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Course Name
(DAS 421) Diplomacy as tools of Conflict Resolution

Master Coursework
in Conflict Resolution, Mediation and Human Rights

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A. Objective of the Course

(i) Learn the basic concepts of diplomacy and how it can signifies content, character, method, manner and art in different context.

(ii) Understand how diplomacy and war are both international institutions,

(iii) Determine in which way diplomacy can facilitate or complicate conflict resolution at the same time.

(iv) Demonstrate how conflict can effectively be resolved through diplomacy, mediation and negotiation.

B. Description

In this globalised world, there is a myriad of emerging cross-border conflicts that requires transnational approaches to conflict resolution. Diplomacy constitutes one of the transnational institutional arrangements among other norms and practices aimed at resolving internal or cross-border conflicts. But this depends on different contexts and patterns of conflict, and more importantly the way these diplomatic practices are exercised. These can range from the United Nations Special Adviser on the Prevention of Genocide, Peacebuilding Commission, to special envoys, mediator, and facilitator. So, at the end of this DAS 421 Course, students, especially those aspiring to the diplomatic career, will grasp some notions of diplomacy as a transnational approach to conflict resolution. They will also reflect on which diplomatic norms and practices are useful in the quest for effective and efficient conflict resolution beyond war. That is, students will establish the nexus between diplomacy and conflict resolution and grasp how negotiation and mediation are both applied in place of war to resolve conflicts. In that regard, the United Nations peacekeeping missions will be unpacking and discussing in this DAS 421 course.

C. Study Units

This DAS 421 Course comprises 6 study units including the course assignment. All the contents were sourced and compiled for the following working bibliography:

(i) *Bercovitch, J., Kremenyuk, V. and Zartman, I.W. eds., 2008. The SAGE handbook of conflict resolution. Sage.*

(ii) Jeong, H.W., 2008. Understanding conflict and conflict analysis. Sage.

(iii) *Mayer, B.S., 2010. The dynamics of conflict resolution: A practitioner's guide. John Wiley & Sons.*

(iv) *Mayer, B.S., 2012. The dynamics of conflict: A guide to engagement and intervention. John Wiley.*

Study unit 1: Understanding the notions of Diplomacy

1.1 Notions of Official/Formal Diplomacy

The words "diplomacy" and "diplomatic" are used for several different meanings. In fact, the words have been characterized as "monstrously imprecise," simultaneously signifying "content, character, method, manner and art" (Marshall, 1990: 7). According to Sir Peter Marshall (1990), at least six related meanings may be distinguished, all of which have a bearing on conflict resolution. First, "diplomacy" sometimes refers to the content of foreign affairs as a whole. Diplomacy then becomes more or less synonymous with foreign policy. Several books and articles portraying the diplomacy of countries X, Y and Z are indicative of this usage. Second, "diplomacy" may connote the conduct of foreign policy. The word is then used as a synonym of statecraft. Henry Kissinger's book Diplomacy (1994), which draws on his experiences as US Secretary of State, is a case in point. Ostensibly, the broad understanding of diplomacy in terms of foreign policy or statecraft is more common in the United States than in Europe (cf. James, 1993: 92; Sharp, 1999: 37). A third connotation of diplomacy focuses on the management of international relations by negotiation. Thus, the Oxford English Dictionary defines diplomacy as "the conduct of international relations by negotiation." Adam Watson (1982: 33) offers a similar definition as "negotiations between political entities which acknowledge each other's independence." In more elaborate terms, G.R. Berridge (1995: 1) characterizes diplomacy as "the conduct of international relations by negotiation rather than by force, propaganda, or recourse to law, and by other peaceful means (such as gathering information or engendering goodwill) which are either directly or indirectly designed to promote negotiation." Fourth, diplomacy may be understood as the use of diplomats, organized in a diplomatic service. This usage is more time-bound, as the organization and professionalization of diplomacy is rather recent. Only in 1626 did Richelieu institute the first foreign ministry, and England established its Foreign Office as late as 1782 (Anderson, 1993: 73–87; Hamilton and Langhorne, 1995: 71–75). Not until the latter half of the nineteenth century did European governments begin to recruit diplomats on the basis of merit rather than social rank, so that by the outbreak of World War I, diplomacy could be considered a fairly well-established profession (Anderson, 1993: 123; Berridge, 1995: 8). Fifth, diplomacy, and

especially the adjective "diplomatic," often refers to the manner in which relations are conducted. To be diplomatic means to use "intelligence and tact," to quote Ernest Satow's (1979: 3) classical formulation. Sixth, related conceptualization is to understand diplomacy more specifically as the art or skills of professional diplomats. The craftsmanship of diplomats includes shared norms and rituals as well as a shared language, characterized by courtesy, no redundancy and constructive ambiguity (cf. Cohen, 1981: 32–5). To be sure, all these different conceptualizations can be related to conflict resolution. Diplomatic efforts to resolve international conflicts constitute integral parts of the foreign policy and statecraft of the involved states; they invariably include negotiations; they engage professional diplomats, and rely on their mores and skills. When related to conflict resolution, diplomacy is perhaps most commonly understood as diplomatic practice.

As noted, negotiation is the most prominent practice associated with diplomacy, with mediation as an important subcategory. Suffice it to point out that the prefix "diplomatic" implies that these and other practices are carried out by diplomats, that is, official representatives of states. An alternative understanding of diplomacy, which transcends the ambiguity referred to initially, avoids duplication with other chapters and facilitates a discussion of its contributions to conflict resolution, is in terms of a transhistorical, international institution (cf. Jönsson and Hall, 2005). Diplomacy, like war, can be seen as a perennial institution, influencing relations between polities throughout history.

1.2 Notions of Nonofficial/Informal Diplomacy

Broadly speaking, there are two types of intervening actors in international conflict: official, diplomatic, and governmental actors (Track I diplomats) and informal, nonofficial, and private actors (Track II diplomats). Nonofficial or Track II diplomacy, once virtually invisible in international conflict resolution, is now a critical aspect of peacemaking efforts in virtually every internal war around the world. A facet of the democratization of world politics—the expansion of the nongovernmental sector into all aspects of global governance—the benefits of citizen-based peacemaking were most dramatically illustrated in the Rome Agreement in 1992 between the Mozambique rebel group Renamo (Resistencia Nacional de Mocambique) and the Frelimo (Frente da Libertacao de Mocambique) government, in the Oslo Accords of 1993 between the PLO and the Israeli government, and in the Inter-Tajik Dialogue in 1994. In each of these celebrated cases, private individuals acting in an unofficial capacity played key roles in gaining the trust of the parties and mediating peace agreements in conflicts that had

thus far been resistant to traditional diplomacy. These examples clearly illustrated the ability of nonofficial mediators to gain entry into intractable intrastate conflicts and the potential synergies that can be achieved when official Track I and citizen-based Track II diplomats coordinate their activities into a single peacemaking effort. Since the late 1980s, there has been a proliferation of NGOs established specifically for the task of conflict resolution in war-afflicted countries. By the mid-1990s, the Carter Center in Atlanta listed more than eighty international NGOs working specifically in conflict prevention and resolution. Many have large budgets and work simultaneously in dozens of countries. A well-known directory indicates that the twelve largest conflict resolution NGOs (those dedicated solely to conflict resolution activities, such as the Carter Center, Conflict Management Group, the Institute for Conflict Analysis and Resolution, International Alert, the International Crisis Group, the Institute for Multi-Track Diplomacy, Search for Common Ground, and the United States Institute for Peace) had a combined budget of $136 million in 2000 (Aall, Miltenberger, and Weiss 2000). In addition to these single-purpose organizations, thousands of humanitarian and relief assistance, human rights, environmental, civil society–and democracy- building NGOs, as well as churches, civic associations, and concerned individuals, have also started to incorporate conflict resolution training and conflict prevention and peacebuilding activities into their everyday work. Publications by the European Centre for Conflict Prevention describe 100 nongovernmental organizations working in the fields of conflict prevention and peacebuilding in Africa, 187 in Central and South Asia, and over 300 in Europe and Eurasia (Mekenkamp, van Tongeren, and van de Veen 1999, 2002; Van Tongeren, van de Veen, and Verhoeven 2002). At the governmental level, foreign affairs departments and international organizations have begun to establish sections and units to liaise with NGOs working in areas of conflict. The United Kingdom, Canada, Switzerland, Netherlands, Finland, and Sweden, among others, have created peacebuilding units in their foreign ministries, allocated funds for conflict resolution activities, organized conferences for NGOs in conflict resolution, and in some cases, created special ambassadors with conflict resolution responsibilities (Peck 1999). The U.S. State Department encourages dialogue between official and unofficial diplomats through regular lunchtime meetings, while the Canadian government has sponsored numerous meetings between government officials and NGO representatives to discuss Asia-Pacific security (Chataway 1998: 282). Since the Oslo success in 1993, the Norwegian government has institutionalized its relationship with NGOs working in conflict resolution through the creation of the Norwegian Emergency Preparedness System and the Norwegian Resource Bank for

Democracy and Human Rights (Lieberfeld 1995). These mechanisms involve a series of standby arrangements through which close cooperation takes place between NGOs, the Ministry of Foreign Affairs, and academic institutions in a wide variety of settings involving peacemaking and humanitarian assistance.

The UN has a long-standing relationship with NGOs through Article 71 of the Charter and the work of the Economic and Social Council (ECOSOC). NGOs can be accredited to the UN through the NGO and Institutional Relations section of the UN Department of Public Information (DPI). There are now more than 40,000 NGOs from every part of the world that have entered into some type of relationship with the UN system. Many of these work in the area of conflict resolution and are increasingly involved in UN peacekeeping operations. NGOs have also been heavily involved in UN Conferences, such as the four UN World Conferences on Women and Development (among others), and in 1997 senior representatives from CARE, Médecins sans Frontières, and OXFAM were invited to brief the UN Security Council on the conflict raging in Africa's Great Lakes region (McDonald 2003). More specifically, international organizations in general are increasingly meeting with NGOs to coordinate their conflict resolution activities. The OSCE, for example, co-hosted a meeting with the Institute for Resources and Security Studies in 1995 to clarify and strengthen relationships between the OSCE and NGOs working in conflict resolution (Gutlove and Thompson 1995). Similarly, in the UN there is now an annual DPI-NGO conference, weekly briefings for NGOs, and quarterly workshops on issues of mutual interest. In fact, nonofficial diplomacy has become an increasingly important facet of the emerging conflict resolution system for internal conflicts, even if its role is still little understood or appreciated by governmental officials. While NGOs are well known as essential players in the international response to humanitarian emergencies, human rights abuses, and physical and societal reconstruction efforts, their conflict resolution activities remain somewhat below the diplomatic radar. Recent publications by conflict resolution organizations (Mekenkamp et al. 1999, 2002; Van Tongeren, van de Veen, and Verhoeven 2002) are beginning to provide important accounts of the range of both official and nonofficial diplomatic efforts to resolve internal conflicts. Often working on the front line in a humanitarian capacity, and respected by all sides for their neutrality, NGOs are ideally placed to play a conflict resolution role and can have significant advantages over official diplomats. In this chapter, we outline the functions, roles, and activities of NGOs and other nonofficial actors in the resolution of internal conflicts. We assess their advantages and disadvantages and suggest that they have a critical part to play in all phases of conflict resolution, from pre -

negotiation to mediation and into the implementation and post settlement phases. In particular, the coordination of Track II diplomacy with official Track I efforts in the mediation stage offers tremendous possibilities for settling contemporary internal conflicts. Nonofficial diplomacy is an essential element of the kind of multidimensional approach that is necessary to resolve the deep roots of intractable internal wars.

(i) Nonofficial Diplomats and International Conflict Resolution

The dramatic emergence of nonofficial diplomacy as an important strand of the emerging system for dealing with internal conflicts can be attributed to several key developments. First, at a broad level, there has been since the 1970s a democratization of global governance whereby nongovernmental actors—individuals, associations, organizations, religious groups, multinational companies, social movements—have come to play a more active role in both negotiating and implementing global governance policies. In the late 2000s, the Union of International Associations reported a total of more than 20, 800 international NGOs (INGOs) of which about 50 percent were Northern based organizations working in developing countries and supporting thousands of other local organizations (Aall, Miltenberger, and Weiss 2000: 89). It is estimated that there are now more than 80,000 NGOs worldwide. This represents a doubling of NGOs since 1978, and twenty times the 1951 number. This process has been facilitated by advances in communication and transportation that have made it easier for private citizens to become involved in the conduct of interstate relations. In addition, nongovernmental actors have intensified their activities in response to the political opportunities provided by the end of Cold War hostilities (Aall, Miltenberger, and Weiss 2000: 92). International organizations and diplomatic agendas are no longer off-limits to nonaligned or neutral actors like NGOs. The rise of issue areas demanding genuine global cooperation (as opposed to unilateral state action), such as environmental pollution, nuclear proliferation, disease control, and trans - national organized crime (among others), combined with the erosion of the boundaries between high and low politics, has also created the space for concerned citizens to become involved in what were traditionally seen exclusively as interstate concerns.

In fact, the role of NGOs in supporting the efforts of international organizations has to a large extent now been institutionalized, one consequence of which has been a softening of official attitudes. Many diplomats are no longer inclined to hold the view that nonofficial actors are just “meddlers” in international politics. Rather, they now accept that NGOs are important for initiating and conducting research, formulating policy alternatives, monitoring policy implementation, and providing operative assistance (Berman and Johnson 1977: 21). Some

even suggest "it is unlikely that modern-day conflicts can be resolved without some combination of Track I and Track II initiatives" (Chataway 1998: 272). As a result, there has been something of a proliferation of international institutions, conferences, and think tanks outside of official policy-making circles devoted to dealing with global governance issues, including, at an ever-increasing rate, conflict resolution.

Second, the high-profile successes of the Rome and Oslo Accords had a powerful demonstration effect, not only for the involvement of nonofficial actors in conflict resolution but also for the potentiality of combined Track I and II initiatives. The Community of Sant'Egidio, for example, successfully mediated the Mozambique peace process and has since launched similar peacemaking efforts in Kosovo, Algeria, and Guatemala. Similarly, Norway has attempted to employ the same kind of mediation approach— secret negotiations combining Track I and Track II processes, sometimes referred to as "Track 1.5"—in the Sudan and Sri Lanka. The success of the quasi-official Oslo talks made a strong impression on the views of diplomats about the possibilities of official and nonofficial cooperation in mediation (Chataway 1998: 273). At the same time, a large number of specialist NGO agencies have been established to promote peacemaking in internal conflicts through research and policy advice, direct mediation, problem-solving workshops, peace education activities, human rights advocacy and training, reconciliation, conflict prevention, and post-conflict reconstruction work. Nonofficial efforts at peacemaking have to a large extent been spurred on by the dismal record of traditional diplomatic mediation in protracted conflicts. It took three separate agreements—the Cotonou Agreement in 1993, the first Abuja Agreement in 1995, and Abuja II in 1996—brokered by international mediators (the first two failing completely) to finally bring a respite in the fighting to Liberia. This was followed by seven years of political instability and growing insurgent violence; even after Charles Taylor was exiled from Liberia in 2003, peace remained extremely fragile. In Angola, a full and final peace settlement was mediated in the 1991 Bicesse Peace Accord only for the fighting to re-erupt in 1992 at an even greater level of ferocity than before. The pattern of diplomatically mediated agreements followed by further fighting continued in Angola for another decade until the death of UNITA's leader, Jonas Savimbi. In Somalia, the U.S./UN peace effort succeeded in bringing together warlords and faction leaders for mediated talks in several rounds in 1993–94. International mediation failed to settle the conflict, however, and the U.S./UN-led peace effort collapsed in ignominy in 1994. Mediation in the Balkans—at least a partial success in some eyes—failed to solve any of the underlying issues, and an uneasy peace is maintained by the presence of tens

of thousands of heavily armed NATO troops. In Rwanda the mediated agreements in the Arusha Accords of 1993 were at the very least incapable of preventing the subsequent genocide, and at worst partly responsible for it. In numerous other internal conflicts— Kenya, Burundi, Democratic Republic of Congo, Ivory Coast, Myanmar, Kashmir, Israel-Palestine— international mediation failed (and continues to fail) to make a significant difference to the course of the conflict. Unsurprisingly, this sad litany has engendered a growing sense of pessimism about the ability of official third parties to deal effectively with contemporary conflict (Hampson 1997: 727) and encouraged nonofficial mediators to try their hand.

Fourth, the increased demand for humanitarian assistance in internal conflicts and the problems of mobilizing the official resources necessary for long-term reconstruction have led to a growing interest in the potential for nongovernmental conflict mitigation activities (Rouhana 1995). The UN estimated that there were 20.3 million refugees in 1999 and 20 to 30 million internally displaced persons (Aall, Miltenberger, and Weiss 2000: 92). A large proportion of these are located in Africa, the site of over a dozen internal wars in the 1990s and a region consistently marginalized in international policy-making circles. In other words, as violent civil conflicts have proliferated, particularly in peripheral areas of the world, so has the need grown for organizations specializing in humanitarian relief, conflict resolution, human rights protection, refugee assistance, and post conflict reconstruction. The flexibility of NGOs compared with official agencies means that they can more rapidly respond to emerging crises, quickly closing the gap between diplomatic recognition of a humanitarian disaster and the formulation of an international response. For example, in July 1994 at the height of the genocide there were only 3 international NGOs providing relief in Rwanda; by 20 September 1994 there were 106 (Aall, Miltenberger, and Weiss 2000: 93). Few official agencies—including the UN—could deploy to a remote developing country so rapidly.

(ii) Understanding Nonofficial Diplomacy

We use the term nonofficial diplomacy to describe broadly the activities of private, nongovernmental actors seeking to prevent, resolve, or ameliorate violent political conflicts. Other terms used to describe the array of activities that fall outside official intervention include Track II diplomacy, unofficial diplomacy, back-channel diplomacy, face-to-face diplomacy, problem-solving approaches, multi - track diplomacy, citizen-based diplomacy, nongovernmental diplomacy, nonofficial mediation, and interactive conflict resolution. These terms tend to be used interchangeably, even though interactive conflict resolution and problem-

solving approaches are really a subset of the broader category of nonofficial or Track II diplomacy. In interactive or problem-solving initiatives, trained scholar practitioners run special conflict analysis workshops to facilitate dialogue between influential people from the societies in conflict (see Kelman 1992; Saunders 1987). The underlying assumption is that increased communication and understanding between middle-level leaders will permeate both upward to the Track I level and downward to the level of community reconciliation. We conceive of nonofficial diplomacy as a broader concept, "encompassing the many kinds of nonofficial interaction between members of adversary groups or nations which aim to develop strategies, influence public opinion, and organize human and material resources in ways that might help resolve conflict" (Chataway 1998: 270; see also Montville 1987). In other words, it is defined by the nature of the intervention—aimed specifically at the resolution of conflict, rather than at mitigating humanitarian crises, for example—and the nature of the third party—an individual or organization not representing governments or official international bodies (Rouhana 1995: 257).

(iii) The Basis of Nonofficial Diplomacy

A basic premise of nonofficial diplomacy, long held by religious groups and gradually accepted in the 1980s by the wider conflict resolution community, is that conflict resolution expertise is not the exclusive domain of diplomats and government representatives, and private citizens acting in a nonofficial capacity have a great deal to offer. In fact, as the 1990s opened and official intervention in the bitter civil wars in Liberia, Somalia, and Bosnia failed to halt the carnage, conflict resolution activists and scholars started to assess the relative strengths and weaknesses of official and nonofficial diplomacy in internal conflicts. They came to the conclusion that resolving these "new wars," which were a different kind of conflict from the traditional interstate disputes of the past, required a multi-dimensional approach involving a range of actors, both official and unofficial. The multiple causes of internal conflicts required multiple conflict intervention tracks to resolve them.

The foundation of nonofficial diplomacy is the notion of complementarity and relative advantage. As the Carnegie Commission on Deadly Conflict put it, "the prevention of deadly conflict is, over the long term, too hard—intellectually, technically, and politically—to be the responsibility of any single institution or government, no matter how powerful. Strengths must be pooled, burdens shared, and labour divided among actors" (Carnegie Commission 1997). Not only do nonofficial diplomats have strengths and abilities in internal conflicts that official diplomats lack, but internal conflicts also require a range of activities at different social levels

in order to be resolved, many of which are best (or sometimes only) undertaken by nonofficial actors. Diplomats, for example, cannot invest the necessary time and resources required to promote long-term societal reconciliation, whereas nonofficial actors are often in a better position to undertake such tasks. A final assumption of nonofficial diplomacy is that conflict and conflict resolution have their roots in psychological processes (Montville 1991) and that resolving conflict therefore involves undermining manifestations of violence by altering the psychological climate between the antagonists. A psychologically based approach, non - official diplomacy assumes that altering the perceptions of both individuals and society at large, and meeting the psychological needs of the parties, are necessary for genuine conflict resolution over the long term (Burton 1979, 1987).

(iv) The Roles and Functions of Nonofficial Diplomacy

Nonofficial diplomats play a wide variety of roles in conflict resolution, many but not all of which remain in the background of official efforts. In the context of dealing with internal conflicts, however, they are no less important for sometimes being below the official radar. The following quote from the European Platform for Conflict Prevention and Transformation illustrates the wide variety of possible nonofficial conflict resolution activities. A freedom fighter, struggling against the military occupation of his land, is encouraged by a religious-based peace mission to try another approach. He puts down his weapons and opens a centre for conflict resolution, to mediate local disputes and promote dialogue and nonviolence. A village elder, with modest financial help from an international agency, arranges a traditional ceremony of reconciliation to re-integrate child soldiers who committed atrocities, under duress, against their own families during a recent civil war. Mid-level community and political leaders attend a series of facilitated discussions with their counterparts across the communal divide of their conflict. Several years later, many are in important government positions, and ideas generated in those conversations begin appearing in the political discourse. An influential journalist meets with his colleagues from “the other side” of an ethnic conflict in an NGO-sponsored dialogue, and subsequently refuses to use stereotypical or derogatory language about “them” in his news coverage. (Diamond 1999) In addition to activities that might be described under the general peacebuilding rubric—humanitarian assistance and emergency relief, human rights promotion, civil society and democracy building, resource mobilization— nonofficial actors play a number of targeted conflict resolution roles, including early warning and conflict prevention, national-level diplomatic mediation, local level peacemaking, problem-solving or Track II workshops,

building peace constituencies, conflict resolution training, peace education, and societal reconciliation. The Institute for Multi-Track Diplomacy states that nonofficial diplomacy has three broad aims:

1. To reduce or resolve conflict between groups or nations by improving communication, understanding, and relationships;
2. To decrease tension, anger, fear, or misunderstanding by humanizing the "face of the enemy" and giving people direct personal experience of one another; and
3. To affect the thinking and action of Track One by addressing root causes, feelings, and needs and by exploring diplomatic options without prejudice, thereby laying the groundwork for more formal negotiations or for reframing policies (Diamond and McDonald 1996: 2).

Among nonofficial diplomats, religiously motivated actors have been described as having four kinds of conflict intervention roles (Sampson 1997: 279–80). First, as advocates they are primarily concerned with empowering the weaker parties, restructuring relationships, and working to transform unjust social structures. Second, nonofficial intermediaries devote themselves to peacemaking, through acting as a channel of communication or by bringing the parties together to facilitate dialogue. Third, observers act as a physical and moral presence in the conflict in an attempt to prevent further violence and transform the underlying conflict dynamics. Last, educators attempt to lay the groundwork for conflict transformation by changing people's perceptions through peace education and training programs.

Study unit 2: Diplomacy and war as international Institutions

An institutional perspective on diplomacy implies an understanding in terms of a relatively stable collection of social practices consisting of easily recognized roles coupled with underlying norms and a set of rules or conventions defining appropriate behaviour for, and governing relations among, occupants of these roles (Young, 1989: 32; cf. March and Olsen, 1998: 948). These norms and rules "prescribe behavioural roles, constrain activity, and shape expectations" (Keohane, 1988: 383). Diplomacy as an institution represents a response to "a common problem of living separately and wanting to do so, while having to conduct relations with others" (Sharp, 1999: 51).

Understood as an ancient, perennial international institution, diplomacy is comparable to, and contemporary with, war. In a sociological or institutional sense, war can be seen as a "social custom utilizing regulated violence in connection with intergroup conflicts. "War, like

diplomacy, "appears to have originated with permanent societies" (Wright, 1942: 36). Diplomacy and war alike presume that individuals, through language and tradition, are able to identify themselves with the group. And the recorded history of both institutions dates back to the literate civilizations of Mesopotamia and Egypt (Wright, 1942: 38). Diplomacy is often contrasted with war. Thus, diplomacy has been characterized as "the peaceful conduct of relations amongst political entities" (Hamilton and Langhorne, 1995: 1) or "the art of convincing without using force" (Aron, 1967: 24). Whereas diplomacy is commonly seen as the opposite of war or any use of force, several scholars are reluctant to draw such a clearcut line. "Diplomacy is among the oldest forms of intervention to limit recourse to war but it has also been its handmaiden" (Fierke, 2005: 21). Students of contemporary international relations have coined the phrase "coercive diplomacy" to denote the use of threats or limited force to persuade opponents not to change the status quo in their favour or to call off or undo an encroachment (George, 1991; George and Simons, 1994). The concept was used in Thomas Schelling's (1966) pioneering study of the political use of force, in which he distinguished between the unilateral, "undiplomatic" use of force and coercive diplomacy based on the power to hurt. Whereas the success of brute force depends on its use, Schelling argues, the power to hurt is most successful when held in reserve.

It is the threat of damage, or of more damage to come, that can make someone yield or comply. It is latent violence that can influence someone's choice – violence that can still be withheld or inflicted, or that a victim believes can be withheld or inflicted. (Schelling, 1966: 3) Coercive threats are made either to compel or to deter. Compellence refers to attempts to get the opponent to change behaviour; deterrence to efforts at stopping actions before they take place. UN threats of military action to Saddam Hussein if he did not remove his troops from Kuwait in 1990, as well as NATO threats to start bombing Serbia if Milosevic did not sign the Rambouillet Accords in 1999, are examples of compellence. Deterrence was prominent during the Cold War, as the United States and NATO as well as the Soviet Union and the Warsaw Pact communicated to each other that military intervention would inflict tremendous pain. The purpose of compelling as well as deterring threats is to convince the opponent that the cost of non-compliance is sufficiently high to elicit compliance (cf. Schelling, 1966: 69–72; Fierke, 2005: 81–82). Diplomacy, in this view, can be an integral part of armed conflict, insofar as the critical targets are "in the minds of the enemy as much as on the battlefield; the state of the enemy's expectations is as important as the state of his troops; the threat of violence in reserve is more important than the commitment of force in the field" (Schelling, 1966: 142–3).

