Seeking Compromise? Mediation Through the Eyes of Conflict Parties

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1.
Introduction

In spring 2009, UN Secretary-General Ban Ki-Moon submitted a special report to the Security Council that put mediation firmly into the toolbox of international policy frameworks. The report explicitly claimed the need to allocate "sufficient resources to provide assistance at an early stage to help parties design and pursue processes that will address the root causes of their conflicts, overcome obstacles that block progress, and achieve agreements that lead to sustainable peace" (Security Council Report 2009, 1).

This report marks renewed international interest in mediation, following a somewhat mixed track-record: in the 1990s, several mediation efforts based on providing good offices failed or were at least less effective than expected. According to UN statistics, only 25 percent of all mediation efforts from 1989 until 2002 were successful (HLP 2004, 34). However, one in every four conflicts *was* constructively transformed with the help of mediation. Furthermore, a comparative study of 434 international crises that occurred between 1918 and 2001 showed that the probability of formal agreement is more than five times greater when a crisis is mediated (48.35 percent) than when it is not (9.97 percent). The findings also highlighted that mediation makes a positive contribution to the long-term reduction of tensions (Beardsley et al. 2006).

There are a number of reasons for this recent revival of interest in mediation, which have their roots in several intertwined developments:

First, *the failure of military crisis response:* In 1999 NATO adopted a Strategic Concept that, for the first time since World War II, justified military "crisis response" in circumstances other than a clear case of defence, and irrespective of having a UN mandate (NATO 1999, Art 31, 41, 48-49). However, the military missions that followed in the spirit of "legitimised" intervention, initiated and led by the US, floundered. Their success was already debatable in the case of Kosovo, but the interventions subsequent to 9/11, especially in Iraq and Afghanistan, have led to a rapidly growing scepticism among the protagonists of armed "humanitarian intervention" as to whether using military instruments can really foster democratic state-building and lasting peace in fragile or non-democratic states.

Second, *the need to address internal, asymmetric conflict:* The predominant type of armed conflicts has changed globally since the Cold War. Nowadays, more state- and non-state actors are being involved simultaneously. Asymmetric conflicts have become a cause and are at the same time also a result of a spreading fragility of states. Meanwhile, approximately one in four countries, in total more than 50 states worldwide, is considered to be fragile – i.e. is not able to deliver core functions to its people (Naudé et al. 2008, 1). Traditional state-based instruments, which support and prioritise restoring the monopoly on the use of force, are questionable, especially if state rulers or governments in the supported states lack the backing of larger groups among their citizens and also if they do not enjoy the trust of large parts of the international community. Supporting armed resistance against the existing rule of a state may have a stronger moral and political legitimacy in these cases than any efforts by third parties to consolidate or

help to restore the formal power of a corrupt or patrimonial regime. The external support for the KLA in Kosovo has provided a precedent for this change in perspective among the international community.

Third, *the limits of peacekeeping:* The authority of the UN and of nation states who have engaged in peacekeeping missions in the last two decades has suffered from the lack of success in crucial cases. The more mandated armed interveners became stuck in deadlocked conflict situations, the less their engagement and that of the UN was appreciated by some or all of the conflict parties within those countries. This has reduced their ability to establish new norms. The concept of mediation, on the other hand, leaves the initiative for conflict resolution with the conflict parties. It does not intend to impose fixed template solutions but builds on interests of the conflict parties in seeking compromise and practising collaborative action.

Fourth, *shifts in normative approaches to human rights violations:* Influenced by international debates of the last 20 years on how to deal with protracted violent social conflicts within state boundaries, a set of new approaches is emerging. They are expressed in new moral and proto-legal categories such as *human security, human intervention* and the *responsibility to protect*, which have found their way into influential expert reports, policy recommendations and legal documents of states and international organisations. This changing mindset has gained considerable political momentum and has led over time to an increasing acceptance of legitimised interference into internal matters where human rights are neglected or people are oppressed.

Fifth, *a broader and more transformative understanding of mediation:* Finally, the nature of protracted conflicts (Azar 1985) and the high percentage of critical backlashes following negotiated ceasefires and formal settlements have turned more attention to the root causes of armed conflicts. Mediation has come to be considered less of a tool for bringing about formal agreements between conflict parties, but rather for facilitating more constructive and cooperative behaviour in order to open up perspectives for a resilient, less confrontational and more enduring relationship through a transformation of relations between the parties in conflict. Back in 2004 the High-Level Panel on Threats, Challenges and Change stated that, based on skills and resources, mediation may offer better hope "for breaking long-standing cycles of violence that haunt many war-inflicted countries" (HLP 2004, 60). As Ban Ki-Moon stated in his above-mentioned report: "Since one of the most promising approaches to the peaceful settlement of disputes is skilful third-party mediation, we, the United Nations, have the responsibility to 'we the peoples' to professionalise our efforts to resolve conflicts constructively […] and to 'save succeeding generations from the scourge of war'" (Security Council Report 2009, 21).

Turning our attention to research, we find that a lot has been written in the recent past on the new potential and the functional roles of mediation for conflict resolution. Surprisingly though, the bulk of mediation literature appears to adopt the bird's eye view of third parties. It concentrates on what mediation can achieve, on how the stakeholders can be brought to the negotiation tables, and how the mediation process should be organised so as to eventually be successful. The focus of most studies on mediation is laid either on the impact, timing and efficiency of the process or on the appropriateness of mediating actors and measures.

This said, the perspectives and vested interests of the "mediated" sides are often neglected. Conflict parties are generally viewed as actors who mediators should bring around to seeing reason. But even where the interests of "mediated" actors are dealt with directly, the analytical attention is often absorbed by important but comparably minor issues such as "ripeness"; i.e. the moment and the circumstances when conflict parties finally become ready to accept third-party offers of mediation (Kriesberg 1992; Mitchell 1995; Greig 2001). The driving motivations on the part of the conflict parties regarding who they will accept as mediators and what kind of mediation they will prefer, are dealt with far less systematically (this, for example, is only partly covered by Greig/Regan 2008).

Mediation should not be seen as just a third-party driven process that the conflict parties are to be brought into. For them, third-party mediation might also be a political *option*, clearly based on strategic reasoning. The motivation to choose this option does not result primarily, if at all, from a good will to accommodate or to compromise but to a much greater extent from soberly balancing own interests and opportunities. If mediation is to be primarily about conflict transformation and not about just seeking a compromise between the parties in conflict, their own interests and perspectives on the root causes of the conflict must be taken seriously. That is why successful mediation requires an empathetic view of these fundamental interests.

