

FACILITATIVE ADR'S¹ GLOBAL POPULARITY AND PROMISE

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¹ *This article assumes many readers are new to alternative dispute resolution, (or appropriate dispute resolution, hereinafter also referred to as “ADR”) its terminology and approaches, along with the concrete details of facilitative approaches. “ADR” encompasses a broad continuum of response to conflict that falls between avoidance and escalation. LINDA SINGER, SETTling DISPUTES: CONFLICT RESOLUTION IN BUSINESS, FAMILIES, AND THE LEGAL SYSTEM (1994) It includes community and public dispute resolution as well as alternatives within legal systems. See e.g. E. FRANKLIN DUKES, RESOLVING PUBLIC CONFLICT: TRANSFORMING COMMUNITY AND GOVERNANCE (1996) (reviewing history and practice of public dispute resolution, or assisted, consensus building process for deciding issues involving public agencies, officials, participation, law and governance, with ideas for transforming “citizenry, communities, and the private and public institutions of contemporary democratic society.” Id. at 7). The research reviewed in this article strongly promotes facilitative ADR. See e.g. Leonard Riskin, 78 Notre Dame L. Rev. __ (2003) (reconceptualizing distinction between facilitative and evaluative approaches to mediation). Details of the facilitative approach are described and appreciated again and again (and explained throughout this piece).*

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² *The author wishes to acknowledge former Ambassador John McDonald, Institute for Multi-Track Diplomacy, for his review and validation; Professors Roger Alford, Antonio Mendoza and Jacqueline M. Nolan-Haley for their thoughtful comments, and thank all who responded to her survey and her research and writing partners. Those who gave permission to be named are Dragutin Djekovic, Dr. Sukla Deb Kanango, Goran Lojancic, Rishi Pandey, Vladimir Maric, Leylya Mustafaeva, Daniel Perez (Fulbright scholar, Albania), and Ndi Richard Tanto. Preliminary results of this study were presented at Impact of Global Issues on Women and Children international conference in Thailand 2003, the first international conference of the Association for Conflict Resolution in Toronto, and National Conference on Peacemaking and Conflict Resolution, 2001. Summary results are also published in **HOLDING THESE TRUTHS: EMPOWERMENT AND RECOGNITION IN ACTION** (interactive case study curriculum for multicultural dispute resolution). 2003. Berkeley, California: Institute of Governmental Studies Press, University of California.*

I. INTRODUCTION

A. INSPIRATION

Alternative dispute resolution's growth within courts and governments around the world,³ forecasts a significant global trend, with international potential. Particularly intriguing, however, is alternative dispute resolution's popularity with grassroots peacebuilding. Professionals in conflicted parts of the world, including some of our most intractable and dangerous ethnic battles, are embracing the concepts and practices of alternative dispute resolution⁴, its creative

³ *An increasing number of governments use alternative dispute resolution in their bureaucracies, with a variety of disputes. See e.g. Ngoh-Tiong Tan, Community Mediation in Singapore: Principles for Community Conflict Resolution, 19-3 CONFLICT RESOLUTION QUARTERLY 289 (2002); WILLIAM J. KLAUSNER, REFLECTIONS ON THAI CULTURE 244 (1993); CHRISTOPHER MOORE, THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT 32-40 (1996) (introducing People's Conciliation Committees, China, court-based mediation in Australia, Japan and Korea, Barangay Justice System, Philippines and several other programs. See footnote 28 for a definition/description of mediation). The motivation behind this bureaucratic trend, however, may be quite different from the enthusiasm highlighted in this article. ("B)eing time-limited and problem-focused in approach, the limitation... in dealing with deep-seated issues needs to be recognized. Conflict is often resolved superficially, and the transformative potential of mediation, in imparting skills and engaging in structural change, is neglected...(M)ediation centers...are often perceived as government agents." Tan, supra, at 292, 299); see also Vivian Wiseman and Jean Poitras, Mediation Within A Hierarchical Structure: How Can It Be Done Successfully, 20-1 CONFLICT RESOLUTION QUARTERLY 51 (exploring mediation process in Quebec, Canada).*

⁴ The label, "Americanization of international dispute resolution," risks doing damage unless the conscious choices of international dispute resolvers to adopt (and import) a range of practices discerned helpful is simultaneously acknowledged. Otherwise, critique flatters the American ego, reinforces and magnifies the image of American importance and dominance, while denying and minimizing international actors' self-determination, autonomy and power.

possibilities, along with pragmatic options for reducing tensions within their countries⁵ and empowering more inclusive peacebuilding.

Peacebuilding is development of culture and societal institutions that support reconciliation and peace over time.⁶ Emphasized here is the popularity and potential of alternative dispute resolution with track two diplomacy---preventative and restorative efforts after war.⁷ Track two, or unofficial, citizen diplomacy involves international actors other than nation-states (e.g., leaders of United States and Iraq) or designated international organizations (e.g., United Nations). Joseph Elder's informal efforts as a Quaker mediator working with India, Pakistan and Sri Lanka is an example of track two diplomacy in action.⁸

⁵ Indigenous practices play a foundational role in community initiated conflict management. See e.g. Klausner, *supra* note 3, at 162-63 (describing bhikkhus and Cao Khote, the revered village elders acting as arbitrers). Some communities develop hybrid processes, combining traditional approaches with those praised here. Dr. Sukla Deb Kanango describes how the traditional village panchayat justice system still addresses the majority of community disputes. The facilitative approach to mediation, however, is becoming more popular with family divorces, particularly those involving children. The latter requires the time that facilitative mediation often can provide. (Interview with Dr. Sukla Deb Kanango, Professor of Social Work, Visva-Bharati, Sriniketan, West Bengal, India, in Bangkok, Thailand, February 17, 2003). See section II-B for description of facilitative approach to mediation.

⁶ ELISE BOULDING, *CULTURES OF PEACE: THE HIDDEN SIDE OF HISTORY* (2000).

⁷ See Louis Kriesberg, "Conflict Resolution," *Peace & World Security Studies* (1994).

⁸ DEBORAH M. KOLB, *WHEN TALK WORKS: PROFILES OF MEDIATORS* (1994) (also profiling Jimmy Carter's formal diplomacy incorporating mediation). Informal diplomacy needs extended documentation and evaluation, like that seen with institutionalized diplomacy using international mediation. See e.g. Jacob Bercovitch *International Mediation and Dispute Settlement: Evaluating the Conditions for Successful Mediation*, 12 *Negot. J.* 17 (1996) (studying the conditions for effective mediation and identifying these critical context variables: nature of the parties, dispute and mediation, along with process variables, or the relationship between mediation strategies and outcomes).

Informal process can and does play a role in preparing for and motivating formal, traditional diplomacy. Visionary initiative creates unexpected opportunities.⁹ For example, months of third party assisted meeting and negotiation, resulting in “direct, honest” communication and “mutual trust and affinity,” preceded the Oslo Accords.¹⁰

Egland asserts that non-governmental organizations, or international non-profits, are best positioned for such initiative.¹¹ Those who can operate flexibly, with access to people and networks that can be mobilized quickly, should take the lead.

Brian Ferguson, a leading anthropologist of war, views contemporary outbreaks of ethnic violence as the most pressing issue of war.¹² Though developing formal mechanisms for creating and enforcing public international law is an essential priority at this point in history, the majority of ethnic disputes fall outside the jurisdiction, authority and range of international forums as intra-national. At present, about thirty five conflicts war within nations.¹³ The United States can only handle three at one time---if it decides to respond.¹⁴

⁹*Kolb, supra note 8.*

¹⁰ Jan Egeland, *The Oslo Accord: Multiparty Facilitation through the Norwegian Channel, Herding Cats: Multiparty Mediation in a Complex World* (1999).

¹¹ *Id.*

¹² WILLIAM L. URY, *MUST WE FIGHT?* (2002).

¹³ Former Ambassador John MacDonald, “Ethnic Conflict in Today’s World,” Presentation at Weaving the Future of Peacemaking, April 7, 2003.

UNESCO proposes intercultural dialogue and cultures of peace.

(P)ease culture is a culture that promotes peaceable diversity...The ceaseless culture creating activity that characterizes the social body involves interaction at every level, from the intrapersonal...to the interpersonal—in household, neighborhood, and community, on through successive levels of civic organization from city to the United Nations....Because there is a constant interpenetration of levels, the societal capacity for aggression or peacebuilding, depends on patterns developed in every domain, from the individual and the interpersonal to the national, and interenvironmental....¹⁵

Without prompting, the community members surveyed here, in four different parts of the world, exemplify the viability and popularity of UNESCO's vision---through the practice of alternative dispute resolution. They enthusiastically report ADR's principles and practices guiding the

¹⁴*Id.*

¹⁵ Boulding, *supra* note 6. Intractable international conflict and “conflict-ridden” communities, as well as overcrowded courts, motivated ADR's growth in popularity through the 1970's and 80s. Kolb, *supra* note 8.

challenges of creating multicultural ¹⁶ community: deepening and informing analysis of complex conflict dynamics, building party capacity, providing helpful approaches at different levels of society ¹⁷ and otherwise creating effective process. They repeatedly describe the details of facilitative approaches to dispute resolution and applaud contribution to peacebuilding.

Facilitation, defined simply, means assistance. ¹⁸ Scholars of groups, organizations and systems popularized and expanded the term and practice.

Group facilitation is a process (where) a person whose selection

¹⁶Readers interested in exploring culture, ethics and conflict resolution, through an interactive case study (workbook) format, are directed to: Nancy Erbe. 2003. *HOLDING THESE TRUTHS: EMPOWERMENT AND RECOGNITION IN ACTION*. Berkeley: Berkeley Public Policy Press, Institute of Governmental Studies, University of California, Berkeley. The author welcomes feedback and is available to assist with classroom delivery and other use. She can be contacted at nerbe@pepperdine.edu with questions and needs.

¹⁷Conflict involves layers of dynamics, or “social, intellectual, or moral forces that produce (and change conflict.)” *THE AMERICAN HERITAGE DICTIONARY*, 268 (4th ed. 2001). They are often not expressly acknowledged but still present and part of every international and domestic, or intra-national, process. These layers include: 1) intrapersonal dynamics, or what occurs within the individuals present and concerned, that is relevant to the conflict in question, such as cultural bias, 2) interpersonal dynamics, or what occurs between the individuals present and concerned, that is relevant to the conflict, such as interpretation of conversational messages, 3) intragroup dynamics, or what occurs within the groups present and concerned, such as authoritarian, or “top-down” leadership, 4) intergroup dynamics, or what occurs between the groups present and concerned, such as historic scapegoating, or blaming, and power imbalances, and 5) system dynamics, or what occurs within and between “interacting variables creating complex wholes.” *Id.*, at 832. Systemic examples relevant to conflict are societal discrimination and denial of wrongdoing. See e.g. *Conflict Resolution In Korea: A Workshop for Korean Activists* 18, No. 3 *Conflict Resolution notes* 30 (2001); Boulding, *supra* note 6.

¹⁸ *THE AMERICAN HERITAGE DICTIONARY* (4th ed. 2001).

is acceptable to all members of a group, who is substantively neutral,¹⁹ and who has no substantive decision-making authority, diagnoses and intervenes to help a group improve how it identifies and solves problems and makes decisions to increase the group's effectiveness.

The facilitator's main task is to help the group increase effectiveness by improving its process.²⁰

Other definitions include “influencing how (participants) work together (and) managing processes and dynamics with a focus on group needs.”²¹ Common facilitator (third party) tasks encompass process observation and analysis and positive process influence through, for example, giving participants feedback about their approaches to communication and ideas for improving communication.²²

This article presents the results of qualitative research asking parties to cross-ethnic dispute resolution to evaluate the effectiveness of their leaders, or third parties, in their own words. The data reported here is from four different parts of the world struggling with ethnic conflict: the Balkans, Cameroon, Nepal and Ukraine. The majority of respondents have known violent conflict—war, terrorism and long-standing tensions.

¹⁹ See footnotes 93 and 94,

²⁰ ROGER SCHWARZ, *THE SKILLED FACILITATOR* (2002).

²¹ DAVID JAMIESON & THOMAS JUSTICE, *THE FACILITATOR'S FIELDBOOK: STEP-BY-STEP PROCEDURES, CHECKLISTS AND GUIDELINES*. (1999).

The survey's foremost discovery is the consistent popularity of facilitative approaches to dispute resolution with cross-ethnic conflict in all four regions. First, process that includes all ethnic groups equally is lauded as the most important variable for effective cross-ethnic conflict resolution. Second, research response portrays the best cross-ethnic leadership as assertive and empathetic. Identified as the characteristics of ineffective leadership are the opposite. Insensitive, close-minded, negative, critical, prejudiced, indifferent and aggressive are some of the descriptors. Third, research data describes the overriding importance of skilled attentive listening. Fourth, community members and professionals elaborate the value of conflict resolution training, or learning how to resolve their own conflicts and model cross-ethnic dispute resolution to their communities.

