

THIRD PARTY MEDIATION AS A VIABLE AND COST-EFFECTIVE ALTERNATIVE TO RESOLVING INTER-ETHNIC VIOLENCE AND CIVIL WAR*

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I. INTRODUCTION

Ethnic antagonism driven by intense nationalism and the desire for territorial recognition continues to shake the vulnerable foundations of states slowly inching their way toward stability and away from the pains of infancy. This ethnic divide is drawn by the emergence of irreconcilable differences and "civilizational cleavages"¹ between and among minorities and the majority. It could also stem from state-to-state oppression and the controversial battle to establish definite terrestrial boundaries in an international system of establishing statehood fraught with ambiguities and inconsistent doctrines. Religious and cultural differences also have a hand in rendering co-existence among ethnicities incompatible. Unfortunately, the common response to these wrinkles in the local and international socio-political fabric has been violence and the blatant disregard for human rights.

Countries with culturally distinct ethnic or religious minorities are more likely to have civil wars. At least in the modern period,

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¹ James Fearon & David Latin, *Ethnicity, Insurgency, and Civil War*, at 1 (Mar. 30, 2000).

nationalist movements are likely in such states either because of state and majority group oppression along the lines of cultural difference, or simply due to the yearning of ethnic minorities for self-government. In turn, both oppression and demands for self-government often yield civil war.²

Most people would interpret nationalism as synonymous to statehood. However, there is a fine distinction between the two concepts. Benedict Anderson defines a nation to be an imagined community.³ "It is *imagined* because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion."⁴

Although it seems rather convenient to point our fingers at these social realities as a reason for civil wars and crimes against humanity, more often than not, these grievances are further amplified by poverty, slow economic growth, and inhuman oppression.⁵ Discontent fuels nationalist sentiments to the point of armed struggle and secession.

The Palestinian *Intifada* against Israel was a "spontaneous eruption of hatred and frustration but it represented years of anger."⁶ Their anger translated to a revolution due to "the daily harassments, arrests, and beatings that the ordinary Palestinian could face and had faced for years."⁷ Conflicts such those between the Tamil Tiger separatists and the Sri Lankan government, the Basque ETA in Spain, and the Islamic secessionists in the Philippines similarly involve moderate factions gradually lending support to extremist movements due to their debilitating condition and lack of empowerment from the greater government.⁸

In the long term, inter-ethnic turmoil results not only in local political upheaval and stagnation, but also regional instability.⁹ State-to-state interconnectivity led by globalization has forced us to re-conceptualize the aggregate effects of internal strife as it "impinges upon normative issues,

² Id. at 5

³ Benedict Anderson, *The Nation as Imagined Community* (1983), available at <http://www.nationalismproject.org/what/anderson.htm>.

⁴ Id.

⁵ James Fearon & David Latin, *Ethnicity, Insurgency, and Civil War*, at 1 (Mar. 30, 2000).

⁶ Charles Smith, *Palestine and the Arab-Israeli Conflict* 293 (Third ed. 1996)

⁷ Id. at 293

⁸ James Fearon & David Latin, *Ethnicity, Insurgency, and Civil War*, at 22 (Mar. 30, 2000).

⁹ Id. at 14

human rights, democratization, economic development and the international institutional architecture."¹⁰ It becomes clear therefore, that finding a resolution to prevailing ethnic conflict is in the best interests of both local and global security.

The dilemma now lies in finding alternative ways of dispute resolution in order to promote the global imperative of peace and economic prosperity on a regional scale. The most basic option is to leave it to the opposing parties to enter into the bargaining table and to independently search for an acceptable compromise that would remove any kind of incentive to continue the armed dispute. However that isn't always the case. In fact, resolution is hardly attained from such a method.

Why do governments and secessionist groups find it difficult to approach the bargaining table? What makes it difficult for them to compromise?

Many political analysts have formulated theories to explain the political phenomenon of prolonged secessionism and have proposed processes for establishing a road map to peace. Some of these proposals have had some significant success in catalyzing peacemaking. One of them leans toward the employment of third party mediation as an effective means of dispute resolution. At the very least, mediation aims to lure opposing parties into the bargaining table with a more open mindset and thus creating the proper environment for peace talks.

