

Drawing lessons from the Bosnia Conflict

THE PROMISE OF INNOVATIVE MEDIATION TECHNIQUES

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Summary

It took three and a half years of diplomatic efforts to stop the Bosnian wars in the former Yugoslavia and even then this only came about because of the involvement of the United States. The fighting ceased in November 1995 with the US-mediated Dayton Accord. By the time the deal, brokered by a team led by Richard Holbrooke, was reached, over half of Bosnia-Herzegovina's population of 4,4 million people had fled their homes, 279,000 people were dead or missing (close to 7% of the pre-war population), over half the country's urban areas and infrastructure were destroyed or severely damaged and its economy was decimated. The successful Dayton Accord introduced an unorthodox, modern approach to conflict management, which is the focus of this article.

A study of theory, literature and interviews with the main players in the Yugoslav conflict and its resolution shows that several types of international mediation were attempted. The first two attempts by the EU and UN followed a traditional approach, seeking merely to resolve the conflict, and failed. The third attempt, led by the US and Holbrooke, was successful. Why? What made this approach different? Is successful mediation now down to international professionals and conflict managers, including members of civil society, or is it still the exclusive domain of armies and governments?

The Nature of Conflict Has Changed

Given the world we live in, with resources and opportunities limited and unevenly distributed, conflict is inevitable. Conflict as a struggle is a normal and necessary element of daily life. While conflict is

often painful, it can be also a positive power for growth and our development as human beings. Conflict tends to clarify which issues are really at stake and may ultimately lead to higher levels of understanding and help overcome obstacles.

During the past decade, developing assistance has continued to decline, while private capital flows to the developing world have risen significantly. This has reduced the relative influence of Donor States and International Institutions in developing and emerging countries, while increasing the presence of international corporations.¹ It means that not only governments, but more and more the private sector, ranging from large multinationals to informal micro-enterprises, see an increasing role to play in creating wealth and socio-economic development.

Multinational companies are investing more than US\$ 150 billion annually in nearly 50 countries, which may be confidently described as fairly corrupt or are considered at the brink of conflict.² With this comes a responsibility and significant role in contributing – both directly and indirectly – to the prevention and resolution of conflict, as well as to stimulating good governance. As market economies become widespread and business becomes a more important actor in societies around the world, the importance of prevention and managing conflict is of increasing importance.

It is when people resort to violence that the conflict-resolution process degenerates and becomes negative and destructive. Between 1945 and 2003 the world has witnessed a total of 343 international conflicts³. Most of the conflicts related tot the East-West Cold War and the North-South line.

Over the past 100 years, the nature of international conflict resolution has fundamentally changed. Since the Treaty of The Hague in 1907, international

1 Annual Report of Secretary General Kofie Annan to the General Assembly of the United Nations, New York, 1999.

2 the Prince of Wales Business Leaders Forum, 'The Business of Peace', London, 2000.

3 Jacob Bercovitch and Judith Fretter, 'Regional Guide to International Conflict and Management from 1945 – 2003', Washington DC, 2004.

mediation has been considered a legitimate intervention in another country's affairs. Its aim is to settle conflict between states on terms that are acceptable to the parties involved. Half a century was bridged from the early days, when diplomacy ruled in the 1900s until the practise of 'Good Office', a passive form of mediation such as used by the UN during the Indonesian independence negotiations, more than half a century ago now. It is after the end of the Second World War that *international mediation* as such, became en vogue.

The nature of conflicts changed after World War II. Post war conflicts occur largely within states and are characterized as civil conflicts. In their study, Bercovitch and Fretter⁴ shows that out of the 343 registered conflicts, more than three-quarters of the disputants or adversaries engaged in some form of peaceful conflict management. International mediation played a dominant role in the majority of these conflicts.



- mediation (59.3%)
- negotiation (32.2%)
- international organisations (3.6%)
- multilateral conference (3.0%)
- no management 1.3%)
- arbitration (0.6%)

'International mediation'

The term '*international mediation*' has a complex definition. It is a tool of foreign politics and is therefore part of international politics – far different from the mediation process that has developed over the last 20 years and which is applied in a variety of domestic contexts, such as disputes relating to divorce, labour relations or in a business context. This approach – developed under the influence of the Harvard Negotiation Project of Roger Fisher and William Ury et al. – seems to only slowly be finding its way into international mediation practice, which is remarkable since the technique was developed in 1979 under the guidance of Roger Fisher, while working with the

White House to develop a negotiated outcome for the Iran hostage crisis through Algerian mediation.