Our chapter thus looks at mediation through the eyes of the conflict parties. By shedding some light on the stakeholders' motivation to consider third-party mediation a viable option, this chapter intends to bring added value to the ongoing discourse on how to make mediation an effective approach to conflict transformation. Our analysis builds on careful and discerning studies on mediation (Crocker et al. 2004; Moore 2003), reflections of mediation practitioners (Sumbeiywo 2008; Brahimi/Ahmed 2008; Griffiths 2005) and our own experience of supporting mediation processes and capacity-building for conflict parties. For the latter in particular, we will draw on Berghof's experiences in Sri Lanka (see *Box 1*; see also Norbert Ropers in this volume).

Box 1
Berghof's Work in Sri Lanka

The Berghof Center launched the "Resource Network for Conflict Studies and Transformation" (RNCST) in 2001. Our overall aim was to empower stakeholders and partners from politics and civil society to shape long-term processes for a just and lasting peace, based on fundamental changes in structures and relationships.

The project targeted five stakeholder groups: the Government of Sri Lanka (GoSL); the opposition parties; the Liberation Tigers of Tamil Eelam (LTTE) and other Tamil actors; the Muslim community; and functional elites (e.g. from the public sector).

Our project work lasted for seven years, before we terminated our engagement in response to deteriorating political developments in Sri Lanka.

The next section offers a brief clarification of how we understand mediation (as a process and a strategy) and our definition of conflict parties. The third section elaborates on the core interests of conflict parties in third-party mediation. In the final section, we propose recommendations for practice and research in mediation or mediation support.

2.
Mediation and Parties in Conflict – A Clarification of Terms

In a general sense, mediation is one of the most ubiquitous forms of assisting conflict resolution in a wide array of social arenas [see also Ronald Fisher in this volume]. It intends to bring a different kind of *process* to the problems faced by conflict-ridden communities and to the stalemates that accompany long and contentious, often violent struggle over policy and social affairs (Kolb 1994, 2). Mediation is, at its core, a political process in which conflict parties (stakeholders) agree to accept one or more third actors who are not party to the conflict, who enjoy the trust of the disputants, and who are considered potentially supportive in overcoming the deadlock triggered by a stalemate in the conflict.

Third-party mediation can build on different tracks and types of actors. It is important to differentiate between official mediation processes (based on a mediation mandate, agreed agendas, rules of engagement, etc.) and unofficial mediation processes (McCartney 2006, 4), including Track II activities such as dialogue facilitation and problem-solving, as well as local mediation by insider mediators. However, while official and unofficial mediation processes are in principle complementary, reality shows that the lines between them are often blurred.[1]

Official – or formal – mediation usually aims at paving the way for a negotiated ceasefire (or a peace agreement) between former belligerents. While it makes sense to refer to precise goals in formal talks and negotiations in order to enhance confidence among the participants of the process, it has to be taken into account that the root causes of a protracted conflict cannot be resolved by formal or informal agreement. Negotiated deals or agreements may pave the way for sustained constructive interaction which is aimed at and may therefore eventually lead to eliminating the root causes of conflict and further conflict transformation. If the root causes are not addressed, or even consciously ignored, the whole process may win time but not a durable peace (Hippler 2009, 104). It cannot be expected that all problems will be solved on a single and linear negotiation track. Protracted conflicts over resources or territory, over the type and forms of rule, over cultural, national, political or religious identity are often too complex and intertwined to be nailed together in a formal agreement. The armed conflicts in Palestine, Sri Lanka, the

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1   Mediation may become an issue not only on the level of the relations between the conflict parties, but also may be affected by tensions and competing interests within their constituencies. The infighting between competing factions within the Palestinian and Israeli camps over the best strategies to use during the Oslo Process provides an excellent example of this challenge (for details, see Watkins/Lundberg 1998).

Philippines, in the Caucasus region or in the Kurdish territories, for example, have evolved over a long time. Even if an agreed compromise is found at the negotiation table, it would not diminish the task of creating a constructive relationship between the conflict parties in its wake.

Negotiations and formal talks, therefore, are only one element of official mediation. Official mediation also has to take place behind the scenes, i.e. mediators enter into consultations on either side about how the process can be gradually followed up. Mediators are not only, and not even primarily, moderators, although mediation efforts may include some elements of moderation to assist conflict parties by organising and structuring talks or negotiations. More importantly, mediation aims at influencing the attitudes and perspectives of the parties in conflict. To this end, it is more of a tacit "shuttle diplomacy", based on exploring opportunities for change on either side. It aims at encouraging behavioural changes rather than achieving determined results. Of course, official mediators are bound to a given mandate, to precisely defined rules of engagement, to fixed agendas and time frames. If they fail to achieve visible progress within an agreed schedule, the mediation process becomes either temporarily interrupted or may be phased out without concrete results.

This obvious vulnerability of official mediation has helped to lend increasing weight to a less well-established practice, which is best described as unofficial or informal mediation. The aims of unofficial mediation are similar to those of official mediation; the methods, however, are different. Unofficial mediation does not rely on mandates, negotiations or talks, nor is it bound to fixed rules or schedules. It does not even necessarily require formally appointed mediators. Working in confidential and creative settings is a characteristic feature of unofficial mediation, and in this type of engagement it is even more important than in the case of official mediation. The primary advantage of unofficial mediation is greater flexibility as regards the scope of activity, the choice of appropriate persons and the timeframes foreseen.

Official and unofficial mediation are not necessarily alternative options: they may also complement each other. While an official mediator (i.e. from the UN) might have a lead position in a formal negotiation process, other mediators might work with the conflict parties in a more unofficial setting. Official mediators are usually outsiders (because of their perceived neutrality), but, in fact, their work is often facilitated, complemented and supported by insider mediators. Insider mediators can play a decisive role in preventing, transforming and mitigating conflicts in a constructive way because of their personal commitment, reputation and relationships, their in-depth knowledge and their roots in the specific cultural and religious local contexts. They are influential intermediaries in informal peace processes and are often close to one or other of the conflict parties (Mason 2009). While, in reality, mediation is often a combined effort by diverse, official and unofficial, actors, there is little experience so far of working strategically with and in mediation teams.

