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Résumé de l'article

L'obligation de régler les différends internationaux par des moyens pacifiques est l'un des principes les plus fondamentaux des relations internationales. Divers mécanismes de règlement des différends sont à la disposition des États pour résoudre les différends internationaux. La médiation est sans aucun doute l'un des moyens de résolution des litiges les plus efficaces. Cependant, contrairement à l'arbitrage et au règlement judiciaire, les approches et les normes de pratique en matière de médiation manquent d'uniformité. Une analyse minutieuse des différends internationaux résolus dans l'histoire contemporaine révèle que les facilitateurs qui prétendent être des médiateurs ne respectent pas toujours les principes fondamentaux de la médiation, à savoir l'indépendance, l'impartialité et la neutralité.

Cet article appelle à l'institutionnalisation de la médiation internationale à travers une entité permanente indépendante. Il soutient que l'institutionnalisation de la médiation est le seul moyen d'atteindre un degré raisonnable de standardisation des pratiques et approches de médiation. L'institutionnalisation proposée rendra inévitablement la médiation plus accessible aux parties en conflit, ce qui entraînera le règlement d'un plus grand nombre de conflits par la médiation. L'institutionnalisation favorisera également la recherche et la littérature universitaire sur la médiation internationale, entraînant une professionnalisation accrue du domaine.

La première partie de cet article établit une distinction entre les mécanismes judiciaires de règlement des différends et les mécanismes diplomatiques de règlement des différends, y compris la médiation, qui continue d'évoluer de manière organique et non systématique. La deuxième partie explore des conflits internationaux bien connus qui ont fait l'objet d'une médiation réussie ou non par des personnalités éminentes, à savoir le Secrétaire général des Nations Unies, des chefs d'État, des chefs religieux et d'autres dignitaires. La troisième et dernière partie de l'article démontre que l'ONU, les États, les organisations internationales, les chefs religieux et d'autres personnalités éminentes sont rarement, voire jamais, des médiateurs appropriés car ils ne sont pas indépendants, impartiaux ou neutres pour diverses raisons. . La conclusion logique à laquelle conduit l'analyse est qu'il est grand temps d'institutionnaliser la médiation internationale en créant une entité indépendante permanente chargée de médier les différends internationaux.

TOWARDS INSTITUTIONALIZING INTERNATIONAL MEDIATION

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RÉSUMÉ

L'obligation de régler les différends internationaux par des moyens pacifiques est l'un des principes les plus fondamentaux des relations internationales. Divers mécanismes de règlement des différends sont à la disposition des États pour résoudre les différends internationaux. La médiation est sans aucun doute l'un des moyens de résolution des litiges les plus efficaces. Cependant, contrairement à l'arbitrage et au règlement judiciaire, les approches et les normes de pratique en matière de médiation manquent d'uniformité. Une analyse minutieuse des différends internationaux résolus dans l'histoire contemporaine révèle que les facilitateurs qui prétendent être des médiateurs ne respectent pas toujours les principes fondamentaux de la médiation, à savoir l'indépendance, l'impartialité et la neutralité.

Cet article appelle à l'institutionnalisation de la médiation internationale à travers une entité permanente indépendante. Il soutient que l'institutionnalisation de la médiation est le seul moyen d'atteindre un degré raisonnable de standardisation des pratiques et approches de médiation. L'institutionnalisation proposée rendra inévitablement la médiation plus accessible aux parties en conflit, ce qui entraînera le règlement d'un plus grand nombre de conflits par la médiation. L'institutionnalisation favorisera également la recherche et la littérature universitaire sur la médiation internationale, entraînant une professionnalisation accrue du domaine.

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MOTS-CLÉS

Gestion des conflits, Résolution des différends, Institutionnalisation, Médiation internationale, Organisations internationales

ABSTRACT

The obligation to settle international disputes through peaceful means is one of the most fundamental principles of international relations. A variety of dispute resolution mechanisms are at the disposal of states to resolve international disputes. Mediation is undoubtedly one of the most effective dispute-resolution means. However, unlike arbitration and adjudication, there is a lack of consistency in mediation approaches and

standards of practice. A careful analysis of international disputes resolved in contemporary history reveals that the facilitators who purport to be mediators do not always comply with fundamental principles of mediation, namely independence, impartiality, and neutrality.

This article calls for the institutionalization of international mediation through a permanent independent entity. It argues that institutionalizing mediation is the only way to achieve a reasonable degree of standardization of mediation practices and approaches. The proposed institutionalization will inevitably make mediation more accessible to disputing parties, resulting in a greater number of conflicts being settled through mediation. Institutionalization will also promote research and academic literature in international mediation, bringing about further professionalization of the field.

The first part of this article draws a distinction between judicial dispute resolution mechanisms and diplomatic dispute resolution mechanisms, including mediation, which continues to evolve in an organic and unsystematic manner. The second part explores well-known international conflicts that have been successfully or unsuccessfully mediated by prominent individuals, namely the Secretary-General of the United Nations, Heads of state, religious leaders, and other dignitaries. The third and last part of the article makes a case that the UN, states, international organizations, religious leaders, and other prominent individuals are rarely, if ever, suitable mediators because they are not independent, impartial, or neutral for a variety of reasons. The logical conclusion to which the analysis leads is that it is high time to institutionalize international mediation by establishing a permanent independent entity entrusted with mediating international disputes.

KEYWORDS

Conflict Management, Dispute Resolution, Institutionalization, International Mediation, International Organizations

INTRODUCTION

[1031] One of the most fundamental principles of international relations is the obligation to settle international disputes through peaceful means. (Articles 1.1 and 2.3 of the UN Charter). An impressive number and variety of dispute resolution mechanisms are at the disposal of states to resolve their international and transnational disputes. Many of these mechanisms are enumerated in Article 33 of the Charter of the United Nations. Over a period of several decades, mediation proved to be one of the most effective dispute resolution means. However, unlike arbitration and adjudication, there is a lack of consistency in mediation approaches and standards of practice. A careful analysis of international disputes resolved in contemporary history reveals that the facilitators who purport to be mediators do not always comply with fundamental principles of mediation, namely independence, impartiality, and neutrality.

[1032] This article calls for the institutionalization of international mediation through a permanent independent entity. It argues that institutionalizing mediation is the only way to achieve a reasonable degree of standardization of mediation practices and approaches. The establishment of a permanent and independent international mediation body can also ensure that mediators are impartial and neutral. The main reason it seems so much easier to have recourse to international arbitration and adjudication as opposed to mediation is that judicial dispute resolution mechanisms were institutionalized over 100 years ago. This institutionalization gave rise to codified procedures, consistent practices, and bodies of jurisprudence, which in turn increased their procedural transparency and legitimacy as effective dispute resolution mechanisms. Institutionalizing mediation will inevitably standardize mediation practices and approaches, and make mediation more accessible to disputing parties, resulting in a greater number of conflicts being settled through mediation. Institutionalization will also promote research and academic literature in international mediation, bringing about further professionalization of the field.