The real test case for a modern approach to international mediation came with the Yugoslav wars, which lasted from 1991 – 1995. The fighting took primarily place in Bosnia-Herzegovina, within the borders of the former Yugoslav Federation, although at times, it threatened to spill over into neighbouring states. The conflict also involved arguably the largest number of active disputants in any conflict ever and this made peace negotiations and international mediation difficult, risky and lengthy.

Bosnian Wars

The Bosnian wars and the numerous attempts at peace negotiations took place within the context of significant changes in the international political arena. The collapse of the Soviet Union was greeted with worldwide relief, yet it brought an anxiety that the collapse would result in violence and political instability. European States were heavily involved in a debate to strengthen cooperation among them and form a closer union. Meanwhile, the US started to become more domestically oriented, heralding the arrival of a new world order. These are among the many reasons as to why the numerous traditional mediation efforts made by the international community were not more effective in bringing about a deal to end the Balkan wars sooner and halt their slaughter and destruction.

Furthermore and against this kaleidoscope of international affairs, nobody seemed overly enthusiastic to step into the political minefield that was Yugoslavia with its complex balance of power, born of its 'Tito years'. It was this hesitancy, the failure of arcane conflict resolution processes and the actions of power-hungry opportunists, that led to hundred thousands people losing their lives and resulted into millions of refugees in a region that was, shamefully, less than a 2-hour flight from most European capital cities.

Quite clearly the international community failed to act appropriately and speedily to prevent this tragedy. In fact, it took a very long time to bring about the agreements that halted the fighting, even after international mediation was put in place. The following historical detail proves just how delayed international (legal) mediation can be: In an attempt to gain international support for the dispute, the Bosnia-Herzegovina government in 1993 brought their case to the International Court of Justice (ICJ) in The Hague.

4 Jacob Bercovitch and Judith Fretter, 'Regional Guide to International Conflict and Management from 1945 – 2003', Washington DC, 2004.

On 27th February 2007, fourteen years later, and for the first time in its 61-year history the Court found a state – Serbia – guilty of violating the UN Convention on Genocide and said in its ruling that this was, “established by overwhelming evidence that massive killings in specific areas and detention camps throughout the territory of Bosnia and Herzegovina were perpetrated during the conflict. Furthermore, the evidence presented shows that the victims were in large majority members of the protected group, which suggests that they may have been systematically targeted by the killings.”⁵

It took three and a half years of diplomatic efforts to stop the Bosnian wars in the former Yugoslavia and even then this only came about because of the involvement of the United States. Under pressure from non-governmental organizations and individual politicians, the EU attempted to mediate in the conflict. However, during these initial three years, growing US involvement and Russian participation made the EU turn to the United Nations and request it to undertake the international mediation effort instead. These collective mediation attempts failed to produce a settlement.

Holbrooke Started A New Approach

‘What do parties really want when they are involved in conflict?’ was the question Richard Holbrooke started out with, venturing on his mission to Bosnia. This is referred to in mediation theory as an ‘interest-based approach’. A successful example of one of the interest-based problem solving techniques known as the Harvard Negotiation Project’s techniques is the “one-text” process. Roger Fisher and his team for the Camp David Accord negotiation developed it.

Fisher describes in detail a “one-text” process for managing complex negotiations. This process allows a neutral mediator to create a working “draft” that the parties criticize and improve, without making commitments. The goal of the process, Fisher explained, is to keep the parties from locking into rigid positions from which they would not back down and which would ultimately stalemate the mediation. The mediator controls and continuously improves the draft until he or she believes it satisfies the parties’ interests as well as possible. Then and only then are the parties asked to commit. The process also minimizes the back-and-forth “haggling” that often plagues and delays mediation.

In Bosnia several cease-fire attempts failed before Holbrooke started his eventually successful mission. Earlier attempts by the EU and the UN to resolve the conflict had failed for various reasons. The Americans came with an innovative strategy. Let us take a close

look at the actor starring within the American mediation team, Richard Holbrooke.

What Made Effort So Unique?

The international mediation effort led in 1995 by Richard Holbrooke was unique in that it not only decided on what would or would not be negotiated, but also chose the way in which these talks would be conducted and how they would be concluded. Holbrooke’s style of mediating in the Bosnian conflict went far beyond what was, at that time, still considered to be international mediation. He brought about a shift in paradigm with the emphasis on conflict management rather than merely conflict resolution.

