vis-a-vis individual parties is far greater than is the power of the mediator vis-a-vis nation states or corporations or labor unions. Sometimes individual parties may be browbeaten into agreement while such is less likely in disputes between nation-states. In some instances, a United States' mediator may threaten parties if they do not move toward an agreement. Such was the case with the Vance Owen peace plan and its associated threats to Serbs. Even though mediators were not themselves doing the threatening, threats did come from England and the United States.

Side payments are less available in interpersonal disputes. The inability of the mediator to provide side payments in community mediation means that the mediator must rely more on **the** use of interpersonal skills.

### **Mediator Expertise and Skills**

Expertise on specific content or problems generic to specific kinds of relationships, such as child custody, landlord-tenant or roommates, as well as expertise involving environmental disputes, conflicts over exchanges or security may call for abilities to understand concerns that are not readily transferred or applied from one situation to another. To mediate a dispute between divorcing parents in a child custody case, for example, calls for different knowledge of content, processes, and issues than does mediating between representatives of states. In the latter case, mediators may concern themselves with boundaries, control of adjacent land, and arms control matters. Typically, with children, as with territory, both parties compete for control, but for different kinds of control. It is often helpful for a third party to have considerable substantive knowledge about the issues on which a conflict centers. Such substantive knowledge can enable a mediator to offer realistic help to **the** disputants as well as see possible solutions that might not occur to the conflicting parties. Morton Deutsch (1994) has observed the importance of knowing the rituals of politeness, of the social norms that apply in conflict situations and which vary as a function of the cultural setting in which they occur. Understanding the steps involved in developing mutual trust and a cooperative relationship in the sociocultural context within which negotiations are to take place are essential to effectiveness at all levels. Moreover, "the skilled conflict resolver will often need two types of skills. One type relates to the ability to place oneself outside or above one's social context so that one can observe the influences emanating from it and then consciously decide whether to resist them or not. The other type involves the skills of a successful change agent, of someone who is able to help an institution or group to change its culture so that it facilitates rather than hinders constructive conflict resolution." (Deutsch, 1994, p.27) There are some situations where a mediator can transfer what she/he has previously learned, and there are others where the mediator cannot. It would be useful for a mediator to know which is which.

Deutsch (1994) has cited social skills involved in obtaining constructive solutions to conflict. He notes four types of skills in particular. One set of skills is related to "the third party's establishing an effective working relationship with each of the conflicting parties so that they will trust the third party, communicate freely with her/him, and be responsive to her/his suggestions regarding an orderly process for negotiations. " A second set is "related to establishing a cooperative problem-solving attitude among the conflicting parties toward their conflict." Next, is the set of skills "involved in developing a creative group problem that the conflicting parties are confronting, [which] helps expand the range of alternatives that is perceived to be available, facilitates realistic assessment of their feasibility as well as desirability, and facilitates the implementation of agreed-upon solutions. " And lastly, Deutsch insists "the third party ... have considerable substantive knowledge about the [content of] issues around which the conflict centers" (Deutsch, 1994, p.24).

Issues associated with a dispute may vary as a function of the kind of dispute, the number of parties involved, and the issues that the parties see as central to a dispute. Issues may seem as unique to divorcing parents arguing over custody and visitation rights for their children as they do to the representatives of nation states confronting one another about the optimum location of their mutual boundaries. The number of issues available for trading or for developing into "packages" is ordinarily much larger in international mediation so that "log rolling" can become more feasible. *Log rolling* consists of trading of an item which has only neutral value for the initiator in return for an item he/she values more but which has only nominal value for the other. It is a process much used by politicians. When tradeoffs can be achieved, each side can see itself as winning. The substantive knowledge called for can enable a mediator "to see possible solutions and to assess proposed solutions more realistically" (Deutsch, 1994, p.24).