This paper aims to study the elements of third party mediation and how it may become a primary tool for alternative dispute resolution. In order to conduct a more comprehensive analysis, this paper will begin with an in depth look into the common characteristics of ethnic conflict with the hope of identifying the primary reasons why bargaining has failed. A case study on the Palestinian-Israeli conflict, tracing its timeline and isolating the factors which have brought both sides in the conflict nearer to an agreement and which factors have deepened the cultural divide, will serve as a backdrop for the paper. The discussion will focus on the Oslo Accord and its successful demonstration of third party mediation.

¹⁰ Oliver Richmond, *The Globalization of Responses to Conflict: Making Peace, Order, and Sovereignty*, DEPARTMENT OF INTERNATIONAL RELATIONS UNIVERSITY OF ST. ANDREWS, UK, ISA, July 24-26, 2001.

In order to simplify the analysis, it is essential to study ethnic conflict under the framework of effective negotiations. Through this perspective, the author seeks to understand the similarities between ethnic groups and their consistent incompatibility with the government/ state in the area of dialogue. This will be further facilitated through the application of a rudimentary classification of different types of negotiators and the ideal approaches to dealing with them.

Furthermore, this paper will tackle the issue of mediation by identifying the different elements for its successful employment and eventually juxtaposing it with the context of ethnic violence.

Finally, this paper will contextualize this study in the Philippine setting, extending the analysis onto its very own secessionist problem and ultimately identifying the progress achieved by the Mindanao Peace process through third party mediation spearheaded by Malaysia and the United States Institute of Peace.

II. The Ethnic Divide

Why are these conflicts so persistent and difficult to end? Why has the rate of outbreak exceeded the rate at which they are settled or otherwise concluded?¹¹

The persistent refusal of the relevant parties to negotiate and to compromise has marred civil wars and ethnic violence with an almost hopeless reputation. Indeed, the international community has witnessed countless peace talks and treaties broken by the adamant positions of each party. Their leaders, generating support from the symbolical significance of nationalism and ethnic identity among the wretched and abused, continue to reject proposals which would reflect even the slightest signs of weakness and pragmatism. Insurgent movements thrive on the charismatic appeal of unity and self-governance, allowing principle to rule over the practical merits of a successful negotiation.

¹¹ James Fearon & David Latin, *Ethnicity, Insurgency, and Civil War*, at 4 (Mar. 30, 2000).

Such civil wars are especially difficult to end because they are about matters of cultural or national identity, over which compromises and bargains are difficult and often impossible.¹²

The eventual collapse of peace talks can be attributed to the gap between the apparent and the actual powers of the principal players to compromise on the negotiating table. The problem with delegates coming from both sides is the insurmountable political pressure they have to face in trying to emerge from the peace talks with a favorable result. The standard of favorableness isn't set by the negotiating panel, but rather is imposed upon them by their respective groups and their mass of supporters who refuse to accept anything less than what has been promised to them.

The difficulty of utilizing national identity as a rallying cry for moderate support is the dangerous tendency of splinter groups¹³ to emerge with varying perspectives as to what is acceptable in gaining a true national identity and the methods by which they must be attained. The political will necessary for leadership to effectively negotiate a truce is absent. Compromise no longer becomes an option and more often than not, peace talks merely become a political formality.¹⁴ Thus, in order for ethnic leadership to survive and to unify its supporters, it becomes necessary for a negotiator to be adamant with his demands.

This positional bargaining creates no avenue for settlements. It gives a bargainer an incentive to postpone or to violate prospective agreements. While a bargainer is busy negotiating, he requires a buffer against political unrest within his own camp. Negotiated settlements emanating from this standpoint is ill-fated to fail collapse or be unnecessarily prolonged:

In positional bargaining you try to improve the chance that any settlement reached is favorable to you by starting with an extreme position, by stubbornly holding to it, by deceiving the other party as to your true views, and by making small concessions only as necessary to keep the negotiation going. The same is true for the other side. Each of those factors tends to interfere with reaching a settlement promptly. The more extreme the opening positions and the smaller the concessions, the more

¹² Id. at 5

¹³ Id. at 15

¹⁴ Id.