²² *Id.*

Lauded Cross-Cultural Process: Top Practices

Rank	Descriptors
1	<p>Open honest disclosure</p> <p>Information sharing</p> <p>Expressing and hearing feelings</p> <p>Discussing opinions</p> <p>Dialogue</p> <p>Exploring diverse gender and ethnic experience</p>
2	<p>Paraphrasing</p> <p>Empowerment (e.g. training participants to resolve own conflicts)</p>
3	<p>Open-ended questions</p>
4	<p>Perspective-taking</p>
5	<p>Identification of interests and commonalities (shared interests)</p>

The first section of this article discusses the rationale behind the survey design and how it was administered, including known characteristics of the population surveyed. The second section introduces and contrasts facilitative and evaluative approaches to dispute resolution, for readers new to ADR, along with concern that the international community may be unknowingly incurring destructive costs with its myopic focus on evaluative approaches and apparent ignorance of facilitation's value and popularity. The third section analyzes survey results. First, respondents request personal contact across ethnic, religious and caste lines. I briefly relate ADR to broad global needs. Then I review data, highlighting its strongest themes: multicultural equivalence, or process where all participate and are treated equally, and strong facilitative leadership emulating astute understanding, and guiding participants in practicing their own dispute resolution skills.

B. SURVEY DESIGN AND IMPLEMENTATION (METHODOLOGY)

Results of exploratory qualitative research,²³ evaluating facilitated intercultural dialogue, dispute resolution training, and mediation, are presented here. In partnership with a diverse group of

²³ Thanks to the Flora and Wallace Hewlett foundation for its support of this inquiry.

professionals²⁴ facilitating cross-ethnic dialogue²⁵ and trainings in Bosnia and Herzegovina; Montenegro and Serbia²⁶, a conflict resolution trainer and mediator²⁷ from Cameroon²⁸ a

²⁴ The professionals include an engineer, several journalists and lawyers, teachers, a former military officer and psychologist. The single largest group was lawyers.

²⁵ Facilitated dialogue and public participation in, for example, government decisionmaking or policy creation, have grown in popularity with public dispute resolution in recent years. Several overlap. Like the facilitative approach to mediation, values in dialogue include listening, understanding---feelings as well as perspectives, embracing difference while seeking common ground, openness to change, and problem-solving. See e.g. DUKES, *supra* note 1, at 62-75. (highlighting the success stories of, for example, revitalizing Chattanooga, Tennessee and planning the Berlin-Brandenburg International airport); STUDY CIRCLES RESOURCE CENTER, *FACING THE FUTURE: HOW SHOULD WE MOVE FORWARD AFTER SEPTEMBER 11?* (2001). Dialogue became widely publicized as various sponsors brought Israelis and Palestinians together for the first time. The Nansen Network, sponsored by Norway and one of the efforts evaluated here, is an example of facilitated dialogue in the Balkans. See e.g. *Balkan Dialogue Project*, <http://www.nansen-dialogue.net>.

²⁶ Readers may want an introduction to the social, economic and political conditions in this region during the time surveyed. One research partner provides his perspective in Appendix I. See LAURA SILBER & ALAN LITTLE, *YUGOSLAVIA: DEATH OF A NATION* (1997); SUSAN WOODWARD, *BALKAN TRAGEDY: CHAOS AND DISSOLUTION AFTER THE COLD WAR* (1995); <http://socrates.berkeley.edu/~csees/outreach2.html> (materials from outreach conference, Institute of Slavic, East European and Eurasian Studies, University of California, Berkeley, 1996). Thanks to Director Barbara Voytek and Program Coordinator Stella Bourgoïn for their assistance.

²⁷ In simple terms, mediation is a popular form of alternative dispute resolution where a third party facilitates, or assists, negotiations. See e.g. John Lande, *How Will Lawyering and Mediation Practices Transform Each Other?* 24 FLOR. ST. UNIV. L. REV 839 (1997), citing CHRISTOPHER MOORE, *MEDIATION PROCESS*, 8, 41, 53 (2d ed. 1996).

²⁸ Readers may also seek an introduction to Cameroon's context. This research partner's perspective is found in Appendix II. See Francis Nyamnjoh, *Cameroon: A Country United by Ethnic Ambition and Difference* AFR. AFF. 98 (1999); Ambe Njoh, *The Political Economy of Urban Land Reforms in a Post-Colonial State* INT'L J. URB. & REG'L RES. 22, 408-425 (1998); MARTIN NJEUMA, *INTRODUCTION TO THE HISTORY OF CAMEROON IN THE NINETEENTH AND TWENTIETH CENTURIES* (1989). Thanks to Jennifer Johnson, University of California, Berkeley, for her assistance.

lawyer-mediator working with court-mandated mediation in Nepal²⁹ and a community mediator practicing in Ukraine³⁰, we surveyed the evaluations of participants to multicultural process.³¹

Curiosity about the reasons members of multicultural conflict process ask certain third party intervenors, or facilitators, to assist them, and not others, motivated survey design. The research anticipated and proposed was within the United States. Enthusiasm of international research partners³² regarding the inquiry, however, altered it's direction and scope.

29 At the time of the survey's design, this research partner sought training in mediation for educators throughout Nepal. In the face of escalating violence, he hoped widespread training in mediation would help government's negotiations with terrorists. Former ambassador John McDonald and his Institute for Multi-Track Diplomacy are currently providing such training. This research partner was not available to provide contextual perspective. An urban planner from Kathmandu, Nepal, however, introduces social and political background in Appendix III.

³⁰ *Readers interested in educating themselves about Ukraine's social, economic and political conditions at the time of this research, see ROMAN SZPORLUK, RUSSIA, UKRAINE AND THE BREAK-UP OF THE SOVIET UNION (2000); ANDREW WILSON, THE UKRAINIANS: AN UNEXPECTED NATION (2000); Michael M. Naydan, Teaching Post-Independence Ukrainian Culture In Western Cultural Space, 43 AM. ASS'N ADV. SLAV. STUD. 7 (2003) (providing several respected sources.) Thanks again to Barbara Voytek, Executive Director, Institute of Slavic, East European and Eurasian Studies, University of California, Berkeley. This research partner provides contextual background in Appendix IV.*

³¹ More evaluative research is needed--- regarding participant satisfaction, what makes an effective mediator and essential qualities for success in mediation. *See e.g. Frank E. A. Sander, Some Concluding Thoughts, 17 OHIO ST. J. ON DISP. RESOL. 705, 706-707 (2002).*

³² I met some of the research partners teaching conflict resolution at the University of Oslo International Summer School. I was invited to do so by Norwegian colleagues at the International Peace Research Institute of Oslo and introduced to Dan Smith, the Institute director at that time. He invited me to meet his Balkans colleagues in the Nansen project. Several joined the research team. I would like to acknowledge and thank them all.

One body of scholarship focuses on expert exporting of North American experience, with the purpose of developing transferable models and best practices.³³ The purpose of this research was quite different. The users themselves, rather than outside experts, evaluate conflict intervention. Except for one North American trainer in Cameroon, all intervenors are non-American.

Lack of “sustainable conflict handling institutions,” or effective community capacity, is a shared concern, however.³⁴ One motivation for asking users to evaluate their experience in assisted conflict process mirrors Yarn’s statement that “sustained capacity for conflict handling starts with a commitment to do so.”³⁵ Why not build on existing commitment through identifying the practices and concepts evaluated most highly by users themselves?

Studying multicultural process is unavoidably complex. Researchers must be particularly sensitive to their own cultural assumptions and biases. For this reason, Michael Patton’s

³³ See e.g. Douglas H. Yarn, *Transnational Conflict Resolution Practice: A Brief Introduction to the Context, Issues, and Search for Best Practice in Exporting Conflict Resolution* 19-3 *CONFLICT RESOLUTION QUARTERLY* 303 (2002).

³⁴ *Id.*, at 306.

³⁵ *Id.*, at 315.

approach to evaluative research is used.³⁶ Unlike quantitative research, Patton's qualitative approach begins without researcher premises. None are formulated or tested. Instead, those surveyed create their own evaluation criteria. A series of elicitive, open-ended incomplete statements are used to encourage respondents to identify and describe their priorities, in language and description of their choice. Overriding goals are obtaining descriptive data as free as possible from researcher perspective, bias and language and essential premises formulated and prioritized by respondents themselves. In accord with objectivist grounded theory, researchers did not force data into preconceived categories through imposition of artificial questions.³⁷

Readers are likely more familiar with quantitative research samples and statistical analysis. Qualitative research aims to provide a focused and in-depth understanding of a particular psychological or life experience or community through interpersonal methods like interviews and interpretative rather than statistical analysis. Such ethnomethodological approaches to social inquiry are broadly concerned with how people construct their own definitions of social situations.³⁸

Questionnaires and human subject informed consent forms were mailed to six research partners, three in the Balkans, one in Cameroon, West Africa, one in Nepal, South Asia and one in Ukraine. Research partners gave questionnaires to participants on completion of multicultural

³⁶ See MICHAEL PATTON, *QUALITATIVE RESEARCH AND EVALUATION METHODS* (2002).

³⁷ See Barney G. Glaser, *THE GROUNDED THEORY PERSPECTIVE II* (1999).

³⁸ Chris Mann and Fiona Stewart, *INTERNET COMMUNICATION AND QUALITATIVE RESEARCH* (2000).

conflict process.³⁹ Respondents were given the option of requesting a phone or electronic interview. None elected this option. Because the sensitive nature of the process being evaluated, particularly in the context of post war reconstruction, could discourage open, honest disclosure, survey respondents were allowed to remain anonymous and promised confidentiality.

All respondents remained anonymous. As a result, further exploration and elaboration of responses was prohibited.⁴⁰

Rating scales were used similar to the effectiveness rating used by Andrea Schneider in her seminal study of legal negotiators.⁴¹ Respondents were asked to rate the assessed leader of multicultural process on effectiveness.

³⁹ This research assumed that most, if not all, respondents, are new to the conflict process evaluated. Thus they are not asked to explain or describe their conflict process. They are simply asked to evaluate the effectiveness of their third party facilitator, or assistant, in their own words and from their perspective.

⁴⁰ *Research regarding cross-ethnic conflict requires balancing desire for extended, in depth data with respondents' ambivalence about participation unless promised anonymity about sensitive issues and the freedom to respond as comfortable. At least the latter results in some presumably honest data.*

⁴¹ *Andrea Kupfer Schneider, Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style, 7 HARV. NEGOT. L. REV. 143, 147-148 (Spring 2002).*

I would rate the cultural approach, rapport, awareness, sensitivity and competence, of my trainer(s), group members, facilitators, negotiators and/or mediators (please circle which apply) as:

11.....1
excellent average poor

Please explain: (*Note: If your rating varies depending on behavior, please use a range.*)

Respondents were also asked to evaluate their dispute resolution process in general, once again with their own words.

I found the following:

Helpful

Unhelpful

Overall, I would recommend or suggest:

Some readers may feel frustrated with response brevity, particularly when English is used as a second or third language. Research was conducted, however, with the stated purpose that its results be used to frame criteria for case-by case evaluation of future outside, or third party,

multicultural effectiveness. Furthermore, it is hoped the results will guide and inspire in-depth interviews, focus groups, field observation, analysis of published sources of information and longitudinal quantitative research. Often meanings emerging from qualitative data, like the process evaluation here, are tested in subsequent quantitative studies for plausibility, sturdiness, confirmability, or validity.⁴²

The descriptions of the leaders to multicultural process rated most effective, the descriptions of helpful and unhelpful process, and respondent recommendations were studied to identify patterns. The top patterns are elaborated and explained throughout this article.

II. FACILITATIVE ADR DESERVES BROADER CREDIT AND CONSIDERATION

International peacebuilders, conflict resolvers and lawyers routinely face questions of enormity, complexity and urgency. How do we facilitate recovery and resilience in the face of war and other conflict that scars? Counter intractable cycles? Nurture critical steps forward?

I never anticipated that one of the answers might be the facilitative approach to dispute resolution. While the spirit and determination of those embracing facilitative tools must receive

⁴² Michael Huberman and Matthew Miles, *QUALITATIVE DATA ANALYSIS: AN EXPANDED SOURCEBOOK* (1994).

the bulk of credit, they laud the basics ADR practitioners may take for granted and sell short where they are most needed.⁴³

Top Recommendations for Cross Cultural Conflict Process

Rank	
1	<p style="text-align: center;">Include all voices</p> <p style="text-align: center;">Encourage active participation</p> <p style="text-align: center;">Telling the truth</p>
2	<p style="text-align: center;">Increase seriousness (of participation)</p>

⁴³The author wishes to hear about bi/multicultural process and systems that those with the least power evaluate most highly and from those studying or interested in studying the cumulative impact of case-by case effort. She can be reached at The Straus Institute for Dispute Resolution Malibu, CA 90263 or nerbe@pepperdine.edu.