### **Aspects of Mediation Process**

Some aspects of mediation across levels are compared here. These include the process of entering mediation, the degree to which sessions occur in public or private, the use of pressures to settle, the use of caucuses, mediation time frames, acknowledgment of emotion in the mediation process, best available alternatives to a negotiated agreement (BATNAS), and the norm of reciprocity.

#### *Entering Mediation*

Entry into mediation often is influenced by initiatives from the larger community, whether global or local. Similarities rule here, and differences between international and interpersonal mediation count for less. Institutions and bureaucracies influence what occurs in an international mediation but often are scarcely a factor in interpersonal disputes except in states such as California and Maine where the legislature has acted to make mediation mandatory in divorce cases involving child custody. Community groups which perceive a need to deal with conflicts internal to them can often persuade disputants to accept mediation. It is generally agreed that participants in the mediation process must accept the rules suggested by the mediator; they must at least tacitly "contract" with the mediator who will monitor the process *in vivo* after getting disputants to agree to a preferred set of procedures. The ability to utilize pre-negotiation experiences can perhaps encourage parties to consider mediation. Burton (1969), Kelman (1992), and Rothman (1992) believe that introductory meetings or a series of workshops can increase mutual understanding among conflicting ethnic groups, so that entry into mediation looks less dangerous to the participants. Other forms of preparation might include lectures or videotapes on the nature and merits of mediation, the duration of outcomes, the fairness of results, and ways one might develop an awareness of the other party's needs (Stein, 1989).

Representatives of the parties involved must be able to explain the likely outcomes of mediation to their followers. One virtue of having the principals rather than representatives involved is that principals need not be as explicit about their reasons for acceptance, so that the early stages of the mediation process can focus on the rationale for mediation as compared to its outcome, although reconceptualization of the problem to- be mediated, as noted earlier, may help here.



As suggested earlier, at either an interpersonal or international level, mediators sometimes use side payments to encourage parties to enter mediation. For example, BankAmerica prefers to mediate disputes rather than to litigate them, and its preference is to split the cost of mediation. Moreover, the company is willing to pay the fee of the mediator in disputes in which they are involved. This acts as a kind of side payment to lure other parties into participating in the mediation. The payment is promised whether or not the mediation is successful and whether or not the other party withdraws before the mediation is complete (Christian, 1991).

### *Privacy*

During mediation, privacy protects each party from unnecessary pressure or harm from outside parties, including various publics and other constituencies, and permits each more flexibility in the mediating process. While secrecy can have benefits for disputants and the community during formal grievance hearings, such benefits mean less once the problems are resolved.

Mediators and disputants widely recognize the usefulness of having their discussions private and confidential. Research on mediation suggests that privacy and confidentiality of any negotiating can contribute to the flexibility of the process and decrease the likelihood of negotiations reaching an impasse (Kressel and Pruitt, 1989). In both interpersonal and international mediation there are particular virtues to maintaining privacy and confidentiality about the mediational processes. More **than** that, privacy encourages participants to move beyond posturing and positional bargaining, particularly in an international arena, and to examine options that might be unthinkable in a public forum.

At the same time, representatives cannot move too far ahead of their constituencies; some controlled publicity or information flowing back to constituents may be necessary. It is best to have that information come from a single source (e. g., a mediator) so that representatives can not readily manipulate their constituents in order to strengthen their bargaining positions. It is different when lawyers are there as advocates bound by decisions of parties. If lawyers serve as advocates, they merely report to the decision makers they support.

The extent of openness, once agreements have occurred, should be sufficient to ensure that enforcement of the agreement is feasible. Privacy in a post-dispute setting makes enforcement of the agreement more difficult. Post-mediation agreements can only be enforced to the extent that the parties abide by the rules to which they have agreed; encouraging each other to do so sustains their mutual commitment to these agreements. Ideally, each party is open or transparent with respect to its good behavior or violations of trust. Monitoring becomes easier and agreements have a longer period of survival when communities or states and their representatives can check on the extent to which parties keep the new agreement. However, enforceability of agreements is easier in interpersonal disputes: there one can use the courts to enforce contracts; no such circumstance exists in the mediation of international disputes.