This being said, who are the conflict parties? To answer this question is not very easy, since the ideal model case of a conflict between two actors with homogenous perspectives of what they are fighting about is rather rare. Successful mediation must concentrate on those representatives who enjoy the support of substantial social or political constituencies, from which they derive the legitimacy for using force or for signing ceasefires. The boundaries between different camps of conflict parties tend to become blurred, especially in protracted conflicts – while at the same time

the camps can become internally fragmented. The so-called "moderates" of all groups may have more in common with each other than with the more fundamental representatives in their own groups, whereas stances on the root causes of conflict remain very diverse and may, above all, appear irreconcilable. The pessimistic message from this fragmentation of conflict parties is that there is no easy path for mediation. However, the optimistic message is that mediation is a plausible policy option for almost every type of conflict setting, at least as long as key actors exist among the conflict parties on either side who do not in principle rule out nonviolent alternatives to ongoing confrontation. It is therefore crucial to understand why conflict parties are interested in mediation and how they try to align third-party mediation with their own interests. A further critical question is how those factions that are not interested in mediation can be brought into the process.

Armed conflict transforms not only society and economy, but also has considerable impact on the interests of the parties involved. Therefore, mediation in conflict must not ignore the change of attitudes and its impact on the interests of the conflict parties, or the way they look at each other. The conflicts in Bosnia and Afghanistan, for example, have transformed considerably since they first broke out, and so have the interests of the parties involved. This does not mean that the root causes of the conflict have disappeared or changed. But the conflict parties' interests in resolving the conflict might have done so. In order to understand the dynamics of conflict properly, mediators have to be aware that the conflict parties may have become fragmented over goals and tactics during the protracted conflict. For this purpose in particular, insider knowledge can play an important role in facilitating the transformation of relations between the conflict parties.

3.
Conflict Parties' Interests in Third-Party Mediation

For a systematic response to the question of conflict parties' interests in mediation we will ask why and when they become interested in mediation, who they prefer to serve them as mediators, how they wish to organise the process of mediation and, last but not least, what the scope and limits of issues are that the parties in conflict are ready to entrust to mediators.

3.1
Why Do Conflict Parties Seek Third-Party Mediation?

Conflict parties do not usually opt for negotiations with their 'enemies' because they are willing to make concessions or are ready for compromise. Nor are they interested – without good reason – in bringing external players between them and their enemies who are not partisan, i.e. whose engagement would not work to their own benefit. The primary motivation for a party to accept mediation is that they believe that bringing in mediators may serve their interests better

than keeping the conflict going on unregulated. This motivation applies to basically all kinds of intervention from the outside. Be it negotiations, mediation or military intervention: conflict parties look at external actors from the perspective of benefit in comparison to the current status and foreseeable development. If it looks like third-party engagement will serve their interests better, for example by strengthening their positions, capabilities, policy options or military leeway in comparison to their opponents or in comparison to the current situation, conflict parties will be interested in taking the advantage of the (temporary) intervention.

Obvious motivations that conflict parties may have for bringing mediation into the conflict are as follows:

First of all, as said before, mediation usually becomes a *strategic policy option* when the parties in conflict have got stuck in a seemingly endless, deadlocked conflict situation. This deadlock can either be caused by a neutralising stable equilibrium of forces, with no military or policy options left to the conflict parties to overcome the given stand-off, or by eroding backing for the conflict parties' strategy within the country or outside. If the conflict parties are considered within their own constituency to be intransigent, they might easily lose former legitimacy and support. Therefore, going for the option of mediation is often related to efforts of regaining the initiative in conflict, i.e. trying to seize moral high ground and opening doors for more promising policy options. Sometimes, however, the aims may also be more tactical and less ambitious. Buying some time to regain strength – also for military re-deployments – may also become the purpose for accepting third-party mediation for a certain period of time.

Secondly, mediation is also a *multiple communication strategy*. This strategy intends to enhance the legitimacy of a party's own policies and actions. It gives a public signal of readiness to compromise – and thus to end the protracted conflict – on the one hand to the international community: taking the initiative for mediation aims at gaining sympathy and at receiving more support from other states, from international organisations and donors. It also aims at creating international pressure on the opponent to react constructively and to engage in mediation as well. On the other hand, initiatives for mediation may also serve to build communication channels between the opponents, i.e. if accepted by both they can also be read as an initial consent to starting indirect communication on the root causes of the conflict. Finally, the approval of third-party mediation also addresses the party's own constituency and aims at maintaining its support and favourable publicity. The latter aim may be thoroughly controversial if internal factions of the conflict parties are seriously at odds over the best strategy. In entrenched conflicts in particular, it can happen that factions and non-state splinter groups are not just fighting the government, but are built on oligopolies of violence (Mehler 2009) and competing among themselves over power, influence and tactics.

Thirdly, engagement in mediation is also considered as a way of *improving the general conflict environment*. On the one hand, as said before, showing readiness for mediation is to relieve the international pressure by demonstrating a constructive attitude and conflict behaviour. A successful image transformation may contribute to (re-)generating political, technical or financial support from international donors. On the other hand, actors in asymmetric conflict tend to have a self-image of legitimacy while at the same time denying the legitimacy of their opponents'

activities. In particular, non-state actors who are in conflict with governments in their home countries seek to obtain international recognition as legitimate actors with legitimate aims in their positions vis-à-vis the government, who they themselves do not recognise as legitimate. Offers of mediation by international actors might indeed lend legitimacy to the mediated parties, because at least official mediation would have to be taken seriously by the government in question.

Apart from these core motivations for conflict parties to accept third-party intervention, mediation may also serve a number of functional interests:

First, direct communication between conflict parties is often highly distorted, especially if the opponents are entrenched in their positions. A lack of communication means also a lack of transparency and predictability, which may lead to undetermined risks and can seriously work against the security interests of the opponents. Bringing third parties in may help to organise and to guarantee improved communication structures.[2]

Second, the level of trust between parties who have become stuck in protracted conflicts is usually low. Third parties may serve as visible observers or witnesses who accompany and thus improve the credibility of direct talks between the adversaries.[3] It cannot be ruled out that the conflict parties may seek to use the third parties for their own propaganda purposes. But playing games with third parties could easily steer the whole mediation process into an unpleasant deadlock for all participants. If the parties are seriously interested in mediation they will most likely refrain from damaging the reputation of the mediators.