In other words, several types of interventions can be labelled "diplomatic," insofar as they "involve some form of communication to avoid or limit recourse to force, as well as to realize it" (Fierke, 2005: viii). Thus, in one sense, diplomacy and war can be seen as complementary, "one or the other dominating in turn, without one ever entirely giving way to the other except in the extreme case either of absolute hostility, or of absolute friendship or total federation" (Aron, 1967: 40). Diplomacy is pursued in the shadow of war, and war is waged in the shadow of diplomacy. In Afghanistan, Iraq and the Middle East, peace and war exist in parallel and contemporary peace operations are simultaneously making war and building peace. Warfare and peace-making are therefore intimately connected and should be regarded as a continuous process. Various diplomatic practices, such as competitive negotiation and power mediation, illustrate the oscillation between threat and reward strategies, which are used to influence the pay-off structure and incentives toward conflict resolution. Still, the use of threats and escalation is a high-risk strategy. The parties may keep on escalating in the hope that the other side will give in. At the same time, they may find themselves unable to escape escalation. As a consequence, they are likely to end up in a "competitive irrationality" in terms of possible outcomes, such as war (Zartman and Faure, 2005: 10). For instance, the outbreak of hostilities in the Middle East in recent decades has invariably been accompanied by feverish diplomatic activity. Since the breakdown of the Camp David summit in the summer of 2000 and subsequently the peace process, Israelis and Palestinians are locked in a dangerous violent escalation in which the parties are trying to get the other side to yield and back down. Still, "every war must end" (Iklé, 1971), which again underscores the interface between diplomacy and war. Throughout history, some of the most prominent diplomatic gatherings have been in the wake of devastating wars. If the outbreak of hostilities implies the breakdown of" diplomacy, the end of fighting and the final outcome of a war requires diplomatic efforts. Moreover, a lot of diplomatic activity takes place in the shadow of potential violence. Crisis management is a prominent example of diplomatic interaction involving perceptions of a dangerously high probability that large-scale violence might break out.

The alternation between diplomacy and violence may also continue in the implementation phase, after a peace agreement has been signed. Most contemporary peace processes suffer from a lack of adherence to signed peace agreements. Spoiler groups, that is, actors actively engaged in violent actions aimed at undermining a peace process, are frequent phenomena and troublesome to deal with since they tend to become veto holders of peace processes. As Kydd and Walter (2002: 264) underline, "extremists are surprisingly successful in bringing down

peace processes if they so desire." For instance, only 25 percent of signed peace agreements in civil wars between 1988 and 1998 were implemented due to violence taking place during negotiations. Without any violence, 60 percent of the peace accords were implemented (Kydd & Walter, 2002: 264). The power of spoiler groups tends to increase when political leaders publicly declare and make commitments not to negotiate and make concessions under fire. It is assumed that negotiating while violence continues signals weakness to the other side (Aggestam, 2006). Yet, in practice, diplomats become hostages to spoilers who determine the pace and direction of a peace process (Darby, 2001: 118). This is well illustrated in a comparison between the different negotiation styles of Yitshak Rabin and Ariel Sharon. The peace process in the 1990s was early on beleaguered by terrorist attacks, and yet Rabin declared after every attack in Israel by Hamas and Islamic Jihad that to stop the peace process would be to give in to terror and extremism. Sharon on the contrary argued consistently that he refused to deal with the Palestinian leadership as long as the violence continued, which partly explains why every attempt to negotiate a de-escalation of the conflict failed. Hence, in recent years, a major challenge for diplomats is how to manage these spoiler groups. International custodians, overseeing implementation of negotiated agreements, have therefore become increasingly common. In short, if war and diplomacy cannot be seen as mutually exclusive institutions influencing international conflict resolution, diplomatic practices are usually contrasted with the methods of warfare. Normatively, diplomacy is preferable to war; yet states frequently resort to war in resolving their conflicts. This gives rise to two broad questions: How do the norms, rules and practices of diplomacy contribute to conflict resolution? Under what circumstances do states prefer diplomacy to war? In line with our institutional perspective, our primary focus will not be diplomatic practice – such as negotiation and mediation – but the normative foundation guiding diplomatic practice.

Study unit 3: Diplomatic norms and practices facilitating or complicating conflict resolution

3.1 Background

As an international institution, diplomacy has throughout the ages rested on certain fundamental norms and provided more or less detailed rules of appropriate procedures in the intercourse between states. Some of these norms and rules have remained unchanged over long periods of time; others have changed and evolved in response to changing circumstances.

Whereas most of the diplomatic normative framework facilitates conflict resolution, it should be noted that some norms, rules and practices may contribute to interstate conflicts.

3. 2 Coexistence and reciprocity

Ultimately, diplomacy rests on a norm of coexistence, allowing states "to live and let live." In the words of Garrett Mattingly (1955: 196), "unless people realize that they have to live together, indefinitely, in spite of their differences, diplomats have no place to stand." Acceptance of coexistence reflects the realization on the part of states that they are mutually dependent to a significant degree. Interdependence may be, and is most often, asymmetrical. Yet coexistence implies, if not equality, at least equal rights to participate in international intercourse. The norm of coexistence obviously facilitates conflict resolution, in contrast to notions of exclusion or excommunication, which render interaction with disapproved partners impossible. Reciprocity appears to be another core normative theme running through all diplomatic practice (Cohen, 2001: 25). Reciprocity implies that exchanges should be of roughly equivalent values. Moreover, reciprocity entails contingency, insofar as actions are conditional on responses from others. Reciprocal behaviour returns good for good, ill for ill. The distinction between specific and diffuse reciprocity is pertinent in this connection. In situations of specific reciprocity, partners exchange items of equivalent value in a delimited time sequence, whereas diffuse reciprocity implies less precise definitions of equivalence and less narrowly bounded time sequences. Diffuse reciprocity implies that the parties do not insist on immediate and exactly equivalent reciprocation of each and every concession, on an appropriate "quid" for every "quo" (Keohane, 1986). Buyers and sellers of houses or cars practice specific reciprocity, families or groups of close friends rely on diffuse reciprocity. Reciprocity in diplomatic relations falls in between or oscillates between the two poles. To the extent that diplomatic interaction comes close to the pole of diffuse reciprocity, conflict resolution becomes easier.

Conversely, insistence on specific reciprocity often makes it more difficult. The practice of expelling foreign diplomats for espionage or otherwise declaring them persona non grata represents one variant of specific reciprocity. When a state expels diplomats from a foreign country, that government is likely to respond in kind by immediately expelling an equivalent number of the initiating state's own diplomats. On the one hand, the anticipation of specific reciprocity may deter states from initiating cycles of uncooperative behaviour. On the other hand, the specific reciprocity triggered by the expulsion of diplomats has

often aggravated interstate conflicts. Successful conflict resolution seems to require at least a semblance of reciprocity. The denouement of the Cuban missile crisis in 1962 is a case in point. In exchange for the Soviet Union's withdrawal of its missiles from Cuba, the United States dismantled its missiles in Turkey (which President Kennedy had previously ordered removed as obsolescent) and pledged not to invade Cuba (which it had no intention to do). As Glenn Snyder and Paul Diesing (1977: 19) noted in their pioneering study of 16 major twentieth-century international crises, it is important "whether the loser is 'driven to the wall' and humiliated or given some face-saving concession that can be presented as a 'compromise'." And all compromises presuppose reciprocity. Open communication channels and a shared language Keeping communication channels open is another aspect of diplomacy that facilitates conflict resolution. "Communication is to diplomacy as blood is to the human body. Whenever communication ceases, the body of international politics, the process of diplomacy, is dead, and the result is violent conflict or atrophy" (Tran, 1987: 8). "The pristine form of diplomacy," argues Hedley Bull (1977: 164), "is the transmitting of messages between one independent political community and another." In short, diplomats are messengers and diplomacy involve communication between states. Ever since the first recorded diplomatic exchanges dating back to the third millennium bc in Mesopotamia, rulers have exchanged messengers, who have been the "eyes and ears" and the "mouthpieces" of governments.

Today, the need to communicate is most graphically demonstrated, paradoxically, when diplomatic relations are severed and the parties almost always look for, and find, other ways of communicating (James, 1993: 96). States lacking diplomatic relations may exchange messages through intermediaries. They may also communicate directly. One method builds on the established state practice of entrusting the protection of their interests to the mission of a third state in cases of broken diplomatic relations. Through the creation of "interests sections," consisting of diplomats of the protected state operating under the legal auspices of the protecting state, enemies may permit their own diplomats to remain in states from which they have been legally expelled. In 1977, for instance, the United States created a US interests section in the Swiss embassy in Havana at the same time as Cuba opened its interests section in the Czechoslovak embassy in Washington.

Trade missions and other diplomatic fronts with genuine "cover" functions represent alternative "disguised embassies" (Berridge, 1994: 32–58). Ceremonial occasions, such as "working funerals," and the exchange of secret, special envoys are other ways of communicating despite severed diplomatic relations (cf. Berridge, 1993, 1994). Mediators play

a central role in keeping communication channels open, ongoing and undistorted between mistrusting parties who attempt to settle a conflict. In these situations, mediators may for instance act as go-between, facilitate back-channel negotiations, supply additional information and identify common problems that may inhibit deadlocks and enhance communication. As Princen (1992: 8) states, a mediator gathers necessary information and "serves as a regime surrogate in disputes where institutionalization is impractical." For instance, the Norwegian diplomats played a critical role as "communicators" in 1993 between the negotiation sessions, since Israel and the Palestine Liberation Organization (PLO) at the time lacked any direct communication channels.

Most importantly, diplomatic communication is facilitated by a shared language with mutually understood phrases and expressions as well as rules governing the external form of intercourse. The institutionalization of diplomacy has involved the development of a common language with ritualized phrases, which have allowed cross-cultural communication with a minimum of unnecessary misunderstanding. Courtesy, non-redundancy and constructive ambiguity are prominent features of diplomatic language. Each era appears to have its own set of ritualized phrases that enable diplomatic agents to communicate even unpleasant things with an amount of tact and courtesy. The principle of non-redundancy means that "a diplomatic communication should say neither too much nor too little because every word, nuance of omission will be meticulously studied for any shade of meaning" (Cohen, 1981: 32). Constructive ambiguity avoids premature closure of options. Circumlocution, such as understatements and loaded omissions, permits controversial things to be said in a way understood in the diplomatic community but without needless provocation (Cohen, 1981: 32–4). We may think of diplomats as "intuitive semioticians," as conscious producers and interpreters of signs. Although semiotics is rarely part of their formal education, diplomats are by training and experience experts at weighing words and gestures with a view to their effect on potential receivers (Jönsson, 1990: 31). We may also be reminded that hermeneutics, the science of interpretation, is explicitly associated with Hermes, the ancient Greek deity of diplomacy (Constantinou, 1996: 35). The shared language and intersubjective structures of meaning and collective understanding among diplomats are significant assets when it comes to conflict resolution limited to the diplomatic community. However, the diplomatic language may render communication between professional diplomats and non-professionals more difficult, as the meanings of diplomatic communications are not immediately obvious to outsiders.

3.3 Commitment to peace

Diplomats are commonly described as sharing a commitment to peace or international order. Diplomat-cum-scholar Adam Watson (1982), for example, argues that diplomats throughout history have been guided not only by raison d'état, but also by raison de système. One author refers to diplomacy as "the angels' game," arguing that diplomats, "regardless of nationality, have an enduring obligation to their guild and to each other to work always toward that most elusive of human objectives – a just, universal, and stable peace" (Macomber, 1997: 26). One may even wonder whether "the idea that diplomats serve peace predates that of serving the prince" (Sharp, 1998: 67). Diplomats are said to be "conscious of world interests superior to immediate national interests" (Nicolson, 1959: xi), and to feel bound by their professional ethic to "act in such a way as to ensure that the functioning of the international state system is sustained and improved" (Freeman, 1997: 139). While this may sound like old-fashioned rhetoric, benefiting the diplomatic guild, outside observers point to the continued representation of ideas. Secularism and statism were great spurs to the development of diplomacy as a profession, but they did not overwhelm the earlier commitment to peace. Indeed, a shared commitment to peace and saving their respective princes from themselves became hallmarks of the profession, something which diplomats could hold in common to cement their sense of corps and to gain some distance from their political leaderships (Sharp, 1998: 67). To the extent that diplomatic agents are able to "strike a balance between diplomacy as a means of identifying and fostering 'us' and diplomacy as a means of fostering the latent community of mankind" (Hill, 1991: 99), diplomacy contributes to effective conflict resolution.

3.4 Diplomatic immunity

The principle of diplomatic immunity represents another facilitating norm, insofar as it provides for unharmed contacts between diplomats of conflicting states. It is reasonable to assume, as Nicolson (1977: 6) does, that this principle was the first to become established in pre-historic times. Anthropoid apes and savages must at some stages have realized the advantages of negotiating understandings about the limits of hunting territories. With this must have come the realization that these negotiations could never reach a satisfactory conclusion if emissaries were killed and eaten. The inviolability of messengers seems to be an accepted principle among aboriginal peoples (Numelin, 1950: 147–52).

The inviolability of diplomatic agents is seen to be a prerequisite for the establishment of stable relations between polities. "Rooted in necessity, immunity was buttressed by religion, sanctioned by custom, and fortified by reciprocity" (Frey and Frey, 1999: 4). The sanctity of diplomatic messengers in the ancient world implied inviolability. Traditional codes of hospitality may have contributed to the notion of according to diplomatic envoys inviolability. The medieval diplomat "represented his sovereign in the sense that he was him or embodied him (literally in some readings) when he presented himself at court" (Sharp, 1998: 61). While such a view is alien to modern thought, today's principle of diplomatic immunity has deep roots in notions of personal representation. The most perennial and robust foundation of diplomatic immunity seems to be functional necessity: the privileges and immunities that diplomatic envoys have enjoyed throughout the ages have simply been seen as necessary to enable diplomats to perform their functions (McClanahan, 1989: 32). Functional necessity rests on the principle of reciprocity: "governments expect that other governments will reciprocate in the extension of immunities to similar categories of diplomatic and non-diplomatic personnel" (Wilson, 1967: 32).

3.5 Pacta sunt servanda

The old dictum pacta sunt servanda, which has been a cornerstone of diplomacy for ages, increases the likelihood that agreements resolving interstate conflicts will be honoured. In the Ancient Near East, treaties invariably ended with summons to the deities of both parties to act as witnesses to the treaty provisions and explicit threats of divine retribution in case of violation. The number of deities assembled as treaty witnesses was often substantial, in some cases approaching one thousand (see Beckman, 1996: 80–1). Oaths were sworn by the gods of both parties, so that each ruler exposed himself to the punishment of both sets of deities should he fail to comply. The practice of uttering religious oaths as part of the ceremony of signing treaty documents is found in early Byzantine diplomacy as well. The Byzantines accepted non-Christian oaths of validation, in a way reminiscent of the Ancient Near East practice of invoking multiple deities as witnesses (Chrysos, 1992: 30). Religious appeals, at a time when gods were considered as real as the material world, had its advantages; "since divine sanction rather than national consent gave ancient international law its obligatory quality, it was in some respects more feared and binding than modern international law" (Cohen and Westbrook, 2000: 230).

3.6 Diplomatic Norms and Practices Complicating Conflict Resolution

Most diplomatic norms and practices facilitate conflict resolution. The principle of reciprocity, as we have seen, may contribute either to the resolution or aggravation of conflict. Other diplomatic norms and practices are more pronouncedly double-edged and may in many cases render conflict resolution more difficult. Examples include precedence, openness, constructive ambiguity, diplomatic recognition and multilateralism.

(i) Precedence

Historically, diplomatic notions of precedence have aggravated conflict resolution and, in several cases, contributed to conflict and violence. Yet this represents a problem that has eventually found a diplomatic solution. Whereas diplomacy has always rested on notions of coexistence and reciprocity, as mentioned above, great importance has been attached to the precedence, or order of importance, of individual rulers and states. In the Ancient Near East, a standardized and generally accepted arrangement distinguished between "great kings" and "small kings," and in the evolving complex network of relationships with Egypt, rivalries and jealousies among great kings over their standing in Pharaoh's eyes were frequent (Avruch, 2000: 164; Liverani, 2001: 39–41). Disputes over precedence are recorded in ancient Chinese and Byzantine diplomacy as well (cf. Britton, 2004: 95; Shepard, 1992: 61–2). Early European diplomacy was "full of endless crises caused by intended or unintended slights occurring between ambassadors or their retinues – usually the latter – and also resulting from attempts by ambassadors to gain a higher status in their treatment by the ruler to whom they were accredited, sometimes by seeking to perform highly personal services" (Hamilton and Langhorne, 1995: 65). Especially between France and Spain, there were endless struggles for precedence entailing violence and threats of war (see, for example, Jönsson and Hall, 2005: 54–55). Conflicts over precedence haunted international conferences as well, entailing long, and not always successful, negotiations concerning the order in which representatives would be seated at the conference table. For instance, the Thirty Years' War was prolonged and the Treaty of Westphalia delayed as a result of quarrels over status and precedence, which reflected the competing principles of hierarchy versus dynastic state equality (Holsti, 1991: 33). Further disputes could arise regarding the order in which representatives would sign agreements and treaties. Treaty signatures were long ordered according to precedence, which invited controversies. Gradually, however, a new principle emerged, the alternat, according to which

each representative signed his own copy of the treaty first. While disputed at first, this principle has been institutionalized to the extent that it is still adhered to today. The alternat did not solve problems of precedence altogether, as it did not prescribe the order in which other signatures were to follow (Nicolson, 1977: 99–100; Satow, 1979: 24).

When the Holy Roman Empire came to an end in 1806 and France, with a republican rather than monarchical form of government, was no longer in a position to reassert its claims to privileged rank, questions of precedence became less acute (Satow, 1979: 24–5). The Congress of Vienna in 1815 drew up a convention establishing precedence among diplomatic envoys according to the date they have presented their credentials, disregarding precedence among their principals altogether. Thus, the ambassador who has served longest at a post is considered doyen or dean. As spokesman of the diplomatic corps, the doyen has certain rights and duties as well as an amount of influence (Nicolson, 1977: 226). The Congress of Aix-la-Chapelle in 1818 established the principle that representatives at conferences sign treaties in alphabetical order (Nicolson, 1954/1998: 45–6). Alphabetization has since become used by most international organizations for avoiding precedence issues in seating representatives. Thus, devices have been found that deprive the precedence issue of its previous controversy and drama and that have become firmly institutionalized. While issues of precedence may still arise, they do not carry the same significance and can be resolved creatively and pragmatically. No longer do precedence issues contribute to conflict or complicate conflict resolution in the way they did in earlier history.

(ii) Openness

If precedence as a conflict-generating diplomatic norm has been neutralized and given way to diplomatic practices that facilitate conflict resolution despite status differences, other diplomatic norms and practices are more double-edged. In the last century, the transition from "old" to "new" diplomacy has had important implications on diplomatic norms and conflict resolution. The American President Woodrow Wilson stated after World War I in his Fourteen Points that a new kind of diplomacy based on moral and democratic principles was to be developed. Hence, Wilson's well-quoted statement about "open covenants openly arrived at" became the normative principle of a new and public diplomacy (Eban, 1983: 345). These principles stemmed from a view that old diplomacy, characterized by secrecy, encouraged conspiracies and war. It meant, for instance, that international negotiations should now be pursued openly and in public, without private or secret understandings. These assumptions

were strengthened by the growing influence of media and public opinion, which demanded an open and democratic diplomacy. The expectation that diplomatic practice in general would change resulted in an increase of open international conferences, multilateral diplomacy and personal involvement of politicians (Eban, 1985: 10;Watson, 1982: 121). Hence, public diplomacy became an integral principle of any state claiming to be a democracy and the "public's right to know" was not to be disregarded, for instance, concerning information about new policies and official negotiation positions. At the same time, as Eban (1983: 34) notes, "the hard truth is that the total denial of privacy even in the early stages of a negotiation process has made international agreements harder to obtain than ever in the past history." Hence, there is a built-in tension between publicity and diplomacy. In some circumstances, diplomats may prefer to negotiate privately and thereby limit the publicity surrounding a diplomatic process. In contrast, news media work to expose and scrutinize activities of diplomats and politicians, thereby strengthening the public consciousness that secrecy runs counter to democratic principles (Cohen, 1986: 69).

In short, publicity and the need for privacy in diplomacy are clearly two opposing principles that originate from two completely different frames of reference involving the nature of information and who possesses it. Privacy and discreet diplomatic strategies are often critical when pursuing conflict resolution and rapprochement between hostile parties. Tony Armstrong (1993: 138–40) concluded from his analysis of three cases (1972 Basic Treaty between West Germany and East Germany; US normalization with China in the 1970s; and the peace treaty between Israel and Egypt in 1979) that diplomatic initiatives, which successfully reached an agreement, were conducted away from the public, on a high political level, and with few participants involved. In these secret and private negotiations, assurances and commitments were provided, which were essential for the parties to negotiate in "good faith." Consequently, high media exposure has to a certain extent limited the autonomy and flexibility of diplomats. Particularly in cases with active domestic constituencies with hawkish and opposing views of conflict resolution, concession-making is difficult. Thus, there exists ambivalence among diplomats about the publicity surrounding some of their activities. The bumpy start of the Middle East peace process in the 1990s is a case in point.

The bilateral negotiations in Washington were hampered by constant leaks as well as press conferences in which the parties justified their position. Every minute of the negotiation sessions was recorded and usually published in the media. This publicity inhibited flexibility, and the negotiating positions often became so rigid that concessions were impossible. Each

delegation sought to signal through the media to its domestic constituency that its official negotiation position had not changed and no concessions had been made (see Ashrawi, 1995; Peres, 1995). For some observers, "the klieg lights" of the media had reduced the talks to public posturing and the talks were likened to a "PR campaign" (Makovsky, 1996: 13; see also Hirschfeld, 1994). This was one major reason why secret negotiations were sought in Oslo. Yet, the setbacks and problems in conducting secret negotiations were soon discovered by both sides after the signing of the Declaration of Principles (DOP) in 1993. If secrecy was the key to reach an agreement, it was also the key to its undoing. For fear of leaks, never in the entire process of negotiation did the Palestinians review the documents with legal consultants. The Israelis also avoided any involvement of experts, including military ones. Most importantly, the negotiators did not prepare and mobilize domestic support for the agreement. As Yossi Beilin (1999: 3), one of the architects behind the Oslo channel, poignantly states: "We thought we were absolved of the need to continue molding public understanding, and in this we were wrong. We were also mistaken in that we didn't show the public what we envisaged at the end of the process, and we thereby exposed ourselves to unnecessary accusations and questions."

(iii) Constructive ambiguity

Another double-edged principle concerns constructive ambiguity. As discussed earlier, it may facilitate conflict resolution. Yet it may also be obstructive. Constructive ambiguity is often used to overcome deadlocks by avoiding and postponing detailed interpretations until implementation. The basic rationale is that the parties will be committed to a signed agreement, following the dictum of pacta sunt servanda. However, such an ambiguity may generate counterproductive results in the long run. Statistics reveal that many cases of negotiated peace agreements suffer from incomplete implementation (Stedman, Rothchild and Cousens, 2002). First, constructive ambiguity may exacerbate an already fragile situation characterized by suspicion and mistrust, and create new grounds for hostilities, as these ambiguities need to be addressed, interpreted and agreed upon. Particularly in identity-based conflicts, where the parties are lacking established rules of engagement and conflict resolution, the use of constructive ambiguity often becomes destructive and counterproductive. Second, a "skeptical scrutiny" of a peace agreement may develop, weakening the support for an agreement significantly (Ross, 1995: 34). This is the reason why diplomats and scholars alike are arguing for the necessity of enforcement mechanisms as well as promoting the idea of acting custodians over peace processes (Stedman, 1997). Custodians have been used, for instance, in Cambodia

by the United Nations and in the Northern Ireland peace process by the United Kingdom and Ireland acting as internal custodians.

(iv) Recognition

Diplomatic recognition, in terms of accepting other actors as more or less peers and treating them accordingly, is equally essential to personal and international relations. There is, however, one significant difference between the two. Whereas the development of relations precedes reciprocal recognition between individuals, recognition is a prior condition for official relations to develop at the international level. Recognition is a prerequisite for reciprocal exchanges in international relations. From the viewpoint of individual political units, diplomatic recognition represents a "ticket of general admission to the international arena" (Krasner, 1999: 16). The principles of diplomatic recognition have varied considerably throughout history, ranging from inclusive to highly exclusive. At one extreme, recognition might be, and has been, granted to virtually anyone with some authority and material or moral resources, as was the case in medieval Europe. At the other extreme, only specific actors with certain attributes are recognized, such as sovereign states adhering to the principles of Western civilization. Whereas inclusive recognition patterns would seem to facilitate the resolution of conflicts involving several different types of international actors, exclusive recognition limits the ability of diplomacy to resolve conflicts to those involving a specific kind of recognized actors. The Treaty of Westphalia in 1648 laid a foundation for the gradual emergence of the territorial, sovereign state. As diplomatic recognition gradually became essential to statehood, other types of political formations were delegitimized. Recognition, in other words, became increasingly exclusive. Eventually, rules of diplomatic recognition were incorporated in international law. Even if international lawyers, diplomats and statesmen today agree that statehood requires a central government that exercises effective control over a defined territory and a permanent population, and has the capacity to enter into relations with other states, there are examples of non-recognition of units that fulfil these criteria as well as recognition of units that do not fulfil them. For instance, in 1988, the Palestine Liberation Organization (PLO) declared the state of Palestine on the basis of the UN partition plan from 1947 that proposes one Jewish and one Arab state. At the time of declaration, the PLO did not control one inch of Palestinian territory, and yet over 100 states recognized the state of Palestine. Hence, the factual conditions many states require for recognition have changed over the years, and ultimately recognition remains a political act. During the nineteenth century, diplomacy had the character of a European

"club," into which other states were admitted only if they were "elected" – that is, recognized – by the other "members." The Congress of Vienna in 1815 established that states would not be regarded as sovereign unless recognized by other powers, primarily the great powers of the day. The Final Act of the Congress listed 39 sovereign states in Europe, much fewer than the number of polities claiming to be sovereign (Holsti, 2004: 128). After 1815, in the Concert of Europe era, members of the Holy Alliance tended to treat revolutionary or republican governments as outlaws to be excluded from the "club" (Malanczuk, 1997: 83). Nor did the European states allow non-European polities into the "club." Despite commercial relations with Asian powers, such as China and Japan, whose rulers were treated as if they were sovereign, none was recognized as a state. Imperialism implied "civilizing" rather than recognizing states (Holsti, 2004: 129). After World War I, democratic constitutions and guarantees for minority rights were added to the recognition criteria used by the victorious states (Holsti, 2004: 129–30). US President Woodrow Wilson's plea to "make the world safe for democracy" was emblematic of this change, and a prominent case of non-recognition was the US refusal to recognize the Soviet Union until 1934.