[1033] The first part of this article draws a distinction between judicial dispute resolution mechanisms – which have benefited from extensive institutionalization for the past 110 years – and diplomatic dispute resolution mechanisms, including mediation, which continues to evolve in an organic and unsystematic manner. The second part of the article explores well-known international conflicts that have been successfully or unsuccessfully mediated by prominent individuals, including Secretaries-General of the United Nations, Heads of state, religious leaders, and other dignitaries. The third and last part of the article argues that in the current state of affairs, it is extremely difficult to have an international dispute mediated by professional, independent, impartial, and neutral mediators. It makes a case that the UN, states, international organizations, religious leaders, and other prominent individuals are seldom, if ever, suitable mediators because they are not always independent, impartial, or neutral for a variety of reasons.

1. JUDICIAL AND DIPLOMATIC MECHANISMS FOR INTERNATIONAL DISPUTE SETTLEMENT

[1034] The obligation to settle international disputes through peaceful means is a fundamental principle of international law and international relations. Pursuant to

paragraph 3 of Article 2 of the UN Charter, all members of the United Nations "shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered[181]." The UN Charter devotes an entire chapter to the pacific settlement of disputes[182]. The UN Charter is not the only legal instrument dealing with pacific resolution of conflicts. states have signed a substantial number of bilateral and multilateral treaties and conventions of both regional and universal application aimed at the peaceful settlement of disputes. In addition, the General Assembly also adopted several resolutions regarding the peaceful settlement of disputes[183]. International disputes may be resolved peacefully through a variety of mechanisms. Article 33.1 of the UN Charter lists the main methods for resolving disputes. This provision states that "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 own choice[184]." These various means of resolving conflicts fall into two broad categories – diplomatic mechanisms and judicial mechanisms. Judicial dispute resolution mechanisms consist of arbitration and judicial adjudication whereas diplomatic dispute resolution mechanisms refer to other means, including negotiation, mediation, fact-finding, conciliation, and inquiry. Below, we will briefly describe these various methods for settling international disputes.

1.1 JUDICIAL MECHANISMS

[1035] In the international arena, states may have recourse to a wide range of international courts and tribunals to resolve international disputes and tensions through peaceful means. Some international courts and tribunals are universal while others are regional. The International Court of Justice and the Permanent Court of Arbitration, for example, are courts of universal jurisdiction. The Court of Justice of the European Union, on the other hand, has regional jurisdiction. (Tavadian, 2021, p.124) Most judicial courts and tribunals with universal jurisdiction, including the International Court of Justice and the International Tribunal for the Law of the Sea are part of the United Nations System. In contrast, arbitral tribunals as well as regional courts, such as the Permanent Court of Arbitration, the Court of Justice of the African Union, or the European Court of Human Rights, are invariably independent and unrelated to the United Nations.

1.1.1 ARBITRATION

[1036] Arbitration is the determination of a dispute between states or between a state and a non-state entity through a legal decision rendered by one or more arbitrators and an umpire, or by a tribunal other than the International Court of Justice or another

181 Charter of the United Nations, 26 June 1945, Chapter I, Art.2. Accessible at: https://www.un.org/en/about-us/un-charter/chapter-1 (consulted 4/08/2022)

182 Chapter VI or Articles 33 to 38 of the United Nations Charter.

183 Manila Declaration on the Peaceful Settlement of International Disputes, GA Res 37/10, UNGAOR, 37th Sess, UN Doc A/Res/37/10 (1982) 261 [Manila Declaration]; United Nations Model Rules for the Conciliation of Disputes between States, GA Res 50/50, UNGAOR, 50th Sess, UN Doc A/Res/50/50 (1995) 1; Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in This Field, GA Res Res 43/51, UNGAOR, 43rd Sess, UN Doc A/Res/43/51 (1988) 276.

184 United Nations Charter, Chapter VI, Art.33, https://www.un.org/en/about-us/un-charter/chapter-6 (consulted 4/08/2022)

permanent tribunal (Collier & Lowe, 1999, p.31). Historically, international arbitration preceded international judicial bodies. When arbitration first appeared, a permanent international court or tribunal with compulsory jurisdiction only existed in the realm of ideas. Arbitration became the inspiration for the establishment of permanent judicial institutions (Merrills, 2000, p.3.).

[1037] Arbitration can be public or private in nature. It can also be an institutionalized dispute settlement means or an *ad hoc* one. Arbitration is public when it is instituted by states to resolve a dispute between them. It is private where companies or individuals are parties to the arbitral process. *Ad hoc* arbitrations are those which are established for the settlement of a specific dispute. Permanent or institutionalized arbitrations are those which are set up for the settlement of a category of disputes (Tavadian, 2021, p.125.) such as the Iran–US Claims Tribunal or the International Centre for the Settlement of Investment Disputes (ICSID)[185].

[1038] While international courts and tribunals, apart from international criminal courts, adjudicate disputes occurring primarily between states, arbitration is also available to non-state actors such as armed opposition groups or guerrillas and foreign investors and multinational corporations (Tavadian, 2021, p.126.).

1.1.2 JUDICIAL SETTLEMENT

[1039] Judicial settlement of a dispute refers to submitting the dispute to a permanent tribunal for a legally binding judgment or decision (Merrills, 2000, p.3). Since 1945, the international community has witnessed a proliferation of permanent international courts and tribunals. Some of those judicial institutions, such as the International Criminal Tribunals for Rwanda and the former Yugoslavia, as well as the Special Tribunal for Lebanon, are known as *ad hoc* tribunals because they were created for a specific mandate and for a limited time. The International Court of Justice, the World Trade Organization dispute settlement mechanism, the International Tribunal for the Law of the Sea, and the International Criminal Court are judicial institutions which are permanent in nature. Moreover, International courts and tribunals can be universal or in other words open to all states regardless of their geographical location or they can be regional in their jurisdiction. The European Court of Justice, the European Court of Human Rights, the African Court on Human and Peoples' Rights, the East African Court of Justice, and the Inter-American Court of Human Rights are a few of the many regional judicial dispute settlement institutions (Tavadian, 2021, p.127.).

[1040] It is however important to point out that none of the universal courts and tribunals mentioned above has competence to adjudicate a dispute involving a country which did not explicitly accept its jurisdiction. This principle of the state's consent to be bound by the judgments of an international court or tribunal applies even to the main judicial organ of the United Nations, the International Court of Justice. Therefore, the ICJ cannot hear a case where one of the parties to the dispute does not accept its jurisdiction (Tavadian, 2021, p.127.). The question of accepting or rather refusing to accept the jurisdiction of the various international judicial institutions by states constitutes a major impediment to the settlement of international disputes.