time and effort it will take to discover whether or not agreement is possible.¹⁵

The complications of positional bargaining are further revealed even after a settlement has been reached by all the parties involved in the peace talks. As each side tries, through sheer power, to force the other's will to concede to the other's demand, their relationship is strained. By being stubborn in one's own demands, one neglects the reality that the confidence between negotiators relies heavily on reasonability and trust. Failure of one to achieve his demands will not be seen as a result of a rational process, but rather a weakness of one's part. "Anger and resentment often result as one side sees itself bending to the rigid will of the other while its own legitimate concerns go unaddressed."¹⁶ In the long term, further negotiations are strained and the increase in time and the costs of reaching further amicable settlement is otherwise ignored.

Focusing on positions also contributes to the loss of a proper perspective among ethnic groups. Eventually, concentrating on a specific concession often leads to a misconception among the supporters of insurgents. It creates synonymy between the particular demand and the essence of the cause they are originally fighting for. The loss of that element can be interpreted as a failure on the part of the cause and its aspirations. Such an unguided perspective breeds dissent and may weaken the unity of an insurgent group. The danger then manifests itself in the form of splinter groups claiming to be part of the insurgency but refuses to align itself with the methods of negotiation that the original group employs.

But similarly, if there are multiple rebel groups and the government cannot distinguish the source of attacks, members of one group have an incentive to blame peace-breaking attacks on the other group(s). In general, when environmental and social conditions favor insurgency, rebel groups are prone to splintering since unreconciled factions can easily hive off to continue fighting after an agreement is reached. The anticipation of this inclines governments towards fighting rather than bargaining, especially when the insurgents and the groups they

¹⁵ Roger Fisher & William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* 6 (1981).

¹⁶ *Id.* at 7

represent are highly divided internally. This is another condition favoring insurgency.¹⁷

In order to best illustrate these phenomena, it is important to analyze an example which may fall within this category. The Arab-Israeli conflict is a good example since the Palestinian Intifada may offer us some incite on why ethnic conflict endures and why negotiations between in-fighting groups tend to be positional rather than principled.¹⁸

III. The Arab-Israeli Conflict

Similar to other popular uprisings, the Palestinian Intifada which began in the late 1970's¹⁹ was considered a "spontaneous uprising"²⁰ rooted largely upon the repressed discontent of Arab communities living in Israeli held territories of the West Bank, Golan Heights, and the Gaza Strip.²¹ Initially, the Arabs tolerated the discriminate treatment they received from the Israeli government. They experienced "a subservient working status and the loss of salary already low, through deductions for services available only to Israelis, not Arabs."²² On an average, Israeli's would receive twice as much pay compared to Arabs.

This ill-treatment seemed acceptable to the Palestinians compared to their plight under Jordanian rule prior to the 1970's. First, wages were better under Israeli control and supplemental funds were readily repatriated by Palestinians working in the Gulf where there was a thriving economy.²³ Second, Jewish settlements were kept isolated from Arab communities, minimizing any opportunity for ethnicities to clash.

¹⁷ James Fearon & David Latin, *Ethnicity, Insurgency, and Civil War*, at 17 (Mar. 30, 2000).

¹⁸ Roger Fisher & William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* 7 (1981).

¹⁹ Charles Smith, *Palestine and the Arab-Israeli Conflict* 293 (Third ed. 1996)

²⁰ *Id.* at 293

²¹ *Id.* at 295

²² *Id.* at 293

²³ *Id.*

Co-existence was impaired when the Likud party took power in the Knesset (The Israeli congress) and Israeli leadership. Under Ariel Sharon, Israeli settlements were expanded leading to the abutment of Arab settlements. The conditions were even worse in the Gaza Strip where Arab population density was extra-ordinary. This was caused by Israel's occupation of over forty two percent of the Gaza Strip, pushing Arab communities to further oppression.²⁴

The rebellion against Israeli occupation began primarily from the displacement of the Arabs and their oppression at the hands of their rulers. However, it was also spurned by the absence of clear Palestinian leadership.²⁵ This was furthered by the disenfranchisement of the Palestinian people along with the extra-legal suppression of dissent through warrantless arrests and seizures performed by the Israeli police and military.²⁶