A. AUGMENTING COST/RISK/BENEFIT ANALYSIS FOR ADR ITSELF

Survey results favor facilitative response to cross-cultural conflict. The preference is impossible to ignore. Facilitation's value is repeatedly described in concrete detail.

The heart of the debate between evaluative and facilitative approaches to disputes in the United States is within the alternative dispute communitymediating litigation. Nevertheless, I reference it here. I am concerned when commercial and corporate arbitrators and mediators with evaluative approaches are quoted on issues of international significance as if their approach to ADR is comprehensive.⁴⁴ It is frightening to see commercial and corporate arbitrators speaking as authorities on mediation's value with complex political disputes and international relations.

Before contrasting approaches to mediation, listing evaluative approaches to dispute resolution provides a clear framework. "Judges, arbitrators, neutral experts and advisors are evaluators...(To) make decisions they use predetermined criteria to evaluate evidence and arguments presented by adverse parties. (Their tasks include) finding "the facts," properly weighing evidence, judging credibility and allocating burden of proof, determining and applying relevant law, rule or custom to the particular situation, and making an award or rendering an

⁴⁴David Lazarus, *A dispute beyond mediation* San Francisco Chronicle, March 19, 2003 (exploring mediation's potential with the war on Iraq.)

opinion. Adverse parties have expressly asked the evaluator, judge, arbitrator, or expert, to decide the issue or resolve the conflict.” (emphasis added)⁴⁵

The following quotes preceding the United States’ war with Iraq indicate strong bias favoring the evaluative approach and belief that it represents mediation’s full potential. “If Hussein has contractual obligations [to disarm] that sets up a better case for mediation...It gives the mediator something to work with...” (assuming the need for “predetermined criteria-- relevant law, rule or custom...”). “The next step, mediators say, would be to...(determine) where compromises can be made and how much flexibility both parties are bringing to the equation...(A)n especially tricky task for any mediator would be coming up with a solution... “⁴⁶ (assuming that the mediator will “decide the issue or resolve the conflict.”)

An Argentine lawyer studying alternative dispute resolution brought facilitative relevance to my attention. After hearing my presentation on multicultural conflict resolution⁴⁷, he asked if the facilitative approach is most appropriate for cross cultural mediation. The survey data

⁴⁵ Lela P. Love, *The Top Ten Reasons Mediators Should Not Evaluate*, 24 FLA. ST. U. L. REV. 938 (1997). It should be noted that not all scholars of ADR agree with this framework. Professor Antonio Mendoza, for example, believes that the evaluative approach does not necessarily equate with mediator decisionmaking. Evaluative mediators may share their expertise but leave decisions to the parties. Conversations with Professor Antonio Mendoza, September and October 2003.

⁴⁶ *Id.*

⁴⁷ “Conflict resolution” is a popular term of art in alternative dispute resolution. *See e.g.* MORTON DEUTSCH & PETER T. COLEMAN, *THE HANDBOOK OF CONFLICT RESOLUTION: THEORY AND PRACTICE* (2000); DENNIS J. D. SANDOLE & HUGO VAN DER MERWE, *CONFLICT RESOLUTION THEORY AND PRACTICE* (1993). In this article, conflict resolution will be equated and exchanged with alternative dispute resolution.

reviewed here answers affirmatively, with a loud yes, while simultaneously validating the roles of expertise and direction within facilitation. The result may be seen as an optimal balance and blending of the best of both styles.

Most Esteemed Cross-Cultural Facilitators

Rank	Descriptor
1	Knowledge and experience
2	Tolerant No prejudice Open-mind Skillful facilitation
3	Engaging
4	Interesting
5	Energetic/dynamic
6	Cultural and religious understanding
7	Amusing
8	Influence/charisma In charge while guiding Cooperative Positive spirit/feeling Patient Impartial

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These research results demonstrate how ADR's most important issues can join and transcend diverse forums, international and domestic arenas; public and community as well as litigated disputes. Fundamental questions are raised about global dispute resolution, but also the role of mediators, facilitators, trainers, lawyers, arbitrators⁴⁸ and judges with disputes involving several cultures, within and outside legal systems. Universal is the need to knowledgably contrast facilitative and evaluative strengths and weaknesses before choosing "best options."

The results cannot be quickly or easily assessed, as clear-cut "either/or." Authority, expertise and evaluation can and do play essential roles with cross-ethnic disputes. What is their optimal role? When is their contribution risky?⁴⁹

⁴⁸“In civil law the key word is “mediation.” Mediation means “Vermittlung”, derived from medium, the middle. A mediator is a person standing in the middle between two disputing parties...This has nothing to do with a private arbitrator...The difference is considerable (s)ince the arbitrator decides just like a court...The mediator however does not decide, but rather attempts to guide the disputing parties to a mutual agreement... (i.e.) the parties themselves...decide the dispute. *The negotiating state*, Die Zeit (1999). (Thanks to Anja Zuckmantel for her translation and contribution).

⁴⁹ See Murray S. Levin, *The Propriety of Evaluative Mediation: Concerns About the Nature and Quality of an Evaluative Opinion* 16 OHIO ST. J. ON DISP. RESOL. 267 (2001) (reviewing risk of inaccurate evaluation).

I introduced the need for a similar discussion among public health workers at an international conference in India a few years ago. Sponsored by professional groups from Canada and India, the gathering drew nurses, doctors, social workers and academics from and working in diverse countries like Bangladesh, Iran, Nigeria, Thailand and Vietnam. Many resonated with the assertion that, despite acknowledging need for more public participation, critical blocks to international development include predominance of the evaluative, or expert, approach, along with failure to facilitate effective partnerships with communities served. For example, Burmese activists request that the United Nations and development organizations initiate “inclusive dialogue” and local involvement in negotiations, along with community training (capacity building) in “negotiation, conflict resolution and dialogue” skills.”⁵⁰

Related requests are being made with emerging international courts of justice. When asked about the International Criminal Tribunal, Bosnian legal professionals expressed concern that the tribunal was pursuing its “own determined agenda...without meaningful input...(and thus) international organizations run the risk of undermining the very goals they are trying to achieve.”⁵¹ The report recommends that “additional interventions that are different from, but complementary to trials, such as facilitating culturally accepted mechanisms of justice should be considered...(S)ocial reconstruction may not occur when people are faced with judicial decisions that do not correspond to their perceptions of what happened, i.e. their ‘truth.’ ”⁵²

⁵⁰ ALTERNATIVE ASEAN NETWORK ON BURMA, A PEACE OF PIE: BURMA’S HUMANITARIAN AID DEBATE 57 (2002).

⁵¹ UNIVERSITY OF CALIFORNIA, BERKELEY AND UNIVERSITY OF SARAJEVO, JUSTICE, ACCOUNTABILITY AND SOCIAL RECONSTRUCTION (*An Interview Study of Bosnian Judges and Prosecutors*) (May 2000).

⁵² *Id.*

B. CONTRASTING FACILITATIVE & EVALUATIVE APPROACHES

The mediator who evaluates often helps participants understand the strengths and weaknesses of their positions, assuming that the mediator has knowledge, expertise and opinions that must be shared for optimal problem-solving. The facilitative approach provides a framework that assists parties discover and create options even if they and third parties cannot envision any when they first meet.⁵³ “(T)he mediator who *facilitates assumes that the parties...can develop better solutions than any mediator might create.*”⁵⁴

With the evaluative approach, participants’ style of speech and behavior necessarily aim to convince their decisionmaker.⁵⁵ Because facilitators have no decisionmaking authority, participants share information and relate to each other with the aim of reaching mutually beneficial agreement. Participants may decide to consult with experts but decisions are their own.⁵⁶

⁵³ Parties in conflict need only show a willingness to learn more about mediation “to begin talks.” *Contra* Lazarus, *supra* footnote 28.

⁵⁴ Joseph B. Stulberg, *Facilitative versus Evaluative Mediator Orientations: Piercing The “Grid” Lock* 24 FLA. ST. U. L. REV. 995-996 (1997).

⁵⁵ Joseph B. Stulberg, “*Questions*,” 17 OHIO ST. J. ON DISP. RESOL. 531, 532 (2002).

⁵⁶ *Id.*

The directive style can and does include suggestions, heavy handed pressure and pushing participants towards the third party's conception.⁵⁷ The facilitative mediator assumes that his principal mission is to clarify and to enhance communication between the parties to help them decide what to do.⁵⁸

III. PRAISE FOR FACILITATIVE FRUITS

Crossing historic boundaries of ethnic, class, religious and regional distance with simple human contact, and, even more so, communication and relationship, is an opportunity being embraced around the world through facilitated mediation and dialogue.⁵⁹ While strong critique exists of the risk that informal

⁵⁷Stulberg, *supra* note 54, at 995-996. ("Mediators using a facilitative style focus on eliciting principals' own opinions and refrain from pressing their own...I believe that the term "evaluative" often refers to the level of directiveness or coercion that a mediator employs." *Id.*)

⁵⁸Many mediators advocating the facilitative approach believe that the evaluative approach should be called non-binding arbitration, where parties are free to reject their third party's decision, neutral case evaluation, where the third party is acknowledged as an ethical expert with no personal interest in the evaluation made, or private settlement conferencing, where the third party's legal experience is used to advise the costs and benefits of negotiating a decision rather than proceeding to court with a lawsuit. *Id.*, at 850, 855 and 864.

Another alternative to facilitated mediation and dialogue, as well as litigation and arbitration, for those who prefer or need the evaluative approach, is ombuds neutral factfinding. The United Nations views ombudsing as an important tool to help and protect international human rights. As a result, many ombuds offices have been established in the governments of third world countries. In the United States and Canada, ombuds agencies have been created to assist citizens, consumers, and employees who wish to address concerns about administrative actions or lack of actions (government, nursing home, prison, etc.) University and College Ombuds, *A Brief History of Ombudsing*, at <http://www.colorado.edu/Ombuds/UCOA/history.Html>. (22) Adequate information, however, is necessary for the ombuds process to work. Klausner, *supra* note 3, at 243.

⁵⁹William Ury (Harvard Negotiation Project) builds a case for dialogue as a means to discover and create solutions for all in the world's most conflicted communities. Ury, *supra* note 12.

process allows participants to perpetuate; even hide, prejudice and discrimination,⁶⁰ growing popularity reflects participants' desire to meet each other face-to-face, as human beings, rather than mythologized, and too often demonized, "others."⁶¹ They wish to hear each other's stories

⁶⁰See e.g. Richard Delgado et. al, *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV 1359, 1387-91, Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L. J. 1545 (1991); Isabelle Gunning, *Diversity Issues in Mediation: Controlling Negative Cultural Myths*, 1 J. DISP. RESOL. 55 (1995). Mediation and other popular informal conflict intervention are criticized for pacifying, avoiding important conflict with essential social issues, and circumventing legal proceedings. Laura Nader asserts that "disputing without the force of law...[is] doomed to fail."
AUERBACH, J. S., *JUSTICE WITHOUT LAW? RESOLVING DISPUTES WITHOUT LAWYERS* (1983). A legal ethical perspective equates enforcement of law democratically developed with collective conscience and morality. A lawsuit, with its protections: public record, scrutiny and precedent, is arguably more ethical than private and informal negotiation, or mediation, that can conceivably push for conformity and omit critical legal/constitutional rights. In the beginning of mediation's growth in popularity within U.S. legal systems, Auerbach saw mediation being "most enthusiastically prescribed for disadvantaged citizens who only recently had begun to litigate successfully to protect and extend their rights" and believed that "without legal power, the imbalance between aggrieved individuals and corporations or government agencies cannot be redressed." *Id.*

⁶¹ Social identity theory asserts the tendency to see the world in an us-versus-them framework. "There is an in-group-out-group bias in which we hold less favorable opinions about groups to which we do not belong...According to social identity theory...we use group membership as a source of pride and self-worth...to feel such pride, however, we must assume that our group is, in fact, superior...[leading] us to inflate the positive aspects [of our group] and belittle [others.]"
DAVID W. & FRANK P. JOHNSON, *JOINING TOGETHER: GROUP THEORY AND GROUP SKILLS* (6th ed., 1997). With scapegoating, a group or individual is habitually blamed--often irrationally through displacing tensions from another conflict. At scapegoating's most horrific, the vilified "other" is described as "evil." Dehumanization and resultant prejudice rationalize and encourage attack. *Id.* "All my life I have lived in a small community united only by its insensitivity for another people." *Anonymous international student.* See Ernst Gunter Beier, *The Effect of Induced Anxiety on Flexibility of Intellectual Functioning*, 65 Psychological Monographs: General And Applied (Herbert S. Conrad ed., 1951), IRVING L. JANIS & LEON MANN, *DECISION-MAKING: A PSYCHOLOGICAL ANALYSIS OF CONFLICT, CHOICE AND COMMITMENT* (1977), C. F. Smart, W.A. Thompson & I. Vertinsky, *Diagnosing Corporate Effectiveness and Susceptibility to Crises*, Studies on Crisis Management (C.F. Smart and W.T. Stanbury, ed. 1978); ERNEST HILGARD & GORDON BOWER, *THEORIES OF LEARNING* (1966).

and perspectives----often for the first time. In a city like Mostar, such dialogue presents a rare opportunity to cross imposed separation.⁶²

Mostar is a city in southern Bosnia and Herzegovina still strongly divided

into two ethnically driven communities. The division is the consequence of the fierce armed conflicts, and present political structures are only deepening the gap between the two communities...(T)here are...young people willing to co-operate and overcome the current polarization.⁶³

An essential consideration for the international community, particularly with transitional and emerging democracies, where rule of law and legal institutions require much capacity building, is the distance between law, practice and community norms. Many countries with exemplary constitutions and extensive formally stated law, have little or slow enforcement in daily life---informal and bureaucratic. Ideally, public process respects and reflects law. Real practice, however, can be dramatically different.⁶⁴ In this context, alternative dispute resolution provides

⁶²“Democracy, Human Rights and Peaceful Conflict Resolution,” Nansen Network: Fourth Follow-up Seminar (2000).