185 The Convention, 575 U.N.T.S. 159, in ICSID Convention, Regulations and Rules, Doc. ICSID/15 (Jan. 1985).

1.2 NON-JUDICIAL AND DIPLOMATIC MECHANISMS

[1041] Conflicts resolved through diplomatic means are normally documented and their outcome is reflected in a written agreement. Diplomacy is generally entrusted to professional diplomats, such as delegates representing their governments in international organizations, ambassadors and other embassy personnel, negotiators, officials of international organizations, and politicians handling foreign affairs. The way diplomatic dispute management is pursued is very often as important as its subject matter. Choosing a suitable conflict resolution mechanism is crucial for a successful resolution of a dispute. Below, we will explain different approaches that parties can opt for in pursuing diplomacy. Negotiations, consultations, good offices, inquiry, mediation, and conciliation are among diplomatic or non-judicial methods of international dispute settlement (Tavadian, 2021, p. 114.).

1.2.1 NEGOTIATION, CONSULTATIONS AND EXCHANGE OF VIEWS

[1042] Most international disputes are resolved through negotiation. Its flexibility and efficiency explain the success of negotiation as a highly effective dispute settlement method. Moreover, as opposed to judicial proceedings, the parties have full control over the duration, location, and scope of the negotiation process (Collier & Loew, 2000, p. 20.). Negotiations usually precede all other types of dispute-resolution mechanisms.

[1043] Negotiations, consultations, or exchanges of views are similar but distinguishable methods. The principal distinction between them is in the degree of the concessions expected from the parties. Negotiations may require a party to make important compromises before obtaining something in exchange. Consultations and exchange of views, on the other hand, can be seen as a chance for one party to hear out and take into consideration the perspective of the other party with respect to the debated issue (Tavadian, 2021, p. 118.). One of the limitations of negotiation refers to the balance of power that characterizes the relationship of the disputing parties and the fact that the terms of any negotiated agreement would tend to reflect not so much the quality and value of each party's case but rather their relative power (Merrills, 2000, p. 24). Information asymmetry is another important potential impediment to negotiations. It refers to the inequality between two negotiating parties in their knowledge of relevant facts and details pertaining to the opposing party's interests, and advantages or limitations. Predictably, that imbalance means that the party privy to more relevant information has a competitive advantage over the other party. Involving a third party, such as a mediator is a way of overcoming the information asymmetry during negotiations.

1.2.2 FACT-FINDINGS AND INQUIRIES

[1044] Fact findings are akin to investigations. This method is used when the facts are both pivotal and disputed by the parties. Its purpose is to enable a solution to the dispute by clarifying the facts through an impartial investigation[186]. Several bilateral and multilateral treaties, most notably the Covenant of the League of Nations and the UN Charter, explicitly provided for inquiry as a mechanism of dispute settlement. More recently the report *An Agenda for Peace* also emphasizes the role of fact-finding as a

186 Convention for the Pacific Settlement of International Disputes (The Hague Convention I), 26 September 1928, 93 LNTS 343, art 9.

means of preventive conflict management[187]. The usefulness of this approach is to eliminate factual ambiguities by establishing the fact through a fact-finding or inquiry initiative so that the dispute-resolution process can be based on those facts. Fact findings and inquiries could be a useful dispute settlement mechanism not only for interstate tensions and disputes but can also be employed to tackle global issues and threats (Tavadian, 2021, p.120.), such as pollution and environmental challenges. The power to commence a fact-finding initiative is given to the Security Council, the General Assembly and the Secretary-General by the *Declaration on Fact-Finding by the United Nations in the Field of the Maintenance of International Peace and Security*[188] adopted in 1991 and preceded by *The Manila Declaration on the Peaceful Settlement of International Disputes* of 1982, which includes inquiry as a means of dispute settlement and which calls on member states to consider making greater use of the fact-finding capacity of the Security Council[189]. As we will later discuss in greater detail, in 1987, at the request of the Security Council through Resolution 598, Secretary-General Javier Perez de Cuellar undertook a fact-finding regarding the use of chemical weapons in the Iraq-Iran war[190].

1.2.3 CONCILIATION

[1045] Conciliation is a dispute settlement tool which has evolved from a resolution adopted by the League of Nations in 1922, encouraging states to seek a resolution to their disputes through conciliation commissions[191]. Consequently, conciliation was often included in multilateral treaties as an essential third-party mechanism for international dispute settlement. Conciliation usually combines certain elements of both inquiry and mediation. A conciliation commission begins with an objective investigation and evaluation of all aspects of the dispute to offer the conflicting parties a clearer perspective and understanding of each other's case. The next step in the conciliation process consists of the issuing of a report with a set of recommendations. Unless otherwise agreed by the parties, these recommendations are normally not binding (Tavadian, 2021, p. 124.).

1.2.4 GOOD OFFICES

[1046] When state parties to a dispute are unable to settle it directly between themselves, they may seek a third party's good offices as a means of preventing further aggravation of their dispute and as a method of facilitating efforts towards a peaceful

187 Agenda for Peace, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, UNGAOR, 47th Sess, UN Doc A/47/277 (1992) 1 p.23-25.

188 Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, GA Res 46/59, 46th Sess, UN Doc A/Res/46/59 (1991) 290.

189 Manila Declaration on the Peaceful Settlement of International Disputes, GA Res 37/10, UNGAOR, 37th Sess, UN Doc A/Res/37/10 (1982) 261 [Manila Declaration]; United Nations Model Rules for the Conciliation of Disputes between States, GA Res 50/50, UNGAOR, 50th Sess, UN Doc A/Res/50/50 (1995) 1; Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in This Field, GA Res Res 43/51, UNGAOR, 43rd Sess, UN Doc A/Res/43/51 (1988) 276.

190 SC Res 598 (1987), UNSCOR, 42nd Year, UN Doc S/RES/598 (1987) 5.

191 United Nations Office of Legal Affairs, Handbook on the Peaceful Settlement of Disputes between States (New York: United Nations Publication, 1992), UN Doc OLA/COD/2394 at para 141.

settlement of the dispute[192]. Good offices are a third-party involvement with the objective to facilitate or even help restart the negotiations between the parties to a conflict. The third-party offering their good offices can be a single state, a group of states or a representative of an international organization. This person must be deemed acceptable to the disputing parties and generally employs his or her reputation or prestige of his office to persuade parties to resolve their differences peacefully[193].