During the Islamic Resistance, several groups emerged espousing Palestinian statehood and nationalism. These specific groups fought alongside and were identified with Yasser Arafat's campaign for Palestinian independence.²⁷ They rejected the moderate stance of the so called Muslim Brotherhood, which championed educational and social reforms as a means of spreading Islam and what was considered to be a passive approach against the Infidels.²⁸ Each of these groups has been guided by distinct yet not mutually exclusive philosophies. The Islamic Jihad²⁹ believed in extremism and armed movement. The Hamas (*Harakat al-Maqawama al-Islamiya*), a direct result of the Intifada, were proponents of an Islamic theocratic state or the union between religion and political affairs.

During the 1990's, the Palestinian Liberation Organization (PLO) under Arafat and his party the *Fatah*, slowly lost political will from its supporters and eventually resulted in the individualistic campaign of Palestinian militancy. "Islamic militancy groups identified with Arafat and the *Fatah* in their struggle against Israel but parted company once Arafat's compromise policies became known."³⁰ His concessions for the cessation

²⁴ Id.

²⁵ Id. at 297

²⁶ Id. at 293

²⁷ Id.

²⁸ Id. at 300-301

²⁹ Id. at 301

³⁰ Id.

of armed conflict were particularly abhorrent to these Jihad groups precisely because they manifested an apparent weakness of the Islamic movement. It smelled of fear and total control.

IV. The Peace Process

The Arab League initiated the peace process through resolutions 242 and 348³¹ calling for peace talks under the auspices of an international peace conference and under the condition that there is a mutual recognition of Palestinian and Israeli rights. However, the various Islamic groups and Jihadis rejected the proposal for mutual recognition.

This stance would be criticized by Islamic groups as indicating a willingness to settle for part of Palestine. Islamic groups, like Likud on the Israeli right, rejected the idea of land for peace in favor of controlling all the land they believed belonged to them by divine right.³²

Palestinian and Israeli stubbornness over the idea of divine rights and fundamentalism caused the peace process to remain at a standstill. Direct negotiations between the two sides proved futile for a number of years with either side remaining to be positional hard bargainers. Arafat and the *Fatah* could not broker any kind of settlement because neither the Israelis nor their former supporters have empowered them with any form of authority or political support.

Without communication, there was no chance for negotiation.³³ It was impossible to reconcile hard line positions toward the issue. This illustrated the basic dilemma regarding ethnic conflict. The difference between minorities and majorities are beyond skin deep. They are so deeply rooted in culture and politics, that the existence of any moderate stance is often shunned as cowardice and weakness.

³¹ M. Cherif Bassiouni & Louise Cainkar, *The Palestinian Intifada* - - December 9, 1987 - December 8, 1988: A Record of Israeli Repression 88, (1989).

³² Charles Smith, *Palestine and the Arab-Israeli Conflict* 302 (Third ed. 1996)

³³ Roger Fisher & William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* 42 (1981).

Third Party mediation entered the scene when the United States endorsed Arafat's peace proposal in 1988 when they considered the latter's efforts at stifling terrorism as acceptable. However, its position as an effective mediator was deemed questionable when it issued a joint declaration requiring the Arab League to renounce terrorism and to recognize Israeli statehood.³⁴ U.S. bias even became more apparent when it was revealed that the U.S. was the largest contributor of aid to Israel.

A. The Israeli-Palestinian Accord

The Israeli-Palestinian Accord or the Oslo Accord was not the first instance in which a third party mediator was involved. The United States was the perennial mediator between the PLO and Israel. However, the U.S. hardly had any success at striking a compromise between both parties. This was influenced by a number of factors: 1) The United States followed foreign policy of imposition rather than accommodation. After the White House agreed to mediate the Middle Eastern peace process, it imposed certain conditions upon both the Palestinian Liberation Organization and its staunch supporter, the Arab League. The U.S. demanded that the Arab League recognize Israel as a sovereign state and that they renounce terrorism.³⁵ This reflected poorly upon the U.S. as a global mediator since the demands were very unilateral in nature, creating the suspicion of U.S. bias for Israeli interests. 2) The United States itself was known to be Israel's largest financial benefactor. This cast doubt on U.S. impartiality and removed any avenue for mutual trust among the parties.³⁶ 3) Finally, the United States' status as a global cop and an advocate for democratization led to an over-exposure of the peace process to the most cynical criticisms of the west. Such did not bode well for the peace process.