The interest of "outsiders" can prove to be substantial in both international and interpersonal mediation. Such interest can create problems regarding publicity/privacy and can increase the rigidity of positions and slow the progress of negotiation. Thus, legislatures, news media, public opinion, and major power groups in a society may be interested "outsiders" to an international

mediation, while spouses or family members, neighbors, and co-workers may be interested outsiders to interpersonal mediation. More information about one another may be shared in interpersonal disputes simply because those parties tend to be closer to one another.

### *The Caucus*

A caucus is a private meeting between the mediator and one of the parties that takes place during the mediation. The mediator will ordinarily spend equal amounts of caucus time with each party. The use of the caucus is often a contentious issue. Some community programs refuse to caucus, because to do so gives the mediator too much power. While caucusing does not always occur, the process frequently can prove useful in international and interpersonal settings as it allows the mediator to deal separately with each party, thus reducing the likelihood of open confrontation. Caucusing appeared invaluable for President Jimmy Carter in his Egypt-Israeli mediations at Camp David because the two principals so readily unearthed old hurts that evoked vigorous responses. Thus, they could not work together face-to-face. The mediator may listen separately to issues that disputants might not wish to share with one another. More importantly, the caucus may avoid unnecessary hostile confrontations between angry or fearful parties. The mediator may use caucuses to reframe the bargaining situation into a positive context for each party; in doing so, the mediator acknowledges realistic possibilities for loss and encourages both parties to consider larger perspectives (Neale and Bazerman, 1991).

The power and significance of the caucus may influence either interpersonal or international settings, though there may be differences, especially when tensions or emotions are high. The caucus is a technique that permits both parties to articulate their concerns without unnecessarily escalating the conflict in which they are involved. The use of caucuses over time and a successive series of disputes in which the mediator moves from one location to another making "house calls" rather than dealing with each party at the same location can prove powerful as a way of controlling the level of tension between disputants.

### *Time Differences*

The mediator of interpersonal disputes can accelerate the pace of mediation more readily than can international mediators who deal with multi-layered bureaucracies in which each level has a partial veto over steps in progress toward agreement. Interpersonal mediation is more likely to break down after agreement is reached when parties second-guess their agreements, whereas international mediation may break down because parties cannot reach agreement in the first place.

Often international mediation takes far longer than interpersonal mediation, so that the impact of external events may be greater in international situations (Princen, 1987). The Beagle Channel dispute between Chile and Argentina -took six years to mediate, in part because of the "soft veto" role played by "outsiders." Because the time frame for international mediation may be much longer, the impact of external events can be much greater than is true at the level of individuals; perseverance is a necessity for international mediators.

### *Acknowledgment of Emotion*

In both interpersonal and international settings there is value in airing emotions and acknowledging the personal needs of the representatives and their principals. The ability of both parties to understand the emotional dimensions of the dispute in which they are involved can help the parties meet their political and personal needs. However, some of the mediator's skills readily used in interpersonal situations, such as recognizing, reflecting, and articulating the feelings or emotions of disputants, might not be adaptable to international negotiating. In international settings, overtly recognizing emotions threatens the status of the parties involved. At the same time, not at least being aware of emotional aspects may lead emotion to play an important "underground" role that influences the parties more because its presence is not acknowledged.

### *Best Available Alternatives to a Negotiated Agreement (BATNAS)*

Disputants always face choices in the decisions they make. At minimum they can choose between an agreement or no agreement. They may regard a negotiated agreement as unappealing in contrast to other possibilities. A labor union may regard a strike as better than an acceptance of an unappealing offer from representatives of management. One country may be willing to go to war rather than accept the demands of another; such was the case with Saddam Hussein prior to the start of the Gulf War (Fisher and Ury, 1981). There may be authoritative solutions available in interpersonal conflicts in terms of the law and courts but not in international arenas. The existence of authoritative decisions affect incentives to settle by affecting the range of options available from which each side chooses.