After World War II, recognition and nonrecognition again became prominent political instruments as a result of three major developments. Most important was the ideological and strategic rivalry of the superpowers, but concomitant processes of decolonization and the proliferation of international organizations also contributed to bringing issues of diplomatic recognition to the forefront (Doxey, 1995: 307). The most striking manifestations of political use of the recognition tool during the Cold War were the cases of China and the German Democratic Republic. Between 1949 and 1979, successive US administrations refused to recognize the communist government of the People's Republic of China as the legitimate government of China, instead supporting the claim of the nationalist government of Taiwan to represent all China. This entailed preventing the PRC from taking China's seat in the UN Security Council until 1971.

Another example was the Hallstein Doctrine of the West German government, denying recognition of any government recognizing the GDR, which was seen as a creation of the Soviet Union in breach of treaties between the allies concerning the administration of Germany after World War II. Only after Chancellor Willy Brandt's Ostpolitik led to mutual recognition of the two Germanies in 1972 did Western states recognize the GDR (Doxey, 1995: 308). Recognition of the new state formations that resulted from the end of the Cold War was relatively unproblematic: neither the reunification of Germany nor the dissolution of the Soviet Union or

the "velvet divorce" negotiated by the Czech and Slovak republics raised thorny questions of recognition. However, recent developments seem to have sharpened the political conditions many states require for diplomatic recognition. For instance, in response to the momentous developments after the end of the Cold War, EC member states adopted common guidelines for the recognition of new states in December 1991. Specific requirements include the rule of law, democracy and human rights; guaranteed minority rights; the inviolability of frontiers; acceptance of commitments regarding disarmament and nuclear non-proliferation, and an undertaking to settle by agreement all questions concerning state succession and regional disputes. Recognition of "entities which are the result of aggression" is expressly excluded (Malanczuk, 1997: 89; Cassese, 2001: 50; Doxey, 1995: 312–13). Other criteria for recognition that are used or proposed in today's world are non-dependence on foreign military support and respect for other states 'rights (Peterson, 1997: 77–81). In many contemporary conflicts, diplomacy is stalled because recognition needs to be resolved before any meaningful progress can be made. Non-state actors contest their unrecognized status and governments dispute claims for "proto-political status" (Richmond, 2006: 68). Diplomacy therefore becomes a new "battle ground" where parties are not primarily seeking compromise and conflict resolution but use these diplomatic processes to gain recognition and international legitimacy. As Oliver Richmond (2006: 66) underlines: "The assumption of a compromise is so often of only secondary concern." This was the reason why it took over two years before any progress was made in the Middle East peace process in the early 1990s. It was only with the mutual recognition between the Israeli government and the PLO that an agreement could be reached in late 1993. Another example where considerations of recognition delayed conflict resolution is in the prolonged controversy over the shape of the table at the Paris negotiations to end the Vietnam War. To seat the Vietnamese National Liberation Front (Vietcong) at a four-sided table with representatives of the United States, North Vietnam and South Vietnam would have accorded it equal status. Therefore, much time and creativity were spent on finding a configuration that did not imply diplomatic recognition. As these examples illustrate, problems of recognition may hamper interaction between states and non-state entities in particular. Today, the growing interface between domestic and international conflicts necessitates just this kind of interaction. Diplomats and NGO representatives communicate, share information and negotiate with increasing frequency and in varying contexts to solve global or regional conflicts. Yet mutual suspicion tends to preclude full mutual recognition (cf. Cooper and Hocking, 2000).

(v) Multilateralism and "polylateralism"

Multilateralism entails several constructive innovations in diplomatic practice but may also complicate conflict resolution. The earliest multilateral forums were high-level congresses called to arrange the terms of peace settlements, such as the Congresses of Osnabrück and Münster resulting in the Peace of Westphalia in 1648. Diplomatic conferences, peacetime meetings of diplomats, were unknown before 1830 (Langhorne, 2004: 284–5) but have since then surged in frequency, significance and complexity. In the middle of the nineteenth century, there were about three international conferences annually, today more than 3000 (Holsti, 2004: 191). The creation of the League of Nations after World War I and the United Nations after World War II were attempts to create permanent multilateral institutions to prevent and resolve international conflicts and wars. In many ways, multilateralism has increased transparency and new democratic practices of diplomacy. Some even argue that multilateralism provides the best opportunity for successful conflict resolution, since multilateralism is inclusive, subject-focused and sets explicit deadlines for negotiations. As a result of the revolution in mass communication, conference diplomacy may also be viewed as an excellent tool for political leaders to publicly demonstrate their commitment to resolving international crises (Berridge, 2002: 148–49). Conference diplomacy differs from previous diplomatic forms in several respects, such as the forging of coalitions and groupings, potential leadership roles for the chair and international secretariats assuming important functions. Moreover, diplomatic conferences provide ample room for informal "corridor activity" (cf. Kaufmann, 1996; Walker, 2004). In global conferences and multilateral forums, NGOs have increasingly been granted presence. The growing participation by a variety of actors has resulted in "polylateralism" as a new mode of diplomatic dialogue besides bilateralism and multilateralism, implying relations between official entities (states, international organizations) and unofficial, non-state entities (Wiseman, 1999). Twenty years ago, NGOs staged protests outside the doors of international organizations and had to gather information from the dustbins of national delegations; today, many of them are involved in preparing global UN conferences and routinely get the floor in plenary meetings. On several global issues, such as environmental protection, trade and human rights, NGOs have become key actors that cannot be bypassed in the search for viable solutions. Two prominent examples of active NGO involvement in diplomatic processes concern the 1997 Ottawa convention banning anti-personnel landmines and the 1998 Rome treaty establishing the International Criminal Court (Cooper and Hocking, 2000: 361–76). According to Hocking

(2004: 92), the diversity and heterogeneity of actors and practices have transformed diplomacy from operating within clearly delineated borders to a "boundary-spanning" activity. For instance, track-one diplomacy may be supplemented with track-two diplomacy, which refers to everything from citizen diplomacy, prenegotiation, interactive problem solving to back-channel negotiation. Track-two diplomacy is frequently used to resolve deep-rooted and complex identity-based conflicts and conducted by informal intermediaries, such as NGOs, academics and private citizens. They strive to create a non-judgmental, noncoercive and supportive environment for conflict resolution. Without governmental constraints, it is assumed that such a framework will facilitate shared perceptions of fears and needs, which may reframe conflict and generate mutual understanding and ultimately new ideas of conflict resolution (Rothman, 1997).

Yet, multilateralism may also complicate or hinder conflict resolution. For instance, conference diplomacy is often described as a highly complex and unmanageable practice, with too many actors, issues and levels of negotiations. Consequently, a central issue in many multilateral settings is to manage complexity and insecurity. One way to reduce and manage the number of actors and negotiation positions is to form coalitions. However, it is time-consuming to consolidate a joint platform. When a consensus is achieved, it tends to generate inflexibility and rigidity in the negotiation process, since unity within the coalition is prioritized (Leigh-Phippard, 1999: 98–101). Moreover, conference diplomacy is often criticized as a kind of "public appearance diplomacy" where political leaders are more concerned with their public image than with negotiating the issue at stake. For instance, in the early 1990s, a series of conferences on the war in Bosnia were held under public pressures. World leaders convened several times to give a public appearance of concern about the war, but with poor results (Aggestam, 2004: 6).

3.7 Choosing between Diplomacy and War

As we outlined initially, in conflict situations, state policymakers may have recourse to norms and practices of diplomacy, war or a combination of the two institutions. Reliance on law and adjudication, an alternative mode of conflict resolution domestically, is a rare option in international relations. Under what circumstances, then, do policymakers opt for or against diplomacy? One obvious answer is that the choice is a result of a rational calculus. The transaction costs of war are vastly greater than those of diplomacy. In comparison to mobilizing armies, the costs of engaging diplomats are negligible. Only when the parties perceive (rightly

or wrongly) that the conflict of interest is so deep that it cannot be resolved either by unilateral retreat or by compromise will they resort to war (cf. Snyder and Diesing, 1977: 502). Yet, there might be other, less tangible factors influencing their preferences.

(i) Trust

To rely on diplomacy, policy-makers must have trust in the institution and in diplomats as agents of conflict resolution. This cannot be taken for granted but has varied among states and over time. For instance, the United States distrusted the diplomatic system fashioned and developed in European courts well into the twentieth century.

Condemning European power politics and secret diplomacy, the United States minimized its involvement in the diplomatic world. Still, in 1906, there were only nine US embassies abroad, the rest being legations, and up to the end of World War II, fewer than half of the heads of mission were career diplomats (Eban, 1983: 343). Only after World War II did the idea of diplomacy as a valuable institution and an honourable profession rather than a disagreeable necessity take root in the United States. Similarly, after the Russian revolution in 1917, the Soviet government wanted to distance itself from bourgeois diplomacy.

Generally, the level of trust in diplomacy was at a low level after World War I, when the secretiveness of the "old" diplomacy came under heavy criticism, and the entire diplomatic system was held responsible for the failure to prevent the outbreak of war. In the harsh judgment of one observer, "what we now know as diplomacy is nothing more than a convicted fraud, a swindler of mankind, and a traitorous assassin of the morality and progress of the human race" (Hayward, 1916: 255). While much less virulent, lacking trust in diplomacy is discernible in various parts of the world today as well.

(ii) Worldview

Whether or not diplomacy is preferred also has to do with the worldview of policymakers. Fundamentalist, absolutist outlooks tend to preclude diplomacy, which presumes pragmatic, relativist attitudes. For instance, the sixteenth-century religious wars nearly destroyed the European institution of diplomacy. European diplomacy had served what was, in effect, one society with common upper class and dynasty standards and attitudes. The dynastic power struggles were then reduced to a kind of family quarrel within a ruling aristocracy. The intensification of religious strife in the 1560s was a catastrophic interruption, entailing mutual suspicions that the other's embassies were centers of hostile and subversive ideas. In short,

whereas successful diplomacy requires that the parties can imagine a mutually satisfactory settlement, a clash of ideological opposites leaves little room for diplomacy (cf. Mattingly, 1955: 195–6).

This negative correlation between absolutist worldviews and reliance on diplomatic means of conflict resolution recurs in more recent history. At the height of the Cold War, the United States and the Soviet Union perceived each other as conspiracies disguised as states to be fought globally as well as at home. "Communism was a virus, a social sickness, a disease of the body politic. Capitalism, bourgeois culture, was a source of contamination, cancer, rot" (Barnet, 1977: 73). For a long time, these attitudes precluded the use of diplomatic means of conflict resolution. Similar tendencies are observable in the new millennium, when the "war on terror" rules out diplomatic dialog not only between states and organizations labelled as terrorists, but also between states with leaders expressing fundamentalist, absolutist outlooks, such as US President George W. Bush and Iranian President Mahmud Ahmadinejad. Anathematizing each other, they rule out diplomatic dialog as an alternative.

(iii) Political will

Political willingness is a key factor in explaining why policy-makers prefer diplomacy or not. In recent years, growing concerns over humanitarian catastrophes, collapsing states and gross human rights abuses have resulted in a number of policy reports, which focus on how diplomatic practices may be refined and conflicts prevented and resolved. Most of them share the concern that there has to exist a political willingness to achieve effective preventive diplomacy. For instance, the independent international commission on intervention and state sovereignty, which concluded its report in 2001 on the right of humanitarian intervention and responsibility to protect, stressed the necessity of international political will in order to implement their policy recommendations.

However, as demonstrated in the case of Darfur, a humanitarian catastrophe can be widely recognized, and yet the international community lacks a political will to act. According to Dean Pruitt (1997: 239–40), the motivation and cooperative behaviour of political leaders are to a large extent determined by the goal of achieving mutual cooperation. Yet, optimism about the other parties' reciprocity is equally important and determines the extent to which this goal will affect behaviour. Optimism about a jointly negotiated outcome is necessary since the danger of unilateral conciliatory efforts might be exploited by the opponent and viewed as weak or even treasonous by one's supporter. The turbulent and yet so astonishing transition of South

Africa illustrates well the importance of combining diplomatic leadership and political willingness when pursuing conflict resolution. F.W. de Klerk shocked the world by announcing the release of Nelson Mandela and his intention to negotiate in good faith the end of apartheid. Mandela responded with courage by calling for national reconciliation and embracing white leaders with no sign of bitterness (Sisk, 2001: 107).

In a nutshell, the Westphalian system of sovereign states has engendered exclusive norms of recognition which, on the whole, have been detrimental to the resolution of conflicts involving other actors than recognized states. Today's notions of a globalized world envisage an international society with a diminished role, if not obsolescence, of the state and enhanced roles of other actors, such as NGOs engaged in conflict resolution, private military companies (PMCs), transnational terrorist networks and organized crime. Paradoxically, "the virtually universal recognition of territorial sovereignty as the organizing principle of international politics" goes hand in hand with an equally clear "tendency toward erosion of the exclusivity associated with the traditional notion of territoriality" (Kratochwil, 1986: 27). This raises the question whether diplomacy, understood as an interstate institution, will be able to contribute to the resolution of contemporary and future complex conflicts, involving heterogeneous actors. To be sure, diplomacy has become a more complex practice, involving many different actors. Yet, it has also shown its resilience and adaptability to new circumstances. For instance, in cases of complex political emergencies, a whole range of diplomatic tools are required and performed by states and non-state actors alike, such as multilateral and bilateral diplomacy, peacekeeping, economic and humanitarian aid to assist civilian reconstruction and peace-making. Hence, most diplomats recognize the need of multiple tracks of diplomacy. Contemporary terrorism, however, does pose a particular challenge to diplomacy, in the sense that terrorists loathe the diplomatic rules of engagement, such as communication and negotiation. At the same time, the "war on terror" has in many ways produced counterproductive results, which is why varieties of "soft instruments of power," such as prevention, persuasion and coordination of international diplomatic efforts, are suggested as more productive. In sum, diplomacy remains a vital institution for effective conflict resolution, even in a world where interstate conflicts are not the only – or even the most serious – problems. At the same time, diplomacy offers no panacea, and there are diplomatic norms and practices that are not always conducive to conflict resolution. Diplomacy, in short, is a perennial

international institution that can be regarded as a necessary, but not sufficient, condition for successful conflict resolution.

Study unit 4: Mediation and Negotiation as approaches to conflict resolution

4.1 Background

In all societies, irrespective of their location or level of organization, there is a need to deal with and manage conflicts. Although conflicts have many potential benefits, they can also be destructive and entail high costs for all concerned. Hence, there is a need to manage conflicts to ensure they do not become destructive and costly. Conflicts can, of course, be managed violently, where the parties pursue their differences through violence and coercion, but we are mostly interested in non-violent ways of managing conflicts. The available methods of peaceful settlement of international conflicts are numerous and varied. They are listed in Article 33 of the United Nations (UN) Charter, which requests the "parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice." The UN Charter recognizes in essence the existence of three basic methods for the peaceful management of international conflicts. These are: (a) direct negotiation among the conflicting parties; (b) various forms of mediation, good offices, and conciliation; and (c) binding methods of third-party intervention (e.g. arbitration and adjudication). Each of these methods has its own characteristics, strengths, and disadvantages, and each may be suited to different conflicts. Here, the DAS 421 Course intends to explore mediation, understand its unique features, show how it works, appreciate who can undertake mediation activities and the problems mediators typically encounter, and assess how mediation can contribute to resolving conflicts and preventing their escalation in the new international environment. Mediation is practiced by numerous and diverse actors, ranging from individuals through states to international and nongovernmental organizations. When successful, mediation may "soften up" the parties, promote diplomacy, and be instrumental in achieving a cessation of hostilities, a peace agreement, or a full settlement of a conflict.

Notwithstanding mediation's importance and pervasiveness, research on its characteristics and effects has suffered from compartmentalization, with little interaction between scholars from different fields, let alone scholars employing different methodologies. This study unit helps

bridge some of these chasms by drawing on an extensive theoretical literature, and highlighting ideas derived from large-scale, longitudinal studies. This DAS 421 Course hopes to place mediation within a broader context, and to suggest "best practices" in mediation. It will do so by examining mediation in terms of three broad issues; firstly, a discussion of definitions, features and characteristics of mediation, then a discussion of mediation performance and factors that affect it, and finally, a discussion of how to evaluate mediation outcomes. These are the three most researched areas in the field of mediation, and kindly find the summary below.

4.2 Mediation

4.2.1 Conceptualizing Mediation

For many years, the study of mediation has suffered from conceptual imprecision and a startling lack of information. Practitioners of mediation, formal or informal, in the domestic or international arena were keen to sustain its image as a mysterious practice, akin to some art form, taking place behind closed doors; scholars of mediation, on the other hand, did not think their field of study was susceptible to a systematic analysis. In short, neither group believed that it could discern any pattern of behaviour in mediation's various forms, or that any generalizations could be made about the practice in general.

The prevalent agnosticism toward analysis and the desire to maintain the intuitive mystique of mediation are best exemplified in the observations of two noted American practitioners. Arthur Meyer, commenting on the role of mediators, notes that "the task of the mediator is not an easy one. The sea that he sails is only roughly charted, and its changing contours are not clearly discernible. He has no science of navigation, no fund inherited from the experience of others. He is a solitary artist recognizing at most a few guiding stars and depending on his personal powers of divination" (Meyer 1960, 160). William Simkin, an equally respected practitioner of mediation, comments in a slightly less prosaic but no less emphatic fashion that "the variables are so many that it would be an exercise in futility to describe typical mediator behaviour with respect to sequence, timing or the use or non-use of the various functions theoretically available" (Simkin 1971, 118).

Etymologically, mediation comes from the Latin root to halve, but different definitions of mediation purport to (a) capture the gist of what mediators do or hope to achieve; (b) distinguish between mediation and related processes of third-party intervention (i.e. arbitration); and (c) describe mediators' attributes. It is worth looking at a few definitions of mediation and

assessing their implications. Focusing on what mediators hope to achieve and how they may go about achieving it, Oran Young offers a definition of mediation as "any action taken by an actor that is not a direct party to the crisis, that is designed to reduce or remove one or more of the problems of the bargaining relationship, and therefore to facilitate the termination of the crisis itself" (Young 1967, 34). In much the same vein, Chris Mitchell defines mediation as any "intermediary activity . . . undertaken by a third party with the primary intention of achieving some compromise settlement of the issues at stake between the parties, or at least ending disruptive conflict behaviour" (Mitchell 1981, 287). And in a somewhat more detailed fashion, Blake and Mouton define mediation as a process involving "the intervention of a third party who first investigates and defines the problem and then usually approaches each group separately with recommendations designed to provide a mutually acceptable solution" (Blake and Mouton 1985, 15). Other definitions are less outcome-oriented and focus on the act of the intervention itself.

Ann Douglas defines mediation as "a form of peace-making in which an outsider to a dispute intervenes on his own or accepts the invitation of disputing parties to assist them in reaching agreement" (Douglas 1957, 70). Moore defines it as "an extension and elaboration of the negotiation process. Mediation involves the intervention of an acceptable, impartial, and neutral third party who has no authoritative decision-making power to assist contending parties in voluntarily reaching their own mutually acceptable settlement" (Moore 1986, 6). And Linda Singer defines it as a "form of third-party assistance [that] involves an outsider to the dispute who lacks the power to make decisions for the parties"
(Singer 1990, 20). Still other definitions focus on neutrality and impartiality as the distinguishing features of mediation. Bingham defines mediation as the "assistance of a 'neutral' third party to a negotiation" (Bingham 1985, 5). Folberg and Taylor see mediation "as the process by which the participants, together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs" (Folberg and Taylor 1984, 7). Moore draws attention to the process of mediation and the neutrality of a mediator in the following definition: "the intervention into a dispute or negotiation by an acceptable, impartial and neutral third party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute" (Moore 1986, 14). Finally, Spencer and Yang see mediation as "the

assistance of a third party not involved in the dispute, who may be of a unique status that gives him or her certain authority with the disputants; or perhaps an outsider who may be regarded by them as a suitably neutral go-between" (Spencer and Yang 1993, 195).

These definitions (and they are but a sample) exemplify the enormous scope of mediation. Mediation may take place in conflicts between states, within states, between groups of states, organizations, and between individuals. Mediators enter a conflict to help those involved achieve a better outcome than they would be able to achieve by themselves. Once involved in a conflict, mediators may use a wide variety of behaviours to achieve this objective. Some mediators make suggestions for a settlement, others refrain from doing so. Some mediators are interested in achieving a compromise, others are not. We should also note that some mediators may be neutral, others are decidedly not. Former Secretary of State Henry Kissinger in the Middle East, Presidents Carter and Clinton at Camp David, former British and Russian Foreign Secretaries Robin Cook and Yevgeny Primakov or Ambassador Holbrooke all mediating in Kosovo, Colin Powell and Condoleezza Rice shuttling to and from in the Middle East, or the Chinese in North Korea, as well as many other mediators, may or may not have been neutral in mediating their different conflicts, but that was hardly the most notable feature of their performance. Some may consider this quibbling over definitions or aspects of neutrality to be a futile exercise in semantic sophistry. It is most emphatically not so. The myriad of possible mediators and the range of mediation roles and strategies are so wide as to defeat many attempts to understand, as we seek to do here, the "essence" of mediation. In the absence of a generally accepted definition, there is a tendency to identify mediation with one particular role (e.g. a go-between) or a single strategy (e.g. offering proposals). This does not help us to understand the reality of international mediation. Assigning an exclusive role or strategy to one kind of mediation overlooks the dynamics of the process. It is also detrimental to the search for common and divergent dimensions of mediation in international and other social contexts, and the effort to draw general lessons from mediation experience. The reality of international mediation is that of a complex and dynamic interaction between mediators who have resources and an interest in the conflict or its outcome, and the protagonists or their representatives. The most helpful approach to mediation links it to a related approach to conflict, that of negotiation, but at the same time emphasizes its unique features and conditions. The parameters of such an approach were established by Carl Stevens and Thomas Schelling. Stevens (1963, 123) states that "mediation, like other social phenomena, is susceptible to systematic analysis. The key to analysis is in recognizing that where mediation is employed it is an integral part of the

bargaining process…. [A]n analysis of mediation is not possible except in the context of general analysis of bargaining negotiations." In a similar vein, Schelling (1960, 22) notes that a mediator "is probably best viewed as an element in the communication arrangements, or as a third party with a payoff structure of his own."

In any given conflict, mediators may change, their role may be redefined, issues may alter, indeed even the parties involved in the conflict may and often do change. A comprehensive definition seems to be a primary requisite for understanding this complex reality. The following broad definition provides suitable criteria for inclusion (and exclusion) and serves as a basis for identifying differences and similarities. Mediation is here defined as a process of conflict management, related to but distinct from the parties' own negotiations, where those in conflict seek the assistance of, or accept an offer of help from, an outsider (whether an individual, an organization, a group, or a state) to change their perceptions or behaviour, and to do so without resorting to physical force or invoking the authority of law.

This may be a broad definition, but it is one that can be generally and widely applied. It forces us to recognize, as surely, we must, that any mediation situation comprises (a) parties in conflict, (b) a mediator, (c) a process of mediation, and (d) the context of mediation. All these elements are important in mediation. Together they determine its nature, quality, and effectiveness, as well as why some mediation efforts succeed while others fail. Mediation is, at least structurally, the continuation of negotiations by other means. Mediation differs from other accommodative strategies such as negotiation (which is dyadic rather than triadic in structure) and arbitration (which has a strong binding character). What mediators do, can do, or are permitted to do in their efforts to resolve a conflict may depend, to some extent, on who they are and what resources and competencies they can bring to bear. Ultimately, though, their efforts depend on who the parties are, the context of the conflict, what is at stake, and the nature of their interaction. "Mediation," as Stulberg so rightly notes, "is a procedure predicated upon the process of negotiation" (Stulberg 1981, 87). Mediation is, above all, adaptive and responsive. It extends the process of negotiation to reflect different parties, different possibilities, and different situation. To assume otherwise is to mistake wishful thinking for reality.

4.2.2 Characteristics of mediation

What, then, are the main features or characteristics of mediation across levels? A number of these may be listed below:

• Mediation is an extension and continuation of peaceful conflict management.

• Mediation involves the intervention of an outsider—an individual, a group, or an organization, with values, resources, and interests of their own—into a conflict between two or more states or other actors.

• Mediation is a non-coercive, non-violent and, ultimately, non-binding form of intervention.

• Mediators enter a conflict, whether internal or international, in order to affect it, change it, resolve it, modify it, or influence it in some way.

• Mediators bring with them, consciously or otherwise, ideas, knowledge, resources, and interests of their own or of the group or organization they represent. Mediators often have their own assumptions and agendas about the conflict in question.

• Mediation is a voluntary form of conflict management.

The actors involved retain control over the outcome (if not always over the process) of their conflict, as well as the freedom to accept or reject mediation or mediators' proposals.

• Mediation usually operates on an ad hoc basis only (i.e., a particular mediation effort or series of efforts are undertaken by one or more actors, and then mediation ceases with or without an agreement).

4.2.3 Approaches in the study of mediation

The literature on international mediation has attracted many scholars and reflects a great diversity in terms of approaches and perspectives (see Kolb and Rubin 1991). All these approaches—and there is a seemingly endless variety of them—range from purely scholarly studies to policy implications to the reflections of mediators themselves, and to studies suggesting that academics should act as third parties in mediation efforts. Different scholars categorize studies of mediation under different categories. For instance, Wall and Lynn (1993) differentiates "general theories," "context-specific theories" and "extended context theories." Sometimes these approaches offer implications for practical involvement, while at other times they focus on descriptions and theory development. The following can be identified as the three main traditions in the study of international mediation:

(1) The first group of studies is essentially prescriptive and is devoted to offering advice on what constitutes good conflict management in real-world situations (e.g. Fisher and Ury 1981). These studies, mostly developed by scholars associated with the Program on Negotiation at Harvard University, generate books and manuals on how mediators and negotiators should

behave, what constitutes good negotiation or mediation, and how conflicts—serious or otherwise—can be resolved.