[1047] The Secretaries-General of the United Nations have often undertaken good offices to resolve major political crises and conflicts such as the Cuban missile crisis, the Arab–Israeli war of 1967, the invasion of the Dominican Republic by the United States, the Iran hostage crisis, the Soviet withdrawal from Afghanistan, the conflict in Namibia, etc. Apart from facilitating the communication between the disputing parties so that they can resume negotiations in some cases, the third party offering good offices is authorized to go beyond the traditional limitations and to take a proactive role in the dispute settlement process by suggesting concrete solutions and leading shuttle diplomacy with the parties to discuss such proposals individually (Tavadian, 2021, p. 122-124).

1.2.5 MEDIATION

[1048] When the parties to an international dispute reach an impasse and are unable to solve their disagreement through negotiation the involvement of a neutral third party provides an opportunity to reach a solution acceptable to all the disputing parties (Merrills, 2000, p. 28.). Mediation is therefore a mechanism for peaceful settlement of disputes where the neuter or a mediator facilitates the exchange between the disputants with the objective to re-establish a dialogue and ease international tensions and hostilities. By maintaining a channel of communication between the parties the mediation process allows for the renewal of the negotiations towards a peaceful resolution of the dispute. The majority of regional and universal multilateral instruments, such as the *Charter of the United Nations*, the *Hague Convention for the Pacific Settlement of International Disputes* or the *Pact of the League of the Arab States* for instance, refer to mediation as one of the principal mechanisms for resolving international disputes. The flexible, confidential, and informal nature of the mediation process (Tavadian, 2021, p. 121.) is what makes it an effective and adaptable conflict management tool. The role of a mediator can be filled by individuals such as former and incumbent Secretaries-General of the UN, states, intergovernmental organizations, non-governmental organizations, representatives of religious organizations such as the Catholic Church during the Beagle Channel conflict of 1979 or the missionaries of the Quaker Church during the Nigeria-Biafra conflict of 1967-1970 (Princen, 1995, p. 207.).

2. HISTORICAL OVERVIEW OF INTERNATIONAL MEDIATION

[1049] This section of the article discusses the appearance of mediation as an international dispute settlement mechanism as well as some of the most illustrious

192 *Id.* at para 101-102

193 *Ibid.*

examples of international mediation efforts by third parties, including states, Secretaries-General of the UN, and other prominent individuals.

[1050] International mediation received its first explicit endorsement as a means of dispute settlement in 1899 when the representatives of 26 countries gathered in The Hague to hold what is known today as the First Hague Peace Conference. The delegates met at the initiative of the Russian star Nicholas the 2nd. The meeting had two main goals: (i) to stop the proliferation of armaments in Europe; and (ii) to come up with new ways of settling disputes. Although its first objective was not attained, the conference did produce several declarations about the peaceful settlement of disputes. These declarations adopted during the Hague Peace Conference later resulted in the establishment of the Permanent Court of Arbitration or the model upon which the International Court of Justice was subsequently created. The necessity to use adjudication, arbitration or mediation as international dispute settlement mechanisms was the main accomplishment of The Hague Peace Conference. (Bercovitch, 2011, p. 15.).

[1051] Since then, many international conflicts have been resolved through mediation. As it appears from the cases described below, mediation attempts have been undertaken by a large spectrum of actors. These cases illustrate two points. First, they establish that mediation has played a key role in preventing major international conflicts. Second, they reveal that international mediation has been developing haphazardly. Mediation approaches have been inconsistent. For instance, the term 'mediation' has often been used to designate a variety of other third-party interventions, such as conciliation, inquiry, and negotiations. The so-called 'mediation' attempts have often consisted of a combination of third-party interventions. Most importantly, however, the cases also illustrate that, in many cases, the mediator was not independent, impartial, or neutral.

2.1 MEDIATIONS AND GOOD OFFICES BY UN SECRETARIES-GENERAL OF THE UN

[1052] The good offices and mediation roles of the Secretary-General in the prevention of conflicts and the peaceful settlement of disputes stem from the UN Charter and have been developed through practice since the establishment of the UN. The good offices and mediation roles can be undertaken at the Secretary-General's own initiative, in response to a request from one or more of the parties to a conflict or following a request from the Security Council or the General Assembly. The Secretary-General may either choose to take action himself or appoint special representatives and envoys to carry out good offices and mediation on his behalf. Numerous representatives of the Secretary-General also participate in peace talks or crisis diplomacy while overseeing UN political or peacekeeping missions in the field to assist countries and regions settle conflicts and disputes as well as diffuse tensions peacefully[194]. The following five examples leave no doubt that mediation – in the broad sense of the word – has played an essential role in preventing devastating escalations of international conflicts. Some of these conflicts such as the Cuban missile crisis had the potential of obliterating parts of the world.

194 'The Secretary-General and Mediation' available at https://peacemaker.un.org/peacemaking-mandate/secretary-general (consulted 13/09/2022)

Others, if not prevented, could have produced a spillover effect, and could have resulted in regional conflicts, leading to large-scale armed hostilities.

2.1.1 CUBAN MISSILE CRISIS MEDIATION

[1053] In 1962, U Thant, a former Burmese diplomat and the third Secretary-General of the UN mediated between Kennedy and Khrushchev the Cuban missile crisis – one of the most dangerous incidents of post-World War II history. He provided a channel of communication in the most critical moment of the conflict as well as an impartial point of reference to which both parties could respond positively, without losing face or appearing to concede or surrender. As the history of these troubled moments was written, U Thant received little recognition for his mediation efforts (Urquhart, 1987, p. 192-193.). However, in recognition of U Thant's intermediary services, President Kennedy has been quoted to say: "U Thant has put the world deeply in his debt[195]." Despite all, the role of the Secretary-General has been understated as the history of the crisis has been written, even though he was closely involved in assisting the parties to reach an agreement from the beginning of the escalation until the moment of the arms withdrawal weeks later[196].

2.1.2 BAHRAIN ARCHIPELAGO INQUIRY AND MEDIATION

[1054] In his memoir *View From the UN*, U Thant reflects on his experience mediating a dispute over the archipelago of Bahrain between Iran and the United Kingdom in 1970. Iran claimed that the archipelago is part of its territory and that the protection by the UK is what prevents the Shah from exercising his rights over Bahrain. The United Kingdom considered Bahrain to be a sovereign Arab state with which it had a special relationship. U Thant reached out and discussed with the Iranian and British Ambassadors to the UN the danger of the dispute escalating into an armed conflict. Following these discussions, in 1970, the Secretary-General received a formal request from Iran and later from the United Kingdom to mediate the dispute. He was asked to ascertain the true wishes of the people of Bahrain with respect to the future status of the archipelago. This was the first time in the history of the UN that the parties to a dispute entrusted it to the good offices of the Secretary-General by pledging to accept the findings of his personal representative provided that those findings were endorsed by the Security Council. Although U Thant's efforts averted a war in the Persian Gulf and his good offices eventually led to the independence of Bahrain (U Thant, 1977, p. 50.), U Thant acted more like a conciliator and arbitrator than a mediator.

