

THE APPROPRIATE TIME OF THE MEDIATOR'S INTERVENTION IN INTERNATIONAL MEDIATION

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Abstract: Mediation, as an alternative to resolving international differences, if it has demonstrated effectiveness when used under conditions well determined by the context and intensity of the conflict. The lessons learned throughout history have shown that the success of a mediation also depends directly on the moment when such a method is requested or offered and accepted or imposed.

The article analyzes, in terms of the intensity of the conflict, what may be the appropriate moments of intervention of the mediator, so that the chances of successful mediation increase and propose solutions meant to limit, as much as possible, adverse consequences of a violent dispute.

Keywords: conflict, mediation, opportune moment, intensity, mediator's intervention.

Conflict, as a complex phenomenon that animates humanity on multiple levels, is a topic that practitioners and theorists have analyzed and for which they have proposed solutions on how to solve it.

Alternative conflict resolution methods, which exclude resolution through violence or armed force, include mediation. Mediation is a method enshrined in various international treaties, such as Article 2 of the Final Act¹ of the Hague Conference of 1899, when he received his first attestation, Article 33 of the Charter of the United Nations² signed in 1945, when it received universal consecration, or Article XI of the Bogota Pact³ from 1948, in possible regional disputes between the signatories.

At the state level, mediation has been regulated in national law depending on the political vision and how domestic policy has been related to the domestic conflict market.

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¹ For details, see <https://docs.pca-cpa.org/2016/01/1899-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf>

² For more details, see http://www.anr.gov.ro/docs/legislatie/internationala/Carta_Organizatiei_Natiunilor_Unite_ONU_.pdf

³ For more details, see <https://treaties.un.org/doc/Publication/UNTS/Volume%2030/volume-30-I-449-English.pdf>

Without going into legislative details, whether mediation is regulated or not at state level, it follows as much as possible a procedural line derived from the practice and experience of the initiators, involving the resolution of the conflict between opponents with the help of a specialized third party in conditions of neutrality and impartiality.

By definition, the conflict follows several phases of evolution, being represented graphically in the form of Gauss's bell, going without exception through a phase of ascent, accumulation until the outbreak of violence, through explosion, but also through a phase of decline.

At a small level, in case of smaller conflicts by intensity or severity, such as conflicts between individuals, groups, organizations, entities that do not involve the use of armed force in resolving the dispute, more precisely where social mediation is appropriate, mediator's intervention can theoretically occur at all times in the evolution of the conflict. Usually, in this case, mediation is generally requested by one of the parties to the conflict, without excluding the possibility of being offered by the professional in the field.

The mediator's intervention, more precisely the initiation of mediation, comes from one of the parties, which from a practical point of view has a direct interest in finalizing the dispute in an alternative way, and his request for mediation meets a similar interest from the opponent. Although the nature of the interest of the initiator of mediation cannot be determined, we can say that currently the nature of the interest can be financial, temporal or can be generated by other advantages of the procedure, such as confidentiality or freedom to negotiate the solution. In any case, the perception that maintaining a state of conflict cannot bring advantages determines the reaction of the individual to try to find a way out, a solution that can end the dispute.

Due to the way social mediation works, the mediator has not the slightest control over the intensity of the conflict between the parties at the time the procedure is initiated, so it is not possible to talk about an opportune moment of intervention to resolve the conflict that depends by a professional. This moment depends only on the perception and will of the parties, and the degree of pressure that an unresolved conflict puts on the individual differs from person to person, as the reactions are different.

Depending on the acceptance of mediation by the parties, the mediator approaches the conflict at any stage of its evolution, taking over the state of disagreement existing at the time of entering the procedure. Of course, the way the procedure is conceptually conducted, the parties are encouraged to express their views on the conflict, which leads to a series of arguments and counter-arguments from each opponent. Bringing arguments forward is a feature of individuals' communication. The arguments lie in the way the actors perceive the conflict and relate to it.

The only opportune moment for the mediator to make the transition from the state of the individual, in which he identifies the problem with the opponent, to the

state of detachment of the individual from the problem is the moment when the individuals exhaust the arguments. Noticing this moment is crucial in the case of an escalating conflict, because this moment is located very close to the state in which violence can occur, to explosion. Basically, for a mediator it is essential, in a successful mediation, to have noticed that the exhaustion of arguments is determined by their repetition, and this moment is the opportune moment to ensure that the parties overcome through dialogue the critical moment of the possibility of resorting to violence.