⁶³ *Id.*

⁶⁴ *See e.g.* CARMEN DIANA DEERE AND MAGDALENA LEON, EMPOWERING WOMEN: LAND AND PROPERTY RIGHTS IN LATIN AMERICA (2001); IRWIN P. STOTZKY (ed.) TRANSITION TO DEMOCRACY IN LATIN AMERICA: THE ROLE OF JUDICIARY (1993); Klausner, *supra* note 3, at 234-42.

viable options for critical problem-solving and plays an essential role in empowering the participation necessary for good governance.⁶⁵

A related question is whether equity⁶⁶ is truly possible without citizens' direct participation in decisionmaking and other exercise of power.

Time and time again, we have seen...campaigns [promoting ethnic violence] to be conceived, planned and coercively executed by centralized power elites seeking to maintain or expand their hold on power and wealth –[with messages of hate internalized and horrifically advanced],⁶⁷

Empowering community in the face of corrupt and self-interested political leadership represents many communities' best, perhaps only, option for building peace.⁶⁸ “Somehow confidence must

⁶⁵ See e.g. JENNIFER A. WIDNER, BUILDING THE RULE OF LAW: FRANCIS NYALALI AND THE ROAD TO JUDICIAL INDEPENDENCE IN AFRICA 35, 282 (2001) (judging alternative dispute resolution to be the most effective option for confronting corruption in Tanzanian courts unless dispute involved government). Klausner, *supra* note 3.

⁶⁶ For its use here, equity will be simply defined as “(j)ustice administered according to fairness.” BLACK’S LAW DICTIONARY 484 (1979).

⁶⁷ Ury, *supra* note 12, at 1020.

⁶⁸ See Deere and Leon, *supra* note 64 (“[P]ower from within” or internal power... has to do with generating strength from within oneself...and is apparent when someone is able to resist the power of others by rejecting undesired demands”).

be discovered in a hostile environment.”⁶⁹

115 surveys were completed and returned by those facing the above challenges. Survey respondents, from the four different parts of the world reviewed here, laud facilitative process and fruits. Facilitating inclusive dispute resolution can effectively bridge difference. At its best, facilitation creates positive multicultural spirit and climate, emphasizes careful, respectful listening, and results in the empowered capacity necessary for tough, collaborative problem-solving.

A. ADVANCING INCLUSIVE DISPUTE RESOLUTION

The opportunity to participate in⁷⁰ and create inclusive⁷¹ process is the most popular reason for highly rating mediation and other facilitated conflict process---in all four regions surveyed.⁷²

Words⁷³ like “equal treatment” and “participation” illustrate optimal multicultural conflict

⁶⁹ *Id.*

⁷⁰“(Within the States r)esearch reveals that three elements---participation, dignity and trust---play a large role in people’s assessment of procedural fairness...” *Therapeutic Jurisprudence*, 38 S. TEX. L. REV. 769 (1997) (emphasis added).

⁷¹ Nancy Erbe, University of California, Berkeley, *Cultural Competence: Surveying Party Perception* (2000-2001).

⁷² *Id.* “[There are]...countless examples of symbiotic coexistence between people who are dramatically different...[C]ollective violence along cultural and other lines of identity does not bubble up in populace itself.” Ury, *supra* note 12.

⁷³All initiated evaluating their experience in English. No translation was needed. Whenever possible, respondents’ own words are used. Several quotes are included (but quotation marks are not used with most single words). Interestingly, many evaluators used technical language, e.g. paraphrasing, impartiality, perspective-taking.

experience.⁷⁴ Even “merely” introducing all equally was applauded.⁷⁵

Partakers of conflict resolution training in Cameroon⁷⁶ affirm active participation, with opportunity for community members to share and discuss real life experience. One participant declared the importance of facilitating community’s resolution of their own conflict in non-violent ways rather than directing parties to conflict.⁷⁷

70. *Id.* Richard Salem headed the U.S. Community Relations Service in Chicago for fourteen years. In that capacity, he mediated politically renowned ethnic disputes like Wounded Knee and the Nazi protests in Skokie Illinois. Mr. Salem describes the impartiality of mediation. “Throughout the process, the mediator conveys the message that the parties are treated equally by controlling the way in which they are greeted, seated, addressed, listened to and responded to. This treatment is a strong stimulus for the parties to treat each other as equals.” Albie M. Davis, Richard A. Salem, *Dealing with Power Imbalances in the Mediation of Interpersonal Disputes*, *Mediation Quarterly* (No. 6, 1984).

⁷⁵ Burmese activists promote process “where all stakeholders are equals,” elaborating that this “would be the first time in many decades that all political stakeholders can engage in dialogue on an equal playing field, hence contributing to the development of pluralism and democratic governance.” Alternative ASEAN Network of Burma, *supra* note 50, at 57.

⁷⁶ Ten evaluated conflict resolution conducted by an ecumenical religious institute in Cameroon, with facilitators from Cameroon and the United States. Nine of these described their experience as multicultural. All evaluated their experience highly, with requests for more.

⁷⁷ *Id.*

Most surveys from Nepal⁷⁸ promote low power distance⁷⁹, or power sharing, regardless of caste or ethnic difference.⁸⁰ When all were not involved, uniform inclusion was requested more than once. Stated was the belief that decisions made by “common consensus” are more acceptable and easier to implement than those made by a single person.⁸¹

The strongest preference, found in the survey results presented here and the majority of my students, is facilitation of equal treatment, with respect. Students assert that prejudice and discrimination, including favoritism, should not be tolerated. Some suggest that minorities should be allowed to voice their opinions first. If necessary, process should be private---to prevent public harassment and abuse. Those not agreeing with democratic process should be excluded, particularly if they are societal authorities perpetuating discrimination and other wrongs.

⁷⁸ Fourteen surveys were completed after court-mandated mediation in Nepal, with eighty-five percent described as multicultural.

⁷⁹ Geert Hofstede labels societies that confer superior and inferior status, based on age, class and other difference, as “high power distance.” *See, e.g.* GEERT HOFSTEDÉ, CULTURES AND ORGANIZATIONS: SOFTWARE OF THE MIND (1991). Bosnian legal professionals report feeling like inferiors and not “equal partners in the design and implementation of many of the programs intended to rebuild their legal system and country.” University of California and University of Sarajevo, *et. al., supra* note 51.

⁸⁰ Erbe, *supra* note 71.

⁸¹ *Id.* “When the department of Justice dispatches a team of mediators to service racial conflicts....the last thing parties will embrace is someone trying to tell them how to live their lives.” Stulberg, *supra* note 54, at 995.

Worst Cross-Cultural Leaders: Reported Weaknesses

Rank	Descriptors
1	Do not listen carefully Lack deep understanding
2	Judgmental Disrespectful, e.g. put down parties Bad tempered Emphasize negative

The value of facilitative participatory process was explicitly mentioned by Nepal respondents in reference to cultural diversity and conflict.⁸² One Nepalese party esteemed mediation as a means for parties to enlighten each other about difference, e.g. provide cultural education.⁸³

⁸²Erbe, *supra* note 71.

⁸³*Id.*

Others did not like dividing into groups based on ethnic difference.⁸⁴

Once respect is established, however, optimal multicultural spirit and climate provides much needed relief from the seriousness and tension of escalating conflict. Balkans groups elucidate the spirit of ideal multicultural leadership as interesting, easy-going, funny, energizing and friendly. Fun, or play, is applauded and requested.⁸⁵

One respondent from Nepal also stressed mediator humor, with an interesting statement about culture. “(O)nly the same culture, religion or traits doesn’t make the mediator perfect. The sense of humor, his personality...also counts.”⁸⁶

On the other hand, respect for the evaluative approach to mediation was expressed to a limited extent.⁸⁷ “(I)t is better to know the actual matter before interfering (with) others’ problems.”⁸⁸

Assisting parties to recognize, admit and take responsibility for the harms and other consequences of their conflict was applauded.⁸⁹

⁸⁴ *Id.*

⁸⁵ Erbe, *supra* note 71. Perhaps this leadership revered in some parts of the world and described below also facilitates opening of mind and understanding.

⁸⁶ *Id.*

⁸⁷ Erbe, *supra* note 71.

⁸⁸ *Id.*

⁸⁹ *Id.*

The facilitative approach to mediation was preferred in Ukraine.⁹⁰ “(The mediator) has to help (us) to find resolution but not resolve it by himself.”⁹¹ Earlier Cameroon evaluation was echoed. “I suggest that many people should be train[ed] so that they will solve their problems without looking for third parties to solve their problems. This will go a long way to reduce the number of problems that exist in society.”⁹²

Ukraine respondents debate facilitative preference when evaluating their third party’s impartiality.⁹³ Some believe a mediator should know the background of the parties and groups to the conflict.⁹⁴

⁹⁰ Eleven surveys were completed in Ukraine, evaluating community mediation and conflict resolution training. Sixty-three percent evaluated multicultural process and leadership. Erbe *supra* note 71.

⁹¹ *Id.*

⁹² *Id.*; See also James H. Stark, *The Ethics of Mediation Evaluation: Some Troublesome Questions and Tentative Proposals From An Evaluative Lawyer Mediator* 24 FLA. ST. U. L. REV. (1997); Davis and Salem, *supra* note 70 (“[M]ediation recognizes human intelligence. Mediation assumes that the parties are competent to resolve their own disputes. Often, people who have been socialized to feel powerless rise to the occasion during mediation...”).

⁹³ Erbe, *supra* note 71; Impartiality is popularly summarized in the United States as unbiased, with no preference for any party to the conflict and disclosure of any other relationship with a party to the conflict, including class or group identification. See ROBERT BARACH BUSH, *THE DILEMMAS OF MEDIATION PRACTICE: A STUDY OF ETHICAL DILEMMAS AND POLICY IMPLICATIONS* 10-11 (1992).

⁹⁴ Erbe, *supra* note 71. Brendan McAllister, “*Mediation: A Tool for Change—Northern Ireland Experience*,” 18, No. 3 *Conflict Resolution notes*, 28-29 (2001) (“Each side (in Northern Ireland) is normally suspicious of ‘outsiders’ and especially suspicious of those who spend time with the opposition...I would suggest that in Northern Ireland there are very few, if any truly *neutral* people...While we need not to feign neutrality, we do...need to remain *impartial*...Impartiality is an important hallmark of a mediator.”) (later describing impartiality as “open-minded”).

Many, nevertheless, explicitly appreciate, and even request, impartiality: “not interfering (in) the process of discussion” or pushing for agreement.⁹⁵ Notwithstanding, allowing the group to lose focus was criticized.⁹⁶

Several respondents from the Balkans⁹⁷ prize inclusive participatory process.

“(D)iscussing...religion is so hard and I wanted...(everyone to have a voice.)”⁹⁸ Rated highly were their third parties’ open-mind “for everyone,” regardless of ethnic or gender difference.⁹⁹ Relished were opportunities for teamwork.¹⁰⁰

Eighty Balkans respondents evaluated a range of facilitated practice, including conflict resolution and related training (e.g. “Dialogue and Cultural Identity”), cross-ethnic dialogue and a small number of mediations. Ninety-percent described their processes as multicultural. Several were more than enthusiastic, using exclamation points and words like “precious” and “brilliant.”¹⁰¹

⁹⁵Erbe, *supra* note 71.

⁹⁶*Id.* See section III-A for further discussion of the importance of assertive rather than aggressive leadership.

⁹⁷The vast majority of surveys, about two-thirds, were returned from different parts of the Balkans, including Podgorica, Montenegro, Mostar, Bosnia-Herzegovina, and Belgrade, Serbia

⁹⁸ Erbe, *supra* note 71.