(2) Some studies of mediation in a variety of contexts are based on theoretical notions and the participation of academic practitioners in a variety of actual conflicts, with the aim of testing ideas and developing a generic theory for the resolution of social conflicts. These studies use a variety of interaction and problem-solving techniques to combine political action with scientific experimentation and thus contribute to the development of a set of rules that can address all (not just international) conflicts. Some of this research (Burton 1969, 1972, 1984; Doob 1971; Fisher 1983; Kelman 1992; Walton 1969) has generated valuable insights, but much of it is still in a pioneering phase.

(3) The third set of studies is based on actual descriptions and empirical examinations of mediation cases. These studies seek to develop theories and to offer general guidelines through: (a) the detailed description of a particular case of international mediation (e.g. Ott 1972; Rubin 1981); (b) laboratory and experimental approaches to mediation (e.g. Bartunek et al. 1975; Rubin 1980) to discover how parties and mediators behave in controlled circumstances; and (c) a contingency framework that relies on large-scale systematic studies. This approach draws on numerous cases of international mediation to formulate and test propositions about effective mediation and to assess the conditions under which mediation can be made to work better (e.g. Bercovitch and Rubin 1992; Touval and Zartman 1985). The contingency approach has its roots in the social-psychological theories of negotiation as developed by Sawyer and Guetzkow (1965) and modified by Druckman (1977).

This is the approach that someone believes can yield the most significant insights and policy advice on mediation. The contingency approach provides a framework that permits a systematic analysis of the underlying structures and conditions that shape conflict events, and complex relationships of the conflict management process. It takes into consideration the individual influences of personal, role, situational, goal, interactional and outcome variables (Bercovitch 1984, 2000; Fisher and Keashley 1991; Gochman 1993; Keashley and Fisher 1996) as well as their interactive effects within the context, process, and outcome of conflict management (Bercovitch 2000). The contingency approach makes it clear that the choice of a particular form of mediation is rarely random. The choice of mediation is rarely random. It is affected by the characteristics of the dispute, the nature of the social environment and the identity of a mediator, the characteristics of the dispute, and the nature of the social environment amongst others (Assefa 1987). Mediation is a rational, political process,

representing a strategic engagement between parties and a mediator, which, under some conditions, may stop violence and hostilities or even facilitate a peace agreement and a transformation of the conflict. What the contingency framework allows us to do is disentangle some conditions from the myriad of factors that may affect conflict management and study these in a systematic manner.

4.2.4 Rationale and Motives of Mediation

An essential question that must be posed at this juncture concerns the motives for mediation. The process is time consuming, involves risks and uncertainty and may, and often does, result in failure. Besides, not every actor can afford or has the credibility and time to mediate. So, why mediate? Why would parties in conflict be prepared to relinquish control over aspects of their conflict management experience, and why, come to that, would a third party be willing to intervene in a serious conflict that has defied many attempts at resolution? There are a number of compelling reasons for initiating and undertaking a serious mediation effort. As an instrument of diplomacy and foreign policy, mediation has become almost as common as conflict itself. It is carried out daily by such disparate actors as private individuals; government officials; religious figures; regional, nongovernmental, and international organizations; ad hoc groupings, or states of all sizes. Each of these mediators brings to the mediation situation its own interests, perceptions, and resources. Each of them may adopt behaviour that ranges from the very passive, through the facilitative, to the highly active. The form and character of mediation in a particular international conflict are determined by the context of both the international system and the conflict itself (Bercovitch and Jackson 2001; Kolb 1989a, 1989b; Touval 1985), the issues, the parties involved, and the identity of the mediator. The importance of this reciprocal influence can hardly be overemphasized. As a form of conflict management, mediation is more appropriate in some conflicts than others.

Broadly speaking when (a) a conflict is long, drawn out, or complex; (b) the parties' own conflict-management efforts have reached an impasse; (c) neither party is prepared to countenance further costs or loss of life; and (d) both parties are prepared to cooperate, tacitly or openly, to break their stalemate, mediation may be the preferred choice of conflict management. Even when these conditions prevail, we must wonder why parties in a conflict would accept an outsider or third party, and why an outside third party would become involved in other conflicts, when neither the course of that conflict, nor its outcome, are at all certain. These are important yet often neglected questions that touch upon the motivation for mediation,

and someone needs to understand that motivation is fast becoming a crucial theme in the mediation literature. It is worth thinking about this issue in terms of mediator's motivations and parties' motivations (on this, see Zartman and Touval 2007).

(i) Mediator motivation

Different mediators have different motives to intervene in a conflict. When the mediator is an unofficial individual (e.g. Adam Curle in the Nigeria–Biafra conflict in 1967–1970, or President Carter in North Korea in 1994), the motives for initiating mediation may include a desire to (a) be instrumental in changing the course of a long-standing or escalating conflict; (b) gain access to major political leaders and open channels of communication; (c) put into practice a set of ideas on conflict management; and (d) spread one's own ideas and thus enhance personal stature and professional status. The presence of one or more of these motives (which may be conscious or subconscious) in an opportune situation provides a very strong rationale for an individual to initiate unofficial mediation (on mediators' motives and dilemmas, see Terris and Maoz 2005). Where a mediator is an official representative of a government or an organization as is often the case, another set of motives may prevail. Such persons initiate mediation because (a) they have a clear mandate to intervene in disputes (e.g. the Charters of the Arab League, the African Union, and the Organization of American States each contain an explicit clause mandating that their members seek mediation in regional disputes); (b) they may want to do something about a conflict whose continuance could adversely affect their own political interests; (c) they may be directly requested by one or both parties to mediate; (d) they may wish to preserve intact a structure of which they are a part (e.g. the frequent mediation attempts by the United States in disputes between Greece and Turkey, two valued NATO member states); or (e) they may see mediation as a way of extending and enhancing their own influence by becoming indispensable to the parties in conflict or by gaining the gratitude (and presumably the political goodwill) of one or both protagonists (e.g. the frequent efforts by the United States to mediate the Arab–Israeli conflict). Mediators are political actors; they engage in mediation and expend resources because they expect to resolve a conflict and gain something from it (see Greig 2005). For many actors, mediation is a policy instrument through which they can pursue some of their interests without arousing too much opposition (Touval 1992a). The relationship between a mediator and disputants is thus never entirely devoid of political interest. To overlook this aspect is to miss an important element in the dynamics of mediation.

(ii) Parties' motivation

Adversaries in conflict have a number of motives for desiring mediation: (a) mediation may actually help them reduce the risks of an escalating conflict and get them closer to a settlement; (b) each party may embrace mediation in the expectation that the mediator will actually nudge or influence the other party; (c) both parties may see mediation as a public expression of their commitment to an international norm of peaceful conflict management; (d) they may want an outsider to take much of the blame should their efforts fail; or (e) they may desire mediation because a mediator can be used to monitor, verify, and guarantee any eventual agreement. One way or another, parties in conflict— and a mediator—have pretty compelling reasons for accepting, initiating, or desiring mediation. Whether we are studying ethnic, internal, or international conflict, we should resist the tendency to think of mediation as a totally exogenous input, as a unique role or a distinct humanitarian response to conflict in which a well-meaning actor, motivated only by altruism, is keen to resolve a conflict. A mediator, through the very act of mediating, becomes an actor in a conflictual relationship. This relationship involves interests, costs, and potential rewards and exemplifies certain roles and strategies. A mediator's role, at any one time, is part of this broad interaction. To be effective, mediators' roles must reflect and be congruent with that interaction. This is how mediation should be seen, studied, and considered in international relations.

4.2.5 What do Mediators do When they Mediate?

What is it that mediators do when they intervene in a conflict? Like many questions about mediation, the answer to this one is far from simple or obvious. We must clarify what we mean by mediation behaviour, and how best to interpret it. There are various ways in which mediator activities can be identified and accounted for. Much of the early debate about mediation behaviour was confused and ambiguous (Burton and Dukes 1990, 26). Traditional research and explanations of mediators' activities were shrouded in terms such as "neutrality," "voluntary," "concessions," and "impartiality," which describe the expectations associated with the practice of mediation, but obscure any understanding of its processes. Alternatively, mediator activities were organized conceptually to describe mediator behaviour in terms of various preordained roles and tactics (Gulliver 1979) or phases (Folberg and Taylor 1984; Mitchell 1981; Moore 1986) that govern mediator intervention behaviour. While these may be interesting classifications, they bring us no closer to understanding the underlying dynamics of the mediation process and the reality of the changing nature of a conflict (Bercovitch 1992, 103).

In essence, the practice of mediation revolves around the choice of strategic behaviours that mediators believe will facilitate the type of outcome they seek to achieve in the conflict management process. A mediator may be less reactive and more practical and systematic in his/her behaviour than previously thought. That is, mediators may be seen as skilled practitioners of a learned craft. A mediator's behaviour is dependent on the perceived role or purpose, and the resources and the techniques available to him/her within the specific dispute context. Mediation behaviour can thus be understood as an overall plan or approach to conflict management to achieve a specific end: the settlement of the dispute, the stopping of violence and destruction, or the overall resolution of the conflict. As such, mediation is not an "art" that is highly idiosyncratic, based on intuitive insights, and resistant to systematic analysis (Meyer 1960); it is rather a coherent and planned activity. Consequently, it is possible to explain and understand a mediator's behaviour in terms of the identification and conceptualization of various roles, tactics, processes, and strategies which can be exercised in the practice of mediation.

(i) Mediation strategies

The most useful way of describing and interpreting mediator behaviour is to conceptualize their activities in terms of broad strategies. While the analysis of the roles and stages of mediator behaviour provide perfectly valid and feasible explanations of single cases, the categorization of mediation behaviour into broad strategies is the most practical and useful option when studying a large number of conflicts. This approach provides a simple yet logical structure within which the extensive inventory of mediator behaviour can be organized and understood. For our purposes, the most useful taxonomy of mediator behaviour that can be applied to international mediation analysis is based on the identification of three fundamental mediator strategies along a continuum ranging from low to high intervention.

These are: (a) communication-facilitation, (b) procedural, and (c) directive strategies (discussions of these can be found in Bercovitch 1992; Bercovitch and Wells 1993; and Bercovitch et al. 1991). These strategies are based on assumptions derived from Sheppard's (1984) taxonomy of mediator behaviour that focuses on the content, process and procedural aspects of conflict management. (1) Communication-facilitation strategies describe mediator behaviour at the low end of the intervention spectrum. Here, a mediator typically adopts a fairly passive role, channelling information to the parties, facilitating cooperation but exhibiting little

control over the more formal process or substance of mediation. Norway's mediation role in the Oslo agreement between Israel and the PLO of 1993 exemplifies this approach.

(2) Procedural strategies enable a mediator to exert a more formal control over the mediation process with respect to the environment of the mediation. Here a mediator may determine structural aspects of the meetings, control constituency influences, media publicity, the distribution of information, and the situation powers of the parties' resources and communication processes. New Zealand's efforts in the Bougainville conflict in 1995, where it brought both parties to a military camp in New Zealand, exemplify this form of mediation.

(3) Directive strategies are the most powerful form of intervention. Here, a mediator affects the content and substance of the bargaining process by providing incentives for the parties to negotiate or by issuing ultimatums. Directive strategies deal directly with and aim to change the way issues are framed, and the behaviour associated with them. Richard Holbrooke's efforts at Dayton are typical of this approach.

Although mediators have a wide array of tactical choices at their disposal, there is no suggestion here that they may use any of the strategies they wish with its associated tactics in any conflict they intervene. Clearly, there are some conflicts that will show greater amenability to some forms of mediation behaviour, and of course there will be mediators who will feel more comfortable with, or have the resources and determination to implement, one strategy rather than another. Analysing which strategies and which tactics work in which conflicts has been a dominant, if inconclusive, theme of mediation research. Can we, in any way, link strategies to outcomes? Few studies attempt to assess the effectiveness of different strategies. Those that do so have found that the strategies at each end of the intervention spectrum appear to dominate actual mediator intervention in international conflicts (Bercovitch and Houston 1996). Further analyses of mediation revealed that while communication facilitation strategies are the most frequently utilized by international mediators, directive strategies appear to be the most successful (e.g. Bercovitch and Houston 1996; Gartner and Bercovitch 2006; Wilkenfeld et al. 2003). The choice of a strategy in any situation is clearly affected, inter alia, by the nature of the relationship between the parties, the context of the conflict, and their historical experience. Mediators adapt their style of intervention to meet the requirements of the situation, and we think that certain styles or strategies of mediation will be generally more effective in certain situations. An intense conflict with high fatalities may require more intense interventions than a low-level conflict (see Hiltrop 1985, 1989; Rubin 1980). The costs of no agreement in the former are dangerously high. If a mediator is involved in such a conflict, they will use any stick

or carrot at their disposal to nudge the parties toward a zone of agreement. However, given the entrenched and intense nature of the conflict, it is more than likely that the most that can be achieved is a partial cessation of violence. In a low-intensity conflict, disputants are likely to view those same sticks and carrots as overbearing and too directive in nature – making them less effective, despite the likely lower stakes involved.

(ii) Factors affecting the choice of a strategy

A number of factors affect the choice of a mediation strategy and its potential for success. Amongst the most important factors are the following:

(1) *The intensity of a conflict* is recognized as a major factor affecting the nature of conflict management, and any evolving pattern of mediation. But how exactly does the intensity of a conflict influence the implementation of a particular mediation strategy? Conflict intensity usually refers to such factors as the severity of conflict, the level of hostilities, the number of fatalities, the level of anger and intensity of feeling, the types of issues at stake, and the strength of the parties' negative perceptions (Kressel and Pruitt 1989). When conflict intensity is low, Rubin (1980, 389) suggests that the parties are concerned with "mending their own fences" and do not want third-party intrusion. Low-intensity conflicts can usually be dealt with by the parties themselves. If the parties cannot do so, a mediator will come in as a catalyst for negotiations. In contrast to that, in high-intensity, dangerous conflicts, a primary task is to prevent further escalation, and to achieve this, mediators may adopt more active forms of intervention. High-intensity conflicts are associated with higher levels of mediation involvement (see Bercovitch and Gartner 2006).

(2) *The type of issues in conflict* may be examined to identify the "essence" of a conflict. Intuitively, we would expect this to be an influential factor in a mediator's choice of strategy, as issues represent the focus of what separates the parties, and what the conflict is all about. But what exactly are issues in conflict, and how can we identify them and conceptualize their presence? Conflicts can, in the first instance, be internal or interstate. When they are internal, they are often focused on issues such as identity, autonomy, and ethnicity. These are subjective and emotional issues often including fear, resentment, and distrust that are hard to negotiate over, and harder still to mediate. The best that a mediator may do in such contexts is to resort to communication strategies that build the confidence and trust of the parties, and give them an incentive to pursue peaceful conflict management. In contrast, conflicts over issues such as security, resources, and defense, involve more concrete issues that are easier to work with.

Here, a mediator may press for concessions on tangible issues to achieve a conflict termination or resolution. Each type of issue in conflict elicits a different form of mediator behaviour.

(3) *The internal characteristics of the parties* enable us to examine how each party's political and economic structure affects the process of conflict management and mediation. Parties with similar political systems or social structures (ethnic, cultural, or religious groups organizing society) may be more amenable to serious, active mediation. Parties, on the other hand, with different political, economic, or social systems may be more likely to distrust each other. They may have less in common and perceive the other as a threat to their identity and legitimacy. Actors from different political systems may also possess different norms, protocols, and processes for conflict management. In this case, a mediator may be required to engage in communication strategies, establish channels of communication, educate the parties in the skills of negotiation, and help them clarify the situation.

(4) *The previous relationship and experience* of the parties can be examined to gauge how past experiences of conflict and conflict management affect current behaviour and determine choice of mediation strategy. Any social relationship is affected by previous experiences between the same parties. Similarly, any current conflict management is affected by previous conflict management efforts and any learning which may have taken place (on the role of learning in conflict management, see Leng 2000). The past does indeed cast a shadow on the present. Repeated mediation efforts by the same mediator may establish some norms of interaction and to a large extent determine what each party may expect and how it should behave. In an environment of risk and uncertainty, mediators may use information from previous efforts, or build on any rapport they may have had with the parties. Here, the DAS 421 Course suggests that previous conflict experience and mediation may exert a strong influence on the choice of a current strategy. Previous mediation efforts can establish norms and a certain rapport between the parties, and these can affect their current disposition and behaviour. There is an element of reinforcement and learning occasioned by previous experience of mediation which influences how mediation is currently conducted. Past conflict management behaviour is a pretty good indicator of current and future behaviour. Although conflict management is not a linear process, there is certainly an element of learning at work here, and this element affects the choice of a mediation strategy.

(5) *Mediator identity and rank describe the official position of a mediator*

These will clearly affect the choice of a strategy. At the most basic level, some mediators have the potential to utilize resources, use leverage and influence; others can rely only on their

legitimacy or reputation. Who the mediator is determines to a large extent what a mediator can do. Mediators' use of a strategy is not random; it is the result of many complex factors. One of these factors relates to the official position and status of different mediators. Some have the full range of resources, and thus the full range of strategies available to them. Others (individual mediators, NGOs) can only use communication strategies as they simply do not have access to expensive resources. Who a mediator is determines what a mediator can do, and which strategies are used.

(6*) The initiation and timing of mediation intervention*

While mediation is ultimately a voluntary process, it may be initiated, that is, suggested, appealed for, or offered, by either the disputants, the mediator, or various other concerned parties. The perceived need or justification for mediation is influenced by the disputants' and mediator understanding of what the role of the mediator should be in managing the conflict. The mandate of the intervener and the legitimacy and authority of mediator behaviour are to some extent determined by who initiates the mediation process (Kaufman and Duncan 1992), and the timing of intervention in terms of the conflict phases and the state of the parties' current negotiations. These factors may determine the acceptability of a specific mediator, and the role, bounds, and expectations within which a mediator may act to manage the conflict, and the type of strategies employed (Kolb 1983; Raiffa 1982). The initiation of mediation, and choice and acceptance of a mediator, are largely dependent on the parties', the mediator's, or other third parties' perceptions of the resources and skills a mediator may have on offer, their expectations of how the outcome of the dispute may be influenced by the intervention of a specific mediator, and the level of commitment and urgency of the parties to achieving a settlement.

(7) The mediation environment.

An important dimension which may influence mediation behaviour and choice of strategies is the mediation environment. The choice of mediation environment may be determined by the demands of the parties, their powers, resources and goals, and their willingness to negotiate, by the extent of constituency and media pressures, or it may be the product of a mediator's strategy to control a particular conflict situation. In turn, the specific environment in which mediation takes place may determine the type of behaviour a mediator employs. As such, the mediation environment, with the various opportunities and constraints that it provides, may be a powerful factor in understanding the dynamics of mediation behaviour. An ideal mediation environment will support rather than hinder parties' conflict management efforts and interactions, and provide the mediator with opportunities to manage and control the whole

process (Touval 1982). The structure imposed on mediation by the environment provides opportunities for both parties and the mediator to be empowered and manage their conflict competently and productively, and to avoid or mend any dysfunctional behaviour that may regress the parties' mediation efforts. The physical context of the mediation event establishes the bounds that dictate, and perhaps constrain, the ability of the parties and the mediator to express their status, authority, power, leverage, and assertiveness within mediation and how their efforts are represented to the external constituencies, media, and international audiences. A mediation environment may also determine the situational powers of the participants, their proximity, and social interactions. Clearly, a party's legitimacy, standing, and integrity are integral characteristics that must be protected and maintained if mediation is to be successful (Rubin and Brown 1975) and are dependent on the nature and urgency of the dispute being managed. Mediation behaviour and choice of strategies cannot be foreordained, nor can these be prescribed in advance. They are part of the overall structure of a mediation event and context. Mediators choose strategies that are available, feasible, permissible, and likely to achieve a desired outcome. Mediation behaviour is adaptable; it reflects, to a large extent, the context in which it takes place. There are some of the important contextual dimensions which may have an impact on mediation behaviour and outcomes. We ignore these dimensions at our peril.

4.2.6 The Notion of Success in Mediation

How do we know that mediation has been successful or not? How can we evaluate its impact? Was the Dayton Agreement a success? And if so, why? Was the Oslo Agreement a success? Are we looking only for a change effected as a result of mediation, or for a specific kind of change? And how do we assess change in the context of social relations? There will be as many answers to these questions as there are commentators. And yet, we have to be able to answer this most fundamental of questions. Too often, it seems success or failure are assumed, postulated, or defined on a case-by-case basis, and usually in an arbitrary and poorly reasoned manner. Furthermore, the indicators utilized by those attempting to define success or failure are so diverse as to be almost unworkable. We need to engage in a more comprehensive discussion of what is success, what is a failure, and how to recognize them (for a fuller discussion of these, see Bercovitch 2006).

Because international mediation is not a uniform practice, it seems futile to draw up one set of criteria to cover all possible constructs of success. Individual mediators, for instance, may

adopt communication facilitating strategies, and be more concerned with the quality of interaction and the creation of a better environment for conflict management. Mediating states, on the other hand, may seek to achieve more than just a change in interactions; they would like to see a real change in behaviour. Different objectives give rise to different meanings of success in mediation. Here, this DAS 421 Course suggests two broad criteria, subjective and objective, to assess the effects and consequences of mediation in international conflicts.

(i) Subjective criteria

Subjective criteria refer to the parties' or the mediator's perception (and, to some extent, that of other relevant external actors) that the goals of mediation have been achieved, or that a desired change has taken place. Using this perspective, we can suggest that mediation has been successful when the parties feel, or express, satisfaction with the process or outcome of mediation, or when the outcome is seen as fair, efficient, or effective (Susskind and Cruickshank 1987). Fairness is an intangible abstraction. One cannot define fairness so stringently that it will not still be interpreted differently by different people, much like success itself. However, we do recognize that whatever it may be, fairness suggests to most people an even-handedness of procedure and equitability of outcome, and that is clearly indicative of some conception of "success." Sheppard (1984) presents a number of concrete indicators of fairness that serve to assuage concerns regarding the threat of abstraction. Levels of process neutrality, disputant control, equitability, consistency of results and consistency with accepted norms are all relatively easily observed. Susskind and Cruikshank (1987) meanwhile present similar indicators of fairness (e.g. improvement of procedure and institution of precedent, access to information and opportunity for expression) which provide reasonably concrete conceptions of fairness. However, while there are certain observable indices of fairness, both Sheppard (1984) and Susskind and Cruikshank (1987) talk about the importance of "perceived fairness" in proceedings. Indicators of fairness mean little to parties in conflict if they themselves do not think the proceedings are fair. This "perception of unfairness," justified or not, is often more crucial than any concrete measures of success. Hence, while such indicators may emphasize balanced procedures, or even equitable solutions, if parties to it don't perceive these as fair, it is unlikely that any resulting outcome will be seen as a "success." In some respects, participant satisfaction seems like a better indicator of success. If parties in mediation are satisfied with the process or outcome, they are more likely to perceive it as a success and, as Sheppard indicates (1984), more likely to be committed to it. This in turn produces other

relevant dimensions of success, such as stability, more likely to be achieved. Shepherd identifies a number of measurable indicators, both as regards process (privacy, level of involvement) and outcome (benefit, commitment). However, as with fairness, parties' satisfaction is largely a perceptual and very personal quality. Satisfaction is often deemed an almost emotional response to the achievement of a goal or attainment of some requirement. Clearly, the sorts of goals taken into an event by those involved in conflict are personal in nature, and formed by the specific configuration of their personality, environment, values, expectations, etc. This is neither unexpected nor unusual. Satisfaction is both a very personal and very subjective quality, but it does not mean mediators should abandon their quest to achieve outcomes that "satisfy" the parties. Outcomes that are "satisfactory" are more likely to be longer lasting, and least likely to be breached by repeated conflict. Another possible indication of mediation success is the quality of effectiveness. Effectiveness is a measure of results achieved, or change brought about, of new forms of behaviour agreed to. Successful mediation is about achieving some change. For a mediation effort to be deemed successful, it must have some (positive) impact, or effect on the conflict. The kind of change this DAS 421 Course referred to relates to moving from violent to non-violent behaviour, signing of an agreement, accepting a ceasefire or a settlement, agreeing to a UN peacekeeping force, or any such measures. If any of these has occurred because of mediation, mediation maybe said to have been effective, and thus successful. Effectiveness allows us to observe what has changed after a mediator has entered a conflict. It is to a large extent much less subject to perceptual disagreements and more easily observable and measurable. The fourth subjective criterion, efficiency, is primarily focused on the procedural and temporal dimension of conflict management. Efficiency addresses such issues as the cost of conflict management, resources devoted to it, timeliness and disruptiveness of the undertaking. In some respects, this may seem extraneous. If a mediation episode is effective in other ways, does efficiency matter? Once again, it must be stressed that conflict and its management does not tend to occur in a vacuum. Costs racked up in order to accrue benefits may be such that those benefits lose their sheen. Susskind and Cruikshank give efficiency the most weight. They suggest that "fairness is not enough. A fair agreement is not acceptable if it takes an inordinately long time to achieve or if it costs several times what it should have" (Susskind and Cruickshank, 1987, p. 27). An agreement may not be all that elegant, but if it is achieved within a reasonably short time without entangling too many people in it, there is much to be said for it. Fairness of mediation, satisfaction with its performance, or improvement in the overall climate of the parties'

relationship cannot be easily demonstrated, but they are undoubtedly consequences of successful mediation. They are subjective because they depend on the perceptions of the parties in conflict. Even if a conflict remains unresolved, mediation— in any guise—can do much to change the way the disputants feel about each other and lead, however, indirectly, to both a long-term improvement in the parties' relationship and a resolution of the conflict. We would all describe these efforts as successful, even if we are not quite certain how to demonstrate the correlates of such success.