Third, the conflict parties struggle over who controls the negotiation process. Third parties are considered helpful as they not only take responsibility for the process design, but also may guarantee that the process will not become dominated by the adversary. If the negotiation process does not bring about advantages for the side of one conflicting party, this should at least apply to their opponent as well. Another functional benefit of having third parties in charge of the process is that they can be blamed in case of its failure.

Fourth, in many protracted conflicts there are outside powers (e.g. neighbouring countries and regional powers) that have their own stakes in the conflict. Third-party mediation might help either to constructively bring the interests of these outside parties into the negotiations[4] – or (if powerful enough) to keep outside powers away, at least temporarily, from directly intervening (Touval/Zartman 1985).

Fifth, transformations of protracted conflicts tend to become seriously affected by competing status concerns on either side (see *Box* 2 on how this issue affected the Sri Lanka peace process). Conflict parties hope that mediators will either consolidate or comparatively upgrade their current status in relation to each other, in order to strengthen their own legitimacy and international recognition. This is particularly in the interest of non-state actors in asymmetric conflicts. While

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2   This is a common feature in most protracted conflicts. In some cases, such as the negotiations between the Lord's Resistance Army (LRA) and the government of Uganda, the lack of communication became a huge burden to the parties.
3   This was an important aspect of President Ahtisaari/CMI's role in the Aceh peace negotiations of 2005. It also featured prominently in the Darfur talks of 2006 and the various rounds of the Middle East peace process, to name just a few.
4   The negotiations between the different Lebanese factions in Doha, Qatar in May 2008 provide an excellent example for the integration of fourth parties, as the Qatari government was able to bring in its good relations with the USA and Saudi Arabia on the one hand and Syria and Iran on the other.

non-state actors hope that recognition by third parties will help them to become accepted on an equal footing, state actors for their part are interested in sharpening the accountability of their non-state opponents and bringing them better under control.

When an ethnopolitical conflict is fought in essence about acknowledging the equal esteem, dignity and status of an ethnonational group, it is necessary to find creative ways of expressing this parity. This could also include facilitated negotiations about the exact meaning of "parity". In terms of practice, it will be crucial to develop concrete road maps that demonstrate to non-state armed groups who are branded as "terrorist" organisations how they could constructively pursue their de-proscription.

Box 2
Power Asymmetries and Parity of Status in Sri Lanka

In the Sri Lankan case, parity of status in the negotiations was one of the pillars on which the peace process had to be built, from the perspective of the LTTE. Their goal was to gain more legitimacy vis-à-vis their own constituency, as well as with respect to the international community. For them, parity of status was not confined to the negotiation table, but was a basic requirement for diplomatic interaction, which the international actors should also respect in the context of development assistance, etc. The government, on the other hand, had no interest that the LTTE should be easily legitimised in other contexts of the international arena, quite apart from the fact that for them, as an internationally recognised state, any other parity claims were out of the question anyhow. Others argued that the LTTE should "earn" their international recognition by respecting international human rights standards (if not giving up their military struggle altogether and joining the political mainstream). The lesson to be drawn from this experience is that, despite their asymmetry in status and power, some kind of equal terms that are duly respected by the conflict parties on either side are a crucial condition for holding meaningful negotiations.

In sum, the motivation of conflict parties to seek third-party mediation is predominantly one of self-interest. Their primary interest is not to strike a deal, let alone to seek a compromise. Conflict parties want to regain the initiative in order to overcome a deadlocked situation which – from their perspective – works to their disadvantage. They also fear that keeping the conflict going as before would deteriorate rather than improve their chances to prevail. It is worth considering, however, that the interests behind opting for mediation might not only differ considerably between the conflict parties, but also between different factions within these parties.[5] Competing interests may become an obstacle for the success of mediation, especially if agreements are undermined by rivalling factions, but they may also prove to be a trigger for entering mediation if key actors on the side of the parties in conflict seek alternatives to ongoing fighting.

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5   The importance of the deep split within the Sinhala community concerning whether or not to negotiate with the LTTE was one factor contributing to the breakdown of talks after 2004.

3.2
When Do Conflict Parties Seek Third-Party Mediation?

The question of the right timing for mediation is crucial for all parties. Of course the best time to prevent the escalation of a conflict is at an early stage, i.e. before it turns violent. The opposing positions may not be too entrenched, the issues are less complicated and the emotions are more contained. But the earliest possible moment may not be the right time for a conflict party – or for all of them – to enter into a mediation process or to refrain from confrontation. The mediation literature usually focuses on the "right moment" – or in a more qualitative sense, the "ripeness" – for starting a mediation process. Ripeness was originally understood in the sense that conflicts were "ripe for resolution" (Zartman 2000). But parties in conflict and third parties may have a very different understanding about ripeness, due to their own interests. Third parties see the chances of mediation for resolving – or transforming – a conflict, and try to balance interests and avoid risks in order to achieve an agreement. The parties in conflict, however, consider impartial intervention to be a risk and will rarely engage with third parties voluntarily – unless such involvement promises certain benefits to them from the outset. This is especially so for non-state actors, whose strength and impact is often built on the use of force against the state and who are thus afraid that a ceasefire or even a peace accord would weaken their position vis-à-vis the state actors (Security Council Report 2009, 11). Rebels and resistance movements fear that the loss of armed power will outweigh the chances of winning a negotiated peace. Sometimes economic considerations also play a role. In conflict-ridden societies, some armed actors benefit more from the existence of an uncontrolled black market than they would under the rule of law. In other cases however, running their own markets may be the only source for satisfying the elementary needs and mitigating grievances for parts of a society that is ruled by an authoritarian regime.

That is why calling on third parties for mediation is often not a tool of first choice, but usually results from the failure of other, unilateral strategies. However, it would be misleading to assume that mediation will happen only if all alternatives of unilateral action have been exhausted.

In protracted ethnopolitical conflicts, especially if these conflicts are about territory or even secession, the non-state actors (i.e. resistance, liberation or secessionist movements) often do request international support at an early stage. There are two explanations for this. First of all, secessionist conflicts by their very nature will hardly end with a compromise between the conflict parties, especially if the competing rivals claim control of the same territory.