⁹⁹ *Id.* “In my experience (mediating in Northern Ireland), I have found that retaining a mentality of impartiality, of being ‘open-minded’ in my work has often made me ‘other centered’...” Brendan McAllister, *supra* note 94, at 26.

¹⁰⁰Erbe, *supra* note 71.

¹⁰¹ *Id.*

Balkans respondents not only valued the conflict process being evaluated but often expressed gratitude for broader contribution to emerging democracy in their societies.¹⁰² Several underscored learning the principles of democratic society and “new ideas for implementing democracy in our community.”¹⁰³

I discovered that I’m not as democratic as I thought... All of this showed me that I am not what I hoped...and how to become what I like...open-minded and democratic.¹⁰⁴

In praising the facilitator, “(H)e did a great and important job. He directed our mind to think about democracy!”¹⁰⁵

B. CREATING REQUISITE MULTICULTURAL SPIRIT AND CLIMATE

How do we facilitate constructive contact and communication in the face of destructive realities, especially as they manifest themselves in communities like those surveyed, with generations of

¹⁰² Their acknowledgment is echoed in many quarters. For example, the Third UN World Conference on Women in Nairobi (1985) recognized democratic participation as necessary to empowering women. *See also* JAY FOLBERG & ALISON TAYLOR, *MEDIATION: A COMPREHENSIVE GUIDE TO RESOLVING CONFLICTS WITHOUT LITIGATION* (1984). (“Using mediation to facilitate conflict resolution and encourage self-determination...strengthens democratic values and enhances the dignity of those in conflict.”)

¹⁰³ Erbe, *supra* note 71.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

stubborn ethnic conflict, violent terrorism, abuse, mistreatment and suppression?¹⁰⁶ This article is based on the premise that such a critically important question deserves a case-by case answer.¹⁰⁷

Nevertheless, survey respondents, from the Balkans, Cameroon, Nepal and Ukraine---four very different parts of the world, laud and illustratesome key themes for optimal multicultural leadership in circumstances like those described above.¹⁰⁸ Dispute resolution professionals from the United States may feel ill-qualified to respond. Unexpected and striking, however, are the parallels between the evaluation detailed here and a recent study of the most excellent lawyer negotiators in the United States. The most effective in both studies are universally perceived as assertive and empathetic problem-solvers.¹⁰⁹

¹⁰⁶ Like the dispute resolution field but unlike traditional academic research, peace research advances an obligatory link between theory and practice. Theory must apply to solution of actual problems and prove itself in combating violence while championing peace. See Helge Hveem and Sverre Lodegaard, "An Editorial," *Journal of Peace Research*, 1-2 (1978). Proving and measuring contribution, however, is enormously challenging. The variables are many and complex: social, political, cultural, economic...As one example of the gauntlet, a popular movement within peace studies posits that emerging democratic practice reduces societal violence. See e.g. Nils Petter Gleditsch, *Peace and Democracy*, *Encyclopedia of Violence, Peace and Conflict* (Volume 1) (1999). Yet without established theory, critics challenge. See e.g. Gates, S., Knutsen, T.L. and Moses, J.W., "Democracy and Peace: A More Sceptical View," *Journal of Peace Research* (1996).

¹⁰⁷ "(P)eacemaking is marked by experimentation. There is no right way to go about creating peaceful communities and a peaceful world. Working for peace will differ according to context." HERR & HERR, *TRANSFORMING VIOLENCE: LINKING LOCAL AND GLOBAL PEACEMAKING* (1998)

¹⁰⁸ Erbe, *supra* note 71.

¹⁰⁹ The most effective lawyer negotiators are also described as "trustful," "sincere," and "facilitative." Schneider, *supra* note 41.

Skilled empathy, or deep recognition and understanding of the other's perspective ("perspective taking"), seems ideally suited for cross-cultural dispute resolution. Perspective-taking describes the popular "walking in another's shoes," or attempting to "see through another's eyes" and experience.

In Cameroon and throughout the Balkans, evaluators speak out in gratitude for their third party's understanding.¹¹⁰ "Leaders always tried to understand our point of view."¹¹¹ Recognized more than once was understanding "the very delicate situation regarding cultural and religious differences."¹¹²

Americans may imagine the understanding being appreciated as intellectual, or academic---what is required for evaluative expertise in arbitration or litigation . The dispute resolution leadership being validated, in the majority of cases here, however, emulates facilitative; not evaluative, skills and attitudes.

¹¹⁰Understanding flags the facilitative approach. Love, *supra* note 45, at 939; Riskin, *supra* note 1, at 33.

¹¹¹ The degree to which a disputant is treated with respect and dignity also influences perceptions of procedural justice in the United States. People feel as if they are treated fairly when they trust that the "authorities with whom they are dealing are concerned about their welfare and want to treat them fairly." *Therapeutic Jurisprudence*, *supra* note 70.

¹¹² Erbe, *supra* note 71.

For example, the opposites of empathy: a closed mind and “put-downs,” are disparaged in the Balkans.¹¹³ Open-minded tolerance, or lack of prejudice, described the most popular climate and spirit with Balkans process.

Positive was stressed repeatedly in evaluating the most effective multicultural process in Ukraine.¹¹⁴ When third parties in Ukraine failed to create a positive climate by, for example, forgetting to suspend judgment,¹¹⁵ they were often criticized. One party felt scolded and saw the mediator emphasizing the negative aspects of their conflict.¹¹⁶ Another criticized lack of sensitivity to the parties.¹¹⁷

On a similar note, a Cameroon respondent stressed “transforming the existing negative attitudes and stereotypes.”¹¹⁸ In Nepal, patience was prized.¹¹⁹

¹¹³ *Id.*

¹¹⁴ “Productive” and “constructive” were also used. Erbe, *supra* note 71. Response continue to highlight the facilitative approach, especially when the evaluative approach includes “disparaging participants’ positions.” Stuhlberg, *supra* note 54, at 861.

¹¹⁵ Related to suspending judgment is the principle and practice from interest-based negotiations of separating people from the problem. ROGER FISHER AND WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (1991).

¹¹⁶ Erbe, *supra* note 71.

¹¹⁷ “never tell people what they did wrong.” *Id.*; Jack Gibb, *Defensive Communication*, 11 *Journal of Communication* 141-148 (1961) (finding defensive communication and climate with personal criticism and evaluation, along with superiority/inferiority positioning, rejection, “cold silence” and other non-response, ridicule and discounting. Groups with defensive climates waste more time with ego-protecting discussions and accomplish less than those with supportive environments).

¹¹⁸ Erbe, *supra* note 71.

¹¹⁹ *Id.*

Once again, these survey results mirror research of lawyer negotiators in the United States. Words like stubborn, arrogant, egotistical and unethical describe the least effective lawyer negotiators in the United States.¹²⁰

The Worst Cross-Cultural Process: Top Indicators

Rank	Descriptors
1	Indifference
2	Prejudice Dividing into ethnic and national groups
3	Increased awareness overwhelming—perceived as leading to despair

A group engaged with peacemaking in the Middle East describes what they need to engage in dialogue: suspension of judgment so that all can speak candidly without fear of being labeled. Respect and open-mindedness for all, without domination or attack, encourages voices seldom

¹²⁰ Kupfer Schneider, *supra* note 41.

heard and testing out of thoughts without feared “eternal stigma.” Passionate concern, including open expression of deep feelings, without screaming and shouting, is requested. Mentioned most was the need for flexibility, or the willingness to change opinions with new understanding.

Why would empathy lead the skills mastered by the most highly rated dispute resolvers, in both tough U.S. litigation and cross ethnic disputes around the world? Fierce advocacy popularly symbolizes legal contests. Police and military forces are the most visible international presence with cross ethnic violence.

Related research illuminates. Not surprisingly, misunderstanding results from the closed minds, filled with prejudice and judgment, criticized in the Balkans, Cameroon and Ukraine. Pre-judgment, or quick judgment based on one’s own worldview and experience, rather than broader realities, reinforces erroneous assumptions.

Prejudice hinders and precludes actual experience with and understanding of the “other.”¹²¹

Those defending judgment only “see” and gather data supporting their pre-conceptions.

¹²¹ See e.g. Walter A. Crockett, *Schemas, Affect and Communication*, Communication, Social Cognition & Affect (Lewis Donohew, Howard E. Sypher and E. Tory Higgins, ed. 1988). MATTHEW MCKAY, PETER ROGERS AND JUDITH MCKAY, WHEN ANGER HURTS: QUIETING THE STORM WITHIN (1989), CAROL TARVIS, ANGER: THE MISUNDERSTOOD EMOTION (1989), HENDRIE WEISINGER, THE ANGER WORK-OUT BOOK (1985); see also FEDERAL EMERGENCY MANAGEMENT AGENCY, BEHAVIOR AND ATTITUDES UNDER CRISIS CONDITIONS: SELECTED ISSUES AND FINDINGS (1984).

(T)here has been a tendency to quite inaccurately characterize the cognitive perspective in psychology as viewing people as entirely conscious and rational. This erroneous characterization is deserved up to a point...It was quickly discovered, however, that if anything, people were better described as *faulty computers*---their natural cognitive functioning produced all kinds of biases and distortions.¹²²

These cognitive challenges are not simply faced by those defending rigidly held beliefs, however. Research shows a human tendency to create more favorable versions of ourselves and less favorable versions of the “other” when in actual and perceived conflict.¹²³

Empathetic negotiators, on the other hand, are more likely to interpret the behavior of others accurately.¹²⁴ What could be more important under the pressure of devastating conflict than the ability to objectively gather quality information?

¹²² John A. Bargh, *Automatic Information Processing, Communication, Social Cognition & Affect* (1988).

¹²³ See e.g. Ray Cameron & Don Meichenbaum, *The nature of effective coping and the treatment of stress related problems: A cognitive-behavioral perspective*, *Handbook of Stress: Theoretical and Clinical Aspects* (Goldberger and Breznitz, ed. 1982); see also Beverly Davenport Sypher & Howard E. Sypher, *Affect and Message Generation*, *Communication, Social Cognition and Affect* (1988). Such distortions do not simply damage the other. Distorted reaction increases the probability of conflict or issue avoidance and hinders effective diagnosis of reality. Distortion prohibits the comprehensive, in-depth information gathering necessary for optimal formulation of strategy to advocate one’s own needs.

¹²⁴ Kupfer Schneider, *supra* note 41.

A practitioner who diffused ethnic crisis within the United States describes empathy's value with information gathering.¹²⁵

The ability to listen with empathy may be the most important attribute of interveners who succeed in gaining the trust and cooperation of parties to intractable conflicts and other disputes with high emotional content. Empathic listening enables the skilled listener to receive and accurately interpret the speaker's message. [It] 1) builds trust and respect, 2) enables disputants to release their emotions, 3) reduces tensions, 4) encourages the surfacing of information and 5) creates a safe environment that is conducive to collaborative problem-solving. Empathic listening is often what sets the mediator apart from others involved in the

¹²⁵ RICHARD A. SALEM, THE IMPORTANCE OF EMPATHIC LISTENING IN MEDIATION (Working Draft, 2003).

conflict.¹²⁶

The ability to avoid cognitive distortion, and facilitate understanding, deserves special recognition across cultural difference, especially with intractable conflict. According to some theorists, what is perceived as against, or outside, one's core sense of identity, is experienced as threat and can result in cognitive distortion, in an attempt to "reduce," even eliminate, the threat. A pseudo attempt to protect and defend identity may be made through ignoring, minimizing or rationalizing what is threatening. Once again, by choosing to defend what is familiar and known, rather than focus on learning more about what is new, less and less true information is received. As the reactor increases reliance on his or her own psychological interpretations to describe, dehumanize and objectify "the other," misinformation increases. An escalating spiral of destructive conflict easily results.¹²⁷

Identity (is) defined as an abiding sense of selfhood that is the core of what makes life predictable to an individual... To have no ability to anticipate events is essentially to experience terror... Events which threaten to invalidate the core sense of identity will elicit defensive responses aimed at avoiding psychic and/or physical annihilation.¹²⁸

¹²⁶ *Id.*

¹²⁷ *See, e.g.* TERRELL A. NORTHUP & STUART J. THORSON, INTRACTABLE CONFLICTS (1989).