(ii) Objective criteria

Objective criteria in the study of mediation offer a totally different perspective. Objective criteria rely on substantive indicators that can be demonstrated empirically. Usually, such criteria involve observations of change and judgments about the extent of change as evidence of the success or failure of mediation. Thus, one can consider a particular mediation successful when violence has abated, fatalities reduced, conflict intensity lessened, or a cessation of violent behaviour and the opening of some dialogue between the parties were achieved. Or, one can call mediation successful when a formal and binding agreement that settles the conflict's issues has been signed. These are tangible changes one may observe and whose significance one may evaluate. Thinking of the relationship between mediation and objective criteria of success is a relatively straightforward task. Here, success can be gauged in terms of months both parties observe a ceasefire, reduced number of fatalities following mediation, acceptance of UN peacekeeping force, or any other measures which demonstrably affect the extent and seriousness of a conflict. On the face of it, objective criteria seem to offer a perfectly valid way to assess the impact, consequences, and effectiveness of international mediation. However, it would be unwise to rely solely on objective criteria. Different mediators, and indeed different parties in conflict, have different goals in mind when they enter conflict management. Changing behaviour could well be only one amongst many other objectives. Some international mediators may focus on the substance of interactions; others may focus on its climate, setting, and decision-making norms. These goals cannot always be evaluated easily. Mediation should ideally be evaluated in terms of the criteria that are significant to each of the participants in the process. Thus, the questions of whether or not mediation works, or how best to evaluate it, can only be answered by finding out as much as we can about each party's goals and objectives, as well as learning to ascertain when positive change had taken place. There are just too many conceptual problems with the issue of evaluation, and it seems that, on this

question at least, our theoretical ambitions must be tempered by the constraints of a complex reality. Until ten or fifteen years ago, scholarly attempts to comprehend the nature and sources of human conflict in general, and the manner of its resolution in particular, were all too few in number and rather marginal in character. This situation has changed considerably. International conflict and conflict management have become subjects for systematic analysis. Scholarly tracts and practitioners' reflections have helped to institutionalize the field and enhance the individual and collective capacity to manage conflicts. The risks, costs, and tragedies of conflicts in the later part of our century have finally forced us to search for better ways to resolve them. The traditional reliance on power or avoidance are as far from being optimal ways of dealing with conflict as they are outdated. Negotiation and mediation are at last beginning to emerge as the most appropriate responses to conflict in its myriad forms and to the challenge of building a more peaceful world. Negotiation and mediation do not just happen. They are social roles subject to many influences; and, like other roles, they can be learned and improved. The shared quest for learning the principles and practices of mediation can make sense only if it is conducted within some kind of an intellectual framework, one that can explain the logic and reasoning behind this method of conflict management, in which the mediator is neither directly part of a conflict nor totally removed from it. This DAS 421 Course has sought to provide a way of thinking about mediation, its structure, its context and its consequences. The approach taken here embodies someone conviction that mediation is an aspect of the broader process of conflict management, in which all parties have interests and are prepared to expend resources to achieve these, and that mediation involves the intertwining of interests, resources, and positions in an attempt to influence outcomes. This relationship is critical for analysing the dynamics of conflict and assessing the prospects of successful mediation. This study unit tried to unravel many aspects of this relationship and point out their influence on mediation. Someone may not also assume that conflict resolver's analysis is exhaustive, but there is a need to believe that the presentation here adequately integrates many findings that have a bearing on conflict resolution and provides answers to the basic question of mediation research, namely when one should mediate and how.

To assume that all conflicts can be mediated really ignores the basic structure and logic of the supply and demand of mediation. The end of the Cold War and the emergence of an ever-increasing number of ethnic and internal conflicts provide many opportunities for a significant expansion in the use of mediation as an instrument of conflict resolution. The old techniques of power and deterrence seem increasingly less relevant to deal with the problems and conflicts

confronting us until the end of the century and perhaps beyond. Mediation may well offer the most coherent and effective response to these issues. To ensure that it can also be successful, we need to develop a better understanding of the process and offer consistent guidelines to the many actors involved in mediation. This effort is still in its infancy, and many different fields and disciplines can contribute to its development. In this study unit, we need to take a few tentative steps in that direction. The challenge confronting us all is to recognize the diversity, strengths, and limitations of mediation, and then use its most effective range of tools where appropriate. Given the amount of destruction resulting from today's conflicts and tomorrow's potential crises, this is one challenge we cannot afford to ignore.

4.3 Negotiation

4.3.1 Conceptualizing Negotiation

Negotiation is "a form of decision making in which two or more parties talk with one another in an effort to resolve their opposing interests" (Pruitt, 1981, p. xi). In other words, the parties to a dispute attempt to jointly create an agreement that resolves a conflict between them (as opposed to, for example, resorting to force or appealing to a third party's judgment). Because conflicts can arise in every facet of life, negotiation can be a relevant and viable conflict resolution technique in contexts far beyond purchasing a car or settling the terms of a new job. The potential that negotiation offers in terms of resolving conflicts more efficiently and creating more satisfaction with and commitment to resulting agreements can be hindered when it is not done well. For some, negotiation is an intimidating activity akin to visiting the dentist and agreeing to a root canal. For others, it is a competitive sport embraced with the aggression typical in professional hockey. Our perspective, however, is that negotiation is fundamentally an interpersonal skill, and the success of negotiated endeavours rests on skilfully applying basic principles. Here we supplant some of the more negative, emotional metaphors (dental patient, hockey player) and the schemas they evoke with those principles and replace dysfunctional dispositions (aversion, hyper competitiveness) with confidence. To accomplish this, we rely on an approach referred to as integrative negotiation. In integrative negotiation, the negotiators attempt to settle a dispute in a way that maximizes both of their respective interests (as opposed to having one winner and one loser, or "splitting the difference"). Maximizing joint gain is possible insofar as the parties focus on creating rather than claiming value; the goals of the parties are not mutually exclusive (although they sometimes appear that way initially). We

adopt this lens for three reasons. First, while this technique is popularly referred to as "win-win" negotiation, our experience has shown that few people truly understand what this means or how to achieve it. Second, research has shown that many individuals display a natural tendency to view conflicts such that one person's gain automatically entails the other person's loss, even when this is not the case (Thompson, 1990). Third, integrative techniques are especially appropriate when dealing with very difficult conflicts. In short, we focus broadly on how to negotiate well using integrative techniques, even in conflicts that are difficult to resolve. First, we discuss the theoretical and empirical roots of integrative negotiation.

Negotiation, the process of combining conflicting positions into a joint agreement, is synonymous with conflict resolution, and is the most common (although not the only) way of preventing, managing, resolving, and transforming conflicts. Indeed, there is little negotiation that does not have to do with conflict resolution. If one adopts a rational choice definition of war or violent conflict as bargaining failure (Fearon 1995; Reiter 2003), then successful bargaining or negotiation is the means of preventing or resolving violent conflict. Such an understanding requires a return to the antecedent notion of conflict. Conflict arises from incompatible positions; it is ubiquitous, and not especially troublesome— worthy of resolution—in its static phase (Coser 1956; Aron 1957; Bernard 1957; Schelling 1960; Powelson 1972; Pruitt & Kim 2004). But when conflict becomes active and the parties take measures to make their particular position prevail, it does become troublesome; thus, escalation is the active form of conflict (Smoke 1977; Zartman & Faure 2005). It may block agreement that would permit cooperation to resolve a problem, or it may continue to rise to the point of violence. Conflict continues to escalate until one of three outcomes are reached: victory of one side, painful stalemate forcing the parties to consider de-escalation, and stable stalemate. Thus, negotiation as conflict resolution may be used to prevent conflict from escalating or from turning violent; it may be used to manage conflict—that is deescalate the means of its pursuit from violence to politics; or it may be the means to actually resolve the basic incompatibilities of positions or to transform them into cooperative relationships. Since World War II, negotiation to produce a peace agreement has accounted for only about a sixth of the inter- and intrastate conflicts terminated and an eighth of those temporarily managed in a ceasefire, together accounting for something less than the number terminated by victory of one side over the other. Fully a quarter of those conflicts terminated by a conflict-resolving peace agreement during this period occurred in the immediate aftermath of the Cold War and another quarter in the decade since then. An equal number were terminated by a simple conflict-managing

ceasefire during the same period. These distinctions are all subsumed under the label of conflict resolution as used in this volume but they break down into two very distinct negotiation subtypes (Zartman 2007). Negotiating can be used to deal with conflict in the more common sense of reducing violence, either by deescalating violent conflict or by preventing impending violence from occurring: peace-making, peace enforcement, and part of peace-building, in UN Secretary-General Boutros Boutros Ghali's (1994) operative distinctions. But it is also used in building cooperation, to reduce incompatibilities in positions even where no violence is involved, for conflict prevention or conflict transformation. Cooperative negotiations contain conflicts too or else there would be no need for negotiation, but they are not impelled by impending prospects of violence (Taylor 1987; Stein 1990; Stein & Pauly 1993; Zartman & Touval 2008). In addition, cooperative negotiations are most frequently multi- (or pluri-) lateral and only recently have been subject to systematic analysis, whereas bilateral negotiations have been the subject of most advanced theorization. While one might object that the two types are irreconcilably different and only the case of violent conflict resolution need be considered here, they are integrally tied together by the fact that untreated problems of cooperation may turn violent or may give rise to secondary violence.

In addition, negotiation analysis is often equally relevant to cooperative and (violent) conflict negotiations, even though at times the distinction becomes analytically important and will be highlighted below at those junctures. Other distinctions in the type of conflict, between intrastate and interstate, may also have an impact that will be noted where relevant. Given the relation of negotiation to conflict resolution, this study unit focuses on the ways in which negotiation is studied, in order to bring out current advances in the conceptualization of the subject and to highlight salient questions and areas where further advances are needed (Jönsson 2000; Telhami 2002; Carnevale & deDreu 2004). To do so, it will use as a framework the categorization of analytical frameworks into structural, strategic, processual, and behavioural (Zartman 1988; Hopmann 1996; Kremenyuk 2003). The following review will especially emphasize the practical value of conceptual findings for the better achievement of conflict resolution, in the belief that the purpose of theory is to inform understanding and improve practice. Within the definition as the process of combining conflicting positions into a joint agreement, negotiation has certain characteristics that distinguish it from the two other basic types of decision-making, voting (coalition) and adjudication (hierarchy) (Zartman 1978; Lewicki et al. 2003, 4–6). It operates under a decision rule of unanimity, with a three-fold choice: yes, no, or continue negotiating (Ikle 1964). It creates a positive sum outcome, in that

no party would agree to the outcome unless it feels itself to be better off than without an agreement (its security point). Thus, negotiation involves an exchange of goods rather than a unilateral victory: negotiation is giving something to get something, so it involves moves by both/all sides, although not necessarily to an equal degree. It can be conducted in one of three ways: concession, compensation, and construction (reframing). Power in the process lies not in numbers or in authority but in alternatives (security point, again) and in persuasion. The negotiation process operates under a loose bundle of norms that can be termed the Ethos of Equality. Like any norm, this ethos is not absolute, but it does underlie the conduct of negotiation around the world (Faure 2002). It begins with the formal structural equality of the parties, based on the fact that each has a veto over any agreement; therefore, the parties need to grant each other recognition with equal standing in the negotiations. From this, it extends to the behavioural setting that facilitates exchanges through the courtesy of symmetry that each party gives the other, even if the encounter is asymmetrical in other terms. The ethos also covers the process, where requitement—the sense that concessions will be reciprocated—is expected. While the overarching principles of any agreement, or formula, are the primary subject of any negotiation, they always refer to some mutually agreed notion of justice, the basis of which is equality or equalizing, whatever the specific referent (Zartman et al. 1996; Korm 1998). Neglected or ignored though they may be in any particular negotiation, these elements of the ethos of equality have their influence both for the smooth conduct and for the breakdown of negotiations. But first, the question of Why negotiate? needs to be addressed, before discussing the question, How negotiate? While parties—states, groups or individuals—generally prefer to resolve their problems unilaterally, where they can be in control of decisions and do not have to bend to other parties' interests, they find they have to involve others when resolution of the problem or conflict is beyond their unilateral means. Resolution may mean ending a conflict with another party or overcoming a problem that needs the participation of another party; it may mean ending a costly situation or creating a beneficial one. However, since there are a number of ways to provide social decisions with their own decision rules, including voting and hierarchy, parties resort to negotiation when there is no authoritative hierarchy and no decision rule of division. Those conditions describe the anarchy of the international relations system and the informality of personal relations. In addition, parties turn to negotiation when they want a sense of ownership over the outcome, which neither voting nor hierarchy provides (at least in the same measure). Between the inability unilaterally to end (i.e. win) the conflict or solve the problem and the decision to negotiate (and then to agree on the terms created) bi- or

multilaterally lies a large area of indecision, dominated primarily by the cost of alternatives, above all the cost of continued conflict or unsolved problems. The cost/benefit value of what a party can obtain without negotiating has many names, including security point, best/worst alternative to a negotiated agreement (BATNA/WATNA), reservation price, threat point, and others, and is the most important reference point in understanding and conducting a negotiation (Pillar 1983). It is the source of relative power and determines whether a party can play it tough or soft in negotiating (tough, if the security point is close to the expected outcome; soft, if the gap is great and there is much benefit to gain or much loss to be protected) (Kahneman & Tversky 1979 Zartman 2006). If the estimated gap between the two is too small, parties are likely to let the unresolved conflict or problem continue, and may even bog down in an S5 situation (soft, stable, self-serving stalemate).

4.3.2 Structure

Structural approaches explain outcomes of negotiation by examining the distribution of the parties' means of attaining them, frequently referred to as power.1 Power can be thought of as exercises or measures of contingent gratification and deprivation that a party attaches to negotiating offers and security points in order to change their value, the elements which provide an ability of the parties to move each other in an intended direction (Dahl 1951; Zartman & Rubin 2000). Yet very little is known about the relative merits and moments of gratification (promises) vs deprivation (threats), or about the dynamics associated with security points, other than that they are important, in analysis and in practice. Where continued conflict is the parties' shared security point, the parties in negotiation seek to provide a better alternative (gratification) or to make continuing conflict more costly (deprivation) (Zeuthen 1930; Jönsson 1981; Zartman and Touval 2007). The use of deprivation (coercion) is generally associated with distributive or zero-sum bargaining, and of gratification (benefits) with integrative or positive-sum bargaining (Hopmann 1996, 2001; Wagner 2007). It is likely that both are necessary, a fact often forgotten. When the parties are not able to change each other's calculus to provide a jointly acceptable alternative to violence, they may require the services of a mediator (Wall, Stark & Sandifer 2001). Mediation is considered here to be a subset of negotiation, an activity made necessary by the inability of the conflicting parties to overcome their conflict and produce a joint agreement on their own; it is, however, such an important subset, with its own characteristics provided by the presence of a third party, that it deserves a separate treatment.

Mediation turns the dyadic relation between the parties into a triad, in which the third angle serves to facilitate negotiation between the other two by overcoming the obstacles which keep them from negotiating directly. Power at the hands of a mediator is (for some unknown reason) termed leverage and it comes in limited amounts and forms, all of them ultimately dependent on the parties' need for a settlement (again in comparison to their security point). The forms of leverage, in general order of availability, are persuasion, limitation (closing alternatives), extraction (getting one party to articulate a solution attractive to the other), termination (mediator's threat to leave), and again (but least available) gratification and deprivation. Assistant Secretary of State Chester Crocker (1992) made sure that his mediation was "the only game in town," urged the parties to "make an offer," and threatened to end mediation on occasion, but had little to offer in the way of carrots and sticks, and was left above all with the power of persuasion, comparing an agreement to the cost of continued conflict. Similar arguments can be wielded by the parties themselves. Structure refers primarily to the relative position of perceived power of the parties. It is known that a sense of equality, or symmetry, is beneficial to the efficient and effective achievement of results, and negotiators are well advised to cultivate that sense so they can move from tending the atmospherics to resolving the problem. But, in fact, symmetry is non-existent in the real world; even close equals are never sure of their relative position and parties base their perceptions on different aspects of power. All negotiations are asymmetrical, to a greater or lesser degree; there is no absolute equality in the real world, equality between parties, and parties that are nearly or presumptively equal will spend much of their time protecting that equality or seeking to overturn it in their favour. While symmetry has long been thought to be the most favourable situation for efficient and effective negotiations, both social psychology and political science have recently shown that its real-world equivalent, near-symmetry (small asymmetry), is the least productive structure because the parties will spend most of their time and effort in position politics, seeking to maintain or upset (and therefore counter-maintain) the near-symmetry (Hornstein 1965; Vitz & Kite 1970; Hammerstein & Parker 1982; Pruitt & Carnevale 1993; Zartman & Rubin 2000). Asymmetrical parties know their roles and goals and seek absolute gains, whereas rivals at any level of the totem pole contest each other's position and seek relative gains at the other's expense (Powell 1991). Weaker parties have a potential array of means at their disposal to reduce the degree of asymmetry, by borrowing power from third parties, opponents, context, and process (Zartman & Rubin 2000). Whether the conflict is interstate or intrastate, parties weaker in power also tend to overcome their power deficit by emphasizing commitment. Smaller parties tend to

concentrate on a single issue whereas larger parties are burdened by many issues and are easily distracted; the latter focus on setting the formula for a solution at the beginning of the negotiations, leaving the smaller partner to win back initial losses in the detail phase (Crump and Zartman 2003).

In intrastate conflicts, the government has the structural advantage but the conditions and tactics are the same, as the rebellion emphasizes commitment and concentrates on recognition— formal symmetry—as its goal and the key to its equality (Zartman 1995). The role of imperfect information in conflict decisions between asymmetrical parties is currently the subject of a surge of rational choice literature, but it ignores negotiations, assuming bargaining failure instead of exploring it. Weaker parties also have other elements outside the power structure that can compensate for their weaker position. One, already noted, is commitment, the determination to overcome odds. Since power is sometimes characterized as "resources + skill + will," commitment emphasizes the last element over the first. Commitment also returns the negotiation setting to its formal equality, in which each party holds a veto. The other element, which often underlies commitment, is justice. Even when outgunned, parties may hold out because they hold their cause to be just, and negotiators have been known to turn down deals offered by stronger parties because they were judged unjust. Mexicans offered a fair market price for their gas by the USA rejected the deal because they were not getting a price they considered just by rather extraneous criteria and so lost any income at all (Odell 2000), and despite repeated painful impasses. India and Pakistan reject a salient solution (along the Line of Control) for the Kashmir dispute because both consider it unjust. Power structures also operate within institutional structures, which can have important effects on power relations. Much of the work in this approach has been done on multilateral, cooperative negotiations rather than on violent conflicts. States institutionalize their relations into international regimes, informal and formal, in order to reduce transaction costs, and such regimes both expand and limit their negotiating possibilities (Hasenclever, Mayer & Rittberger 1997; Jönsson and Talberg 1998; Spector & Zartman 2003). Regimes provide information, monitor progress, expand linkages, establish agendas, and generally reduce uncertainties and regulate expectations; but they also limit options and strategies (Odell 2005). In this, they tend to equalize member parties and reduce asymmetries. Multilateral bargaining (and analysis) also depends largely on the formation of temporary, informal institutions such as party and issue coalitions, involving some very distinct strategies, typologies, and negotiations (Hampson 1994; Zartman 1994, 2006; Sebenius 1996; Bottom et al. 2000; Nalikar 2003; Crump &

Zartman 2003; Odell 2005). Since institutions have their own rules, relations and constraints, drawn in turn from their own internal structures and from their relative positions toward each other, they can have an important impact on negotiators' capabilities. The European Union, for example, is essentially an institutionalized negotiating system where outcomes are strongly affected by the paths the process is required to take, although it has only rarely been analysed as such (Meerts & Cede 2003; Elgström & Jönsson 2005).An enormous field of inquiry is opened by other institutionalized negotiation fora, from the UN Security Council and the World Trade Organization (WTO) (and other agencies) (Odell 2006) to regional organizations (Rothchild 1997) to national legislatures, constituting a rich subject for negotiation analysis of conflict resolution, much the same way as behavioural analysis overtook judicial studies or socioeconomic analysis electoral studies. Another form of structural analysis that has developed some insights in regard to cooperative negotiations concerns the negotiatory relation between the negotiations and their domestic constituencies in two-level games. The approach has not been used as much as possible in regard to either interstate or intrastate conflicts (Druckman 1978; Evans, Jacobson & Putnam 1993; Putnam 1998). The idea that negotiating parties need also negotiate with their home constituencies and reach an agreement on the domestic level that corresponds to the parameters of an agreement on the inter-party level is as applicable to conflict negotiations as to cooperation. It opens up a window of enormous complexity, however, when relating to intrastate civil wars, where the internal politics of rebel movements are often inchoate at best. For that very reason, analysis would be useful, even if difficult.

4.3.3 Strategy

Contrasted with structural analysis' focus on means as the explanatory concept, strategic analysis uses the rational choice of ends as its terms of analysis, as portrayed in game theory and other rational choice approaches. Unfortunately, the rational choice work on negotiation has literally fled from the subject through its assumptions as well as its analysis. As Fearon (1995, p 390) posits, "There should exist a set of negotiated agreements that have greater utility for both sides than the gamble of war…So to explain…war,…why might states fail either to locate or to agree on an outcome in this range …?" The subsequent work in the intervening decade then focuses on bargaining failures without looking at the bargaining process itself and explaining its outcomes. Yet the basic presentations of Prisoners' Dilemma (PDG) and the

lesser-used Chicken Dilemma Games (CDG) launched a whole body of literature on negotiation.

(i) Prisoners' Dilemma Games (PDG)

In these meta-games, PDG and CDG, both power and process were explicitly excluded, the outcome being explained by the values assigned to various outcomes (Nash 1950, 1953; Powell 2002; Avenhaus & Zartman 2007). Again, the analysis showed that for parties caught in a perceived PDG situation, the determinate outcome or Nash equilibrium is not to negotiate, lest their concession leave them open to be zapped by the other party. As a result, the challenge of negotiation is to find ways of building trust that would establish requitement, the sense that concessions will be reciprocated. The best known device is to establish a reputation in order to "teach requitement" by opening "soft" with a concession and playing Tit-for-Tat thereafter (Cross 1969; Bartos 1978; Axelrod 1984; Brams 1990). The analysis coincided with the introduction of GRIT (Gradual Reciprocation in Tension Reduction) strategy by Charles Osgood (1962) during the Cold War. If it had questionable application during the Cold War, Tit for Tat could be seen in as diverse negotiations as those later on in South Africa and Macedonia. Other ways of establishing trust include making public commitments, negotiating with institutional frameworks, signing enforceable contracts, and employing a mediator (Schelling 1960).

Although it has limited direct use for portraying situations of negotiation, PDG is a cartoon portrayal of many situations of international conflict that long defy negotiation, as discussed by Avenhaus in this volume. Its popularity was doubtless enhanced by its accurate depiction of the Cold War in general ("Better dead than Red"), although by that fact it inhibited or hid real possibilities of East–West negotiation (Kanet & Kolodziej 1991). Another situation captured by PDG has been the Arab–Israeli conflict, but here the delicate process of getting around the dilemma by establishing trust and requitement is well exemplified in the tactics leading to and through the Oslo Agreement of 1993 (Pruitt 1996), subsequently abandoned. PDG also accurately captures such territorial conflicts as the Indo-Pakistani conflict over Kashmir and the Morocco–Algeria conflict over the Western Sahara, among others. There is a huge literature on the role of mediators as a crutch of trust to permit negotiation. Students are encouraged to. Get familiar with recent pertinent literature. Another important way of escaping the inhibitions of the PDG is to change the game, through a re-evaluation of the end values.

(ii) Chicken Dilemma Games (CDG)

One important change is to a CDG, wherein the worst outcome is deadlock (mutual defection or security point) rather than being zapped by the opponent ("Better Red than dead"). Here there is no determinate outcome but two Nash equilibria favouring each party, respectively, creating a coordination rather than a collaboration problem (Snyder & Diesing 1977; Stein 1983 Wagner 1999). But CDG like PDG is a situation of perceived symmetry, so another change in the game would be to introduce asymmetry and thus power. This represents the tactic used by the USA under President Kennedy to end the Cuban Missile standoff (1962) and by President Reagan to end the Cold War in 1989 (Brams 1985).

The study of end value asymmetry has given rise to a large literature sometimes termed negotiation analysis or models for negotiation which seeks to obviate the lengthy and inefficient process of negotiation by indicating fair outcomes based on end values assigned by the parties (Young 1994; Raiffa with Richardson & Metcalfe 2003; Brams & Taylor 1996). While such a procedure might be of use in arbitration-type situations of a CDG, where any end of conflict is preferable to continuing conflict but where the parties are satisfied by a division deemed fair, it is unlikely to be welcomed in situations of sharp conflict over indivisibles or over nontradables, situations where process ownership is important, or situations where the stakes include high political commitment, in other words, most intrastate and many interstate conflicts. In this as in other types of formal modelling for and of negotiation, the analysis removed from real world relevance by its absence of process, often based on Rubenstein's (1982) take-it-or-leave-it games that avoid Ikle's (1964) basic three-fold choice (yes, no, keep on talking) as the essence of negotiation. The task of assigning end values and rankings is often difficult enough but a more precise analysis requires identification of cardinal values for outcomes, which tends toward the impossible, at least in nonmonetary cases of conflict. An additional complication has been introduced by a significant reinterpretation of end values, termed prospect theory (Farnham 1992; Tversky & Kahneman 1995; MacDermott 2007). Prospect theory indicates that losses are more highly valued than gains, that parties are more risk-taking over losses and risk averse over gains, and that the referent frames that parties use determine the comparative value of ends. These considerations make end-based analysis much less reliable while introducing tactical elements that are crucial to effective negotiation. Another way of analysing negotiation using game theoretic concepts is to focus on the strategies of the parties, their "general plan[s] of action containing instructions as to what to do in every contingency" (Shubik 1964, p. 13) or "the overall orientation adopted by an actor to

achieve his goal," as defined by Faure in his chapter. Most strategies in conflict resolution are mixed and therefore hard to capture in rigorous analysis, but they lie between the two poles of distributive or value-taking and integrative or value making, departures from the usual minimax strategy (Lax & Sebenius 1986). Research on these strategies has primarily been on cooperative multilateral negotiations, where the differences often appear clearly: minilateral interest-based coalitions conglomerate their way into larger aggregations bargaining for future gains, maximizing positive-sum outcomes and using promises and predictions as exercises of power, whereas maxi lateral or hegemon-based coalition accrete their way to dominance, using threats and warnings, trading security for support, avoiding losses rather than focusing on gains (Chasek 1997; Baç 2000, 2001; Crump & Zartman 2003; da Conceição-Heldt 2006; Narlikar & Odell 2006; Odell 2006). However, in conflict type negotiations, Richard Holbrooke tended toward the distributive pole at Dayton, whereas George Mitchell mediated integratively at Belfast (Curran et al. 2004); nonmediated examples, especially of integrative strategies, are harder to find.