It is crucial to understand that conflict management is different from conflict resolution. Conflict management is a process and not an action aimed at an end result. Conflict management therefore moves away from the traditional view of conflict negotiation that stresses static substantive solutions and moves towards an approach that stresses the power of the process as a whole.⁶

Perhaps the most important difference between Holbrooke’s mediation and previous initiatives was that it aimed far beyond a simple ceasefire or a basic peace agreement. Instead of pursuing a settlement that aimed to just end the conflict, he fostered and strengthened a working relationship with the parties to improve their abilities to deal with the inevitable changes that would lie ahead once a ceasefire had been agreed. Holbrooke sought to ensure lasting resolution by managing the characters, the parties, the wants, the expectations and the potential problems. He created a blueprint for the governance of a new Bosnia-Herzegovina to be met through the power of process. This approach required the involvement of the parties to think beyond the conflict itself. It ‘enlarged the pie’ and gave the parties involved plenty of opportunity to negotiate in a constructive manner, allowing them to display success on the home front while providing a long overdue peace agreement.

When Holbrooke realized there were too many players at the negotiation table, he put pressure on Milosevic and reduced the number of parties involved and secured their mandate. When the relationship between Izetbegovic, Sairbey and Silajdzic weakened the Muslim position and undermined the possible outcome of the negotiations, Holbrooke applied the caucus technique to bring the Muslim delegation back as one party to the negotiation table⁷. When

5 International Herald Tribune, 28th February 2007.

6 Roger Fisher, ‘Beyond Machiavelli’, Harvard, 1993.

7 Richard Holbrooke, ‘To End a War’, New York, 1998.

Tudjman's military's ambition and winning mood seemed to be concurring too much territory which would undermine a possible agreement on the 'map', Holbrooke made an end to the military campaign by threatening to withdraw US support for the Federation.⁸ Often it is suggested that Holbrooke could get away with this 'political arm-twisting', given the power of the US he represented. However, it is important to realize that the US was relatively a 'new' player in the region. The relationship with the EU and a potential future membership of the union has been the main interest of the warring parties. However, this 'diplomatic game' was not well enforced by the EU mediators in the previous period.

Holbrooke chose the IRP-theoretical approach⁹ to bring the warring parties together, a fundamentally different strategy from the 'dual concern' model, previously tried by EU-led mediation efforts. During the first phase of his mediation effort he did not focus on a cease-fire, something his EU predecessors did. Their dual-concern approach limited their creativity and made them focus on reaching a cease-fire agreement, before handling other issues, if any.

A Personal Style

Holbrooke's mediation style became a power in itself and went far beyond what had long been considered the purpose of international mediation. David G. McIntosh describes in his working paper "The Muscular Mediator: Richard Holbrooke and the Dayton Peace Conference"¹⁰ in detail how Holbrooke controlled crucial criteria: The venue for any conference had to be American. This way a possible meeting of the adversaries with President Clinton could be used as an incentive. Moreover, the media agenda could be controlled and he had unlimited access to the Balkan negotiators, without having to share their attention with European or UN mediators. The use of a 10-seat Gulfstream Falcon the US Air Force had placed at Holbrooke's disposal, is thought to be a 'cherished secret weapon' and became a symbol of momentum or stall backs in the negotiations when a government withheld transportation to strand the mediators; a situation, which occurred often with the EU mediators.

The choice for casting a US Secretary of State as mediator gave the Balkan Presidents a sort of 'prestige' in exchange for their compromise. The United States became a muscular mediator, in the sense that it could guarantee, insure and reward concessions from the Balkan combatants, something the EU mediators lacked. Holbrooke convinced the adversaries that the US would not accept 'no' for an answer. Setting priorities was a fundamental strategic choice; the mediators put the least intractable issues

on the table first and built from there. Finally, Holbrooke had to report back regularly to his superiors in Washington, even though he took and enjoyed liberal freedom in his decision making, but was given plenty of space to act on his own behalf.

Perhaps the most important difference in his style compared with previous initiatives was that it aimed far beyond the limited cease-fire or basic peace agreement – which could easily be broken at a later stage unless the causes were dealt with for the long term. Instead of merely targeting a settlement to end the conflict, Holbrooke went 'the extra mile' and created a detailed blueprint for how a new Bosnia ought to be governed, ranging from policing the new state to how to structure the election process. This approach made it possible to satisfy the parties involved beyond just silencing the guns. It gave them plenty of opportunity to negotiate and show success at their home front, while also still providing a long overdue agreement.