¹²⁸ *Id.*

Even those who do not feel threatened by cultural difference will optimally recognize the need to examine (“test”) their assumptions and judgment when negotiating outside their experience. Coordinated management of meaning examines the implicit (unspoken) rules, or expectations, that individuals use and assume when talking with each other. Confrontation episodes theory describes conflict over expectations or rules of behavior. The more individuals share similar or complementary world and cultural views, or interpretative biases, understandings and social values, the more likely they will share similar interpretations in conversation. The opposite is also true.¹²⁹

A party gives recognition...when: He experiences the realization that, beyond possessing the strength to deal with his own situation, he possesses the capacity to reflect about, and acknowledge in some way the situation of the other...He realizes that he feels secure enough to stop thinking exclusively about his own situation and to focus to some degree on what the other party is going through....He consciously

¹²⁹ W. Barnett Pearce, *Coordinated management of meaning: A rule-based theory of interpersonal communication*, Explorations in Interpersonal Communication (Gerald R. Miller ed., 1976); Sara E. Newell & Randall K. Stutman, *The Social Confrontation Episode*, 55 Communication Monographs. Pushing parties to question assumptions is recognized as part of the facilitative approach to mediation---one more reason for attempting the facilitative approach with seemingly intractable conflict. Love, *supra* note 45, at 939.

lets go of his own viewpoint and tries to see things through the other party's perspective.¹³⁰

Third parties intervening in volatile conflict, however, cannot soar on one skill, no matter how important or strong. The most effective lawyer negotiators in the United States are described as both empathetic and assertive. This critical combination is also stressed in the regions surveyed here.

Throughout the Balkans, popular cross-cultural leadership is appreciated, first and foremost, for sharing valuable knowledge and experience.¹³¹ Reported second in importance is influence, or “possessing skills to change our opinions.”¹³² Included here were the third party's values, personal and professional, communication skills and ability to “be in charge of the topic and guide the audience.”¹³³

¹³⁰ ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION* (1994); *see also* Love, *supra* note 45, at 939. Reframing is a facilitative skill enhancing perspective-taking. Third parties are trained to reframe, or restate, what they hear to emphasize the most important underlying message in ways that do not distort the speaker's message and simultaneously encourage all to proceed constructively. Moore, *supra* note 3. Understanding, or perspective-taking, is necessary for accurate reframing.

¹³¹ *Id.*

¹³² *Id.* What persuades? Students offer this feedback: 1) rapport and trust, 2) strong perspective-taking, or knowing audience well, 3) recognizing commonalities---what is shared with those to be persuaded, 4) genuine concern, partially demonstrated through presenting information relevant to audience needs, 5) “custom-designed” presentations that interest and engage, 6) considerate framing of language, and 7) enough space and time. They are not persuaded with personal attack or blame, attempts at domination and failure to anticipate their perspective.

¹³³ Erbe, *supra* note 71; *See also* Klausner, *supra* note 3 (recognizing importance of leader's character or “vibes” in Thai villages).

The obvious challenge in cases like those reviewed here is that dispute resolution must somehow embrace, or at least find a way to work with, the opposite of the optimal climate described earlier: destructive, competitive systems permeated with corruption and nurturing violence. Parties to mediation in Nepal, for example, were more likely to criticize and describe bad faith on the part of other parties.¹³⁴ The bad faith described encompassed: 1) attempting to break the promised and signed agreement, 2) deceit and failure to share important information (“secrets”), 3) not observing ground rules, 4) trying to overpower the other party and treat the party as inferior, 5) misusing the process for self-interest, and 6) rigid indifference. Indifference was also criticized in the Balkans.¹³⁵ Aggression and expression of anger were criticized several times.¹³⁶

How do skillful dispute resolvers proceed in the face of power abuse, corruption and possible violence? Wishful attempts at easy, global (macro) or abstract answers appear to routinely fail. The practice of conflict resolution, however, offers several tools for facilitating small (micro) steps forward as those intimately immersed in their particular challenge struggle with leading, co-creating and sustaining viable progress. Ground rules,¹³⁷ for example, are one concrete response esteemed by Ukraine evaluators.¹³⁸ All concerned negotiate detailed agreements about what is necessary to proceed constructively, step-by-step; interaction-by interaction.

¹³⁴ Erbe, *supra* note 71. Words like “middle way” were used to describe effective process. *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Erbe, *supra* note 71.

¹³⁸ *Id.*

Such ground rules,” or process parameters, serve several purposes. They offer an option for balancing power. They can establish moral boundaries, e.g. good faith. Contractual boundaries provide legal recourse if breached, e.g. failure to honestly disclose important information. Reflecting on work with multicultural communities and violence and crisis, critical themes are consciousness and power.

Self-determination “cross(es) cultural barriers” and allows parties to structure the process appropriate for them. Creating ground rules, or shared agreements and understandings, with everyone’s input, respects individual and group (cultural) norms equally to build solid multicultural foundation.

Words like “respectful and humane,” “work(ing) hard for us,” and “support of the individual in the group” were used to illustrate optimal multicultural facilitation throughout the Balkans.¹³⁹

Mediation has a number of ...empowering qualities. For example, it is founded on a respect for human dignity. Mediators model respectful behavior. They treat the parties with dignity, listen with care, and project their interest in and concern for what each party says. Their example sets the tone for how the parties can listen to and treat one another.¹⁴⁰

¹³⁹Erbe, *supra* note 71.

¹⁴⁰Davis and Salem, *supra* note 70.

Once again, the U.S. research of excellent lawyer negotiators referenced earlier validates. The most effective lawyer negotiator is described as both “assertive” and “facilitative.”¹⁴¹

C. THE UNIVERSAL IMPORTANCE OF CAREFUL LISTENING

All surveyed champion careful listening.¹⁴² It is hard to imagine skilled empathy and understanding without careful listening. Respondents from Ukraine stress its importance and value again and again.¹⁴³

A few parties to mediation in Nepal found paraphrasing helpful, along with at least one respondent from Cameroon.¹⁴⁴ “Listening and rephrasing of what parties are saying builds

¹⁴¹ Kupfer Schneider, *supra* note 41.

¹⁴² Erbe, *supra* note 71.

¹⁴³ *Id.*

¹⁴⁴ Erbe, *supra* note 71. Optimal listening accurately interprets the speaker’s meaning or perspective, with a focus on what matters most. When culturally welcome, paraphrasing, or rephrasing key words, emotions and meaning, is a skill used by listeners to check understanding. In response, the speaker will ideally correct, clarify, elaborate and otherwise verify accuracy and completeness of listener understanding. Accurate paraphrasing necessarily relies heavily on corrective feedback from the speaker, since a listener will naturally interpret through the listener’s experience and perspective. Taking the time and “trouble” to complete this dialogue, until the speaker verifies listener understanding, is essential. Otherwise, the listener may appear to understand through repeating words and emotions, yet never actually understand the speaker’s most important message.

confidence in the parties.”¹⁴⁵

The picture that emerges from survey results regarding the importance of careful listening is twofold. First, the third party encourages increasing disclosure of vital information across culture, heightening understanding between and within the parties to conflict; even personal transformation. Second, by modeling open-minded empathy and understanding, the third party inspires the parties to more careful listening of each other

Once again, the most popular leaders of cross-cultural process are portrayed as balancing receptivity and rapport with assertive direction. Respondents from several regions mention direct, detailed questioning as important to careful listening.¹⁴⁶

Open, honest disclosure, or sharing, must result.¹⁴⁷ This was particularly true in Nepal, where questions and open discussion led the most compelling multicultural process.¹⁴⁸

¹⁴⁵ *Id.*

¹⁴⁶Erbe, *supra* note 71. Skilled negotiators use questions more than twice as much as average, or mediocre, negotiators. See M. Rackham, *The Behavior of Successful Negotiators*, reprinted in *Negotiation: Readings, Exercises and Cases* (R.J. Lewicki, D.M. Saunders & J.W. Minton eds. 1999).

¹⁴⁷Erbe, *supra* note 71. How to encourage disclosure of important information across culture is a fundamental question. Astute parties to conflict, particularly minority groups who have learned to be cautious and alert with majority groups, will observe behavior rather than listen to words in deciding whether to trust and speak openly. The leader’s example speaks loudly. Consistently asserting ground rules so that parties are assured of good faith is also key. See Klausner, *supra* note 3, at 107, 121, 145 (describing traditional Thai village trustbuilding process).

¹⁴⁸ Erbe, *supra* note 71.

One of the parties to mediation in Ukraine appreciated “allow(ing) people to talk freely about their feelings, perceptions, needs and suggestions.”¹⁴⁹

I’m glad that I had the opportunity to talk to people with different views. It is good that we all could say what we think...was wrong and what is still wrong.¹⁵⁰

Another was disappointed with not being able to talk about what was happening between parties.¹⁵¹

If numbers alone are considered, Balkans evaluations led all surveys in appreciation of open, honest sharing.¹⁵² Hearing, understanding and discussion of different feelings, opinions and experience, including ethnic and gender difference, were mentioned frequently, with request that all participation be serious.¹⁵³

¹⁴⁹ Davis and Salem, *supra* note 70 (“Mediation is an open process. It has none of the mystique usually associated with the adjudicative process. Mediators describe the philosophy, the process, and the ground rules, and they encourage questions. By their openness, mediators convey the message that information is to be shared”).

¹⁵⁰ Erbe, *supra* note 71.

¹⁵¹ *Id.* Once more, the facilitative approach is preferred. The facilitative approach prioritizes direct communication. Love, *supra* note 45, at 939. The evaluative and directive approach can and does limit direct communication between participants. Stulberg, *supra* note 54, at 864.

¹⁵² Erbe, *supra* note 71.

¹⁵³ *Id.* Urging participants to weigh their own values and priorities reflects the facilitative approach as well. Love, *supra* note 45, at 939.

Several in the Balkans, as well as at least one participant from Cameroon, valued learning to be a better listener. Balkans evaluators spotlight understanding the causes of conflict and “other’s feelings, needs and perspective.”¹⁵⁴

Participants throughout the Balkans repeatedly elaborate the value of perspective-taking. One appreciated becoming more open-minded and tolerant.¹⁵⁵ A few mentioned actually changing their points of view, seeing conflict “more deeply...with (the) thinking of all parties involved.” A participant, from “Dialogue and Cultural identity” in Mostar, found the truth “meeting peoples who live...in my town on west and east side..and that change(d) me in...side.”¹⁵⁶

Ukraine evaluators credit identification of commonalities, or shared interests, as building a foundation and possibility for positive change.¹⁵⁷ Ury, of the Harvard Negotiation Project,

¹⁵⁴*Id.* This sounds, at least in part, like the interest analysis valued and described earlier. See Fisher and Ury, *supra* note 115.

¹⁵⁶ Erbe, *supra* note 71. The fruits of perspective taking, perhaps because so difficult and rare, can be life-changing. CLAYTON AND CAROLE ROBARCHEK, WAORANI: THE CONTEXTS OF VIOLENCE AND WAR (1998).

¹⁵⁷ Erbe, *supra* note 71. In simple terms, commonalities are the interests, needs and hopes shared by parties to conflict process. See, e.g. Fisher and Ury, *supra* note 115. In one study of negotiators, the most effective spent over three times as much attention to identifying commonalities. STEWART L. TUBBS, A SYSTEMS APPROACH TO SMALL GROUP INTERACTION 271 (5th ed. 1995).

Danilo Dolci has been called the “Gandhi of Sicily.” His “maieutic” method of creating communities embraced empathy as the means to raise consciousness of shared concern and prepare communities to confront government neglect and Mafia domination. DOLCI (1970).

agrees. He envisions mobilizing “the power of peer...from a perspective of common ground. “

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Most recommend more: “(e)specially for Balkan region, where we have strong emotions and a lot of unsolved problems.”¹⁵⁹

**Top Benefits Reported
From Participation In Cross Cultural Conflict Process**

Rank	Descriptors
1	Practical tools for change Techniques for peaceful resolution of conflict
2	Increased understanding (of conflict and thinking of all those involved)
3	Skills for better communications (e.g. listening)
4	New ideas for building democracy
4	Increased self awareness and understanding
6	Widening perspective-taking Increasing tolerance Improving open-mindedness

¹⁵⁸Ury, *supra* note 12 (viewing strong relationships with related attitudes and skills as a basis for preventing conflict and containing escalation---through noticing early warning signs and addressing latent tensions).

¹⁵⁹ *Id.*

D. EMPOWERING PARTY CAPACITY

Intertwined is the theme of individual empowerment. “Conflict resolution training helped me see things on the micro (individual)-level and...connect this with the global structure.”¹⁶⁰

(I found helpful learning the positive aspects of conflict)--- a sign that we are living... [C]onflicts build our identity, help us to mature, oblige...us to recognize the existence of others, and reveal what is hidden in us....It works!”¹⁶¹

Empowerment can be defined as

the restoration to individuals of a sense of their own value and strength and their own capacity to handle life’s problems.¹⁶²

Once again, the facilitative approach is key.

Empowerment must be induced by first creating consciousness...

To facilitate ...is the role of external agents. Experience has

¹⁶⁰ *Id.*

¹⁶¹ Erbe, *supra* note 71.