There is no obvious parallel between the essential moments of the mediator's intervention in social mediation and those in international mediation, because first of all conflicts differ both in evolution and in duration and negative consequences. If in social mediation we generally discuss conflicts of a civil or criminal nature, in many of the international conflicts we discuss the use of armed force, human casualties and immense material damage. When discussing interstate or intra-state armed conflicts, things are much more complex and require in-depth analysis.

An international mediation presupposes, in addition to the observance of a whole set of rules, a carefully studied preparation of the mediation, going to the detail of finding the opportune moment in which the belligerents are in the position to want, to seek a reasonable way out of the conflict, without to have the power or ability to do so on their own. In fact, if we have to make a comparison with social mediation, we can show that the opponents have gone from that state of identifying the problem with the opponent to the state of accepting a possible compromise in order to resolve the conflict reasonably. So, the parties to the conflict should move on their own from the winning attitude to the detriment of the opponent to the win-win attitude, even if the advantages would be lower.

Basically, theorists⁴ identified the opportune moment of the mediator's intervention as essential in the success of a mediation and was chosen when the parties seek a reasonable way out of the conflict, being prepared for this after a major consumption of resources (after consuming arguments, if we compare with social mediation)⁵. The theory that William Zartman advanced is based on a series of findings from practice. It is generated by the direct link between the maturity of the conflict, its ripening moment and the moment when a mediator can intervene successfully. Thus, the model in question identifies as the optimal time to resolve the conflict the moment when the parties are at a standstill, at a high level of

⁴ For more details, see <https://www.e-ir.info/2008/12/20/ripeness-the-importance-of-timing-in-negotiation-and-conflict-resolution/>

⁵ "The other argues that a key to the successful resolution of the conflict is when efforts are made to resolve it. The parties resolve their conflict only when they are ready to do so – when the alternative, usually unilateral, means of achieving a satisfactory result are blocked and the parties are in an awkward and costly situation. At that moment, he starts proposing proposals that have usually been in the air for a long time and that only now seem attractive" – I. William Zartman, *Ripeness: The Hurting Stalemate and Beyond*, in Paul Stern, Daniel Druckman (eds.), *International Conflict Resolution after the Cold War*, Washington, National Academy Press, 2000.

conflict intensity, and when through their own efforts cannot win (in other words, after using all possible arguments, the opponent remained steadfast, and the persistence in trying to convince with their own weapons is not successful, which is why there is room for third party intervention, which manages to make the actors overcome the moment through a change of state, mentality and approach, to make the transition from “I against you” to “we against the problem”). The basis of this theory is the idea that the actors will at some point be stuck in conflict without having the ability to advance to victory, and when the stalemate is painful for them they will look for an alternative way out. The foreshadowing of a catastrophe, which is apt to increase the pain on both sides, can pressure the parties to resolve the conflict within a given time frame, because otherwise the indicators of the intensity of that pain may escalate.

Four conditions are identified, not necessarily fulfilled at the same time, which indicate the maturity of the conflict, so that favorable moment of the mediator’s intervention: painful impasse of the conflict, proliferation of a catastrophe, validated representatives and the existence of a way out of the conflict.

In essence, what the theory wants to argue is that when mediation occurs at the time of maturity of the conflict it will be a successful one and an agreement will be reached, and if this moment is missed there will be a failed mediation, idea with which we do not completely agree with.

Basically, the theory is the mirror of the deeply human reactions of an individual in a situation of stress as a result of involvement in the conflict: discomfort, fear of failure, decision-making power and a solution from which to lose as little as possible. If we were to continue along the same lines, we could add other feelings and reactions that are related to the perceptions of an individual in conflict and that could be translated by generalization on a larger scale. Thus, we can identify to an individual in conflict, for example affected values, identity or opinion of others, which can be translated by resources, religion, culture, traditions, the degree of affect of national and international relations.

In the light of this comparison, certainly not only the four elements can be signs of the maturity of the conflict that will determine a favorable moment of the mediator’s intervention, but also other elements that can expand and generate options for a practical intervention, able to avoid reaching painful points, with the foreshadowing of a catastrophe that is generally preceded by the loss of human lives and major material damage.

William Zartman’s theory of the opportune moment is not without criticism, nor is it applicable to the whole sphere of international conflict.