The Secret of Success

It is clear that the approach chosen by Richard Holbrooke and his team, which originally consisted out of Wesley Clark, Rosemary Pauli, Bob Frasure¹¹, Joe Kruzelt and Nelson Drew¹², was different from the international mediation effort of his predecessors¹³.

Holbrooke and his team focused on the management of the conflict and not simply on its resolution as the prime objective. While the success of the negotiations was in part due to the show of force by the international community with the NATO bombing campaign, this did more to support Holbrooke's negotiation strategy rather than to secure peace by itself. Holbrooke's success can be attributed first to diplomacy and professional mediation, second to military force.

8 Derek Chollet, *A Study of American Statecraft: 'the Road to the Dayton Accords'*, New York, 2005.

9 IRP-theory, formulated initially by Ury, Brett and Goldberg (1988). It refers to the tendency of disputing parties to communicate through (I) interest-oriented messages; (R) rights-oriented messages; and (P) power-oriented messages. In empirical tests of the IRP-theory (Brett et al. 1998) found that the most effective way to stop conflict spiraling was to combine a power-oriented statement with an interest-oriented one.

10 Program on Negotiation at Harvard Law School, Working Paper 98-1. In the series PON Papers, Harvard Press, Cambridge, 1998.

11 On the morning of 19th August 1995, the Holbrooke's team arrived by helicopter near the Mont Igman pass. They were greeted by senior US military liaison officers and boarded two vehicles: a French UN-APC (armored personnel carrier) and a US military army Humvee, which would bring them to Sarajevo. During the trip the APC bounced over the dirt road and somersaulted down the mountain. The tragic road accident killed three members of Holbrooke's negotiation team: Bob Frasure, a fifty-three year old professional diplomat and former US Ambassador to Serbia; Joe Kruzelt, at fifty year old senior official, with a academic background with the US Air Force Academy and Harvard; and Nelson Drew, forty-seven years old, Air Force colonel, who had recently joined the National Security Council staff.

12 Richard Holbrooke, *To End a War*, New York, 1998.

The military campaign, although not decided upon by the US administration, had an effect on the Bosnian war but it did not end it. The settlement was largely built on Holbrooke's achievement of getting a true commitment from the warring parties to agree to end the fighting before mediation even began.

There are four significant elements which had a major impact on the outcome of the negotiations and which define Holbrooke's unorthodox approach to conflict management:

- 1.) To understand the conflict and treat it as a process, dealing with differences and interests efficiently, peaceably and with a minimum of social and human costs.
- 2.) To focus on what the Bosnians wanted out of an overall agreement, emphasizing the future of Bosnia-Herzegovina and not seeing a cease-fire as the end goal.
- 3.) To reduce the number of parties at the negotiation table from five (Croatia, Bosnian Croats, Bosnian Muslims, Bosnian Serbs and Serbs) to two: the Muslim-Croat Federation and Serbia; and to 'manage the infrastructure' under which the negotiations took place.
- 4.) To 'enlarge the pie', so that interests and desires would be easier to satisfy, achieving this in a limited amount of time.

These elements were new in to managing the conflict. They have not been on the agenda of Holbrooke's predecessors and ultimately, it 'made the day'.

Conclusion

In recent years the principle of sovereignty has ceased to shield states from external intervention in domestic disputes. The number of interventions in such conflicts – as in El Salvador (1992), Cambodia (1993), Haiti (1995), Somalia (1995) – has increased. In the cases where international mediation was introduced, and not always successfully, it resulted in very little controversy. This is because mediation, whether successful or not, is always consensual: it cannot take place without the active cooperation of the disputing parties.¹³ Despite their reluctance to have outsiders involved in their internal affairs, governments do accept external mediation of internal disputes and do cooperate with mediators, if only to stave off other kinds of intervention that could prove more harmful to whatever regime is in power.