¹⁶² ROBERT A. BARUCH BUSH, JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION* (1994).

demonstrated that empowerment takes place in different scenarios... There are no magic formulas or infallible designs, no single recipe or prescriptive (evaluative) model. Empowerment is not a linear process with a well defined beginning and ending that is the same for all...Empowerment is shaped for each individual or group by their lives, context, and history, as well as according to the location of subordination in the personal, familiar, communal, and higher levels.¹⁶³

Many respondents reported heightened understanding of themselves,¹⁶⁴ their needs and feelings, with practical ideas and tools for self-improvement and satisfaction of needs.¹⁶⁵ Repeatedly chronicled was conflict resolution's usefulness to their daily lives.¹⁶⁶

Respondents felt empowered to make a broader difference in their societies, stressing the power of the people in a democracy.¹⁶⁷

¹⁶³ Deere and Leon, *supra* note 64, at 25; *see also* Stulberg, *supra* note 50, at 873-874, 988; Love, *supra* note 45, at 937-938; Riskin, *supra* note 1, at 32.

¹⁶⁴ Erbe, *supra* note 71.

¹⁶⁶ Erbe, *supra* note 71.

¹⁶⁷ *Id.*;

I thought that democracy comes from government. I realized that we (individuals) have to create health(y) democratic society by ourselves....Conflict seminars... are very helpful for increasing the well-being of our society.¹⁶⁸

Many international students, particularly those acting as social leaders, mention the potential they see in facilitative dispute resolution for addressing intragroup tensions. Groups fighting and fragmented within are ill-positioned to negotiate with the outside world.

At their best, facilitative tools increase intra-group understanding and unity. They result in stronger party capacity, including the ability to advocate and negotiate, more effective strategy, and enhanced credibility.¹⁶⁹

To be truly strong in self-determination, internal conflicts must be addressed. Slow, steady steps forward are likely to frustrate those wanting dramatic revolutionary change. False unity, however, created by attempting to unite against the “other”¹⁷⁰ through displacing tensions from

¹⁶⁸ Erbe, *supra* note 71; Riskin, *supra* note 1, at 32. (“(M)any facilitative-broad mediators will help participants find opportunities to educate or change themselves, their institutions, or their communities”).

¹⁶⁹ *Id.*; see Deere and Leon, *supra* note 64, 24. (“Power with...generates a collective solution”).

¹⁷⁰ Self-fulfilling prophecy describes those times when parties are truly “their own worst enemy.” For example, one party assumes the other is belligerent and proceeds to treat the other party in a hostile way. The first party thereby provokes actual belligerence from the second—in response to their own hostility. The first party then uses the belligerence they provoked to confirm (or prove!) their original assumption that the other party is belligerent. Johnson, *supra* note 61.

within¹⁷¹, is fragile and hollow.

Many of the most conflicted groups are not addressing their own needs. Their haunting question is: “Can this region in its desperation (e.g., poverty) afford to feed on each other’s animosity?”

Widespread apathy and lack of response to basic community needs are some of the most common challenges heard from peacebuilders around the world. How can we engage an unresponsive bureaucrat? Motivate our community to care? Facilitative practices, like reframing tensions into collaborative questions, e.g. “How do we preserve our cultural identity while openly engaging with others?” have the potential to illuminate desperately needed transcendent possibilities.

¹⁷¹Displacement can also be consciously used to preserve intra-group harmony and intended for conflict management. For example, *prachot* is the Thai word for directing own anger towards a third party, with the purpose of indirectly communicating with the actual party to conflict. Klausner, *supra* note 3.

Several survey respondents stress peace begins with the individual.¹⁷²

[I found helpful] the knowledge to resolve conflicts peacefully and restoratively in my community pregnant with conflicts, (t)he development of my mind on the importance of peace in the development of the home and the community...(t)he improvement of my social relationships with friends, neighbors and even long time enemies...the definition of peace as a continuous process of resolving conflicts without the use of violence.¹⁷³

Another imagined that changing oneself provides examples for others.¹⁷⁴ One more was encouraged through gathering with others also examining how they could make a positive

¹⁷² Erbe, *supra*, note 71.

¹⁷³ *Id.*

¹⁷⁴ *Id.*; *Research...Management Culture(s): A Role For*, UCI Ombudsman: The Journal, <http://www.ombuds.uci.edu/Journals/1995/researching.html> (1995). (“(An) interesting area...is...the identification of the “indigenous” problem-solvers who are found within various...domains. Within any community, one can usually find individuals who, based on their interpersonal skills or social position, are frequently approached by people seeking problem-solving assistance”).

difference with their actions.¹⁷⁵

(This made) me realize that people can be more creative,...work
hard on peace and that there are many things we can do to avoid
the escalation of conflict¹⁷⁶

Specially valued was information about problems of communication and conflict. Conflict analysis was rated highly more than once.¹⁷⁷ The conflict resolution tools of interest

¹⁷⁵Erbe, *supra* note 71; Resignation learned under oppression must be reversed in any way possible. Davis and Salem, *supra* note 70 (“...the term *power* can be defined as the ability to influence or control others...Power is relative. Outward appearances notwithstanding, everyone has some power. An indigent tenant with few apparent resources may have the ability to organize an entire apartment building. It is equally important to consider how willing people are to use their power and the conditions that might discourage them from using it to the fullest extent. For example, a person might be physically strong and never resort to threats of violence, or a corporation with access to the best legal advice might wish to avoid the bad publicity involved in a lawsuit...[The real extent of usable power and empowerment should be explored.]”)

¹⁷⁶Deere and Leon, *supra* note 64, at 24, describing the Fourth Latin American Feminist Meeting in Taxco, Mexico, in 1987. (“Power to” serves to catalyze change when one person or a group leader galvanizes the enthusiasm and action of others. It is a generative or productive power, a creative or facilitating power that opens up possibilities and actions without domination...”)

¹⁷⁷*Id.* OLARA A. OTUNNU & MICHAEL W. DOYLE, PEACEMAKING AND PEACEKEEPING FOR THE NEW CENTURY (1998) (“(I)ntermediaries can learn from experiences in dealing with past conflicts, but there is no model that can be applied to all cases. The unique features of each must be examined carefully and adjustments in strategy made throughout the process, which is invariably complex and sensitive....Today the emphasis is on the need to build a just peace in more direct and tangible ways. The large issues and threats are still with us, but our response is led by stories of communities mobilizing to resolve problems through immediate and direct participation...This is a time characterized by many choices and options as well as individualized, decentralized authority.”).

analysis¹⁷⁸ and option generation¹⁷⁹ were specifically mentioned.

It also helped me direct my acquired knowledge, related to
different social matters, towards a direction which brings about
positive solutions...¹⁸⁰

A misconception, among those who have not studied facilitative approaches to dispute resolution, is that the conflicting parties must first “be willing to discuss options ...(and/or) want to resolve (their) conflict...Otherwise, “there’s no reason to begin talks.”¹⁸¹ In complex intractable conflicts, however, parties frequently despair. Facilitative tools, like option creation and interest analysis, are designed to help parties discover new possibilities in the midst of entrenched perspectives.

¹⁷⁸ Fisher and Ury, *supra* note 115.

¹⁷⁹ “The difference between self-determination and witless submission lies in the ability to predict accurately the consequences of alternative courses of action. Autonomy involves a personal decision in full knowledge of different courses of action.” EMILE DURKHEIM, MORAL EDUCATION (1961) (emphasis added) ; Davis and Salem, *supra* note 70 (“The mediation process is designed to surface the issues underlying a dispute and to encourage open exploration of options. This quality in itself can lead to settlements that transcend solutions that arise from the sheer use of power”). (“Empowerment is...the basis for generating alternative visions..” citing GITA SEN AND CAREN GROWN, DEVELOPMENT, CRISES AND ALTERNATIVE VISIONS (1985) from the Third UN World Conference on Women in Nairobi).

¹⁸⁰ Erbe, *supra* note 71.

¹⁸¹ Lazarus, *supra* note 44.

Roger Fisher, founder of the Harvard Negotiation Project, popularized interest analysis as an alternative to positional, or power, bargaining with international relations. Rather than expecting political leaders to abandon threats and political posturing, or waiting for diplomatic openings, positions are analyzed and collaborative alternatives generated through identifying all sides' underlying needs, concerns and fears, or interests. The principals' interests provide an explicit framework for generating options and otherwise stimulating creative problem-solving.¹⁸²

A survivor of torture and exile powerfully emulates how seemingly simple tools can make a powerful difference when used with passion and determination. "Throughout my life, when I felt hopeless and desperate, several things helped to sustain me and give me hope...no matter what happens we must always look for alternatives."¹⁸³ Mr. Mossallanejad goes on to credit other familiar steps of facilitative process: task setting, information exchange, "sharing common goals and understanding," acknowledgment of interdependency and reflective practice.¹⁸⁴

IV. CONCLUSION

Our warring world deserves serious practicing of what dispute resolvers preach---here the

¹⁸²Fisher and Ury, *supra* note 115; Deere and Leon, *supra* note 64, at 23.

¹⁸³Ezat Mossallanejad, "Surviving Torture Through Self Rehabilitation and Love," First Light (Canadian Centre for Victims of Torture, 2001) (emphasis added).

¹⁸⁴*Id.* (The Arabic word *t'aamol* describes "the action of seeing something, pausing and considering it very carefully before taking action.") Survivors also embrace forums, storytelling, creative expression, and validation of "small but critical" movement forward. See JUDITH HERMAN, TRAUMA & RECOVERY (1997).

willingness to suspend judgment long enough to impartially inquire whether our profession has yet to tap its potential.

Sustained exertion and experimentation are probable.

(Peacebuilding is a) multigenerational task involving the gradual transformation of a conflictual society and, secondly, of ensuring that peace-building becomes an organic phenomenon, at work at all levels of our society rather than the traditional, narrow view of peace being negotiated by political leaders alone....Peacemaking involves more than the condemnation of violence. 'Peace' is built, gradually, over decades and generations.¹⁸⁵

Reflecting on his work in the Balkans, Dr. Tauber proposes facilitative interethnic teams—community building, counseling, conflict resolution and reconciliation.¹⁸⁶ He views conflict

¹⁸⁵Brendan McAllister, *supra* note 94 ; *See* Alternative Dispute Resolution and Aging (multigenerational process), Applied Communications, University of Denver.

¹⁸⁶ Charles Tauber, *Psychological Trauma, Physical Health And Conflict Resolution In Croatia, Serbia and Bosnia: Lessons For The Future*" 18, no. 4 *Conflict Resolution notes* 41 (2001).

resolution as key to an integrated strategy for transgenerational rehabilitation and capacity building.¹⁸⁷

It is hoped that experts among us will give the reports of community members surveyed here credence---enough to stimulate their own inquiry and research with the facilitative approach and international dispute resolution. In the worst of cross-cultural conflict, these communities engage, inspire and empower, offering us a rich opportunity for reflective practice--- increased competence and consciousness--- as we internationalize our practice.

Awareness of “ self ” is fundamental to both multicultural “ sea legs ” and our influence as third party intervenors with conflict. Peacemakers around the world show us the most powerful persuasion requires conviction. What do we stand for?

Intervenors...who believe that mediation can serve important political agendas and social harmony infuse the profession (of mediation) with a higher purpose that serves the interests of all practitioners...(W)hen they succeed the field may be energized with a sense of purpose and vision.¹⁸⁸

¹⁸⁷ *Id.*

¹⁸⁸ Kolb, *supra* note 8, at 465.

APPENDIX I

INTERETHNIC DIALOGUE IN WESTERN BALKANS

By Goran Lojancic, Nansen Network

Edited by Daniel Perez, Fulbright Scholar, Albania

There is not much more to say that has not been said already (regarding) interethnic relations in Western Balkans (former Socialist Federative Republic Yugoslavia). During the last decade of (the twentieth century), the world press as well as many social scientists, were forced to learn and understand the complex map of ethnicities in this region. Therefore...this short article will..only...give (an) overview on the present situation in the region, and...introduce...the Nansen Network, one initiative made with ambition to overcome consequences of recent wars through interethnic dialogue and cooperation.

NOTHING TO BE TAKEN FOR GRANTED

It appears that (the) season of wars in Western Balkans is about to come to an end. Last attempts in Macedonia and Southern Serbia were prevented with a combination of a determined and robust intervention by international community and frightening experience that nations in Balkans gained from previous wars in Bosnia and Kosovo.

However, (the) challenges...standing in front of (the) region are not much easier... Whole reconstruction of...mutual relationships is carrying the heavy burden of... partial and not (sustainably) resolving of wars and...the...high level of hatred and resentment...This burden almost halted creativity of all major initiatives, making investors (both political and economical)...follow “elephant paths”—inertive and proven activities...showing some results in the past. (The European Union integration process, at least for now, is encouraging economic cooperation and political moderation between politicians of former Yugoslav countries. The sustainability of this cooperation and moderation, however, is questionable...)

Aside (from) the political and psychological consequences of recent wars, there is also a set of physical consequences that cannot be overcome easily----(a) high rate of criminal activities (not surprisingly—interethnic)...connected with politics, criminal accumulation of capital (war profiteers), hundreds of thousands of refugees and internally displaced persons, demolished infrastructure, etc. After the World War, it took a decade of reconstruction in...Europe for each year of the War. And we are talking about Western Europe, with all its potentials and standards. In Western Balkans, (the) picture is even less pleasant.