Second, insurgents against the government in place may perceive the internationalisation of the conflict as a benefit because they hope to gain increased legitimacy for their movement and its causes. The often rigid rejection by rulers, or support from neighbouring 'kin-states', may strengthen the moral (and often also the political) case of rebel groups to call on international parties for mediation. However, calling for mediation in order to put pressure on an enemy government and seriously being prepared to join a mediation process are often two different stories. Non-state actors may be surprised by moves from their opponents, leaving them poorly prepared when mediation is actually suddenly accepted. Armed movements often lack the

experience to deal with a third party effectively and to lend it a crucial role in peaceful conflict resolution.[6] There may, therefore, be a contradiction between the apparent "ripeness" for a mediation process to start and how ready all the conflict parties are to effectively join it from the very beginning.

As for the case of ongoing armed conflict, the following scenarios may facilitate conflict parties' readiness to accept and to enter a mediation process:

First, when the armed conflict has led to exhaustion without any foreseeable conclusion and the conflict parties have come to reason that the losses and disadvantages of ongoing fighting outweigh conceivable benefits. The conflict parties have realised that they can neither win the war militarily nor achieve their political goals with military means in a reasonable period of time. They accept that using additional violence will become counterproductive to them and to their goals. In protracted wars, the permanent accumulation of funds and resources and the sustained mobilisation of forces can rarely be endlessly guaranteed. The moral integrity of the constituency, and also of the combatants, becomes endangered with increasing numbers of civilian casualties. Moreover, since war incurs high economic costs that cannot be sufficiently substituted and that cause cumulative attrition of resources, the conflict parties may become keen to preserve their resources for other purposes.

A second scenario is related to the international environment, and the opportunities, incentives and pressure exerted or offered by international actors. Here, the external pressure or force to bring the armed conflict to an end may have increased to a level that means that ignoring this pressure could create a serious risk for the opponent(s). Pressure from outside often has a tremendous impact on the attitude of the conflict parties, since they consider international support and recognition to be indispensable. The perception of one-sided pressure, however, may also cause negative reactions from conflict parties; in some cases parties have even demonstratively withdrawn from the process.[7] International actors could also offer political and economic incentives.[8] A smart combination of outside pressure and incentives seems to be most effective (Barnes et al. 2008). Even if the conflict parties consider international mediators to be *partisan*, this still does not rule out that they might be amenable to international mediation. As said before, they understand the role of mediators primarily as one of helping them against their opponents. Yet the mediators should not act selfishly or only to the benefit of the other parties.

Third, the balance of means and ends is often underestimated when the motivation and interest of conflict parties is evaluated. Options are chosen due to a given context, and decisions are taken with regard to the likelihood of successful implementation. Neither arms nor secret diplomacy, nor other potential means of action, are seen as good or bad *per se*. Moral high ground and cost-efficiency may play a role in decision-making about policy options, but the most important factor is the perceived best balance of means and ends. While state actors

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6   This was partly the case with GAM in Aceh, who had not anticipated the Indonesian government's readiness to accept CMI's mediation offer.
7   Israel and the Palestinians frequently practised this behaviour during the Oslo Process, though the two delegations often were driven by internal differences and acted on pressure from hardliner factions.
8   The huge wave of international support in the wake of the tsunami in 2004 was one of the factors that facilitated the negotiations between the government of Indonesia and GAM in 2005.

usually emphasise the use of force as a means of last resort (i.e. if all other means have failed), for non-state actors the use of force is much less determined by a preceding escalation of conflict. The matter is rather about the choice of alternatives, which is much more limited for non-state actors in asymmetric conflicts with states and governments. This does not mean that non-state actors prefer the use of force, or that they are more prone to using force than governments are. The limitation of power usually applies also to the capability of using arms, and this is why rebels and insurgents try to use 'pinpricks' to hit their opponents rather than risking a pitched battle with an uncertain outcome.

Short-term considerations may also have an influence on the conflict parties' perspectives. Rebel groups and liberation movements might consider a short-term change of the status quo to be necessary if they perceive growing internal competition or an increased infiltration of government agents and undercutting of support (Cronin 2008, 6).[9] State actors may become interested in change if they are confronted with – and challenged by – a strong internal peace movement. However, as said before, the internal dynamics of the conflict parties often play an equally important role: the acceptance of mediated negotiations can be seen as an initiative for mobilising one's own constituency vis-à-vis competing political parties and factions. Furthermore, the relative numerical, political and intellectual strengths of moderates and hardliners within the parties obviously do impact on the conflict parties' willingness to explore mediated negotiations.[10] The conflict parties' decision to enter into a mediation process is usually not based on a complete change of their policy. It is more an attempt to win at the table what they could not win on the battlefield (Security Council Report 2009, 9). This is why mediation processes are non-linear, and permanently at risk of failing if the conflict parties remain unwilling to formally compromise (see also *Box 3*).

Box 3
The Failure of the Sri Lankan Peace Process: Due to a Lack of Will?

One of the explanations for the failure of the 2002/3 peace process is that at least one or even both of the parties, the LTTE or the GoSL, did not have the political will to settle the conflict in an "inclusive", creative and peaceful way. The argument behind this sceptical interpretation is that the respective sides refused to give up their maximum goals of either secession or keeping the basic characteristics of a centrally organised state. Instead, the aim was to pursue their own goals at least for some time with different, peaceful strategies and to work towards a unilateral success at a later stage – conveniently justified with the suspicion that this was exactly the strategy adopted by the other side. This is an argument that obviously has to be considered in all cases of international peace efforts, because they take place in a highly contested power political environment.

9 An example of the former is the Palestinian infighting of the PLO and other groups during the rise of first intifada; of the latter, a growing interest in negotiations on the part of the Provisional Irish Republican Army. The waning global support for any rebellion groups after 9/11, and the danger of losing ground in conflict, also triggered their interests in seeking international support.
10 The start of the Sudan peace talks in Naivasha in 2002 can be explained by a mix of internal factors and external pressure from the US.