4.3.4 Process

Negotiation is a process, and its outcome can be best explained—and hence obtained— by process analysis: "Where you get is a function of how you get there," as Henry Kissinger was to have said. "How you get there," however, is in turn a function of two processes, the conflict process and the negotiation process. The conflict process leads to a decision to negotiate when the conflict is ripe. The ensuing negotiation process then goes through a succession of stages, whose proper accomplishment makes for a coherent agreement that maximizes the payoffs for the parties involved. Active conflict or escalation typically contains sets of steps to negotiation. One begins with a stage of petition (or diplomacy, in interstate conflicts), where grievances are broadly felt as Needs and the aggrieved party seeks to negotiate redress, recognizing the government's authority. The protest moves on to consolidation, where the rebellion turns inward to build its own solidarity and unity; often using identity or Creed to articulate the grievances and to build support; negotiation is unlikely and antithetical to the rebellion's focus at this stage. Only when consolidation is completed can the rebellion turn to confrontation, in combat and diplomacy (although the two work against each other) (Stedman 1991; Zartman 1995, 2006). However, at this stage, if victory or negotiation do not take place, the rebellion often turns inward, using its means as ends, and enters a phase of Greed that is much less amenable to negotiation (Collier et al. 2003; Arnson & Zartman 2005). Parties consider

positively the notion of conflict resolution through direct or mediated negotiation when they perceive the conditions of ripeness (Touval 1982; Touval & Zartman 1985; Zartman 1982, 1989, 1995, 2000; Gregg 2001). Ripeness occurs when the parties feel that they can no longer expect to win the conflict through escalation (or simply holding out) at an acceptable cost and that there is a possibility of a jointly acceptable solution. These two conditions, termed a Mutually Hurting Stalemate (MHS) and a Way Out (WO), are perceptional and subjective, although they generally have an objective referent. Ripeness is a necessary but insufficient condition for negotiations to begin; it has to be seized and acted upon. In order to reach a successful conclusion, the elements need to be reversed: the parties need to turn the WO into a Mutually Enticing Opportunity complementing the push factor of the MHS with a pull factor that draws the parties to a conclusion (Mitchell 1995; Pruitt & Olczak 1995; Ohlson 1998).

Ripeness was found in the mediated negotiations that resolved the South West African conflict in 1988 (Crocker 1992) and the Salvadoran conflict in 1989 (deSoto 1992) and in the direct negotiation in South Africa in 1990–94 (Sisk 1995). It was carried through to a minimal outcome (agreeing formula) in Nagorno Karabagh (Mooradian & Druckman 2003) and to more or less resolving formulas in Dayton in 1993 (Holbrooke 1998), in the Israeli disengagements (Rubin 1982) and the Israeli–Egyptian Washington Treaty (1979). Ripeness was absent in the failed Carter mediation between Eritrea and Ethiopia in 1990 (Ottaway 1995) and Clinton mediation between Palestine and Israel in 2000 (Enderlin 2002), and was present but not seized in Liberia in 1990 or Lebanon in 1976 (Zartman 2005). Once it has become a perceived option by the parties, either directly or through the help of a mediator, negotiation typically goes through its own process involving a number of stages and turning points (Zartman & Berman 1982; Bendahmane & McDonald 1986; Druckman 1986, 2001; Hopmann 1996). These may overlap and parties may backtrack; their passage maybe explicit or implicit; but their functions need to be observed or else the negotiations will fail or produce an incoherent result. The first stage is diagnosis, without which the parties cannot get the most out of the negotiations for themselves and at the same time find terms of agreement that are acceptable to the other party. Parties need to answer such questions as: What are my real interests in this conflict, as opposed to stated positions (Fisher & Ury 1985)? What is my security point? What is this conflict like? How were other similar conflicts handled? And then similar questions need to be ascertained from the other side's point of view. Parties must also—separately or jointly—establish such preparatory elements as: parties to be included and issues to be covered in negotiation, risks and costs incurred in negotiating, support for resolving rather then pursuing the conflict, and

preliminary contacts (Stein 1995). Parties and issues are some of the most difficult prenegotiation problems. While agreeing that negotiations among both sides'moderates only are likely to leave the mass of the rebellion outside the agreement, scholarship and practice are still out on whether to include diehard spoilers in the hopes of carrying them along in the momentum of the negotiations or to leave them out in marginalized isolation (Stedman 2001; Zahar 2007). Inside they may wreck the talks, and outside they may torpedo the results, the critical variable being the weight that they command within the rebellion. Whether the hardline akazu and the Committee for the Defense of the Republic (CDR) should have been included in the Arusha negotiations on Rwanda in 1993 is a question that will be long debated and never answered (Jones 2001; Leader 2001).

But the absence of the IRA on one side and the DUP and the UKUP on the other made the Good Friday Agreement possible in 1998 (Curran & Sebenius 2003). In between, excluded parties at the Arusha negotiations on Burundi after 2000 were gradually brought in as the agreement evolved. Similarly, the question of what issues to include without breaking the back of an agreeable agenda is also crucial; it is unlikely that the Jerusalem question could have been included at Oslo or the Kosovo question at Dayton, but the decision to put off a resolution of Brcko at Dayton (1994) and of the Panguna mine at Arawa (2001) were the keys to the last lock on the Bosnian and Bougainville agreements. Although diplomats may assume that such preparation is natural to negotiation, it is frequently neglected. A comparison of President Carter's (1979) and President Clinton's (2000) preparation for their Camp David Mideast negotiations goes far to explain the relative success of the first and the failure of the second. Rebel groups often need training in negotiation, beginning with the diagnosis phase, as the painful experiences of Renamo in Mozambique leading up to the 1990 negotiations, the Tamil Tigers in Sri Lanka leading up to the 2005 ceasefire, and the Lord's Resistance Army in Uganda leading up to the 2006 negotiations all show, among others.

The second phase is one of formulation. Negotiators do not immediately start establishing a meeting point from fixed positions; implicitly or explicitly, they first establish a formula for their agreement, consisting of a common definition of the problem and its solution (emerging directly from the diagnosis components), a common sense of justice, and/or an agreed set of terms of trade. This set of principles serves as the basis for the subsequent allocation of details. Establishing a satisfying formula is the key to a subsequent agreement, and if it is not done, the resolution of the conflict will be slower, less coherent, and less satisfactory (Narlikar & Odell 2006). There are two different types of formulas: a minimal agreeing formula that ends or

suspends the violence without touching the basic conflict issues, and a resolving formula that takes on the more difficult challenge of managing both the original issues, the complications that have arisen during the conflict, and mechanism for dealing with old conflict that may re-emerge and new conflicts that may arise. The distinction raises a major dilemma in negotiated conflict resolution: should peace be achieved, even if through a minimal agreeing formula that may leave issues unresolved and grievances unaddressed, or should negotiation focus on the achievement of a final resolving formula, even if the search prolongs the violence and killing that come with the struggle for justice (Zartman & Kremenyuk 2005)? Rather than find an answer in the absolute, the optimal strategy involves sequencing, focusing first on conflict management and the reduction of violence and then turning to the search for the ingredients of a just, resolving formula, recognizing that conflict management both undermines and promises conflict resolution since it reduces pressure for a solution (a less hurting stalemate) but also implies subsequent attention to underlying causes lest they return to bring back the conflict. The notion of justice, which enters the negotiation process through its formula, is important both in understanding the process and in tying negotiation analysis to other elements of social science and diplomatic practice. While some have held that there is a single overarching notion of justice governing negotiated outcomes (Rawls 1971; Barry 1986) and others have held that justice has no place at all in negotiation, it has been found that justice is an important element in the search for a formula but that the particular version of justice to be applied is negotiated between the parties before they can move on to the disposition of specific items in dispute (Gauthier 1986; Elster 1992; Zartman et al. 1996; Albin 2001, 2003). Formulas abound. The Arab–Israeli disputes were handled on the basis of the UNSCR 242 formula of "Peace for security" in the Israeli–Egyptian Washington Treaty (1979), the Israeli Jordan Treaty (1995), and the Oslo Accords (1993), and were not managed or resolved with Syria or Palestine because the formula was not applied. The formula may provide one (or a mixture) of three ways by which conflicting positions are combined into a joint agreement: concession, compensation, and construction.

(i) Concession

Concession involves mutual movement from initial positions on a single item to a meeting point somewhere in the middle. It is initiated by the establishment of a range where the potential positions of the parties overlap, termed the bargaining range or zone of possible agreement (ZOPA), absence of which agreement is not possible (Pillar 1983). Pioneering work by

economists introduced process analysis in the early twentieth century, but, while theoretically elegant, it was hampered by two assumptions: fixed initial positions and constant concession rates (Edgeworth 1881; Zeuthen 1930). Concession behaviour occurs most frequently toward the end of the negotiation process, often in the form of split-the difference, after a general framework has been established (see below) (Tracy 1987).

Camp David (1979), for example, cannot be understood by analysing the parties' movement from given numbers of Israeli settlements or predetermined definitions of Palestinian autonomy to a compromise figure somewhere in the middle. But the Caricom proposal for resolution of the Haitian conflict in 2004 or the Zairean conflict in 1996 did involve concessions from opposite positions favouring removal of the president vs those favouring his maintenance in power, with the middle point—maintenance in position but with power diverted to the prime minister— the basis of the compromise, adopted in the Zairean case and finally rejected in Haiti. In the prolonged negotiation over Aceh, mediator Martti Ahrtissari successfully proposed self-government as the midpoint resulting from concessions from Indonesia's discredited autonomy and the Acehnese independence (Kingsbury 2006). Concession is conceptually zero-sum, although the outcome of the negotiation becomes positive-sum when compared to the security point of continued conflict. Compensation overcomes the zero-sum problem by bringing in other items as a trade-off. It is expressed in the penetrating insight of the Homans (1961, p 62) Maxim: "The more the items at stake can be divided into goods valued more by one party than they cost to the other and goods valued more by the other party than they cost to the first, the greater the chances of successful outcome," and also in the Nash (1950) Point.

(ii) Compensation

Compensation not only underscores the importance of establishing terms of trade as a key to successful negotiation but also reminds negotiators not to leave unclaimed value on the table (Lax & Sebenius 1982).

In the South West African negotiations (1981–88), South Africa insisted on the withdrawal of Cuban troops from Angola, whose presence justified South African troops in South West Africa, whereas Angola (and the Southwest African People's Organization [SWAPO]) insisted on the withdrawal of the South African Defense Force (SADF) from South West Africa, whose presence justified Angolan troops in Angola. Negotiations looking for a midpoint between zero and 50,000 for either troops would have been meaningless, but using each proposal as

compensation for agreement on the other, as the US mediator got the parties to do, produced a highly positive-sum agreement with relatively balanced terms and Namibian independence as well. Similarly, in the famous Cuban Missile negotiations (1972), Soviet missile evacuation was bought by a US pledge not to invade, compensating an action with a promise that was deemed a fair set of terms of trade by the parties.

(iii) Construction

Construction, sometimes termed integration or problem-solving, refers to the reframing of the conflict or its solution in such a way that an outcome beneficial to both sides can be envisaged. There are many conflicts where Homans Maxim—and all the more so, a concession strategy—simply cannot be made to apply, and where a redefinition of the conflict is necessary to make a solution. In the Peru–Ecuador border dispute, decades of competing territorial claims produced only war, a real bargaining failure, but redefinition of the problem as one of mutual development made a cooperative settlement possible (1998). In Ulster, the redefinition of the conflict by the mediator into three strands—intra-Ulster, Ulster–Eire, Eire–UK—took it out of a distributive, zero-sum confrontation. While these three forms are ideal types, they are starting points for variations that make negotiations possible. They indicate that sharing in a coveted payoff, bringing in new values to make a larger pie, and redefining the problem to bring out all parties' interests in a solution are approaches that negotiators need to take to find jointly acceptable solutions. Present-day understanding of process is in terms of stages gained in realism by overcoming the two limiting assumptions at the cost of quantitative theoretical elegance.

4.3.5 Behaviour

Behavioural analysis uses the negotiator as the analytical variable, and in so doing faces serious conceptual challenges that it has not yet fully worked out. The approach is doubtless the oldest and most persistent, for it prevails today at the hands of many diplomats who feel that they alone know how to negotiate, in nontransmissible ways. However, at that level, it becomes totally idiosyncratic. To serve as a basis for analysis, the approach must group individuals into meaningful behavioural categories. The basic dichotomy of the previous century between Shopkeepers and Warriors (Nicolson 1939) has been repeated in many forms, notably as Soft-liners and Hardliners (Snyder & Diesing 1975) and Doves and Hawks. While intuitively attractive, it is far too Manichean a division, to the point where even the Hawks–Doves added

Owls to complete their world. The most recent and more complex attempt divides personalities into five categories—competitor, avoider, accommodator, collaborator/problem-solver, and compromiser (or shark, turtle, teddy bear, owl, and fox, in another formulation) (Thomas & Killman 1974), which have in turn been correlated as appropriate strategies (and hence not personalities at all) for situations of transaction, tacit cooperation, relationships, and balanced concerns, with the compromiser/fox a jack-of-all-conflicts (Shell 1999).3 Personalities are often key to the resolution or nonresolution of conflict by negotiation, but their categorization still remains elusive. One can analyse the crucial role of Nelson Mandela and Frederik de Klerk in making a resolution of the South Africa conflict (Sisk 1995; Zartman 1995), and of Menachem Begin, Anwar Sadat, and Jimmy Carter in Camp David I and Ehud Barak, Yasir Arafat, and Bill Clinton at Camp David II, but putting these distinct personalities into meaningful typologies has not yet been accomplished. Collective personality, in the form of culture, constitutes another focus of negotiation research for conflict resolution. A surge of studies on national negotiating styles has produced a better understanding of how nations negotiate (Janosik 1987; Graham & Sano 1989; McDonald 1996; Lebedeva & Kremenyuk 1997; Schecter 1998; Snyder 1999; Solomon 1999; Diamant 2000; Blaker et al. 2002; Smyser 2003;Wittes 2005), but at the risk of stereotyping, thus reducing the creativity that is the key to successful negotiation. More work is needed to find the appropriate collectivity to which the term "culture" can be applied and to identify negotiating traits that are cross-cultural compared to those that are intrinsic (and to explain their presence by some other variable than a tautological use of "culture"). Thus, culture is a delicate variable on which to hang an analysis of process and outcomes, yet undeniably it matters. Analysts are still looking for the best way to handle it (Cohen 1997; Faure & Rubin 1997; Avruch 1998.) One way is to look at crosscutting variables of the same sort that run across national boundaries. Work on professional culture has only begun, showing that such commonalities do matter too, although not definitively (Sjöstedt 2003). The "which when why?" question still poses its challenge.

4.3.6 Negotiating through Knowledge of Conflict Types

The study of negotiation has made enormous strides since it became a field of research less than a half century ago (Schelling 1960; Ikle 1964;Walton&McKersie 1965). In this, it has kept up with the need for negotiated conflict resolution, as intrastate conflicts persist (after a rise and then a drop in the 1990s, after the Cold War restraints and supports were withdrawn) even though interstate conflicts have declined (Wallensteen 2007). Negotiation can count many

successes in Conflict Resolution to its credit in the same period, more or less resolving intrastate conflicts (in addition to decolonization conflicts) in Mozambique (1992), Aceh (2005), Sudan (2005), Senegal (2006), Liberia (1997 and 2003), Sierra Leone (1999), Bosnia (1994), Kosovo (1999), Congo (1999), Bougainville (2001), Democratic Republic of Congo (1996, 1998, 2003 to date), among others. It also provided either agreeing or resolving formulas to end interstate conflicts through the Middle East Peace Process in the Israeli–Syrian Disengagements (1977), Israeli–Egyptian Treaty (1979), the Oslo Agreements (1993), and the Israeli–Jordanian Treaty (1995); the Geneva Agreements on Afghanistan (1988), the Ethiopian–Eritrean Agreements (1991 and 2000); the Brazzaville Agreement on Namibia (1988); the Peru–Ecuador Border Agreement (1999); the Tashkent (1966) and Simla (1972) Agreements on Kashmir, not to speak of the agreements in the construction of Europe, among others. And it has led to the establishment of a growing web of international regimes, beginning with the security regime in the UN itself (1945), and going on to the Convention on the Law of the Sea (UNCLOS) (1982), the General Agreement on Trade and Tariffs (GATT) (1947) and then the World Trade Organization (WTO) (1995), the Ozone Treaty (1994) and Framework Convention on Climate Change (1995), the Convention/ Organization on Security and Cooperation in Europe (C/OSCE) (1975/1992), and a myriad of other regimes. Each of these types has its dynamics and analyses. There has been less analysis of interstate conflict negotiations, because there have been fewer interstate wars in the post-war and especially post-Cold War period. Parties to interstate conflicts enjoy formal equality as states, and usually in the post-World War II era their existence is not in question in the conflict; they will continue to exist when the war is over and the conflict is only one of their concerns. That said, their levels of power and commitment may vary greatly, leading to a greater or lesser degree of asymmetry. Much of the work that has been done on negotiating interstate conflicts focuses on territoriality and on asymmetry, which is also an angle used by research on war itself. Studies of war asked why weak states attack, attributing the decision to imperfect information (Paul 1994); studies of negotiation ask how weak states can win something, and often a lot, attributing the result to strategies of borrowing power and of phasing, as already discussed (Zartman & Rubin 2003). Negotiations to end interstate wars, whether mediated or direct, generally tend to be conflict-driven and depend on the elements of ripeness to be perceived before they can begin; thereafter they tend to stop at agreeing formulas, sometimes surprisingly long-lasting, rather then being able to reach into the basic issues to come up with a resolving formula for agreement. Intrastate conflict negotiations are characteristically asymmetrical, both

informally in regard to power and formally in regard to status. In the first, the rebellion opposes its commitment to state power and its fixation on the conflict—an existential struggle to—the state's many other problems; in the second, it seeks recognition as spokesman for its cause, denying the state legitimacy as national authority, and status as an equal. Recognition is necessary for negotiation; negotiation confers recognition. This situation constitutes the major obstacle to substantive negotiating, and once it is overcome, the parties can begin discussing the range of issues lying between integration and independence or takeover. A whole range of intermediate solutions— various forms of autonomy, executive, and legislative power-sharing, elections—is available for the negotiating, but the biggest obstacle is generally the absence of trust. The longer negotiations drag on, the greater the number of additional issues, including wounds and hatreds, that encumber the agenda: the longer it lasts, the harder it is to end, and so the still longer it lasts.

Intrastate conflicts frequently involve identity issues that are highly impervious to negotiation. Such issues require constructive formulas, since concession and compensation are ill suited to deal with the problem. In interstate cooperation, the path to prevention through the establishment of standards and institutions is entirely a matter of negotiation, as is the matter of maintaining and adjusting such regimes (Hasenclever et al. 1997; Chesterman, Ignatief & Thakur 2005). As in conflict negotiations, parties are formally equal but have different weights in power and, in addition, different roles in the negotiation. As a result, the challenge is one of managing complexity, involving largely the creation of coalitions of parties and of issues (Dupont 1994; Hampson 1995; Sebenius 1996). Negotiations to create regimes are problem-solving negotiations, designed to economize on transaction costs by setting up standard procedures for handling recurrent problems.

4.3.7 Scholarship Challenges

As scholarship has come face to face with the growing number of cases in reality, and as it has focused increasing attention on the negotiation process itself, it has spread out in new directions. Indeed, what is termed negotiation is in fact (or in concept) three sets of negotiations: negotiations to negotiate, negotiations to end conflict (violent or not), and negotiations to implement the agreement. All of these invite further work. One is the matter of what happens before formal negotiations begin, as in negotiability (Dupont 2006), diagnosis (Zartman and Berman 1982), prenegotiation (Stein 1997), ripening (Haas 1990; Zartman 2008), escalation (Zartman & Faure 2005), entry (Crocker et al. 1999; Maundi et al. 2006), etc.

While ripeness theory provides an important key to the decision to negotiate, it is dependent on perception, a condition the parties often cannot achieve alone or together. Much negotiation is usually required by a mediator and within the parties themselves to come to the subject realization of the need and opportunity to negotiate. Conflict itself is the preparation for its own resolution; how can this preparation be accelerated more economically, and the costs of conflict reduced? The important work already done on these topics does not exhaust the subject; to the contrary, it only opens it to further research. In the analysis of the process itself, the strategic situation demanding coordination, as in CDG or the Battle of the Sexes where there are two Nash equilibria and the challenge becomes the choice or combination between them, as opposed to the PDG challenge of collaboration, poses a major problem for analysis and practice, as Avenhaus discusses in his work on game theory. Since many situations do not fall under Homans Maxim or have a Nash Point where compensation and trade-offs are possible, the challenge of concession or construction is mighty. The other of the processes calling for further study has to do with closure, a topic on which there is essentially nothing. When is enough and when can one side ask for a little more without breaking down the process? The question is crucial to the judgment of whether the parties did the most they could or whether they left unclaimed gains on the table. Do the negotiations in question end on an agreeing formula or a resolving formula, and how can the one lead to the other? The third direction concerns what happens after successful negotiations, as in implementation, post agreement negotiations (Spector & Zartman 2003), reconstruction, and durability (Licklider 1995; Walter 2002; Fortna 2004a, 2004b). More than the previous subject area, these topics are open-ended and so hard to subject to bounded inquiry. In fact, one of the problems plaguing durability studies is, How long does an agreement have to have lasted (meaning?) to be judged durable? A challenging implication of post agreement negotiations is, How constraining is a regime if renegotiation is a normal part of its nature? Indeed, some have indicated that negotiation should not be regarded as a process with an end but rather as the beginning of a process of continuing cooperation (Thuderoz 2003). This may be a cultural question: Americans like their negotiations to end with a solid agreement and go home, whereas other cultures (not necessarily Asian) and particularly students of social negotiations see negotiation as merely opening a door. In any case, the viewpoint would be a useful addition to conflict resolution approaches, where parties not only conduct forward-looking negotiations to take care of future possible conflict but where they also seek to build mechanisms for transforming relationships (Zartman & Kremenyuk 2005). Probably the most challenging issue of the time concerns the profound

change in negotiation brought on by a changing nature of the parties. Negotiation with armed bands, terrorists, antiglobalist movements, among others, are not the neat two-party negotiations that current analysis so often assumes. Not only does it involve internal politics (as do all negotiations) but the other party frequently does not exist as a corporate body. There is no leader who can make a decision and hold an agreement, and no delegates who represent the central organization. Furthermore, the "party" frequently does not know what it wants: its actions call for attention, express protest, look to millennial outcomes, and expect conversion and surrender from the other side (or eternal war), as in Uganda and Sri Lanka in current conflicts. Finally, these "parties" usually do not know how to negotiate and often have to be taken aside and given training, as in Darfur, Mozambique, and Sri Lanka in recent conflicts. Negotiating with or between amorphous parties needs entirely different models to capture its process, in concept and in reality. There is still much life left to live in the old practice and its relatively new analysis.

Study unit 5: United Nations and Conflict Resolution: Some case studies

5.1 Background

Since its inception in 1945, much of the effort of the United Nations has been aimed at the 'maintenance of peace and security' and the 'pacific settlement of disputes'– objectives set out in the UN Charter. This study unit 5 briefly discusses the UN's methodology in the area of conflict resolution within the context of the typology on different approaches to dispute resolution outlined by Ury, Brett and Goldberg (1988). It will then focus more specifically on the UN's interest-based approach and suggest some of the lessons that can be learned for conflict resolution and peacemaking from UN experience.

5.2 The United Nations as a Dispute Settlement System

Indeed, the three main approaches to dispute settlement outlined by Ury and his colleagues – power-based, rights-based and interest-based – are all embodied in different parts of the United Nations, as discussed in greater detail elsewhere (Peck, 1991, 1994, 1998). The Security Council represents the UN's power-based approach; the International Court of Justice, its right-based approach; and the Secretary-General and his Representatives, its interest-based approach. Of course, other parts of the UN system also help to avoid or resolve disputes by establishing norms, standards and rules to guide the interaction of member states with one

another as well as with their own populations. The General Assembly, the Economic and Social Council, the Human Rights Council, the Conference on Disarmament, the World Trade Organization and many other fora offer an opportunity for member states of the organization to dialogue and eventually come to agreement on a whole range of topics which help avoid international disputes and/or set forth rules for helping to resolve them when they do occur. The multilateral negotiations in such fora are often intense as multiple parties with different interests try to agree.