There are conflicts on the world that are practically like a mobile perpetuum and to which, due to cyclicity, the present theory cannot give an answer, the proof being the fact that they erupt periodically. This is the case of frozen conflicts for which, in the case of their reheating, the theory cannot identify the moment of maturity in which the mediator’s intervention can be decisive in extinguishing

them. Because they never reached that painful intensity or the proliferation of a catastrophe, the leaders changed periodically, and the way out of the conflict is not identified. Examples worth noting are those in the ex-Soviet space, such as the conflict between Armenia and Azerbaijan or the one in South Ossetia.

Another category of conflict that is difficult to manage, if it remains dependent on this theory, are the conflicts that are based on religious differences where religion has become a predominant factor, among other factors, and here we mention the conflict between Israel and Palestine or India and Pakistan, on the theme of Kashmir.

The example of the war in Yugoslavia is one that shows that, although the intensity of the conflict has been high for a long time, no diplomatic intervention has been able to stop this conflict, as the parties have been in a painful stalemate for a long time. It was necessary to launch NATO bombings to force a change in the perception of the parties and to reach a peace agreement.

Obviously, the choice of the right moment for intervention raises questions about how it is determined, based on the assumption that the actors in the conflict would act rationally and would like to change their status at some point in time, under the pressure of the stalemate. However, even if it is one of the best known theories, it is not without criticism, and in many cases this theory cannot be applied. Specialist articles have shown that this theory has limits and is not suitable for a conflict like the one in Northern Ireland⁶.

The theory cannot be proved in the case of the conflict between India and Pakistan either, because the occupation of Kashmir and the struggle for its territory did not have the moment of maturity, as defined by the theories. It is well known that in the event of this conflict, the repeated interventions of the UN Security Council, which issued resolutions on the imposition of mediation, resulted in peace agreements that had a relative durability over time, international competition between the two states being still notorious today. In fact, what at first appeared as a territorial dispute acquired the valences of a conflict based on religious criteria, which makes it even more difficult to control and predict in evolution.

If the first theory is based on the idea of the rational actor, who thinks in terms of limiting losses and reducing costs in his decisions, another model of the opportune moment was based on the theory that leaders become captive to the continuous pursuit of victory, regardless if the costs seem very high from the outside. The basis of the model is given by the idea that these high costs are investments in total victory. Basically, the pain in William Zartman's model becomes the main source of motivation to continue the conflict, and leaders become dependent on the idea that the immense sacrifices of the past would be wasted if a complete victory is not achieved. Thus, the conception that what we have already suffered is already too great to count much what we will suffer in the

⁶ Eamonn O'kane, *When Can Conflicts be Resolved? A Critique of Ripeness*, available at https://www.researchgate.net/publication/32116719_When_Can_Conflicts_Be_Resolved_A_Critique_of_Ripeness.

future is the way some leaders reason⁷. The theory is based on a staging of the leaders' decisions in order to be able to detect the opportune moment of the intervention. Thus, gradually a leader goes through the focus on obtaining a possible reward, then by justifying the resources consumed, followed by the desire to cause damage to the opponent and minimize total losses, and finally by depleting resources⁸.

It is assumed that the timing of the intervention should be somewhere between the third and fourth stage, but this theory also has a long series of shortcomings. For example, no one can say how the perception and decision of the leaders change, if this change of perception is synchronized with that of the opponent, how the leader makes the decision totally opposite to the previous moments, more precisely how he makes the transition from a seemingly irrational attitude to one rational, directed towards exit, towards compromise.

Last but not least, another theory has a not so pessimistic view of leaders, but also based on reasonableness or rationality. It is assumed that a good time may come when leaders will see a better way to achieve their goals than to continue the fight. These opportunities open up or are open when there are less costly options for continuing violence, with a focus on new benefits and rewards than on past or anticipated costs. Specialist works have identified a number of factors that have contributed to the creation of this opportunity⁹.

Other theories consider interventions before violence reaches high levels, and other theories support later intervention, when violent military solutions and ways to peace have been exhausted¹⁰.

Stephen Stender proposes other variants of assessment in assessing the maturity of the conflict related to situations when actors have redefined their interests due to changes in leadership or pressure and are no longer satisfied with the status quo. The old rules and patterns of behavior have been replaced by new rules that facilitate opportunities for compromise and lasting regulation, have common perceptions of the desire to reach an agreement, have agreed on a common liaison process to resolve differences, a formula that allows for a compromise and a negotiated end to hostilities is viable. This theory obviously involves changes in status, leaders, perceptions, mentalities that do not come naturally, but come from a certain evolution of the conflict, an evolution that involves overcoming even the violent stages which is not desired, because as the conflict evolves it creates casualties and material damage.