It is often stated that mediation is more likely to be successful in international conflict because it comple-

ments the conflict management process, while adding extra resources and creativity. Mediation can break negotiation deadlocks, re-open channels of communication, provide face-saving for concessions, propose creative solutions and mediators can act as go-betweens who promote the conditions required for a resolution.¹⁴

As the usefulness of traditional diplomacy in managing conflicts wanes, states are forced to turn to direct negotiation through mediation. In reality, negotiation and mediation are the principal means of handling all international disputes, including economic and trade disputes, and are employed more frequently than all other methods of conflict management together.¹⁵

During the past decade, developing assistance has continued to decline, while private capital flows to the developing world have risen significantly. This has reduced the relative influence of Donor States and International Institutions in developing and emerging countries, while increasing the presence of international corporations.¹⁶ It means that not only governments, but more and more the private sector, ranging from large multinationals to informal micro-enterprises, see themselves to be playing an increasing role in creating wealth and socio-economic development. Today, only 4% of the world's GNP is military related; 96% of the international business community provides civilian products and services. Most of these business communities have a vested interest in stability and peace.¹⁷

The US-led mediation in the Bosnian wars stood in sharp contrast to the previous attempts at brokering peace. Summarizing, it was conflict management – focused on the entire process and the ongoing state of affairs beyond a ceasefire – as opposed to conflict resolution – focused on a ceasefire or peace agreement alone. It can also be said that the absence of a clear strategy in the EU-led mediation efforts actually contributed to exacerbating the troubles and the problems in the Balkan instead of resolving them.

However, some would argue that the US administration did not have a strategy to begin with either and that Holbrooke – the 'bulldozer diplomat' – and his team

13 Laura Reed and Carl Kaysen (eds), *Emerging Norms of Justified Intervention*, Cambridge, MA, 1993.

14 Jacob Bercovitch, 'Understanding Mediation's Role in Preventative Diplomacy', in *Negotiation Journal*, vol. 12, number 3, 1996.

15 Jacob Bercovitch and Judith Fretter, *Regional Guide to International Conflict and Management from 1945 – 2003*, Washington DC, 2004.

16 Annual Report of Secretary General Kofie Annan to the General Assembly of the United Nations, New York, 1999.

17 Business for Global Stability, *Why the Business Community should Contribute to Conflict Prevention, Resolution and Peace Processes*, London, 1999.

made countless decisions without any guidance from their superiors in Washington that helped to bring peace in Bosnia-Herzegovina, it allowed them to work towards a generally accepted settlement and securing its future, from both a political as well as an economic perspective.

The Bosnian wars and the atrocities that arose, had an impact on the public sense of the morality and therefore of the leadership of the US. Extensive media coverage triggered action and the US administration sought to prove that the US was still an effective world leader. There are definitely advantages in channelling peacemaking efforts through a powerful state. However, the most important advantage of having the international community involved, as opposed to one powerful state, is that such an effort is endowed with greater legitimacy and can therefore be better conducted under the auspices of an effective international organization, yet such an organization must be willing and capable to use a modern approach and techniques. Maybe that is the most important lesson and our challenge ahead.

We live in an era where interventions are admitted by treaty, as is the case with the UN and NATO. Sustainable solutions that shall last are likely to be those that are supported by the international community. Modern mediation techniques can prevent unnecessary violence in potential and existing conflict situations. Mediation efforts are most sustainable when supported by a wide and diverse alliance of the international community, including international organisations as well as NGO's, the business community and other stakeholders involved. Today, conflict is more than a dispute between governments, it involves a wide range of stakeholders and thus requires a different approach.

Multinational companies are investing more than US\$ 150 billion annually in nearly 50 countries, which may be confidently described as fairly corrupt or are considered at the brink of conflict.¹⁸ With this comes a responsibility and significant role in contributing – both directly and indirectly – to the prevention and resolution of conflict, as well as to stimulating good governance. As market economies become widespread and business becomes a more important actor in societies around the world, the importance of prevention and managing conflict is of increasing importance.

The Prince of Wales Business Leaders Forum advised the international business community in 2000, to 'develop mutually beneficial and transparent partnerships with civil organisations, government bodies and other companies, to address sensitive political and

public policy issues and to invest in practical projects. Collective action can address activities such as: advocacy for good governance and anti-corruption measures; negotiating peace; develop voluntary codes of corporate conduct; supporting an open and free media; and creative innovative public-private financing mechanisms for health, education, civic institution building and infrastructural development.'¹⁹

Besides formal diplomacy, there currently are many informal lines between NGO's and the business world, with a vibrant exchange of expertise, often referred to as 'track 2' diplomacy. The combination of innovative mediation techniques and the increased role of these 'track 2 diplomats' from the various public and private stakeholders might prove to be a powerful source of untapped potential for the future. There is a 'world to win' if we can really draw the right lessons learned from the Bosnia case.

18 the Prince of Wales Business Leaders Forum, 'The Business of Peace', London, 2000.

19 ibid.