These organizations are not 'talking shops' as is sometimes claimed; their decisions have a profound impact on both inter- and intra-state relations. Other parts of the UN system also engage in negotiation and mediation in order to carry out their mandates. For example, humanitarian organizations, such as the World Food Programme, the High Commissioner for Refugees, the United Nations Fund for Children and many others have to negotiate humanitarian access in conflict situations in order to deliver humanitarian assistance to those suffering from the conflict. However, the three parts of the UN which deal most directly with conflict resolution per se are discussed briefly below. The UN's power-based approach The Security Council is the UN organ most directly charged by the Charter with the responsibility for maintaining peace and security. Its 15 members meet regularly to discuss trouble spots around the world, to receive input and reports from member states, as well as from the UN system, and from regional and non-governmental organizations and to make decisions about what action should be undertaken. Its actions are negotiated among its members, then voted on and announced in the form of Security Council Resolutions which have the force of international law. The Council can also issue letters or Presidential statements, or establish a Security Council Mission to see a situation first-hand and make recommendations directly to the parties. The Council can take action under Chapter VI of the UN Charter with the consent of the member state involved or under Chapter VII in which consent is not required. The Council can also refer the situation to a regional organization under Chapter VIII. During the Cold War, the Security Council's ability to take action was constrained by the veto power of its permanent members which was used as part of their Cold War struggle. Since then, however, the veto has been used less frequently and informal consultations, especially among the permanent members, have allowed the Council to become much more active. Even so, the Council's actions (and sometimes inaction) are not always welcomed. A large number of members feel that the Council is not representative of the UN's membership as a whole and

debate is ongoing about the need for Security Council reform, with numerous formulas proposed. There is also widespread concern that the permanent members of the Council too frequently pursue their own geopolitical interests rather than those of the membership as a whole, resulting in different standards being applied to different situations. The Council's greater use in recent years of Chapter VII measures, such as peace enforcement, sanctions or arms embargoes, are also a cause for concern to some. Thus, members are often reluctant to relinquish control over the process and outcome of their disputes to a Security Council with such powerful instruments. Moreover, even in cases where the Council has tried to act as a kind of arbiter (rather than as an enforcer, bringing parties to the Council chambers for discussion), parties tend to respond by engaging in adversarial debate rather than problem solving. This mutual recrimination and positional arguing by each side to convince the Council of the 'rightness' of its case and the 'wrongness' of the other side tends to further harden positions and inflame the situation. When Council members are forced to declare their sympathies, support for one or both sides can widen the dispute or encourage hostilities. But in spite of these issues, the Security Council's regular monitoring of a large number of conflict situations and actions to try to manage them have undoubtedly had an overall beneficial effect on international peace and security over the years and kept many situations from deteriorating further. Of all the power-based instruments available to the Council, the most successful has been the use of peacekeeping operations, which were not mentioned in the UN Charter, but were an afterthought proposed by Dag Hammarskjold. Since then, they have become a major instrument for maintaining peace or for restoring peace once a comprehensive peace settlement has been agreed upon by the parties. At the time of this writing, there are 97,924 personnel in the field in 18 peace operations led by the Department of Peacekeeping Operations on four continents (DPKO, 2006). Peacekeeping missions vary greatly in their mandate, size and structure – ranging from unarmed military observers creating a thin blue line dividing the parties, such as in Cyprus, to large multidimensional peacekeeping forces, such as in Liberia, Sierra Leone or the Democratic Republic of the Congo. In recent years, peacekeeping forces have even been given an executive mandate, where for a limited period, the mission has become the virtual governing body in the country, such as in Cambodia, East Timor and Kosovo. The use of peacekeeping has evolved greatly since its inception and is now being used more extensively than ever before. Some peacekeeping missions are deployed under Chapter VI where peacekeepers are typically lightly armed, and others under Chapter VII where forces are more heavily armed with more robust rules of engagement about how and when force can be

used. Thus, peacekeeping operations can encompass varying degrees of power, but the mere presence of a peacekeeping mission is a source of both power and influence. The supervision, monitoring and reporting functions of the peacekeeping troops and military observers (whether unarmed, lightly armed or heavily armed); civilian police; human rights monitors; civil or political affairs officers and election monitors all exert a wide range of implicit and explicit positive and negative leverage on the leadership of the conflicting parties, their constituents and on the population at large.

Of course, not all peacekeeping missions have been entirely successful and many lessons have been learned from these situations. However, in others, significant progress has been made (to cite a few examples, Angola, Burundi, Cambodia, Cyprus, the Democratic Republic of the Congo, East Timor, Eastern Slovenia, El Salvador, Ethiopia–Eritrea, Georgia, Guatemala, Haiti, Lebanon, Liberia, Mozambique, Namibia, Sierra Leone and Tajikistan). In recent years, The UN has sought to learn the lessons from the experience of all these missions and to make the necessary reforms within the Department of Peacekeeping Operations to try to ensure that mistakes are not repeated. Nonetheless, the sheer complexity of multidimensional peacekeeping missions which have to operate in an ever-changing conflict environment cannot be underestimated. The UN's rights-based approaches Apart from the Security Council, the other UN organ directly charged with the peaceful settlement of disputes is the International Court of Justice (ICJ) located in The Hague. As the principal judicial organ of the UN, it was designed to hear contentious cases between sovereign states and to provide advisory opinions to the authorized organs of the UN. Although the ICJ has been involved in the resolution of a number of conflicts between states over the years, it has not proved to be as useful as the framers of the UN Charter hoped it would be for a number of reasons. One of these is because its statute limits it to disputes between states whereas most conflicts in recent years have been within states (Wallensteen, 2002). The other problem is that, like the UN's other peaceful methods for the settlement of disputes, recourse to the Court is largely voluntary (Peck and Lee, 1997). States can accept its jurisdiction in three ways. The first is through the 'optional clause' of the Court's statute (Article 36 [2]).

This allows member states to declare that they recognize the compulsory jurisdiction of the Court, although they can also exempt certain areas from jurisdiction. The second is through the consent of a state to take a dispute to the court as part of a special agreement or compromise (Article 36 [1]). A final avenue is through compromisory clauses in treaty agreements, which stipulate that any dispute arising therefrom must be referred to the Court (Article 36[1]).

Thus, the Court has suffered from much the same problem faced by the Security Council. On the whole, member states have been reluctant to relinquish decision-making control to a third party. One hundred and ninety-one states are parties to the Statute of the Court but only 66 of them have accepted the compulsory jurisdiction of the Court and most of those have introduced reservations. Of even greater concern, only one of the five permanent members of the Security Council (the United Kingdom) has currently endorsed the optional clause for compulsory jurisdiction. Use of the Court has, nonetheless, grown significantly in recent years and it has been successful in resolving disputes, most commonly territorial disputes between neighbouring states over land or maritime boundaries; the treatment of nationals; or cases concerning the use of force by one state against another. In 2005, it rendered a judgment in 10 cases (Jiuyong, 2005).

5.2.1 The UN's interest-based approach

The Secretary-General and his Representatives embody the interest-based approach of the organization. When a preventive diplomacy, peacemaking, peacekeeping or peace-building mission is established, the Secretary-General appoints a Representative of the Secretary-General (also sometimes called Special Representative, Personal Representative, Envoy or Special Adviser) to head up the new peace mission. The size of preventive diplomacy, peacemaking and peace-building missions is usually quite small, whereas peacekeeping missions can be quite large; but in all cases, the Representative is the person on the ground responsible for the actual negotiation and mediation in situ with the conflicting parties. In the case of peacemaking (obtaining a peace settlement after a situation has degenerated into armed conflict) or preventive diplomacy (before it reaches that stage), the Representative reports to the Secretary-General through the Department of Political Affairs. The UN has been involved in peacemaking (sometimes called 'good offices') in a range of situations (e.g. Afghanistan, Angola, Bougainville, Colombia, Cyprus, East Timor, El Salvador, the Former Yugoslavia, Guatemala, Georgia, Haiti, the Iran–Iraq War, Nicaragua,Tajikistan and Western Sahara) with varying degrees of success. As well, the organization sometimes plays a supportive role in situations where peacemaking is undertaken by regional or sub-regional organizations or other third parties (for example, in Burundi, Cambodia, the Democratic Republic of the Congo and Somalia). Even in peacekeeping missions, Representatives are constantly required to use negotiation and mediation to implement the comprehensive peace agreements which have been agreed and to overcome the many obstacles which present themselves during the

implementation process. In the latter case, they report to the Secretary-General through the Department of Peacekeeping Operations. Recently, it has been more widely acknowledged that building sustainable peace in a post-conflict situation requires a much longer term engagement by the UN and peacebuilding missions, which stay on in a country after the peacekeeping mission has left, have been established. Once again, Representatives of the Secretary-General are appointed to head up these peace-building missions and to negotiate with the parties on the ground, as well as with the donor community and with the UN Country Team to ensure that the situation receives what is needed to secure the right conditions for a sustainable peace. A new Peace-building Commission has now been established, composed of selected member states, with a Peace-building Support Office in the Secretariat to support its work and to ensure that more attention is given to this vital area.

4.3 Lessons from UN Experience for the Pre-Mediation Process

This section explores the use of negotiation and mediation by the Secretary- General and his Representatives to assist warring parties in finding (and subsequently implementing) comprehensive settlements to their conflicts and the lessons which can be learned from this experience for conflict resolution practice. Much of this information derives from a five-year study by the author, known as the 'UNITAR Programme for Briefing and Debriefing Special and Personal Representatives and Envoys of the Secretary- General' which has involved: (1) in-depth interviews with current and past Representatives of the Secretary-General (RSGs); (2) the preparation of two editions of a book for in-house UN use only (entitled On Being a Special Representative of the Secretary- General), as well as a set of edited DVD interviews – intended for briefing new RSGs and (3) a regular seminar for all current RSGs and senior headquarters staff (of which there have been three to date). The objectives of the study have been to preserve and pass on the valuable lessons and experience of RSGs and to ensure that these are used to refine and enhance future practice. Of course, this knowledge and advice is also of considerable use to our general understanding of conflict resolution and, therefore, is described here in brief. Although different RSGs take different approaches to their third party role, some of the practical advice from their experience is presented below. Since many of the concepts referred to by RSGs come from the wider conflict resolution literature, the scholars who developed these concepts are also cited in the notes and the references. Helping to ripen a situation. Some Representatives argue that UN involvement can help to 'ripen' a situation5 and, therefore, that peacemaking assistance should be offered more proactively. 'When the UN becomes involved,

it brings hope,' observes Vendrell (2002). He proposes that, where possible, the parties should be persuaded to accept a modest role for the Secretary-General's Representative as a facilitator or observer and then, when a window of opportunity opens, he/she will be well placed to assist. The UN presence in Afghanistan prior to September 11, for example, gave it an advantage in being able to organize the talks in Bonn to form the new Afghan government following the defeat of the Taliban. Similarly in 1997, the UN began facilitating talks between Indonesia and Portugal over East Timor at a time when the chances of an agreement seemed unlikely. In January 1999, however, the new President of Indonesia made the startling announcement that East Timor would be offered regional autonomy and, if this was not accepted by its people, then Indonesia would consider releasing East Timor. As Marker (the Personal Representative of the Secretary- General who was facilitating the UN talks) notes, when this window of opportunity opened, 'we were right there and ready' (2001).

In Guatemala, the UN helped to ripen the situation by bringing civil society into the process (for example, trade unions, peasant groups, indigenous groups and human rights groups). This brought a greater element of balance into a situation where the guerrillas were very weak and also allowed more space for NGOs to develop. As well, it brought about a discussion in the media about how to end the conflict. Finally, the kind of proposals that the Secretary-General's Representative was putting forward 'created a dynamic within Guatemalan ruling circles, particularly within the army, that brought about power struggles and purges and, on the whole, resulted in the more moderate elements in the army, who were keener on negotiations, coming to the fore' (Vendrell, 2002).

(i) Dealing with pre-conditions

One common problem that RSGs face occurs when one or both parties demand that certain requirements must be met before negotiations can begin. Such pre-conditions are often set by hard-line leaders or in response to hard-line constituents to block negotiations. By setting a pre-condition that one knows the other party is unwilling to accept, one appears willing to negotiate, while shifting blame to the other side for the blockage. In internal conflicts, the most common precondition is a demand by the government for the guerrillas to disarm or sign a ceasefire agreement before negotiations. Guerrilla groups, however, frequently believe that only armed pressure will force concessions from the government, so they are usually unwilling to comply. 'In most cases, such a demand is a non-starter,' comments de Soto. 'War-time

negotiations can actually be easier than peacetime negotiations, mostly because of the external pressure that can be brought to bear' (2001). Indeed, de Soto's mediation efforts in El Salvador offer a successful example of this. Third parties can also make it clear to the parties that substantive pre-conditions are not acceptable. In the negotiations in Burundi, Dinka explained to guerrilla groups the distinction between substantive preconditions which had to be the subject of negotiation versus confidence-building preconditions which could be agreed to in order to build confidence. 'If the rebels say to me: "We don't want the President to call us rebels; we are an armed group, but we're not rebels!" I can go to the President and say, "When you speak on the radio, please don't call them rebels" – because that is not going to change anything.' By contrast, Dinka makes it clear that substantive issues are what have to be negotiated and no party should be asked to make a concession on such issues before the negotiations begin (2001).

(ii) Confidence-building measures

Egeland (2001) points out that, 'Parties often don't know which tools are available to them. They know how to fight, but they don't know how to make peace. They need to be educated in what confidence-building measures they can undertake and what tools the international community can provide.' In some cases, it may be useful to go through a pre-negotiation phase, where the objective is not agreement but merely low-key facilitation of dialogue and confidence-building. 'If you go too fast,' he warns 'you may end up with total rejection of the process.' To facilitate confidence-building in Colombia, Egeland organized a joint tour by the two negotiating teams – the FARC and the government – to Stockholm and Oslo where seminars were held on human rights, international humanitarian law, experiences from other peace processes, democratic governance, rule of law and transparent governance. As well, the teams were taken on a joint European tour 'to expose them to something different than the vicious cycle they were living in their own country.' This helped to develop relationships between the parties and also established a positive relationship between the parties and the Secretary-General's Representative (2001). In an attempt to make progress in the Georgia–Abkhazia conflict, a series of conferences were organized to discuss concrete confidence-building measures, such as the exchange of refugees and displaced persons; information sharing among law enforcement organs to prevent crime; cooperation in the field of mass media; economic exchanges in areas such as wineries and joint meetings between parliamentarians, journalists, NGOs, and directors of libraries. In the latter case, for example,

the Director of the Georgian National Library agreed to search for books and materials among Georgian holdings to replace the loss of the Abkhaz archives destroyed during the war (Boden, 2001). An interesting variation on confidence building measures was used by de Soto at the beginning of the negotiations in El Salvador, when President Christiani was criticized by his constituents for offering a dialogue process with the guerrillas, who had refused to renounce hostilities. Knowing the guerrillas did not want to make a gesture to the government, de Soto took the unusual step of suggesting to the FMLN that it make confidence-building gestures to the Secretary-General (who was intervening for the first time in a good offices role in Latin America). The confidence-building measures adopted in response included the cessation of attacks against businesses, civilian targets and the banning of certain types of land mines, allowing the president to say to his constituents that something had been achieved by entering negotiations (2001). The UN can also build confidence through its own actions. In both Guatemala and El Salvador, UN human rights monitors were deployed during the peacemaking process. Arnault comments that the deployment of the human rights verification mission created, within the URNG constituency, the sense that the peace process was bringing something tangible. 'Yesterday an army colonel could do anything and now there was an office of MINUGUA in the area, staffed with five police observers and five human rights monitors' (2001).

(iii) The need for a single mediator

RSGs were unanimous in agreeing that, for peacemaking to be effective, it must be led by a single mediator. Ould-Abdallah recalls that at one point in the Great Lakes Region there were twelve Representatives from regional organizations, member states, NGOs and the UN. 'Such a proliferation of intermediaries can, of course, engender considerable confusion regarding the role of the international community and create numerous opportunities for extremists to play one intermediary off against another.' In such cases, he advises that a 'lead actor' must be established (2000: 131). In Cyprus, where the UN has a mandate from the Security Council, de Soto (2004) met the other envoys and told them that the Secretary-General viewed them as his friends in the process and sources of advice and support. However, he also explained the importance of maintaining the unity and integrity of the UN's efforts and asked them to consult with him before coming to the island or having contact with the parties.

(iv) Deciding who to include in the process

Another issue which can be contentious is who to include in the process. Most RSGs urge that all major parties who are stakeholders in the situation should be included and warn that those left outside the talks will have a greater motivation to act as spoilers. 'Leaving a warring party out of a negotiation is a recipe for failure,' comments de Soto. 'It is essential to have the major protagonists in a conflict at the table, absent which you can't expect them to comply with whatever agreements emerge' (2001). Tubman describes why the peace process for Somalia, organized by Djibouti in 2000 and dubbed the Arta process, didn't succeed:

> Arta was based on the premise that the warlords had been a problem and that although they were welcome there, the idea was that you would deal with civil society, with the clans, and they would get together and hold the answer to what was needed in Somalia. The warlords would be left out. When the government was formed, those who were left out were free to be co-opted into other arrangements. Ethiopia, which was also largely left out of the Arta process, wasn't happy with the results of Arta, and they reached out to those unhappy warlords and formed them into a group that began to offer a parallel political dispensation to the Transitional National Government. As a result, the people who initiated the next process – IGAD – felt that all stakeholders should be invited into the next peace process. (2003)

Ould-Abdallah (2001), however, warns against including extremists, since they can disrupt an already shaky political environment. By contrast, Vendrell (2002) argues that including an extremist group usually depends on the power of that group. 'The question,' he maintains, 'is not so much whether you have extremist groups at the table, but whether you accede to their demands which are contrary to the objectives and principles of the UN Charter.' One means for overcoming the problem of extremists is to include a broader-based group of positive, influential actors, such as religious leaders, elders or scholars. Sahnoun (2003) proposes that these individuals should be given visibility, especially when the negotiations meet with success. Another issue is the involvement of women. Security Council Resolution 1325 (2000) calls for 'an increase in the participation of women at decision-making levels in conflict resolution and peace processes.'

The UNIFEM book, Women at the Peace Table, argues that:

> It is predominately male leaders of the fighting parties who are negotiating an end to war and laying the foundation for peace. The justification often given is that the peace table must bring together those who have taken up arms because it is up to them to stop the

> conflict … The process of reconstructing a society emerging from war requires the equal contribution of men and women. Ensuring women's participation in such negotiations enhances the legitimacy of the process by making it more democratic and responsive to the priorities of all sectors of the affected population … In this sense, the peace table becomes a platform for transforming institutions and structures, and opening the door to greater social justice. (Anderlini, 2000: 5)

Other RSGs argue, however, that including too many parties makes agreement less likely. 'Most mediators,' comments Vendrell (2002) 'would look askance at the idea of having civil society (for example, the exile groups or the refugees) represented at the table, because it makes the negotiations totally unmanageable. But civil society will argue, "Why should only those with the guns be negotiating?".' To overcome this problem in Guatemala, the UN mediation process established an Assembly of Civil Society in 1994, with representatives from a range of civil society groups. While the Assembly did not participate directly in the negotiations between the government and the guerrillas, it was able to input views and, even more importantly, it had the right to review and pass judgement on all agreements reached in the bilateral talks. Its judgement was not binding, but it did exert pressure on the main parties to take into consideration a broader range of interests (Arnault, 2001).

(v) Dealing with decision-makers

Dealing directly with the decision-makers is vital to any peacemaking process. 'It is often a mistake,' advises Egeland, 'to seek contact with those who share your opinions because it's easier to deal with them. If you do that, you end up with a deal that can't be realized, because those you dealt with have no clout on their respective sides.' He proposes that mediators should try to have the leaders at the table or at least those who can make decisions (2001). In the 1990–91 El Salvador talks, the government's Dialogue Commission did not have full capacity to make decisions, so de Soto often found himself flying on an urgent basis to San Salvador to deal directly with President Christiani or phoning him from wherever the negotiations were being held. De Soto also travelled to Cuba, Nicaragua and Mexico to meet directly with the commanders of the FMLN (2001).

(vi) Agreeing on a venue

Settling on a venue for peace talks may also create problems, since the location can have symbolic meaning for the parties. Typically, governments want to hold talks inside the country, but opposition groups may fear for their security or be concerned about listening devices. In cases where a Group of Friends of the Secretary-General exists (which will be discussed later), the talks can take place in the country of one or more of the friends. More generally, Vendrell (2002) proposes that one should not choose a venue that is identified with either side or too distant. Good communication facilities are important, as is the consent of the host country, since it is usually asked to pay for the local costs. Finally, he recommends that one doesn't want a place 'where the government will try to poke its nose into the negotiations. 'His modus operandi is to prepare a list of countries that he believes would be suitable and to individually ask the parties where they would not be willing to go. By the time he proposes a venue, he has discussed this thoroughly with all sides. In Tajikistan, Merrem and his staff found themselves carrying out framework talks in December, 1996 in freezing temperatures at the mountain fortress of Commander Masood in order to overcome the fact that the President wanted talks in Dushanbe and Nuri wanted them at his own base in northern Afghanistan (Merrem, 2002). In 1997 in the DRC, when Kabila's forces were marching on Kinshasa, Sahnoun and Mandela negotiated with Mobutu and Kabila on a ship provided by South Africa, anchored off the coast of Angola in order to avoid bloodshed (Sahnoun, 2003).

(vii) Establishing a framework for negotiations

Most UN mediators stress the importance of trying to obtain a framework agreement as a first step in the negotiation process. Such an agreement commits the parties to a process of negotiation and sets out how the process will be structured and what procedural rules will guide the talks. Framework agreements usually outline: who the parties will be; who the mediator will be; what format the talks will take and the need for high-level representatives from the parties who have the capacity to take decisions. A framework agreement also usually contains a commitment by the parties not to abandon the process unilaterally, as well as rules about who can talk to the media under what conditions. Even when it is not possible to negotiate a framework agreement, the mediator can 'frame' the talks by providing an opening statement which sets out procedural rules for the negotiation and seeks informal agreement on these.

4.4 Lessons about Mediation from UN Peacemaking Experience

Once the above hurdles have been surmounted and the facilitation/mediation process begins,

there are a number of other challenges to be faced.

(i) Identifying issues and agreeing on an agenda

Developing an agenda of key issues can be problematic since each party may want to include issues that the other does not wish to consider. 'It's important,' notes Sahnoun, 'that the agenda addresses all of the important grievances. Both sides must see that their legitimate fears are taken care of, but formulated in such a way that they can be accepted by the other side, so that neither party will see in the formulation any kind of provocation' (2003). RSGs generally recommend that agenda items should be framed in a neutral manner, for example, 'constitutional issues' rather than 'constitutional reform' (de Soto, 2001; Vendrell, 2002).

(ii) Ordering the agenda can also be problematic

Some RSGs suggests that mediators should begin with the issue on which they think progress is most likely, to give a sense that the negotiations are progressing. Also because agenda items are usually linked, they propose that parties should be warned that issues will not necessarily be negotiated in a sequential manner and that it may be necessary to alternate back and forth between issues. Certain items inevitably come at the end of the process, for example, return of refugees or demobilization, disarmament and reintegration of ex-combatants. In some cases, the mediator may wish to put issues on the agenda that the parties may not think of themselves, such as human rights or verification (Arnault, 2001; de Soto, 2001; Vendrell, 2002).

(iii) Bargaining over positions versus reconciling interests

Broadly speaking, two methods of negotiation can be identified. The parties themselves typically view negotiations as a bargaining process, which merely transforms their existing power struggle from the military arena to the negotiating table. In such a process, each party advances positions (or advocated solutions) and argues for the acceptance of its positions and against the other party's solution – in pursuit of winning at the bargaining table what they were unable to win on the battlefield. If left unaided by an intermediary, parties tend to employ a range of coercive tactics to force the other side to make concessions. These may include recitation of past grievances, angry recriminations, threats, ultimatums and walk-outs. If unchecked, such tactics can backfire – causing the other party to react in kind, and bringing the whole process to a standstill.

The second approach to mediation, adopted by most RSGs involved in peacemaking, is to attempt to transform the process into a forum for problem solving, in which the objective is to search for innovative solutions which address each side's key interests in order to try to reconcile or bridge differing concerns. The main features that distinguish this more promising approach are:

• an in-depth understanding by the mediator of parties' core interests and concerns which must be addressed to achieve a sustainable settlement;

• the interposition of the RSG as a third party – who, in effect, becomes the negotiating partner for each side – and who, through shuttle or proximity talks, probes interests and explores innovative options with both parties. This allows each party to have a constructive partner as its interlocutor and overcomes the difficulty of parties having to deal directly with those with whom they have a bitter adversarial relationship;

• the use of international standards, practices and models which provide objective criteria upon which agreements can be based;

• an exploration with the parties of innovative options for addressing key interests that move beyond each side's positions and identify new possibilities that may not have been considered before, but which might be gradually pieced together into mutually acceptable agreements. These can be built from ideas presented by the parties themselves, the mediator, experts and civil society or they may be derived from international standards, models and best practices. After a series of consultations with the parties, the ideas are gradually refined until agreement is reached;

• the gradual building of confidence and subsequent improvement of the atmosphere between the parties which comes from sequential successes in reaching agreement; and

• the encouragement and support of influential member states (such as Friends of the Secretary-General) and other actors (such as donors or international financial institutions) which can nudge reluctant parties towards accommodation and agreement.

For example, in facilitating the peace talks on Bougainville from 1999 to 2001, Sinclair defines how he transformed the process from one of arguing over positions to exploring options based on interests:

> In any process of negotiation, it can be important to have an initial period of general exchange of views between the two sides – but if you have too much of it, it can become the negotiation. When that happens, you're not doing anything to close the gap between

> the parties' positions, and if it's allowed to go on unchecked, it can degenerate into a trading of complaints and slogans, with political positions being advanced and insisted upon. When this started to happen in the Bougainville negotiations, I tried to steer the exchanges to a different level. Instead of articulating general positions, I proposed: "Why don't we go to the level of identifying interests? Beyond saying what you would like, let us identify why you would like to have this. What interests are you seeking to protect by putting this position forward? What fears are you trying to guard against by articulating this position?" After that, the nature of the discussions changed noticeably. The two sides became specific, more open, and gave themselves more space to find solutions or agreements (2001).

(iv) Understanding parties' interests and finding solutions that satisfy interests

UN mediators agree that, to be an effective mediator, good listening skills are required in order to understand parties' interests and motivations.8 This involves trying to see the situation from the parties' perspective – as they themselves see it. Sahnoun (2003) points out that 'When you listen, you create trust. Being listened to creates a psychological catharsis. It is important to ask questions – to go deeper into their thinking, into their views, into their apprehensions, into the way they came to these positions. That is absolutely fundamental.' Arnault comments that the mediator must have empathy. 'You must be able to relate completely, totally and without reservation with each party's agenda. You must understand what they want, why they want it and why they want it so much.' He observes that the parties may hold positions or have, committed acts that the mediator disagrees with but he advises:

> You still have the duty to understand what lies behind this behaviour and to understand where all their mistrust and suspicion comes from. To do this, you have to spend a great deal of time with them. I spent days and nights talking and talking and talking with the two parties. In French we say, entrer dans les vues de quelqu'un. It doesn't mean that you share their views – but that you understand them. You get into their shoes. You don't have to stay there, but at least you know what it's like. But doing that imposes a discipline of being simultaneously empathetic with contradictory views. (2001).

Along these same lines, de Soto explains his own approach:

> Going into any negotiation, a mediator should make it his business – as quickly as possible – to try to find out what interests, concerns, fears, aspirations, dreams and

> nightmares led to setting those positions. If you can identify interests, rather than positions, you're already a long way in the direction of finding the key to the solution of the conflict, especially if you do this with both sides. It's only by identifying the underlying interests and the institutional problems that are frequently attached to them that you can go beyond a glorified ceasefire to build peace that will be durable because you have identified the causes. Identifying interests – going beyond positions – involves finding out the source of grievances. Frequently, these may be exclusionary policies based upon exclusionary institutions. They may be economic, in order to entrench the interests of a certain sector of society; they may be simply for the preservation of the status quo; sometimes they are of an ethnic character. But these are the problems that have to be addressed. (2001).