⁷ Teger I Allan, Cary Mark, *To much invest to quit*, New York, Oxford, Pergamon Press, 1980.

⁸ C.R. Mitchell, *Cutting Losses: Reflections On Appropriate Timing*, in "The Institute for Conflict Analysis and Resolution Working Paper 9", Fairfax, Virginia.

⁹ C.R. Mitchell, *Conflict Resolution and Civil War*, in "The Institute for Conflict Analysis and Resolution Working Paper 3", Fairfax, Virginia.

¹⁰ „And most importantly, the risks of peace increase the insecurity and uncertainty of ordinary citizens who have the most to lose if the war is renewed” – J. Stephen Stender, *Spoiler problems in peace processes*, in Paul Stern, Daniel Druckman (eds.), *International Conflict Resolution after the Cold War*, Washington, National Academy Press, 2000.

The lack of an intervention to resolve the conflict, or at least to stop the consequences of violence that results in multiple victims and high damage, cannot be attributed to finding the moment of maturity of the conflict, when the perception of the belligerents will change and thus justify the intervention of the mediator. It is known, moreover, that the mediators of force will not be involved or will intervene only to a certain extent of the conflict and without the risk of making mistakes.

However, none of the theories take into account anything other than the degree of oppression that the conflict produces, the attitude of leaders, their perception and that of supporters, more precisely a certain status in which violence has reached a certain degree of intensity or exceeded it.

In its texts for international mediation, the UN does not emphasize the timing of intervention as a precursor to the initiation of the mediation procedure, with no possible identification of it in the preparatory phase¹¹.

It is not the maturity of the conflict that should prevail, because once escalated a conflict can hardly be stopped, but due attention must be paid to the possible triggers of violence, their degree of accumulation, more precisely their weight. The more the weight of a possible triggering factor, such as religious freedom or the desire for self-determination of a part of the population or the territorial integrity is threatened, the more the weight of a decisive factor in triggering violence increases. Careful assessment of the triggering factors, because there will always be signals at the international level, can make the early response to avoid violence appropriate. At that time, even if the actors do not seem willing to make major compromises, the mediator's intervention may be appropriate either to postpone the violence, or to avoid it, or to open the early solution path that is brought to the attention of the actors, which may reduce future violence.

In other words, the moment of the so-called maturity of the conflict is preceded by a sum of the maturity of the decisive factors triggering the conflict, because it is hard to believe that an international conflict of magnitude occurs spontaneously, without a long period of accumulation. By studying the generative factors and the evolution of their weights in the general equation of the conflict, the mediation initiative can be launched before the critical moment or reaching the apogee.

It has been proven that it is possible to successfully mediate between hostile actors, without a conflict being able to be extinguished. However, it is important

¹¹ „The training combines the individual knowledge and skills of a mediator with a coherent team of specialists, as well as the necessary political, financial and administrative support from the mediation entity.

Although it does not predetermine the outcome, the preparation involves the development of strategies for different phases (such as pre-negotiations, negotiations and implementation), based on comprehensive conflict analysis and stakeholder mapping, including examination of previous mediation initiatives. As a mediation process is never linear and not all elements can be fully controlled, strategies need to be flexible to respond to the changing context” – United Nations, Guidance for effective mediation, 2012.

that in such cases the common interests and sufferings of the actors be identified. An eloquent example is the Indus Water Treaty, mediated by the World Bank between India and Pakistan, a treaty that has been in force for decades, during which there have been repeated armed clashes over Kashmir.

Here that a major conflict can be ignored regardless of its maturity and found the way to compromise when specific interests require it, and finally if such a solution has proved viable and durable, mediation on specific areas that result in repeated compromises from the actors' side can lead to the defusing of a conflict before reaching a quantifiable maturity according to certain criteria.

Each conflict has distinct features that are given by a multitude of factors that influence its evolution, but no one can quantify the reaction of the actors, their subsequent behavior, the rationality of leaders, external influences and interests, so that moment of ripening, maturity can be removed in time, it can be imperceptible or it can be missed.

Obviously, a study on a certain typology of conflict, with certain given characteristics, can determine the validation of the theory regarding the opportune moment of the intervention, but nothing can lead to the generalization or absolutization of such a theory in the whole range of international conflicts, but only to a small extent given by the similarity of the generating factors underlying the respective conflicts.

There is only one common element of each conflict: the triggers and their weight in the decision to use force. If these factors are observed and quantified in time, the intervention of the third mediator, until that factor or the combination of factors triggers violence, can be a viable solution in maintaining peace.