The Oslo Accord differed from U.S. led peace talks in a number of ways. First of all, it was the first summit conducted without American involvement. Norway's sponsorship of the Israeli-PLO discussions were catalyzed by members of the Israeli cabinet under Rabin, Rod Larsen, a Norwegian researcher, Johan Jorgen Holst, Norway's soon-to-be foreign minister.³⁷ Secondly, the primary goal of the peace accord was not centered

³⁴ Charles Smith, *Palestine and the Arab-Israeli Conflict* 303 (Third ed. 1996)

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 317

upon discussions on territory. In order to prevent the talks from becoming unreasonably positional, the goal of talks was to agree upon the Declaration of Principles and the Letters of Mutual Recognition.

The Declaration of Principles, signed by both parties, established the mutual desire, in principle, of both sides to a gradual cession of territory and the eventual withdrawal of Israeli troops from them. Since this was only on principle, the actual negotiations were agreed upon by both parties to be conducted at the end of that year.³⁸

The Letters of Mutual Recognition was the most important result of the accord. Although many would dismiss it as a lopsided document since Israeli was recognized as a state while the PLO was merely recognized as an organization representing the Palestinian people, it was the *first time* that the Palestinians felt united. According to Nabil Shaath, the *principal* negotiator for the PLO, the accord had accomplished much.

The Palestinians were addressed "as a people," not simply as residents or insurgents, thereby including all Palestinians. The territories were named specifically. The accord stressed that Resolution 242, land in exchange for peace, would be the basis of negotiations.³⁹

Nabil Shaath further stressed that:

What basically broke the impasse was the Israeli willingness to accept territorial jurisdiction, with temporal exceptions. And for us, once the exceptions became time-related, we were willing to accept that the issues of settlements and Jerusalem be in these categories of exceptions.⁴⁰

The impasse between parties was broken because negotiations were limited on principles rather than on specific material or territorial concessions. Although the peace accord had very specific deadlines for negotiations and stringent delimitations on which territories would be discussed, it focused largely on the issue of mutual recognition, not only of existence, but of the capacity to establish and run a state.

³⁸ Id. at 319

³⁹ Id. at 325

⁴⁰ Id.

What made Norway an effective mediator? Many of these reasons could be country specific. However, its success as a third party intervener could also be attributed to the manner or process by which mediation was conducted:

The approach used was to facilitate negotiations on the official level, but without publicizing them. At that time, Norway had a better chance to succeed in Middle East negotiations than the United States, whose negotiations were in stalemate. The reasons were the following: (1) Norway had a smaller bureaucratic machine which allowed it to decide on facilitation and implement this decision in a short period of time; (2) Norway's foreign policy was coherent and consistent; (3) Norway had a relatively independent international position, not being under any economic or political obligations. This contributed to its impartiality as a facilitator. (4) For a small country like Norway, it was easier to keep the process in secret.⁴¹

Why are these four elements necessary for effective mediation? Why is mediation in particular, such a viable option for dispute resolution given the context of ethnic violence? A framework of analysis is necessary to shed some light on these queries, which leads to the next part of this paper, a more thorough discussion on International Mediation.

V. International Mediation

International Mediation is not a new avenue for dispute resolution. It is a clinical process which requires the mediator, a third party,⁴² to assume a specific role necessary to compel adversaries to willingly enter the negotiating table. Mediation departs from dwelling upon the issues of origin and development in international disputes and focuses rather on how best to end them⁴³

⁴¹ Mariya Yevsyukova, *Mediating the Oslo Accord on the Middle East*, available at <http://www.colorado.edu/conflict/peace/example/norw858.html>

⁴² Goldberg, Sanders Rogers & Cole, *Dispute Resolution (Negotiation, Mediation and Other Processes)* 111 (4th ed. 2003)