RSGs also stress the importance of good background research. 'You're negotiating with people and they have to be analysed,' observes de Mistura. 'You have to study their culture, their background, their motivations, their connections, their tactics and strategies and what they have done so far. In real estate, the experts say the secret is "location, location, location"; in negotiations, it's "homework, homework, homework"' (2004). Finding proposals that address the parties' core interests requires creativity. In the negotiations over autonomy for Bougainville, Sinclair was able to help the parties invent new options to address their most important interests. Regarding the police, for example, it was agreed that Bougainville would have its own police force with its own head who would be appointed by a commission that would include Bougainvilleans, as well as the commissioner of police in Port Moresby. The standards of policing were to be the same for both. 'This was a very creative solution,' concludes Sinclair, 'that met the concerns of the national government that the institution of the police not be fractured, and the concerns of the Bougainvilleans that the police arrangements would not be a constant reminder of the atrocities they suffered at the hands of the police during the crisis' (2001).

(v) Finding the best balance between direct and indirect talks

When faced with the problem of how to structure the peace process, RSGs face two choices – whether to bring the parties faceto- face in direct talks or whether to see the parties one at a time in indirect talks, such as shuttle diplomacy or proximity talks. In the former, the mediator shuttles back and forth between parties that are not in close physical proximity, but this puts considerable strain on the mediator. So many prefer proximity talks, with parties located near

one another, for example, in a university setting, a hotel or at UN headquarters. In transforming a bargaining process into a problem-solving one, how negotiations are structured can make a big difference to the outcome. Except in formal conference diplomacy, RSGs, as a rule, tend to favour proximity talks over plenary sessions, where parties meet face-to-face, especially early in the negotiation. As Arnault explains:

> Plenaries are confrontational. They are there to outline your principled stand on an issue. It's very difficult to make concessions in plenary. Plenaries are a good way to commit parties to a certain position. If that's what you want, a plenary is the ideal setting. If you want exactly the opposite – if you don't want parties to be wed to a specific position and if you are going to ask them to move away from this position – the last thing you want is a plenary, because once they've become wed to a position in front of the other party, they simply cannot abandon it without losing face. The major advantage of proximity talks is that you replace something which is not a dialogue, that is, the two parties talking at each other, with something that is a real dialogue, which is you talking to each of the parties. Essentially, what you do is to renounce the dialogue between the two parties and establish the only thing that can work at this particular point in time, which is a dialogue between you and each of them separately – and that can last quite a long time. (2001)

Voicing a similar view, Vendrell (2002) notes that the problem with face-to-face talks is that 'the parties tend to speak for propaganda purposes, so they reiterate their well-known positions all the time for the sake of the other party. They love to remind the other side of what they did wrong and what their own position is. As a result, you waste a lot of time.' Indirect talks also make it easier for the mediator to make a proposal, since the parties do not know the source of the ideas. In a plenary setting, a proposal offered by the other side is frequently rejected and, if the mediator endorses it, he/she may be accused of siding with the party that made the proposal. For this reason, Vendrell is opposed to the parties exchanging proposals in writing, arguing that it is more efficacious to ask them to present their proposals to the UN team which can then structure ideas to address the interests of all parties (2002). Another suggestion for advancing the process is to make use of the multiplicity of possible formats.

As Arnault (2001) explains:

> 'One way to achieve progress is to constantly change the format in search of the easiest path. On the same day, I might move from a closed meeting with the two leaders, to a midsized meeting, to a large-sized one and then come back to a mid-sized meeting.'

> Jumping from one format to another, he argues, can sometimes build consensus. Technical teams can also be used to advance the process and go beyond agreed-upon principles to flesh out details. Towards the end of the Cyprus talks in 2003–2004, there were 12 working groups with up to 300 Greek and Turkish Cypriot lawyers and other experts, 'working at breakneck pace, around the clock.'

They drafted the biggest peace agreement ever produced which was over 6000 pages. Regrettably, however, after this major effort by the UN, the agreement was ultimately rejected by the Greek Cypriot public in a referendum held on April 24, 2004 (de Soto, 2004).

(vi) Balancing asymmetrical power between parties

Since parties are seldom equal in power, this can also present problems for UN facilitators. Egeland (2001) warns that, 'One often has to deal with asymmetric parties – usually it is a strong government and a weak insurgency, but it can be a weak government and a strong insurgency. This asymmetry can lead to a moral dilemma, because if one side is strong, the agreement may end up more favourable to the strong party.' Vendrell (2002) suggests that it is inappropriate for mediators who have the objectives of the UN in mind to appease the strong and put pressure on the weak. 'If you have no objective, you will pressure the weak because you don't care about the outcome as long as the two sides agree. But if you end up with an agreement that's not just, this outcome probably won't last very long.' Building coalitions with civil society or international and national NGOs or bringing in Friends of the Secretary-General can be used to support a weak party. He further argues that it is important for the mediator to realize that there is rarely equidistance between the parties and that one cannot ask the two sides to make an equal number of concessions. 'When one side has three cards in its hand and the other has fifty, you can't agree with the latter if they say, "If I give up three cards, the other side should give up three as well."' He concludes that it is, therefore, often the stronger side that will have to make more concessions, especially in the beginning.

The mediator can also make the stronger party aware of the long-term negative consequences of certain actions. 'Leaders should be made to feel responsible,' advises Sahnoun. 'One should always stress the effects of the continuing crisis on society – the destruction of institutions, of infrastructure, and the hardship for the people. Sometimes it may even be important to tell them that, if they continue to behave as they are, they might one day be brought before an international court.' He suggests that it is also helpful to highlight factors, such as how the

people of the region feel or the possibility of an adverse reaction from the governments of neighbouring countries (2003).

(vii) Drawing on international norms, standards and models

Another useful strategy employed by RSGs is to bring existing norms, standards or practices into the process to serve as models. 'A very important technique is what Arnault calls "technification". Arnault says:

> 'In other words, bringing issues down to a technical level and having technical arbitration.' In Guatemala, he called in experts from UN agencies, the World Bank and the IMF to provide such input. For example, experts from the ILO who had devised the Convention on Indigenous Rights were called upon to explain that existing international standards must form the basis of all indigenous policies (2001).

Using a single negotiating text Several RSGs advocate use of a single negotiating text where, after extensive consultation, the mediator presents a draft text to both parties who, after study, are invited to suggest changes. The mediator then revises the draft and once again presents it for further comments until, in an iterative manner, the text evolves into something that all sides can accept. In Guatemala, Arnault constructed the text from four sources: (1) the interests of the government; (2) the interests of the guerrillas; (3) the interests of the Assembly of Civil Society and (4) expressions of international norms and best practices. But he cautions against prematurely trying to sell a text to the parties:

> The worst mistake you can make is to try to sell the parties something for which they have developed no sense of ownership. You have to walk them from where they are to the final product. Usually, I started by having a dialogue with one side. I looked at their position on a particular issue and tried to get more clarity on their concerns. Then I began engaging them, not based on the other party's position, which would have been rejected – but rather in the light of the positions and interests of civil society and the international community. Once I had something that seemed acceptable, I turned to the other party. But, of course, by then I already had the benefit of what I had heard from the first, so I was better able to build their concerns into the discussion. So, basically, what you try to do is to weave their concerns into yours, yours into theirs, and you end up having two separate negotiations where the parties rarely confront one another's positions directly; they basically raise their concerns to ideas you present and you try to incorporate these. (2001).

(viii) Introducing new ideas

RSGs often found it useful to introduce new ideas into the process.12 In El Salvador, de Soto introduced the concept of the Truth and Reconciliation Commission, as well as the Ad Hoc Commission to Evaluate the Officer Corps of the Armed Forces. He took the notion even further by organizing brainstorming meetings to generate new ideas. In trying to formulate the human rights agreement, he brought together a group of human rights specialists, Salvadorans and personnel from the UN Centre for Human Rights for a brainstorming session. Many of the ideas that they produced subsequently became part of the human rights agreement (2001). In the Bougainville negotiations, Sinclair tried to encourage the parties to come up with new ideas of their own, but when they were unable to do so, he proposed his own:

> 'The two delegations were in the same building, but they were not even looking at each other, because the feelings on the referendum were so strong.' To move the process forward, Sinclair presented a paper outlining his own ideas on the issue. 'The moment I saw the two delegations starting to communicate,' he recalls, 'I realized we had something in this document. We had to do some refining, some finessing, but basically we were on our way to breaking the log jam on the question of the referendum.' The following day, the Loloata Understanding on the Question of a Referendum was signed (2001).

Sometimes, simply the introduction of new terminology can make a difference, as in East Timor where for years, the Indonesian government had rejected the term 'referendum.' It was, however, prepared to accept the new terminology of a 'popular consultation' which basically embodied the same concept of one person, one vote, with only the Timorese voting (Marker, 2003). Eschewing artificial deadlines Several RSGs cautioned against setting artificial deadlines. De Soto offers a distinction between natural (or real) deadlines, imposed by the calendar and artificial deadlines, imposed by the mediator and cautions against imposing the latter. Real deadlines 'can and should be grasped and manipulated by a mediator to prod a negotiation along and pry concessions from recalcitrant parties,' he advises. 'But let the mediator beware of conjuring up deadlines not anchored in reality. Calls to settle by a given date "or else" frequently put the mediator's credibility at risk' – since they usually do not work (1999: 382).

(ix) Dealing with the media

Although RSGs involved in peacekeeping and peace-building typically find the media helpful, those engaged in peacemaking do not. Egeland (2001) notes that facilitators are 'dealing with vulnerable compromises or ideas that might become agreements further down the road and that would certainly be very controversial among the hawks on either side – if they were known.' For this reason, mediators want as little media attention as possible until an agreement has been reached and the parties have had an opportunity to discuss it with their constituents. 'I've seen so many agreements crumble,' he cautions, 'because they were revealed at an early stage – shot down by chauvinist public opinion or groups.' But not talking to the press can also become an issue. When approached by the media, Egeland revealed with whom he met, what general issues were discussed and tried to give a positive message of having had good talks, without going into much substance. Similarly, in describing how he dealt with the media in the tripartite talks with the UN in Indonesia and Portugal over the status of East Timor, Marker (2001) notes, 'We kept a very low profile. We more or less took Trappist vows. The media were a little unhappy about that, but we were very circumspect in what we said – never anything individually, always together with one or both governments.' Indeed, Le Moyne (2005) describes how the process can go wrong if there is too much media exposure. In Colombia, the government and the guerrillas negotiated in front of the cameras during the entire period and 'turned the process into a media show. That was very damaging and was exploited repeatedly by one side or the other, as well as by the media. It was like a soap opera. It undercut the seriousness of the effort.' To avoid this kind of scenario, most RSGs try to obtain a procedural agreement from the outset on dealing with the media. Vendrell, for example, asked the parties to agree that the Representative of the Secretary-General would be the only person to speak to the media (2002). Arnault (2001) proposed a rule that the parties could talk to the press about their own concerns, but could not comment on the other parties' positions.

(x) The need for patience and persistence

Virtually all RSGs stressed the need for patience and persistence. 'The crucial thing is to stick with the parties, to keep faith with the process,' says Stephen. 'Optimism is a vital thing. You have to look for ways forward that give hope – in every situation' (2001). 'There are valid

reasons why you want to rush the parties into something that allows the end of the war,' notes Arnault. But if the agreement is to survive, if it is good, legitimate, politically accurate, based on a great deal of mutual confidence and has addressed all major issues – that will require time' (2001). RSGs also mention that parties need to be helped to understand that they cannot obtain everything they aspire to. 'A peace agreement will always be controversial,' concludes Egeland, 'because both sides have to give up something. Leaders have to accept that by agreeing on a practical although less than perfect deal, they may lose some public support, but history will show that they were heroes of peace who took the courageous decisions' (2001).

(xi) Using the Secretary-General's authority

In some cases, RSGs found it useful to call upon the authority of the Secretary-General. In Cyprus, de Soto (2004) used the Secretary- General's authority extensively. He invited the parties to meetings with Annan in New York, Paris, Copenhagen, The Hague, and Burgenstock, as well as in Cyprus itself. At these meetings, the Secretary-General used his own powers of persuasion, building on de Soto's work. He sometimes even read statements prepared by de Soto and his team to outline parameters of the process. On a number of occasions, the Secretary-General hosted working dinners and lunches for the leaders. 'A United Nations good officer, however qualified he may be as a Representative, can never aspire to the kind of authority that the Secretary-General personally carries,' concludes de Soto.

(xii) Unravelling the linkage between issues

Because issues in a negotiation are usually linked in complex ways,14 many UN peacemakers adopt the rule of 'nothing is agreed until everything is agreed.' This is to ensure that, although peace agreements addressing different agenda items are negotiated and signed one by one, they are then set aside until the full agenda has been dealt with and a comprehensive settlement is in place. At that time, a commitment is made to implement the full set of agreements according to a schedule that is included in the agreement. Establishing public commitment Public signing of peace agreements can provide a significant finale to years of negotiating and help to establish a public commitment to peace. De Soto (2001) recalls that the final ceremony for the signing of the El Salvador peace accord was held at Chapultepec Castle in Mexico City on January 16, 1992, before 10 heads of government, including those of all the Central American countries and the Friends of the Secretary- General, as well as the Secretary-General. The opening line of Boutros-Ghali's speech was: 'The long night of El Salvador is drawing to an end.' 'Until

then, President Christiani had refused to meet with the guerrillas, but after a remarkable speech, he came down from the stage and embraced the guerrilla delegation members, one by one,' recounts de Soto, 'and he had tears in his eyes.'

(xiii) Support from Friends of the Secretary-General

Another issue of importance to UN mediation is the support of the organization's member states. In certain situations, this relationship has been formalized by the creation of a Group of Friends of the Secretary-General, which can provide resources, ideas and diplomatic assistance and show the parties and their constituencies that there is international support for the peace effort. RSGs agree that the choice of friends is crucial. 'It's best to choose countries that have no stake in the outcome,' argues de Soto, 'and to express the strong expectation that those countries who will become entitled to the lofty title of "Friends of the Secretary-General" will behave as such' (2001). Problems are more likely to arise when friends are self-appointed or where one of the friends has strong bilateral interests vis-à-vis one or more of the parties. This is illustrated by the Group of Friends established for Georgia/Abkhazia, where, as Whitfield notes, the Western states were staunchly opposed to the aspirations of the Abkhaz, whereas Russia, which was both a friend and 'facilitator' of the process, saw itself as the Abkhaz protector. Whitfield concludes that members of a Friends Group need to have conflict resolution as their uppermost goal. 'Situations in which individual Friends have a greater interest in the stability or continuing existence of one or other of the parties of the conflict, or their own influence within the conflict arena, than in the resolution of the conflict itself will be complicated by these national priorities' (2005: 13).

(xiv) Working with regional and sub-regional organizations

In a growing number of situations, the UN has worked closely with regional and sub-regional organizations when they take the initiative in a peace process. For example, Dinka describes the role he played in the Arusha process, where first Julius Nyerere and then Nelson Mandela served as the regional mediators. 'Our role was to attend their meetings and listen and then to go talk to the people that were causing the most difficulty, trying to get them on board, trying to come up with compromise formulations.' He notes that this was effective because the parties trusted the UN to be an honest broker. Dinka then liaised with Nyerere's or Mandela's team to propose new ideas and formulations. 'Once you decide to play this kind of role,' he advises, 'the whole sub-region begins to trust you. But the moment you show some kind of indication

that you want to take over the driver's seat, then the entire sub-region turns against you' (2001). Stephen and Tubman played a similar role in two successive sub-regional peace processes for Somalia – the first sponsored by Djibouti, the second by Kenya.

Stephen (2001) comments:

> 'My role was to accompany the process. I gradually developed a role as a kind of facilitator between the process and the international community's norms.' He worked, for example, to ensure that women and minority groups were adequately represented and had a meaningful role (2001). In the second peace process, Tubman acted as a go-between, exploring issues, interests and options with the parties and communicating these to the Kenyan Special Envoy in charge of the talks (2003).

Another interesting example of close cooperation is the partnership of the UN and the African Union in an initiative known as the International Conference on the Great Lakes Region, where Fall, an RSG for the UN, has worked closely with the Special Envoy of the Chairperson of the AU Commission. After wide consultation with the leaders and civil society of countries in the region, a regional framework and process was established to adopt and implement a Stability, Security and Development Pact to address four thematic issues: (1) peace and security; (2) democracy and good governance; (3) economic development and regional integration and (4) humanitarian and social issues. At the first summit, the Dar-es-Salaam Declaration on Peace, Security, Democracy, and Development in the Great Lake Region was signed in the presence of the UN Secretary-General and the Chairperson of the African Union Commission. A second summit is planned to endorse a plan of action which will constitute the Security, Stability and Development Pact for the region (Report of the Secretary-General, 2006).

4.5 Lessons for Peace Agreements

A number of lessons also emerge from UN experience regarding substantive aspects of peace agreements that are likely to lead to successful implementation.

(i) Resolution of all major issues with sufficient detail and specificity

'To be effective,' argues Vendrell, 'a peace agreement has to deal with the causes of conflict. It has to either address the causes directly or establish a new system and institutions that will enable these causes to be dealt with over time' (2002). Moreover, peace agreements that are more complete are easier to implement, since more of the issues in contention have been worked out and agreed to ahead of time, leaving less to be decided during implementation.

'Lack of specificity in a peace agreement,' argues Ajello, 'is a recipe for endless discussions and disputes during the implementation phase' (1999: 640). He suggests that the additional time required to make a peace agreement more specific during the mediation phase is worthwhile and creates a more solid base for the implementation process (2001). As Legwaila (2001) notes, the UN Mission in Ethiopia/Eritrea, for which he was responsible, suffered from a lack of specificity in the agreement (brokered by the USA and the OAU) about the boundaries of the Temporary Security Zone, which resulted in endless problems for the mission.

(ii) Agreement on how power will be shared

How power is to be shared is also crucial. Careful consideration should be given to finding a model that fits each situation. Based on her experience in Angola, Anstee advises that an election in a post-conflict situation 'should never be based on a "winner takes all" formula. The losers must also have a stake in the future stability and prosperity of the country through a judicious system of power sharing' (1996: 607). Hampson recommends that a settlement must, at a minimum, 'establish a level playing field and allow equal and fair access to the political process by formerly excluded groups. Everybody must have a sense that they can participate and that political life is not zero sum. The new rules about political competition must also be seen as fair and just' (1996: 218).

(iii) Acceptability to the majority of constituents

A peace agreement should also be acceptable to the majority of constituents. Although the peace process in Guatemala involved a special role for civil society, the private sector was not part of the process and this led to problems in implementation when the Constitutional Amendment required to carry out the provisions in the peace accords was defeated in a referendum (Arnault, 2001). As mentioned earlier, this highlights the importance of having all major stakeholders involved, in some way, in the process.

(iv) Clear guidelines about implementation priorities and timetables

Peace agreements also need to contain clear guidelines about implementation priorities and realistic implementation timetables. A common problem is that timetables are too ambitious and when deadlines are missed, 'the parties begin to doubt each other's political will to comply with the settlement' (Arnault, 2001). Agreements should spell out how the implementation schedules for different issues interlock with one another, because they often involve 'reciprocal

concessions.' As de Soto (2001) explains: 'If the demobilization of guerrillas is contingent upon their receiving – immediately upon hand-over of their weapons – some sort of financial assistance, you had better be sure that you know if and when that assistance can and will be delivered.'

(v) A lead role for the UN in implementation

Most RSGs agree that, in cases where the UN is expected to have a role in implementation, it should broker the peace agreement or have sufficient input to ensure that it is, indeed, implementable. 'Many of the problems encountered in Angola,' laments Anstee, 'were rooted in the nature of the Bicesse Accords, in the negotiation of which the UN played no role. The thesis that the main responsibility for implementing the Accords must be vested in the two parties in the conflict presupposed a Boy Scout's code of honour in circumstances hardly conducive to the evolution of the Boy Scout spirit.' She recommends that the UN should 'never accept any role in the implementation of a peace accord unless the organization has been fully involved in the negotiation of its terms and its mandate' (1996: 532–533).

(vi) An implementation mechanism for resolving disputes

Finally, peace agreements should contain an effective mechanism to manage the inevitable disagreements that arise in implementation. 'A strong political structure should be established to manage the peace process,' says Ajello. In Mozambique, the Supervision and Monitoring Commission was composed of the two parties, as well as representatives of the OAU, France, Italy, Germany, Portugal, the United Kingdom and the United States and chaired by Ajello, as the Special Representative of the Secretary-General.

He sums up the benefits of this approach:

> This relationship allowed the international community to speak with a single voice and this support and unity of intent produced two important results. The first was that the parties' perception of my role changed dramatically. I was subsequently viewed by the two parties, not as the delegate of a bureaucracy in New York, but as a representative of the international community (2001).

A wide variety of mechanisms have been effectively established in subsequent peace missions to carry out similar functions.

4.6 Negotiation/Mediation during Implementation

Implementing peace agreements also requires an ongoing process of negotiation and mediation during the peacekeeping phase. RSGs who head up these missions (with the help of the various mission components) carry out constant negotiations – with the parties themselves, with the local population and with the international community – in order to move towards realization of the objectives of the peace agreement. As Hampson notes: 'The demand for mediators does not end once a deal is reached because negotiations between the parties typically do not end. The terms of a settlement are constantly being renegotiated during its implementation and new problems can emerge that have the potential, if left unresolved, to jeopardize the peace process' (1996: 227). Stedman, Rothchild and Cousens (2002) highlight the dangers of failing to satisfactorily implement peace agreements. They note that the breakdown of the Bicesse agreement in Angola in 1993 led to 350,000 deaths and the failure of the Arusha agreement in Rwanda in 1994 to 800,000 deaths. Although it is beyond the scope of study unit to describe the multitude of mediation efforts undertaken by RSGs during implementation, Steiner's experience on arrival in Kosovo offers a good example. When he arrived in February, 2002, the elections had been held the previous November but it had been impossible to form a coalition government because of disputes over the distribution of power among the parties. After bilateral discussions with the party leaders, he invited all of the players to a dinner at his residence in Pristina where he presented them with a draft text based on his previous discussions. Rooms were available for bilateral talks between the parties and between the RSG and the parties, and UN staff were positioned in the neighbouring rooms for immediate translation into English, Albanian and Serbian. After hours of talks, at three o'clock in the morning, Steiner was able to give a press conference to the reporters who were camped outside his residence, announcing an agreement on the formation of a new government. After further negotiations on who would get what ministry, a couple of days later, the agreement went to parliament for confirmation. Although the constitution foresaw consecutive steps for voting on the president, the prime minister and the rest of the government, there was insufficient trust among the parties to proceed in this sequential manner. To overcome this, Steiner suggested that there should be just one vote to simultaneously elect the president, the prime minister and to confirm who would head each ministry. In the end, he notes, 'the Serbs got their minority posts. The biggest party got what it wanted, the post of president; the second biggest party got the post of prime minister and the various ministries were distributed. There was the normal political bickering but, in the end, people could live with the arrangement' (2003). Ajello

(2001) reminds implementers that understanding the interests of the parties is as important in implementation as it is in mediating the peace agreement. 'If you analyse all the elements, you should be able to say, 'These are the vital interests of these people. If we address these, we have a good chance of being able to solve the problems.'

Finally, Hampson notes that:

> Peacemaking and peace-building are a nurturing process … negotiated settlements are unlikely to endure if left unattended; they must be cultivated by skilful, committed people able to manage the problems that inevitably arise as the terms of a settlement negotiated at a given point in time are translated over time into action. By entrenching their roles and remaining fully engaged, third parties can help settlements take root (1996: 217).

Indeed, the capacity of the United Nations to follow through its peacemaking efforts with the deployment of peacekeeping and peacebuilding missions to assist in implementation of a peace agreement is one of the comparative advantages the organization has over other entities. Further, RSGs are able to harness assistance and leverage from UN agencies, program and funds, as well as from member states to provide help and incentives for parties to follow through on their commitments. The UN mediator, however, differs from other mediators, as he/she must operate entirely within the framework of the UN Charter and the body of human rights laws and general principles and practices that emanate from it. As de Soto (2001) explains, the parties need to know that the United Nations has behind it 'a certain institutional backing, but also that a certain threshold has to be passed and certain standards must be met.'

In a nutshell, most UN peacemaking to date has been carried out by a few individuals who were often proactive in their approach and offered their services (sometimes in a modest way initially) to parties who ultimately accepted the assistance and asked for more, as confidence was established. The need to support and strengthen the UN's heretofore modest peacemaking efforts with adequate resources and greater political support was acknowledged at the 2005 World Summit of Heads of State and of Government in the subsequent resolution adopted by the General Assembly which endorsed a greater role for the Secretary-General in this regard: 'Recognizing the important role of the good offices of the Secretary-General, including in the mediation of disputes, we support the Secretary-General's efforts to strengthen his capacity in this area' (2005: 21). Efforts are now under way to do this, with some strengthening of the Department of Political Affairs and the creation of a small Mediation Support Unit in the department. Equally important, however, is the need for mediation and facilitation at the stage of preventive diplomacy before disputes escalate into violent conflict. Although there has been

considerable discussion on this topic within UN circles, the capacity and political will for a truly effective conflict resolution approach at the prevention stage has not yet fully materialized. Nonetheless, the knowledge and skills gained from conflict resolution during the peacemaking, peacekeeping and peacebuilding stages can also be applied to conflict prevention, whenever the political will to do so can be marshalled, among member states and within the UN secretariat. Only then will the United Nations come closer to achieving the objective stated in its Charter: 'to save succeeding generations from the scourge of war.'

Study unit 6: Writing of an essay

Prepare a 5-8 pages essay in which you discuss the pros and cos of diplomacy in the conflict resolution based on the following recommended reading: "Diplomacy and Conflict Resolution a chapter by Christer Jönson and Karin Aggestam in Bercovitch, J., Kremenyuk, V. and Zartman, I.W. eds., 2008. *The SAGE handbook of conflict resolution*. Sage.

D. Bibliography

(i) *Bercovitch, J., Kremenyuk, V. and Zartman, I.W. eds., 2008. The SAGE handbook of conflict resolution. Sage.*

(ii) *Jeong, H.W., 2008. Understanding conflict and conflict analysis. Sage.*

(iii) *Mayer, B.S., 2010. The dynamics of conflict resolution: A practitioner& guide. John Wiley & amp; Sons.*

(iv) *Mayer, B.S., 2012. The dynamics of conflict: A guide to engagement and intervention. John Wiley.*