3.3
Who Are the Best Suited Mediators in the Eyes of Conflict Parties?

Conflict parties have similar but at the same time often also competing expectations with regard to the role and profile of mediators. Generally speaking, they will not accept mediators who question their status or who will be presumed to take a partial stance against their interests.[11] It is difficult to answer in general the question of who fits best, as this relates not only to the functional interests for mediation and the perceived readiness to respond to parties' interests, but also to the context (e.g. some third parties are not acceptable for historical reasons or because regional powers refuse to work with them).[12]

Also, it cannot be taken for granted that different conflict parties will consider the same mediators best for serving their interests. For example, while state actors in asymmetric conflicts usually prefer low-profile mediators in order to protect their formal legitimacy, non-state actors might possibly prefer more high-profile external mediators in order to upgrade their own status and to put more indirect pressure on their state counterpart.[13] Furthermore, the expectations vis-à-vis precise mediating roles and functions may vary in the course of the mediation process. While at the beginning low-profile mediators might be preferred in order to sound out opportunities of mediation, the same actors might prefer stronger mediators at the implementation end of the process. But also the opposite may be the case, with credible and strong third parties at the beginning and low profile mediation at the end, in order to get the stakeholders back into the driving seat. In general, it can be concluded that for conflict stakeholders the strength or weakness of mediators is not a matter of their institutional capacity, but of their potential functional contribution (Griffiths 2005, 6-8). Conflict parties gauge the acceptability of a particular mediator against the benefits and risks of letting them get involved. Likewise, linkages to mediators, such as the heritage of the past, cultural affinity or political and religious affiliation, may positively or negatively affect decisions to accept offers from or to call upon mediators (Greig/Regan 2008, 769; see also Ropers 2009).

The choice of mediators thus depends both on existing opportunities and on concrete functional interests. Ideal-typical triangular constellations are more the exception than the rule: while one conflict party might favour a strong power mediation approach (and will therefore call upon an economically, politically and militarily powerful actor), the other party might prefer a softer, more transformative mediation approach (and will call upon smaller, less interest-driven actors or an INGO).[14]

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11   In some cases, however, local actors cannot be ignored or excluded because they are too powerful, such as Russia in comparison to its Caucasian neighbours.
12   For example, Nepal's powerful neighbour India was reluctant to let international mediators gain ground.
13   Sri Lanka provides a good example for these diametrically opposed expectations vis-à-vis the mediator. While the LTTE had asked for UN mediation, the Sri Lankan government made it very clear that they would only accept a less heavyweight mediation power.
14   Power mediation as such is by no means a blueprint for successful conflict resolution. The United States made use of its dominating power to strike a deal between the conflict parties over Bosnia in 1995. In the case of the Darfur negotiations in Sudan in 2006, however, US power mediation failed.

In sum, different actors may serve in facilitating or supporting roles: state and non-state actors, private and business actors, international organisations, external or insider mediators (Slim 2007, 2; Cousens 2008, 70; Griffiths 2005, 15; Tripathi/Gündüz 2008). As for the conflict parties, they might choose different actors for different functions. For third parties, it is therefore key to understand that they are working in a broader mediation system – with different functions, but with a potentially high level of complementarity.

In terms of the preferred qualities of a third-party mediator, the conflict parties are interested in their:

• competence
• personal commitment, respect and integrity
• empathy
• patience
• independence
• flexibility and practical skills.[15]

These expected qualifications are very close to what third parties expect from their mediators, too. The principles of neutrality and multi-partiality, which third parties consider to be an indispensable prerequisite, are not the main priority for conflict parties when it comes to selecting potential mediators. For them, trustworthy behaviour, honesty, transparency and accountability of mediators are much more important. Power, hardly surprisingly, is not the main variable in choosing a mediator.

On the contrary, hard power (i.e. the ability to use 'sticks' rather than 'carrots') might damage the mediator's reputation, as he or she will be seen as pushing for a pre-determined outcome in the interest of either the third party or, even worse, the adversary. This said, however, smart collaboration between a power player and a mediator can be quite effective.[16] The conflict parties are interested in having respectable mediators, with a lead actor as supreme authority who can be addressed directly in critical moments. A weak and inconsistent mediator will hardly enjoy the required recognition from the conflict parties. But the mediator's power need not build on the ability to project force; it should be better translated into authority and recognition by all conflict parties. The more power is attributed to the mediator, however, the higher the risk for the conflict parties, and also for the third parties, that the whole mediation process will collapse if the mediator fails. Therefore, it might make sense for either side not only to build safety-nets around the mediation processes, but also to limit the role of a trustworthy, impartial and authoritative lead actor to that of a supervisor and a door-opener, while building up the practical mediation process involving different partners with distinct competencies for all fields of interest. Understood in this way, the task of mediation is shared by a team of mediators, with a clear lead, instead of a single mediation approach. If one channel runs dry, others can keep the process going.

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15 Negatively speaking, the 'seven deadly sins' of mediation are: ignorance, arrogance, partiality, impotence, haste, inflexibility and false promises (Brahimi/Ahmed 2008).
16 The mediation system during the Sudan peace negotiations in Naivasha from 2002 to 2005 was quite smart in this respect, as it entailed a regional organisation, IGAD, as lead mediation agency, and a small group of friends (troika), encompassing the UK, Norway and the USA.

> **Box 4**
>
> **Why Was Norway Chosen as the Facilitator of the Talks in Sri Lanka?**
>
> In the beginning, Norway was chosen as a facilitator because they were acceptable to the GoSL as well as the LTTE and agreeable to playing a low-key supportive "facilitating" role. They were also perceived as having no colonial legacy in the country, geopolitical or other "selfish" interests or big power weight, but had a strong profile of bilateral development cooperation and a good record as a facilitator.
>
> The mandate given to Norway was explicitly one of "facilitation", i.e. supporting interaction and communication between the two warring parties, GoSL and LTTE, who were about to negotiate a ceasefire agreement. Later, they were heavily criticised from two opposing perspectives. One was that of those opposed to any foreign involvement, who regularly expressed their suspicion that the Norwegians were interfering too much and had de facto played the role of "mediators" without a mandate. The other one came from critics who argued that the Norwegians should be much more pro-active and principled and insist on a series of requirements like inclusivity and the integration of human rights.