⁴³ Jacob Bercovitch, *International Mediation and Intractable Conflict*, available at http://www.beyondintractability.org/m/med_intractable_conflict.jsp

Mediation is a process of conflict management, related to but distinct from the parties' own negotiations, where those in conflict seek the assistance of, or accept an offer of help from, an outsider (whether an individual, an organization, a group, or a state) to change their perceptions or behavior, and to do so without resorting to physical force or invoking the authority of law.⁴⁴

Mediation involves the intervention of an outsider. Characteristically, this intervention is "non-coercive, non-violent, and ultimately non-binding."⁴⁵ It prioritizes dispute resolution and peaceful outcome over the material advantage that may be gained by any party in the dispute. By virtue of this, it is essential for the mediator to be impartial with regard to the respective parties' interests. Utilizing ideas, knowledge, resources, and prestige, mediators often find themselves in the middle of an internal or international dispute with the ultimate goal of ending violence and achieving conflict resolution.⁴⁶

Mediators may either be prestigious individuals such as Jimmy Carter, who brokered the Camp David Accord between Israel and Egypt, or States, commonly the United States or the members of the European Union, or even organizations such as the United Nations or Non-Governmental Organizations such as Amnesty International and International Alert.⁴⁷

Different strategies are applied in mediation. Here are the applied strategies:

(a) Communication-facilitation strategies Here a mediator typically adopts a fairly passive role, channeling information to the parties, facilitating cooperation, but exhibiting little control over the more formal process or substance of mediation. In such situations, a mediator who can facilitate dialogue and communication, and just carry out information from one to the other, is a prerequisite for an effective process of peacemaking. Norway's intervention in bringing about the Oslo Accords in

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

1993 is a good example of what we mean by communication-facilitation strategies.

(b) **Procedural strategies** enable a mediator to bring both parties together, in some neutral environment, where they (i.e., the mediator) exert some control over the conflict management process. Here a mediator may exercise control over timing, issues on the agenda, meeting place and arrangements, media publicity, the distribution of information, and the formality or flexibility of the meetings

(c) **Directive strategies** are the most powerful form of intervention. Here a mediator works hard to shape the content and nature of a final outcome. This is done by offering each party in conflict incentives, promises of support, or threats of diplomatic sanctions. When a mediator engages in such behavior, the parties are confronted with new resources or the prospect of losing resources. This may change the value they attach to their conflict and produce behavior that is more consonant with the requirements of conflict resolution.⁴⁸

Successful mediation requires the proper environment for parties to comfortably negotiate. Indeed, mediators must be impartial, process-oriented, and committed to the pursuit of regional stability and peace. However, success must also be measured by the strength of the parties to promote a peaceful environment for espousing trust. It requires a cessation of violence on both sides so that real interests must be brought out.

In the Oslo Accord, Norway was able to utilize these strategies effectively. However, it makes one wonder how it was able to prevent further escalation of violence given that the PLO was only one of many Islamic groups in Palestine advocating for self rule. Furthermore, how were they able to compel both sides to agree to anything? There must be some ideal method of mediation beyond the aforementioned strategies that allow opposing parties with glaring positional philosophies to compromise and engage in a meeting of minds.

Mediation allows the mediator to act as a facilitator in a dispute. Through a more intimate relationship with the opposing parties, he is able to encourage exchanges of information, help the parties understand each other's views, assist the parties in fleshing out their real interests and to

dichotomize between demands and principled interests, and to encourage flexibility among the parties.

Norway was able to flesh out the real interests of the parties. Although the more apparent purpose for negotiations between the parties is to reach an agreement upon a specific configuration of compromise and concessions, mediators, through communication-facilitation strategies, are able to gain a more realistic take upon the entire conflict and are able to emphasize upon the overlying principle governing ethnic interaction and their respective aspirations in the aggregate picture. In the Oslo Accord, through a mediated resolution, the opposing parties began to realize that their interests are much broader and more profound than simply the attainment of bounded territories.

Through mediation, parties negotiated from a more principled standpoint rather than from a hard bargainer's point of view. Without too much involvement, mediators are able to creatively invent solutions that meet the fundamental interests of all the parties.⁴⁹ This particular effect of third party intervention prevents the digression of peace talks into shallow territorial disputes, allowing each party to zero-in on the essence of their cause. Even before they realize that there is a possibility of compromise, parties begin to realize that there is an even greater hope of achieving a settlement when they discover that the principles motivating each of their groups aren't necessarily as incompatible as they've originally perceived.