2.1.3 IRAQ–IRAN MEDIATION AND FACT-FINDING

[1055] Between 1983 and 1988, at the request of the Security Council, Secretary-General Javier Perez de Cuellar mediated a peace deal between Iraq and Iran[197]. The Iran-Iraq War which lasted from 1980 to 1988 was a protracted armed conflict between

195 A Walter Dorn, "U Thant: Buddhism in Action" in Kent J Kille, ed, *The UN Secretary-General and Moral Authority: Ethics and Religion in International Leadership* (Washington, DC: Georgetown University Press, 2007) at 143.

196 A. Walter Dorn and Robert Pauk, Unsung Mediator: U Thant and the Cuban Missile Crisis, Diplomatic History, Vol. 33, No. 2 (April 2009). The Society for Historians of American Foreign Relations (SHAFR). Published by Wiley Periodicals, Inc., p.261 (available at https://walterdorn.net/pdf/CubanMissileCrisis-UnsungMediator_Dorn-Pauk_DiplHistory_Vol33No2_Apr2009.pdf).

197 Security Council Resolution 598: Iraq-Islamic Republic of Iran (1988), https://peacemaker.un.org/iraqiran-resolution598

the two neighboring states. In September 1980, Iraqi forces attacked western Iran along its border. Iraq's principal justification for the attack was the imperative to prevent Ruhollah Khomeini from exporting the new Iranian ideology to Iraq[198]. Fighting was ended by a 1988 cease-fire, though the resumption of normal diplomatic relations and the withdrawal of troops did not take place until the signing of a formal peace agreement on August 16, 1990[199]. In January 1987, Secretary-General Perez de Cuellar undertook a mediation initiative toward a peace settlement. Soliciting the support of all members of the Security Council in January 1987, he outlined several elements for their consideration. In July 1987, after extensive consultations, the Council adopted resolution 598 (1987)[200], which included Perez de Cuellar's recommendations. At the same time, at the request of the Security Council through Resolution 598, the Secretary-General also undertook a fact-finding regarding the use of chemical weapons in the Iraq-Iran war[201]. The ceasefire came into effect one year later. The success of the Secretary-General's mediation efforts was attributable to the support of the five permanent members of the Security Council[202]. It is noteworthy that the solution was not found by the parties but recommended by the mediator and was not really mediated but imposed on the parties by the Security Council. This is inconsistent with the principles of self-determination, impartiality, and neutrality that any mediation process should endeavour to observe.

2.1.4 POST-ELECTION VIOLENCE MEDIATION AND CONCILIATION IN KENYA

[1056] In December 2007, following the announcement of parliamentary election results in Kenya, violence erupted between ethnic groups, resulting in killings, rapes, and destruction of property. Fearing a large-scale ethnic massacre reminiscent of the Rwandan genocide, the international community began searching for a way to mediate the crisis. The chair of the African Union requested former Secretary-General Kofi Annan to mediate between belligerent parties. As the post-election violence in the country intensified, president-elect Kibaki and his rival Odinga agreed to a mediation team of African leaders under the lead of Kofi Annan (Anan, 2012, p.186-188.). Nearly seven weeks, multiple unsuccessful negotiation attempts and over 1000 deaths later, on February 14, 2008, Kofi Annan's mediation team brokered a political settlement "necessary to promote national reconciliation and unity" (Anan, 2012, p.199.). Averting a widespread ethnic conflict, the creation of Truth, Justice and Reconciliation Commission as well as a national referendum approving a new constitution which would change the face of Kenyan politics were among the major points negotiated and agreed upon with the assistance of Kofi Annan. However, Kofi Annan's interventions were not exclusively mediation; they had some aspects of conciliation.

198 Hadeel Oueis, 'Iraqi Christians want a stronger state and weaker militias', (24 April 2022), The Jerusalem Post. Accessible at https://www.jpost.com/opinion/article-704986

199 Britannica, The Editors of Encyclopedia. 'Iran-Iraq War'. Encyclopedia Britannica, (15 Oct. 2021), accessible at https://www.britannica.com/event/Iran-Iraq-War. (Accessed 13/09/2022.)

200 SC Res 598 (1987), UNSCOR, 42nd Year, UN Doc S/RES/598 (1987) 5.

201 *Ibid.*

202 'Iran-Iraq UNIIMOG', https://peacekeeping.un.org/sites/default/files/past/uniimogbackgr.html (Accessed 13/09/2022)

2.1.5 FALKLAND ISLANDS MEDIATION

[1057] In 1982, Secretary-General Javier Pérez de Cuéllar mediated the Falkland Island conflict between the United Kingdom and Argentina (Pérez de Cuéllar, 1997.). Pérez de Cuéllar was able to engage in mediating disputes involving the permanent Security Council members, something that had bewildered his predecessors, U Thant, and Kurt Waldheim[203]. In 1982, during his first year in office, Pérez de Cuéllar attempted to broker a peace deal between the British and the Argentinian governments over the Falkland Islands, (known as Islas Malvinas in Argentina), after Buenos Aires invaded the archipelago. Although this mediation ultimately failed, a British diplomat involved in the talks recollects that the British government was impressed by the Secretary-General's mediation efforts[204]. One of the reasons for the impasse this mediation faced was the competing interests of other parties. Specifically, the United States and Peru were heavily invested in their own attempted and unsuccessful mediations between UK and Argentina. These two governments' mediation efforts were undoubtedly self-serving and, in the case of the United States, uncoordinated with and unsupportive of the UN mediation initiative as Pérez de Cuéllar reflects in his memoir *Pilgrimage for Peace* (Pérez de Cuéllar, 1999.). The failed mediation initiatives by both the UN and the third countries such as the United States, illustrate the difficulty for the UN Secretary-General to act as a truly neutral and independent mediator in conflicts involving a permanent member of the Security Council.

2.2 MEDIATIONS BY THIRD STATES, RELIGIOUS INSTITUTIONS, AND DIGNITARIES

[1058] Whilst cases mediated by the Secretary-General of the UN are well-known to the wider public, the three cases described below support the argument that states, religious leaders, dignitaries, and other influential individuals have also played an instrumental role as mediators in complex conflicts.