### *Reciprocity*

Particularly but not exclusively in disputes between individuals, factors such as the norm of reciprocity may be significant. Reciprocity implies a sequential balance in the gains and concessions of each party. That norm may also prove significant in relations between states when threats to status may have particular salience. In the mediation between Israel and Egypt, Egypt and Israel owed a favor to the United States, both for providing the service of mediation itself and for the positive inducements provided by the side payments. In that situation the side payments also served to recognize the status of the disputants, not just for the moment but also for the future. The anticipation of reciprocity necessarily means that expectations for the future may be important, whether those expectations be hopes or fears. At the interpersonal level side payments are far smaller and serve fewer functions but still may be used, such as when the mediator recognizes nonverbally as well as verbally the status of each of the parties.

Relationships build upon reciprocal relations between actions and reactions that can serve as tangible bases for settlements and so contribute to conflict resolution. What matters most is what parties do to and for one another, which are steps beyond talk and perceptions. For conflict resolution, mutual apologies and forgiveness are called for that make possible mutual refraining between individuals and collective groups.

## **Enforcement and Compliance**

Agreements reached in mediation are not always regarded as enforceable. As mentioned earlier, openness and publicity help; such agreements are more readily enforceable when the larger community knows of their existence. Publicity might delay and hinder the mediation process, but eventually it contributes to mutual and community monitoring and, perhaps, to enforcement of mediation outcomes. Privacy or secrecy increases possibilities for flexibility during the negotiation process. Once mediation has been concluded, the situation changes, and transparency with respect to actions and likely motives yields more payoff. Undue privacy at that point makes enforcement more difficult. On the other hand, mediation can occur in very sensitive areas such as cases of sexual harassment. The successful mediation of a case of sexual harassment might lead both sides to avoid going public about the agreement reached in order to protect all involved.

The process of resolving international conflicts tends to lead to open and public agreements to a greater extent than is the case with interpersonal ones. Expectations of extended relationships can themselves, as suggested above, lead to attempts to resolve disputes. These expectations encourage parties to avoid conflicts and to have procedures already in place to avoid or to resolve **future** conflicts. The openness that develops allows for easier monitoring. This openness is similar to verification procedures in arms control agreements, in that it encourages abiding by such treaties, in part because known violations could lead violators to lose many other advantages of a treaty.

Side payments can also be used to encourage settlement or compliance. Internationally, Kissinger and Carter both promised Egypt and Israel substantial annual benefits (\$4 billion to Israel and \$3 billion to Egypt) for continuing a peaceful relationship.

### **Normative Distinctions**

When mediators dealing with interpersonal disputes fail to view collectively, they can also fail to perceive the relevant larger constituencies and inadvertently create a barrier that is difficult to surmount. Mediators of interpersonal disputes can, and *should*, attend more to the larger aspects of local collectivities that range from friends and relatives to community and the state in which disputes are centered and which might provide a supportive and normative context. Such might be the case were one of these collectivities to provide some form of side payments.

The fact that international mediators are not always likely to listen to arguments or insights that emerge at a community level should not discourage community level mediators from learning from international-level mediators. By doing so they can become more aware and make use of the constituencies of interested outsiders existing at both levels, to understand and to deal more effectively with the principals in a dispute. Being aware of constituencies can satisfy the basis needed to transform relationships, especially in constituencies less individualistic than are American cultures (Merry, 1982,1989). International communities can be rebuilt when outside parties donate resources, such as they do for peacekeeping operations. A similar use of resources at the interpersonal level might be considered to provide "jump starts" toward rebuilding future relationships. Relationships build upon reciprocal relations between actions and reactions that can serve as tangible bases for settlements and so contribute to conflict resolution. What matters

most is what parties do to and for one another, which steps are taken beyond talk and perceptions. For conflict resolution, mutual apologies and forgiveness are called for that make possible mutual refraining among individuals and collective groups.