Oftentimes, positional negotiators tend to fuse the problem with their adversary. In the Arab-Israeli conflict, part of the reason why both sides refused to compromise to begin with was not because there was a fundamental incompatibility between them, but rather, they interpret compromise as a form of surrender to the other faction. Mediation creates the avenues for effective negotiation. Mediators approach the conflict in two ways. They first try to facilitate a rebuilding of trust between the parties.

⁴⁹ Goldberg, Sanders Rogers & Cole, *Dispute Resolution (Negotiation, Mediation and Other Processes)* 111 (4th ed. 2003)

The dilemma with negotiations is that relationships get entangled with the problem.⁵⁰ It becomes essential to nurture the relationship between the parties in order for them to let go of the biases and to focus rather on their respective needs. However, it is quite difficult to expect that ethnic groups will independently choose to mend their relationship. Mediation guides the negotiations based on the proper principles of effective bargaining.

The mediation process contains within it a unique potential for transforming people-engendering moral growth-by helping them wrestle with difficult circumstances and bridge human differences in the very midst of conflict. This transformative potential stems from mediation's capacity to generate two important effects, empowerment and recognition. In simplest terms, empowerment means the restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems. Recognition means the evocation in individuals of acknowledgement and empathy for the situation and problems of others. When both of these processes are held central in the practice of mediation, parties are helped to use conflicts as opportunities for moral growth and the transformative potential of mediation is realized.⁵¹

The Oslo Accord exemplifies this potential of mediation. Through a mediated process, Palestinians, who have not had recognition from the international community for so long, have been empowered and recognized as a people capable of fighting for their rights and governing themselves. Direct negotiations between the Arab and Israelis have resulted in nothing but lopsided agreements lacking the political teeth to truly empower and recognize the Palestinian people. Mediation has reminded them of a sense of their own value and strength.⁵²

⁵⁰ Roger Fisher & William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, 46 (1981).

⁵¹ Goldberg, Sanders Rogers & Cole, *Dispute Resolution (Negotiation, Mediation and Other Processes)* 112 (4th ed. 2003) quoting Bush and Folger.

⁵² *Id.*

VI. The Bangsamoro Problem

The Bangsamoro problem isn't very much different from the Palestinian conflict. Ethnic Muslim groups in Mindanao have been asking for self-rule for about a quarter of a century. Since the 1970's the Philippine government had been engaging in peace negotiations with Islamic groups, eventually striking deal with the Moro National Liberation front in 1997⁵³ However, similar to the difficulties encountered by the PLO in curbing splinter cells such as Hamas and the Islamic Jihad, the Moro Islamic Liberation Front would not accept autonomy as a resolution to the dispute and instead opted to advocate the complete independence of Muslim Mindanao.⁵⁴

While the MNLF opted to achieve its aspiration for self-determination through autonomy, the MILF considers this vehicle for limited self-rule a total failure and renewed its demand for the establishment of an independent Muslim state. The MILF believes that autonomy has failed to address the fundamental grievances of the armed revolution and it declared ahead of the talks that it will reject the same or even an enhanced autonomy arrangement.² On the other hand, Manila continues to reject any demand for a separate Muslim state in the southern Philippines.⁵⁵

Since the renewed Bangsamoro conflict between the government and MILF ignited, both sides have engaged in several peace negotiations. The problem stems from the lack of political will coming from both sides to maintain the cease-fire and to be faithful to the terms of agreement. Each peace treaty would be broken by recurring armed sparked from either side.

⁵³ United States Institute of Peace, *The Mindanao Peace Talks: Another Opportunity to Resolve the Moro Conflict in the Philippines*, Special Report 131,

Available at <http://www.usip.org/pubs/specialreports/sr131.html#1>.

⁵⁴ "Autonomy not answer, say Moro rebs," *Philippine Daily Inquirer* (Manila), October 13, 2004, quoting MILF vice-chair for political affairs Ghadzali Jaafar, available at http://news.inq7.net/regions/index.php?index=1&story_id=14799.