2.2.1 CAMP DAVID MEDIATION AND CONCILIATION BETWEEN EGYPT AND ISRAEL

[1059] In March 1979, Egyptian President, Anwar el Sadad, and Israeli Prime Minister, Menachem Begin, signed a peace treaty in Washington D.C. President Jimmy Carter, who presided over the signing, had dedicated in the previous two years a substantial amount of time, efforts, and resources to mediating a peace deal in the Middle East. Carter's mediation of the settlement was praised worldwide as a historic achievement in addressing multiple unresolved issues and bringing peace to the region. Jimmy Carter's mediation, however, did not attain a comprehensive solution to the Arab-Israeli conflict, and the US President ultimately resigned to dropping the most concerning and obdurate point of the discussion, the Palestinian question (Princen, 1995, p. 69.). The inability to tackle this most critical question upon which any lasting peace deal in the Middle East would depend raises questions about the impartiality and neutrality of the mediator when he is the president of a third country that has vested interests in the conflict. As the President of the United States, Jimmy Carter also had a personal interest to resolve

203 Richard Gowan, "Remembering Javier Pérez de Cuéllar's "Piecemeal" Approach to UN Peacemaking", International Crisis Group (6 March 2020) accessible online at: https://www.crisisgroup.org/global/remembering-javier-perez-de-cuellars-piecemeal-approach-un-peacemaking

204 *Ibid.*

the conflict through mediation. From the beginning of his presidency in 1977, he regarded peace in the Middle East as a major foreign policy objective. In line with his strategic goals, Carter publicly outlined his idea of a fair settlement. The Carter proposal called for an Israeli withdrawal to the 1967 lines, for the establishment of a Palestinian homeland in Gaza and the West Bank, and for a normalization of Israeli-Arab relations. The plan was promptly rejected by the Israeli Prime Minister despite the US being largely perceived as the benefactor of Israel (Princen, 1995, p.71-72.). The importance of American foreign aid and investment in both parties accounted for a negotiation dynamic, compelling the parties to negotiate not only with each other but also with the mediator. As might be expected, the principles of neutrality, independence, and impartiality are seriously undermined when the mediator is a governmental official of a third state with strategic interests in the outcome of the process. History bears witness that agreements reached under such conditions tend to be short-lived. Unsurprisingly, the UN General Assembly rejected the Camp David Accords because the agreements were concluded without the participation of the United Nations and the Palestinian Liberation Organization (PLO) and did not comply with the Palestinian right of return and right to self-determination. In December 1978, the UN General Assembly reiterated in the Resolution 33/28A that the Framework for peace agreements would only be valid if they were consistent with the framework of the United Nations Charter and its resolutions, including the Palestinian right of return and Palestine's right to sovereignty, and concluded with the participation of the PLO[205].

2.2.2 IRANIAN HOSTAGE CRISIS MEDIATION BETWEEN THE UNITED STATES AND IRAN

[1060] Another significant conflict resolved through mediation by a third State was the Iranian Hostage Crisis. After Shah Mohammad Reza Pahlavi was overthrown, he was admitted to the U.S. to undergo cancer treatment. The United States welcomed the former leader of Iran, upsetting the Iranian population and its government. In January 1979, 400 Iranian students broke into the American embassy in Tehran, taking 63 hostages. Iran demanded Shah's return to stand trial for crimes that he had allegedly committed during his reign. Shah was accused of crimes against Iranian citizens with the help of the Iranian secret police. Iran requested Shah's extradition in exchange for the embassy hostages. The United States refused to comply with the request and accused the Iranian government of a blatant violation of international law, and more specifically the principles of diplomatic immunity as defined by the Vienna Convention[206].

[1061] Algeria proposed to mediate the dispute. The Algerian Government set up a team of high-ranking officials and members of the Algerian intelligence whose objective was to maintain a channel of communication between the American and the Iranian governments in an effort to conduct shuttle mediation of the hostage crisis[207]. These

205 UNGA, 7 December 1978, Resolution 33/28 A. Question of Palestine Archived 11 January 2014 at the Wayback Machine (doc.nr. A/RES/33/2

206 Arslan Chikhaoui, (January 2021) '40 Years Later: The Role of Algerian Diplomacy During the Iran Hostage Crisis'. *NESA Center for Strategic Studies,* accessible at: https://nesa-center.org/40-years-later-the-role-of-algerian-diplomacy-during-the-iran-hostage-crisis/

207 Bart Barnes, (March 2011) 'Former secretary of state Warren Christopher dies at 85', *Washington Post* accessible at: https://www.washingtonpost.com/local/obituaries/former-secretary-of-state-warren-christopher-dies-at-85/2010/09/21/ABCPk6t_story.html

efforts led to the Algiers Accord signed by the parties on 19 January 1982. As a result of this agreement brokered by the Algerian team of mediators, American hostages were released on 27 January 1981. Some of the main provisions of the Algiers Accord stipulated that the US would not intervene politically or militarily in Iranian internal affairs and would remove the freeze on Iranian assets and trade sanctions against Iran[208]. The agreement reached by the parties was based on the course of action proposed by the Algerian negotiators, which transformed the Algerian intervention into a form of conciliation. Throughout the mediation process, it was clear to all parties that the Algerian government had vested interests in the outcome of the process and was not entirely neutral[209].

2.2.3 BEAGLE CHANNEL CONFLICT MEDIATION BETWEEN ARGENTINA AND CHILE

[1062] An interesting case when mediation was conducted not by a State but by a religious institution is the Beagle Channel conflict. In 1971, the Beagle Channel dispute between Chile and Argentina was submitted to binding arbitration under the auspices of the United Kingdom government, following an Arbitration Agreement signed in 1977 by President S. Allende of Chile and President A. Lanusse of Argentina. In May 1977, the tribunal ruled that the Beagle Islands belonged to Chile. On 25 January 1978, Argentina rejected the arbitration decision[210] and on 22 December 1978, in a show of power and determination, Buenos Aires commenced a military advance towards the Chilian border, only to withdraw its troops several hours later. Following Argentina's near invasion of Chile on December 23, 1978, the new Pope John Paul II, who was ordained merely two months earlier, began seeking a mediated solution to the Beagle Channel dispute. Even though the Chilean government's position appeared to be favoured by the principles of international law, the militarily more powerful Argentina had vehemently opposed any concessions[211]. To legitimize its credibility as a mediator, the Vatican relied primarily on its religious authority as a spiritual sovereign in the Catholic realm. Despite numerous obstacles, the Papal mediation team managed to secure tentative concessions in caucuses which were later incorporated into the final version of the treaty (Princen, 1995, p. 174-175.). In October 1984, following a five-year mediation effort by Pope John Paul II, Argentina and Chile signed a protocol in Rome which ended a century-old border dispute over land and sea rights at the tip of South America[212].