By no means a footnote is the potential role of women. The recent UN report on mediation has explicitly emphasised the importance of bringing female envoys to the negotiation tables (Security Council Report 2009, 20). In practice, participation of women in mediation processes has been a rare exception, even though the changing nature of conflict has also brought with it a higher percentage of female combatants, especially on the side of non-state actors. Their particular interests will be taken seriously only if they are physically represented in the mediation process. The pressure to include women in the mediation process from the very beginning may vary from case to case, depending on the nature of war, the structural integration of women into combat forces, the cultural background of the conflict parties and the influence that women have on the constituency. But even if the conflict parties will not put the issue on the agenda themselves for political or cultural reasons, they might be interested in reacting constructively to specific offers from the mediators to open up the process also for female participants due to their growing influence within the conflict parties and their importance for maintaining constituency cohesion and support (for more detail, see Reimann 2008).

3.4
Where Should Mediation Take Place?

As a principle, from the perspective of the conflict parties mediation and negotiations should be conducted within the country in conflict, or at least nearby. When the party leaders leave the country, they leave a lot of uncertainty behind. Furthermore, agreements taken inside a country enhance national ownership, both in symbolic and practical ways.[17]

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17 For example, the Oslo Agreements between Israel and the PLO remained alien to large sections of the Israeli and Palestinian societies.

However, because mediation usually starts in moments of fierce and often ongoing battles, safe venues for mediation are as important for the mediators as they are for the conflict parties. Under the conditions of ongoing fighting, a key task for the mediators will be establishing neutral and safe zones for communication that are free of physical risks and guarantee confidentiality to all participants. If envoys are expected to move towards compromise, strict confidentiality is a must – in order to avoid causing infighting in the stakeholders' camps while discussing preliminary ideas.

In addition, many protracted conflicts are marked by a high level of symbolism around territory and space (and contested territorial demarcation lines). In order to meet on neutral ground, the negotiations then might have to take place outside the country, which might pose a challenge for representatives of proscribed armed groups.[18] Some groups or individual members of groups and governments may be listed in other countries, which would either prevent them from joining the talks or would require explicit guarantees against detention and extradition and for a safe return. The conflict parties will gauge how serious mediation efforts are against the way their delegated envoys are treated. If their envoys are not accepted or not treated appropriately by the mediators or host states, the parties will hardly develop the necessary trust in the mediators or in the mediation process.

A trustworthy climate is crucial for brainstorming and thus for the success of mediation. Apart from a suitable location, this also requires a very finely-tuned sense of timing and sequencing the process. Especially under the stress of entrenched positions, progress will, if at all, take place in a very incremental way. Backlashes can also not be ruled out. The conflict parties, seeking more leeway for their own policies, will act very cautiously in order not to concede too much too early. Mediation will rarely be successful within the first few days or weeks. Constructive engagement and patience are hence required to leave enough space to the conflict parties to clarify their positions and to develop reasonable alternatives to the use of force.

Since mediation, in our understanding, does not aim at a short-term success but at the gradual transformation of the conflict, the location for the process should be carefully chosen, very much dependent on the state of the conflict and the progress that is made in the course of mediation. Informal facilitation or consultation approaches that aim at providing space for the exploration of new political options and ideas may benefit from meetings being held outside the country, again deviating from the principle of in-country mediation mentioned above. These can help the participants to detach from their usual routines and tasks and also protect them from rigid public scrutiny.

In the event that mediated negotiations take place outside the country in conflict, talks should be relocated home as soon as possible, taking into consideration the importance of local ownership and the necessary links between the mediation process and the constituencies of the conflict parties.

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18   This happened to the LTTE in 2003, when they were excluded from an international donor meeting in Washington.

3.5
What Do Conflict Parties Expect from Third-Party Mediation?

As discussed in *section 3.1*, conflict parties do not enter mediation in order to achieve a compromise in the first instance. But they hope, through third-party mediation, to achieve a solution that is favourable to them. For that purpose they may also try to manipulate the mediator. In this context they are expecting him or her to make their opponent better understand the legitimacy of their interests and demands, in order to trigger a change of the current attitudes and behaviour on the opponent's side. Thus, mediation serves the purpose of transmitting their own political interests into the mindset of the opponent.

Once the mediation process begins to unfold and the mediator proves his or her competence and commitment, the parties will expect that the mediator is not weakening or undermining their own position (Jagan 2006, 72-74), but rather that he or she is taking responsibility for a process that is fair and responsive to the parties' needs. It is important to understand that the conflict parties are primarily interested in departing from the deadlocked situation of the conflict, i.e. they are definitely keen to avoid getting into a new deadlock in a different arena. As they start to communicate with the mediator – and maybe also with the opposite side – they learn more about their respective interests and perceptions and are possibly able to develop empathy and a sense of compromise to their own benefit. This learning process also alters the relationship to the mediator, who will become more of a partner over time.

That is why the mediator's persistent credibility in terms of ethics and values is as important as his or her competence: pretending to be pragmatic or a 'blank sheet' in response to human rights abuses is likely to erode the credibility on either side and would lead to waning support in the wider intrastate and international constituencies (Baechler 2008, 11).

Whereas the mediator's overall formal or informal mandate stems from the conflict parties, it is quite common that they expect mediators to take responsibility for setting the agenda, sequencing discussions and organising the venue. In terms of the content of the negotiations, conflict parties have emphasised the notion of ownership, showing that they would only accept external support on the basis that the conflict parties clearly remain in the driving seat (Dudouet 2008).[19]

In protracted asymmetric conflicts, the mediator might be expected to provide strong process-related leadership in order to deal with emotional blockades and strong feelings of insecurity among the parties. For this purpose it is crucial that the mediator is able to understand the concerns of all the key actors involved (multi-partiality). But equally important is that the mediator helps to build a robust process, which includes a) safety-nets to keep the process going in the event of temporary failure of talks and b) mechanisms to overcome and unlock blocked negotiations.

Furthermore, the conflict parties expect the mediator to take responsibility for coordinating other international actors and their potential support to the mediation, and for monitoring the implementation of an agreement or longer-term peacebuilding process. This might also entail

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19   James Baker followed a different approach with respect to a solution of the Western Sahara conflict, by drafting two plans (in 2001 and 2003) after a series of bilateral consultations with the Moroccan government and the Polisario; both parties refused the plans.

helping to manage those international actors who are perceived as having a negative impact on the negotiation processes.

In asymmetric conflicts, the mediator is often requested (and sometimes tempted) to provide capacity-building for the weaker negotiation party (e.g. providing expertise on power sharing, DDR/SSR, etc.; training in negotiation techniques; organising study tours). However, mixing the roles of mediation, capacity-building and monitoring is problematic for the third-party mediator, as it impacts on the perceived impartiality/multi-partiality, thus triggering suspicion and mistrust (see also *Box 5*).