An analogous barrier and a kind of incompleteness exists when international mediators fail to see and to deal with interpersonal aspects of relationships. They should include what they often miss, for otherwise they focus exclusively on positional bargaining and parts related to the bureaucracies within which they are embedded.

## **Conclusion**

There are similarities across levels of mediated disputes. Disputants resolve disputes; they are not like arbitrated or adjudicated resolutions. Mediators are present and seek agreement between the parties as to the nature of the process of the mediation. A mediator with status and a reputation for status may more readily encourage parties to enter mediation. The mediator monitors the mediation process as it moves from one stage to the next, from the concerns to the issues, for example. The use of caucuses is not infrequent across settings. It is probably the case that the mediator must be able to grasp and describe the central issues of the dispute to the disputing parties. Asymmetries of power between parties are not unusual at any level. Neither is a lack of trust between parties that leads to desires to avoid being close to one another. Mediators fairly often may seek to limit the parties' abilities to withdraw before some agreement is reached.

There are some factors generic to mediation, such as the need for the mediator to describe the process of mediation, and then learn how each party perceives the other, the other's motives, and the nature of the dispute. The mediator may reflect to each party the perceptions of the different disputants to themselves and one another, each party serving as an audience for the other. The mediator hypothesizes or formulates what appear to be central issues about which some negotiation is feasible (Zartman and Berman, 1982). Once there is agreement as to what the major issues are, the mediator listens to disputants and encourages them as they begin, typically one at a time, to formulate possible resolutions. The mediator may attempt to reframe the issues in a dispute; the very nature of the issues will vary by sector and level. A mediator may encourage the parties to move toward creative resolution of disputes by pointing out ways used by others to resolve their disputes. The mediator may encourage movement toward resolution and the formulation of a mutually satisfying agreement or contract.

There are other major similarities: privacy or secrecy during the mediational process is important at each level, and, similarly, openness once agreements have been reached supports agreements at both levels and supplies bases for verification. Caucuses that separate parties are useful in both settings, particularly when negative emotions run high. To the extent that disputing parties value the resources available to a mediator, the mediator's power to influence the process of the mediation increases.

There are also marked differences across levels. Various levels of dispute from interpersonal to international as well as disputes of different kinds, such as ones about the environment or union recognition, may typically imply different issues. Disputes among different parties from diverse

cultures can have very different implications. Divorce custody cases may lead mediators to think differently, because they must draw upon different knowledge bases to determine what is relevant.

Side payments as an inducement to enter mediation or as an incentive to ensure compliance with whatever agreements are reached are far more likely to occur at the international level. Outside collectivities are rather more likely to encourage entry into mediation between major actors such as nation-states, although at community levels such entry may be at least briefly mandated. Mediators may more often bring their own agendas to the mediation of disputes between states. As a result, mediators are less frequently neutral in international settings. More mediator status is called for when, as is the case between nationstates, both disputing parties are themselves powerful.

There are other differences: international mediation tends to be far more complex and takes longer than interpersonal mediation. Knowledge relevant to understanding the content and issues of a dispute weighs more heavily in more complex disputes, such as ones between nations.

Mediators and the practice of mediation face obstacles at each level. Each level has strengths that could be used by practitioners on other levels to overcome obstacles. Side payments are used at the international level and could possibly be used more frequently at the interpersonal level to provide incentives toward resolutions. Similarly the interpersonal level might employ more frequent use of caucuses and develop more awareness of the community context in which the mediation takes place. Attention to individual personality differences of key players might aid movement at the international level.

Mediators may improve their skills at one level by increasing their understanding of factors at a different level of conflict so they can be more aware of distinctive aspects of what they do. Being knowledgeable or skillful at international mediation may provide useful insights about interpersonal mediation. Researchers and practitioners of mediation at all levels are challenged to identify and share such insights with each other.

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