208 Full Text of the Algiers Accord available at https://www.parstimes.com/history/algiers_accords.pdf

209 Marvine Howe, (26 January 1981) 'Wary Algeria Edged into Pivotal Role', *New York Times,* accessible at: https://www.nytimes.com/1981/01/26/world/wary-algeria-edged-into-pivotal-role.html

210 'Dispute between Argentina and Chile concerning the Beagle Channel 1977', Reports of International Arbitral Awards. Vol. XXI, (United Nations, 2006). Accessible at: https://legal.un.org/riaa/cases/vol_XXI/53-264.pdf

211 Martin Anderson, (19 October 1984) 'Chile, Argentina Sign Protocol on Beagle', *Washington Post* accessible at: https://www.washingtonpost.com/archive/politics/1984/10/19/chile-argentina-sign-protocol-on-beagle/f8e5a9db-f01c-4a5a-9691-f91861c095eb/

212 The success of the mediation and the increasing willingness of Argentina to reach a mediated solution to the Beagle dispute was partially on account of the unfolding Falkland Island conflict to which Argentina was also a party.

3. TOWARDS A PERMANENT INTERNATIONAL MEDIATION BODY

[1063] The cases described above demonstrate that the third parties who intervened as mediators were not always consistent in their approach and often did not observe the fundamental principles of mediation, which include independence, impartiality, and neutrality. The notions of neutrality and impartiality are often confounded and used interchangeably in academic literature. We refer to neutrality as defining the relationship between the mediator and the outcome of the mediation process. Impartiality, on the other hand, is the lack of preference or bias by the mediator towards the parties to the mediation. The independence of the mediator refers to the fact that he or she does not depend on either party in any way: financially, politically, hierarchically, emotionally etc. Naturally, neutrality and impartiality are prerequisites for independence.

[1064] In a conflict opposing two countries, one would be hard-pressed to find a third country that would have no interests whatsoever in the outcome of the dispute to play the role of a mediator. The interests of any State are so varied and multifaceted that it almost always has some interest in the outcome of any international conflict. This reality deprives states of the essential characteristics of a mediator, which are independence, impartiality, and neutrality. In conventional mediation, the independence, neutrality, and impartiality of the mediator are based on the assumption that the parties have no pre-existing relationship with him or her. This presumption is inoperable when the mediator is a State. In the mediation between Israel and Egypt by US President Carter, the American interest in promoting peace and stability in the Middle was clearly articulated as a priority on the US foreign policy agenda. This was an element of a larger national security and economic agenda for the US government. Moreover, the success of the mediation was perceived as having a bearing on the approaching US presidential election of 1980 (Piercen, 1995, p. 100-101.).

[1065] In the case of the Algerian mediation of the Iranian Hostage Crisis, the role of a peace broker was a point of international prestige and a source of political capital with the aim of securing the American endorsement of the Algerian position with regard to the conflict in Western Sahara. At the time of the hostage crisis, the Algerian government was supporting guerrillas in the Western Sahara who were fighting against the annexation of the territory by Morocco[213]. Moreover, Algeria unambiguously expressed its aspiration to help reinforce the Iranian Islamic revolution by preventing an escalation of the crisis between the US and Iran[214]. Consequently, the Algerian government had clear interests in the outcome of the conflict between the two governments.

[1066] The neutrality and independence of the UN Secretary-General is an interesting topic for separate in-depth research. As per the UN Charter, the Secretary-General, and his staff are not permitted to seek or receive instructions from any government. They must abstain from any action that might negatively reflect on their position as international officials. Each member State of the UN also has an obligation to respect

213 Marvine Howe, (26 January 1981) 'Wary Algeria Edged into Pivotal Role', New York Times, accessible at: https://www.nytimes.com/1981/01/26/world/wary-algeria-edged-into-pivotal-role.html

214 *Ibid.*

the exclusively international character of the responsibilities of the Secretary-General and his staff and not to seek to influence them in the discharge of their responsibilities[215]. Even though the UN charter unambiguously requires the Secretary-General to be independent in the performance of his duties, such independence is illusory considering that he is appointed by the General Assembly on the recommendation of the Security Council for a five-year term in office with the possibility of reelection for a second term[216]. Any permanent member of the Security Council may veto the reelection of the Secretary-General for a second term. Hence, in practical terms, the UN Secretary-General is only truly independent from permanent members of the Security Council after his reelection for a second term or only during his last five years in office[217]. This is a significant limitation to the Secretary-General's suitability to be a mediator, particularly in conflicts where permanent members of the Security Council have vested interests or are parties to a conflict. However, even if none of the Security Council's permanent members is directly involved in a particular conflict, their interests in and alliances with the disputing parties can become a source of undue influence affecting the independence of the Secretary-General as a mediator.

[1067] Furthermore, as recent events have demonstrated, the Secretary-General can lose his neutrality and disqualify himself as a mediator by taking a stance on a specific conflict. For instance, during a Security Council meeting in May 2022 Secretary-General Antonio Guterres condemned the actions of a permanent member of the Security Council by describing Russia's invasion of Ukraine as "a violation of [Ukraine's] territorial integrity and of the Charter of the United Nations" and characterizing the war as "senseless in its scope, ruthless in its dimensions and limitless in its potential for global harm"[218]. While the content of the statement may sound morally justified, the Secretary-General disqualified himself as a mediator by taking a position on the conflict.

[1068] Spiritual leaders or religious institutions, including the Pope, cannot be credible mediators either particularly when the parties to the conflict do not belong to the same faith. The impartiality and neutrality of the Vatican were not challenged in the Beagle Channel mediation because both conflicting parties were Catholic countries. However, a representative of the Catholic Church would be an unlikely candidate to mediate a conflict between groups belonging to different religious affiliations.

[1069] We have seen that third countries, UN Secretaries-General, religious leaders, and other dignitaries can successfully mediate conflicts; however, their independence, impartiality, and neutrality can be easily challenged. The establishment of a permanent and independent mediation body would effectively address these concerns.

[1070] In May and June 1999, on the occasion of the celebration of the 100th anniversary of the first International Peace Conference, an Expert Meeting and a

215 Charter of the United Nations, 26 June 1945, Chapter XV, Art.100. Accessible at: https://www.un.org/en/about-us/un-charter/chapter-15

216 Terms of Appointment of the Secretary-General, GA Res 11 (I), UNGAOR, 1st Year, UN Doc A/RES/11(I) (1946) 14, para. 3.

217 Even though art. 97 of the Charter does not explicitly limit the appointment of the Secretary-General to two terms, a practice of limiting his service to a maximum of two terms in office has evolved over years since 1945.