Box 5
Norway's Overstretch of Roles in the Sri Lankan Peace Process

One particular aspect on which there seems to be a widely shared consensus is that Norway should not have played the additional role of heading the Sri Lanka Monitoring Mission (SLMM), a role which they had not applied for, but which the parties had urged them to take over. Time and again they were confronted with conflicts of interest as "facilitators" (being interested in an ongoing smooth negotiation process) and as "monitors" (being obliged to register CFA violations without immediately considering their impact on the negotiation process). This is one lesson learned that has generic value.

Other roles that Norway took over parallel to that of facilitator were those of supporting the capacity-building of the LTTE and of a development donor with a strong presence in the Northeast. Based on the assumption that capacity-building for the LTTE to become an effective political actor would be one of the preconditions of a sustainable peace process, they took a lead role in this respect. One of the simple reasons for this was that other international actors were reluctant to do so (or were legally prevented from doing this because of the proscription of the LTTE as a terrorist organisation). The unfortunate impact was that Norway was tainted as being "biased towards the Tigers". The conclusion is that such roles should be shared in the international system in a much more balanced way.

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4.
Recommendations for Mediators and Mediation Supporters

Our analysis has revealed that the interests of conflict parties and third-party mediators need not necessarily be – and mostly are not – in compliance. Mediators must also be aware of asymmetries between the conflict parties and of sometimes rivalling interests within the opposing camps. The following policy recommendations should guide mediation processes that aim at achieving changes in the attitudes and behaviour of the opponents in order to promote conflict transformation. We have discussed these and more in greater detail in an analysis for the UN Mediation Support Unit (Giessmann/Wils 2009).

1. Third-party mediators must have an empathetic understanding of the key interests and needs of all conflict stakeholders. They should strictly apply principles of multi-partiality.

Beyond bilateral negotiations, mediation is a multi-level and complex process with many different addressees and interests, including gender-specific ones. It is therefore crucial that mediators always bear in mind that the partners they talk to are envoys with their own vested interests, while they themselves must consider and balance the interests of all stakeholders in the conflict. A regularly updated mapping exercise may serve as a starting point to capture divergent interests and needs between and within the parties.

Multi-partiality is a precondition for engaging with all the parties, without being seen by one or more of them as partisan, one-sided or under-committed. Mediators must be aware that the interests of the rival actors will not be accommodated if neither side moves during the process. The integrity and credibility of mediators may therefore require admitting to failure in the mediation process, before becoming stuck in endless (status) gambling between the conflict parties.

2. Third-party mediators must pay constant attention to maintaining a certain level of parity between the competing sides. Therefore they should also take care that conflict parties are sufficiently prepared for constructive and professional negotiations.

In asymmetric conflicts, mutual recognition of the interests and legitimacy of the conflict parties is a key variable for a constructive mediation process. In order not to risk a sudden breakdown of mutual recognition, it is necessary to "level the playing field". However, this involves a risk for mediators, as factions within the conflict parties might challenge the principle of multi-partiality and subsequently accuse the mediator of taking sides. In order to counter this risk, mediators might engage directly with the parties and raise this issue on a regular basis. Insider mediators on either side may also contribute a great deal to this enormously important prerequisite for a functioning mediation process. Insiders may strengthen the consciousness and

the responsibility of ownership among the conflict parties. Upon request, (various) third-party actors should help with providing expertise and training where negotiation skills do not exist.

3. Third-party mediators should acknowledge and value the potential of complementarity and work towards a culture of cooperation.

Conflict parties who have decided to pursue negotiations might request or be in need of a broad range of different support activities. Protracted conflicts require equally protracted, flexible and adaptive mediation (support) systems. From the point of view of the conflict parties, the most beneficial mediation system is one that offers them a choice of options for all their key interests (e.g. political, economic, security and cultural interests). Therefore, it may make sense to think of involving qualified specialists in the mediation process, according to the specific needs or interests expressed by the parties.

4. Third-party actors should acknowledge the role of and, where possible, strengthen the contribution of insider mediators.

Since intrastate conflicts in particular are characterised by competing factions within conflict parties (opting for controversial strategies), the need for committed, skilled insider mediators, including women, who enjoy trust across the various factions is obvious. Their activities, however, should be linked to the third-party mediators, through focal persons or by other mechanisms, such as regular information exchange and consultation. In order to strengthen the key contributions that insider mediators make to any peace process, national capacities for mediation need to be acknowledged and strengthened. This entails training and establishing international exchange programmes for experienced and junior insider mediators.

There is, by way of conclusion, wide scope to improve learning and reflection on mediation experiences. This entails, firstly, systematic debriefings after the termination of mediation activities (probably in collaboration with other support actors), studies reflecting the perceptions and experiences of conflict parties concerning the strengths and limits of mediation ("client feedback") and frequent evaluations of the interplay between mediation mandates, means, actions and results. Specialised mediation support units or projects, as recently established by the UN and in Switzerland, can play a lead role in these endeavours. Secondly, supportive mediation research must also be collaborative. Third parties who just seek to implement their own aspiration and agenda run the risk not only of undermining the much-needed confidence of one or all parties interested in third-party mediation. That is why the issues for research and consultancy have to be identified and determined in fair cooperation, along with creating spaces in which constructive input and exchange become possible. Finally, research should pick up new, important and particularly complicated challenges of mediation for the stakeholders in conflict: how to sustain mediation efforts against criticism from inside the stakeholder groups; how to shape the elite-grass-roots discourse; how to bring gender perspectives into mediation

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processes; or how to address crimes against humanity and massive abuses of human rights in a proper and just manner without putting the success of mediation at risk. By adopting a change of perspective that properly takes into account the conflict parties themselves, many new and unanswered research questions emerge that deserve attention. Collaborative mediation research may provide a useful framework and an inspiring opportunity to identify promising approaches for conflict transformation.

5.
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Important Online Resources

The Mediation Support Network (MSN) Web-Based Resource Platform (administered by USIP):
　　　http://mcr.frameworks.usip.org/
United Nations Peacemaker – A Resource Platform of the UN DPA/Mediation Support Unit:
　　　http://peacemaker.unlb.org/index1.php

　　　[All weblinks accessed 15 July 2010.]