⁵⁵ United States Institute of Peace, *The Mindanao Peace Talks: Another Opportunity to Resolve the Moro Conflict in the Philippines*, Special Report 131, available at <http://www.usip.org/pubs/specialreports/sr131.html#1>.

...from 1996 to 2000, the government and the MILF entered into a total of 39 agreements, joint communiqués, acknowledgments, and resolutions: 16 agreements on the implementation of the cease-fire pact (organization of committees, repositioning of government and MILF troops, return of evacuees, and safety and security guarantees), 13 on the framework of the talks, six on procedural matters, and four on recognition and verification of MILF camps. Throughout this period, no resolution was reached on the substantive issues raised by the MILF.⁵⁶

The struggle further escalated when the Joseph Estrada took over the presidency in 1998. In 2000, the government launched an offensive campaign to take over camps previously held by the MILF, this brought the peace process to an almost irreversible spiral. Fortunately, in 2001, when Gloria Macapagal Arroyo took over the presidency after Estrada was deposed, there was a resumption of the MILF peace talks. In order to establish trust and willingness on both sides to engage in exploratory talks, Macapagal-Arroyo extended a gesture of piece through a unilateral cease-fire.

The exploratory talks yielded interesting results. Third Party Mediation formally made its way into the peace process when the government agreed to the three conditions proposed by the MILF: 1) that the talks be mediated by the OIC or by ad OIC member country. 2) that the parties comply with the terms of past agreements 3) that the talks be held in foreign venue. This proposal removed any chance by which the armed conflict in Mindanao could stifle the peace talks. Malaysia was then the chosen mediator between both groups.

Although the 2001 peace talks in Kuala Lumpur did not produce tangible results, it fleshed out an agreement on principle similar to what was achieved in the Oslo Accord between Palestine and Israel in 1993. Mediation allowed Malaysia to isolate the fundamental interests of both sides without either side provoking the other to be positional. The Oslo Accord and the Tripoli Peace Agreement yielded three similarities.

⁵⁶ *Id.*

- 1) Both agreements involved each party recognizing the legal existence of the other.⁵⁷
- 2) Both sides in each agreement recognized that their mutual interests are not necessarily incompatible.⁵⁸
- 3) Both parties in agreed to conduct the peace process in stages and grievances will be addressed simultaneously with the peace process.⁵⁹

From November 2000 to February 2003, the negotiations resulted in the forging of the 2001 Tripoli Peace Agreement; the Implementing Guidelines of the Security Aspect of the Tripoli Peace Agreement; the Manual of Instructions for the Coordinating Committee on the Cessation of Hostilities and the Local Monitoring Teams; the Joint Communiqué on Criminal Interdiction; and the Implementing Guidelines of the Humanitarian, Rehabilitation, and Development Aspects of the Tripoli Peace Agreement.⁶⁰

CONCLUSION

It is clear from both the context of the Palestinian Intifada and the Bangsamoro problem in the Philippines, third party mediation has become a very viable option in terms of resolving inter-ethnic conflict. The beauty of this process is that through passive involvement, third parties are able to guide opposing parties to engage in an ideal form of negotiations. Positional bargaining yields nothing but a strained relationship between negotiators. Mediation allows both sides to recognize and establish their principal interests without being marred and bogged down by specific details. It guides them through principled negotiations. Through mediation, overlying principles are discovered and are used a starting point for further negotiation.

Mediation as a strategy is especially important in inter-ethnic conflict especially when interests are entrenched within deep-seeded cultural differences such as Religion or racial preferences. When interests become

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

entrenched in philosophies such Divine Right or Religious Supremacy, direct negotiations between parties who possess opposing philosophies have nothing to either give or concede. When a third party intervenes, opposing sides are able to realize that their views are very specific to them and that their interests can be elevated to such a degree that compatibility may arise from the opposing side. While this process of discovery is going on, mediation creates the proper environment of trust which is necessary for groups to first lay down their arms and allow for a more peaceful approach. In the long term, mediation not only is a cost-effective tool for dispute resolution, it may become the primary alternative to dispute

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