218 Official Records of the UN Security Council, minutes of the 9027th meeting of the Security Council, UN Doc. S/PV.9027 (5 May 2022) p. 2

Conference were held in The Hague and then in Saint Petersburg. The agenda of topics discussed during the two conferences in 1999 was wide and included items such as the nonproliferation of a variety of weapons, internal armed conflicts, civil society, and humanitarian law. More interestingly, however, the peaceful settlement of international disputes and conflict prevention, where mediation figured most prominently, were given special attention[219]. Unfortunately, these gatherings stopped short of recommending the institutionalization of mediation. Although international mediation received its first explicit endorsement over 100 years ago (at the same time as arbitration and before judicial adjudication), actual steps towards institutionalizing the practice of mediation are yet to become a reality. International arbitration and adjudication reaped enormous benefits from their institutionalization. They gained prestige, consistency of approach, procedural clarity, and credibility as an independent dispute resolution mechanism. The proliferation of international courts and arbitration tribunals during the last century supports the proposition that institutionalization enhances not only their accessibility but also the perceived legitimacy and public awareness of dispute resolution mechanisms. The institutionalization of international mediation will no doubt lead to the same benefits. The importance of mediation has been recognized and emphasized multiple times by world leaders, UN General Assembly, UN Security Council, UN Secretaries-General, through resolutions, recommendations, mediation initiatives, expert meetings and conferences since mediation was first articulated as an international conflict settlement tool during the first Hague Peace Conference in 1899 and subsequently included in art. 33 of the UN Charter. If there is political will for its use and shared belief in its effectiveness in managing conflicts, what prevents the process of institutionalization of international mediation through the creation of a permanent international mediation body?

[1071] The institutionalization of mediation will equip the international community with a permanent, body staffed by professional mediators independent from any government, religious institution, or interest group. Mediators with no vested interests will be truly impartial and neutral. The case studies described above illustrate that mediation is often requested at the initiative of a third party as opposed to one of the belligerent parties. This can be explained by the dynamics of international conflicts. Because of the informal nature of the mediation process, if one of the disputing parties proposes mediation, their invitation could be construed as a sign of weakness. The institutionalization of mediation will trigger a cultural change, making it less prejudicial to refer disputes to mediation. It will simplify the referral of disputes to mediation and allow disputing parties to appoint a mediator without losing face. Institutionalization will also make procedural steps for requesting mediation transparent, consistent, and foreseeable. The proposed institutionalization could be accompanied by other measures, such as making mediation a mandatory step that the parties must exhaust before initiating legal proceedings. Once mediation proves to be unsuccessful, the parties could then turn to litigation.

219 "Outcome of the celebrations of the Centennial of the First International Peace Conference: Report on the conclusions", Annex to the Letter dated 10 September 1999 from the Permanent Representatives of the Netherlands and the Russian Federation addressed to the Secretary-General, UN Doc. A/54/381 (21 September 1999). www.un.org/law/cod/sixth/54/english/hague.htm (Consulted 26/07/2022)

[1072] The establishment of a permanent mediation body would also provide the advantage of expediting the dispute resolution process by significantly shortening delays caused by the negotiating and signing of pre-mediation agreements between the disputing parties. Such agreements are normally concluded before the mediation process begins[220]. However, the delays resulting from this step of the process would be avoided through voluntary adhesion to a permanent mediation institution. Gaining time is an advantage that cannot be underestimated as most conflicts have escalation points of no return after which mediation is less likely to be effective. The time required to identify and appoint a mediator as well as to negotiate and sign a pre-mediation agreement can often be a decisive factor and make a difference between peaceful resolution and armed hostilities.

[1073] Establishing a permanent body for international mediation is infinitely easier than setting up an international court or tribunal. States perceive the act of accepting the jurisdiction of an international court and tribunal as encroaching on their sovereignty. For instance, only 73 out of 193 member states of the UN and one permanent member of the Security Council have thus far accepted the compulsory jurisdiction of the ICJ. The United States withdrew its acceptance of the ICJ's compulsory jurisdiction in 1985 after the ICJ issued an unfavourable judgment against the US in a case relating to its military intervention in Nicaragua[221]. Becoming a member of a permanent body for international mediation does not entail the acceptance of any compulsory jurisdiction or relinquishment of sovereignty. The very nature of the mediation process with its principle of self-determination would serve as an incentive for all states to become signatories of a new universal mediation body.

[1074] The proposed institutionalization would also enable the codification of the mediation process and the professionalization of its practice. It would foster research and development of the process and practice of mediation. Such an international organization would become the reference point for building and sharing expertise in mediation, which could in the long run transform mediation into a primary dispute settlement mechanism.

[1075] For all these reasons, a permanent mediation institution is the solution to having dependable, legitimate, apolitical, neutral, impartial, independent, and qualified mediation teams ready to intervene on short notice.

[1076] The structure of the universal mediation institution, which we propose, can draw inspiration from the structure of the Permanent Court of Arbitration. To guarantee its independence, neutrality, and impartiality, the new permanent mediation organization should be an entity independent from all states and the United Nations System. A more detailed structure for such a body exceeds the scope of this article and can be the subject of a separate study.

220 Agreement between the Government of Canada and the Government of the United States of America on the establishment of a mediation procedure regarding the Pacific Salmon Treaty. Montreal, 11 September 1995, 2029, UNTS 307.

221 Scott R. Anderson, (October 9, 2018) 'Walking Away from the World Court', *Lawfare,* Accessible at: https://www.lawfareblog.com/walking-away-world-court

CONCLUSION

[1077] Mediation is recognized as one of the most effective dispute-resolution mechanisms. Many important international conflicts and humanitarian disasters have been prevented or resolved through mediation. However, unlike other conflict resolution tools, such as arbitration and adjudication, the practice of mediation lacks consistency in approaches and standards of practice. An analysis of international conflicts resolved through mediation in recent history reveals that the international community does not currently have a permanent body staffed with independent, impartial, neutral, and qualified mediators ready to intervene on short notice. High-profile mediators, such as UN Secretaries-General, governmental officials, and other dignitaries often do not fulfill the requirements of independence, impartiality, and neutrality as they often have vested interests.

[1078] Institutionalizing international mediation would ensure a reasonable degree of standardization of mediation practices and guarantee the independence, impartiality, and neutrality of mediators. Establishing a permanent mediation institution would give rise to codified procedures, and consistent practices, which in turn would increase the procedural transparency and legitimacy of mediation as effective dispute resolution mechanisms. Moreover, institutionalization will also promote research and academic literature in international mediation, while bringing about further professionalization of the field. More importantly, a permanent mediation body would render this mechanism more accessible to disputing parties, ultimately resulting in a greater number of conflicts being settled and international crises being averted through mediation.

[1079] This article will hopefully generate interest in this topic and entice researchers to study and propose institutional structures and functioning of a permanent mediation body.

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