(There is still some reason for optimism, however.) (The) main warlords are either imprisoned (or) dead, and politically insignificant. The last attempt of “patriots” to take over power in Serbia, through assassination of the Serbian Prime Minister, provoked determined and unconditional state action and turned out to be a glorious loss. In less than a month, (the) whole pyramid of violence and criminal connections in government bodies collapsed. It is significant that Serbian police could count on political support and police cooperation in all countries in the

region. Appearance of this ugly criminal scene in public seriously decreased doubts that the Serbian public had toward the International War Crime Tribunal in Hague, which is a solid side effect.

(The) importance of right wing political parties with nationalistic politics is slowly decreasing. Those parties were overthrown in Croatia, Macedonia and Serbia, and even in Bosnia they are constantly losing electorate percentage. In Kosovo, the first elections after the war brought to power (a) less radical political option than...was expected.

Old economical and cultural connections inherited, from the time we have been living in the same country, were reestablished. Visiting theatre shows, concerts, movies, sport events are not bizarre attractions any more.

NANSEN NETWORK—THINK REALISTIC; ASK FOR IMPOSSIBLE

This optimism was a thin ground whe(n) the idea for...dialogue work between ethnic communities in Western Balkans...landed. It started as an exclusive project for (a) small number of people in (the) Nansen Academy in Lillehammer, Norway, and now...(has) around 40 employees and thousands of beneficiaries. (The) unexpected question of two participants in (the) course in Lillehammer, one Serbian and one Albanian from Kosovo---“why can’t we do these things in our home town” resulted (in) the first Nansen Center in Pristina, capital of Kosovo. (This) Nansen center organized (a) series of dialogue workshops, which came as a surprise to

everyone (including participants in those workshops), society in general, international donors, etc.

Although (the) center in Pristina had a short life interrupted by first NATO bombs in March 1999, the results were not forgotten. (The) Norwegian Foreign Ministry expanded the adventure and several months after the end of the war in Kosovo, we...restarted with four centers in Belgrade, Skopje, Podgorica and Pristina, followed in a short time by five more in Sarajevo, Banja Luka, Mostar, Osijek and Mitrovica...

Nansen dialogue (provides) social interference through personal contacts. Each of our participants is not only representative of his/her ethnic group, but, at the same time, our advocate in his/her community. It can, obviously, create...problem(s) when your target group counts millions....Capacities are limited. (Our general strategy must acknowledge population of more than 20 million people.)

That is why we...created a series of workshops, (combining) interethnic dialogue and education in dialogue work. The most successful participants were encouraged to continue education until they were ready to take over (a) different level of activities, e.g. organization, marketing, facilitation and co-facilitation...) under (the) Nansen umbrellas, mainly in their own communities. Through that work they are arithmetically expanding our ideas and basic aspects of our work, among the many people we could not possibly reach from one center. Many of our participants are now assistants in Nansen offices, independent trainers, founders of local NGOs, etc., but they all share one thing—specific education in Nansen dialogue. In Serbia our participants often call themselves Nansen people, with ambition to show identity in NGO work...

Thanks to the fact that we are present everywhere in the region, the most difficult activities, cross-border or cross-ethnic, became just a usual activity to conduct. This relaxation moves to our participants as well. Almost all of them are aware that they are part of a big picture. (The) phenomenon of ethnic boundaries is starting to lose its significance. This is even recognized by influential political and social subjects...great reward for the small steps we are trying to make (and a great motivation for future work).

APPENDIX II: Cameroon

By Ndi Richard Tanto, Ecumenical Service for Peace

The North West and West provinces of Cameroon have gone down in record as potentially very violent provinces. In the 1990's, these provinces recorded very violent conflicts between the Balikumbat and Bafanji ethnic groups in the North West province and the Bagam and Bamenyam in the West province. In the two major clashes that opposed the Balikumbat and Bafanji in 1995 and 1998, more than 200 people were killed, more than 2.7 billion in property was destroyed and many families moved out of the area. Cohabitation of the communities was (non) existent...Suspicion, bitterness, misery (reflected the trauma) of the people in these communities....

The case of Bafanji/Balikumbat

Bafanji and Balikumbat are villages in Balikumbat Sub-Division. This Sub-Division has five villages: Balibkumbat, Bafanji, Bamukumbit, Baligansin, and Baligashu. Our first step was to identify the stakeholders resident in the area for a first level training in Non-Violent Conflict Resolution (NVCR).

The first category of people we targeted were opinion leaders. With this category, we organized a series of workshops in all the villages of the Sub-Division. This was because we did not want to give the impression that we were coming to mediate the conflict. Two workshops were organized in each village.

After these workshops, which were organized in the years 2000-2001, we set up structures called Peace Forum in each of the villages. The objective was to set the basis for diffusion of the knowledge learned, practice of the skills learned and...exchange of ideas on issues of peace in their communities. These structures organized monthly meetings and became an attraction to their communities...(B)efore long, some of the traditional leaders recognized them as structures for resolution of conflicts and sent conflicts to them for resolution.

Convinced that this step had the desired impact, we went ahead to bring all the Peace Forums in the Sub-Division to a second level training. Or second level trainings focus on techniques of mediation. Five delegates represented each Peace Forum. This workshop, which took five days, brought together for the first time in four years, participants from Balikumbat and Bafanji in the the Balikumbat village. At the end of this workshop...commitments were taken by all participants to work towards restoring peace in the area. One of the landmark resolutions was to contact the traditional councils of their villages and talk about the need for them to be trained in techniques of NVCR.

Our next target was the traditional council of Balikumbat and Bafanji. When we contacted them for training, there was no hesitation. We began by giving them a first level training separately in their respective villages as a prelude to bringing them together in a second level training. This proved very successful, as at the end of the workshops, they all resolved to face the issues of the conflict opposing them. The traditional council is responsible for resolving conflicts at (the) village level.

All of these trainings were intended to prepare the conflicting parties to have the same level of understanding of the basic issues involved in conflict so as to meet and discuss at the same level of

understanding. It was therefore very easy for the traditional councils to meet because they knew they were to meet people who had gone through the same training as they.

In October 2002, the traditional councils of Balikumbat and Bafanji and representatives of Peace Forums and traditional councils of the three other villages (about ninety people in all) met in Bafanji for an evaluation and planning meeting. (This was the first time for all of them to come to Bafanji after the war of 1995.) They were exposed to the cost of conflict on development in their area. After discussions...the parties committed...to work with SeP and the Administration to find a way out of the conflict. They will be submitting a report of what they consider...the issues at stake in the conflict and how they think these issues should be resolved. (The Fon of Bafanji was so elated by the events of the meeting that he personally entertained all the members of the Balikumbat Traditional Council).

When (this phase is complete), the traditional rulers (will) be brought into the process for a final solution worked out and accepted by the parties. This will not be in a workshop...but high level discussions, which might also bring in some elite and the administration of the division. A series of follow-up meetings to this effect are already planned. It is hoped that before the year runs out, we will celebrate reconciliation in the area.

All of these activities have made visible impact. After only three years working intensively in the area, it will be difficult for violence to occur even if we were to leave now.

The primary objective of the Ecumenical Service for Peace is to contribute to Non-Violent Social Transformation. It seeks to contribute to the advent of a society of participation based on justice, peace, reconciliation and compassion. Its activities are mainly in conflict areas in Cameroon. SeP organizes trainings in conflict resolution at three levels. The first level focuses on concepts of conflicts and other concepts such as peace, justice, reconciliation and general notions of mediation and negotiation. Second

level workshops focus on mediation and third level workshops focus on conflict analyses. We do third level when we are invited as mediators. Other training activities focus on socio-political leadership, citizenship education and para-legals. We also train in Non-Violence, especially to vulnerable groups that have problems with government but (are) not able to resolve them because of the power of government.

The expectation is that after SeP's intervention, conflicting parties should be empowered to a point that they are able to collaborate in the search for solutions to their conflicts. Here are some examples.

In September 2002, there was tension between Balikumbat and Bafanji concerning the building of a Government Secondary School in Bafanji. The Fon of Balikumbat felt that the School was being built on the disputed area and ordered the building to be destroyed. This caused tension and some members of the Traditional Council in Balikumbat rushed to the site and protected the school. Realising that his plan did not succeed at that level, the Fon used his political influence and the Senior Divisional Officer for Ngoketunjia issued an injunction stopping construction of the school. The people of Bafanji formed a delegation led by the leader of the Peace Forum and they met the Fon of Balikumbat in his palace for discussions on how to take off the injunction so as to continue with the construction...The method of seeking...redress has drastically changed...since the 1990's.

In January 2003, another incident occurred which would have led to a clash but the communities, especially those who have been trained, approached the problem peacefully. A native of Bafanji gave his bike for repairs in Bamukumbit. The Fon of Balikumbat came and took the bike from the repairer and accused the owner of stealing it from a Balikumbat person during the war. The owner provided documents to prove that the bike was his own but the Fon refused to hand back the motorbike....(T)he traditional council and peace forum...worked very hard to calm the situation. (Violence was avoided.)

The Senior Divisional Officer and the Medical Officer for Balikumbat have joined SeP in the crusade for peace in their area of work. A committee of the Divisional Officer, SeP, and the traditional councils of the two villages has been formed...The statistics of the Balikumbat Hospital show a steady increase in the number of Bafanji people visiting the hospital. The same situation has been observed at the Divisional Officer's office to the great satisfaction of the Divisional Officer.

Before 1995, the Head Teachers of primary schools in the Balikumbat sub division had an association whose meetings rotated from one village to another. These meetings...stopped with the war of 1995. The association has been re-launched and all the Head teachers in the sub division are again actively taking part.

It is also becoming fashionable to see people give names to their businesses as *Peace Lover's Saloon, No peace no business* etc... There is a steady increase in the number of people from Balikumbat who attend the Bafanji market... Many people from Bafanji have started rebuilding their houses destroyed during war. The area was completely abandoned after the war...

Before this year, Bafanji had no member in the Balikumbat Council because it meets in the Balikumbat village. This means that the interests of Bafanji were not represented in the Balikumbat Rural Council. Today three members of the Bafanji Peace Forum are members of that Council and effectively take part in deliberations...The number of people from Bafanji attending national and political events has tremendously increased.

Note: Readers interested in learning more are welcome to contact the author at nditanto@hotmail.com.

APPENDIX III: NEPAL

By Rishi Pandey

Nepal, a small Himalayan kingdom, is a land of beauty and diversities. The country is landlocked and bound by (the world's two population billionaires)---China in the north and India in the east, west and south. Nepal is located between the latitude of 26 22' and 30 27' north and the longitude of 80 4' and 88 12' east, having an area of 147181 sq km.

Topography of the country changes dramatically within the short lateral distance. Topography varies from 70 m to 8848m within the aerial distance of about 140 km. This variation in topography has created diversities in climate, vegetation, human adaptation pattern, and resource utilization system.

Nepal is...rich in natural beauty and cultural heritage. Diversities in ethnicity, culture, customs, social activities and religion are tied by a sense of fellow feeling...The country harbors four castes and 36 sub castes. In the 2001 population census, 103 ethnic groups were registered and these people use more than 93 different mother tongues. Two religions, Hinduism (80.6%) and Buddhism (10.7%) are the major religion(s) of Nepal...(C)ustom of a wife having more than one husband in northern hill (in *Sherpa* community) and prohibition of drinking alcohol among *Brahmin* are some of the interesting features of Nepalese cultures.

This is (the) home of Mt. Everest and Lord Buddha (Symbol of Peace). More than eight of (the) world's top peaks, higher than 8000m, have been challenging the sky. Variety of plants, animals, diverse topography and its creation are glorious assets of the nation. These scenarios of nature raise the dignity of Nepalese people.

The population of Nepal was 23.1 million with 2.2 annual growth rate...and 5.4 average household size in 2001. The country is predominantly rural...Only about 14% (of) people are in urban areas. Distribution of population is highly uneven. Mountain region comprises about 15 percent of the total land surface and provides shelter only for 7.3 percent of the total population. The Tarai, southern plain of Nepal, is highly fertile...(so faces) the problem of heavy population growth...from migration from Mountain as well as India....The Hilly and Tarai region is house for 44.3 and 48.4 percent of the total population, with 68 and 17 percent of the total land surface respectively.

Socio-Economic Condition

Agriculture is the means of livelihood of the largest proportion (80%) of (Nepal)...GNP...for year 1999/00 was estimated about 5654 million US dollars...Per capita GDP and GNP...(was) 241.82 and 251.00 US dollars. The comparison of Nepalese economy (with) South Asian countries, e.g. Bangladesh, Pakistan... shows the weakest economic condition in terms of GDP. However the country is the third largest in area and fourth largest in population. (Life expectancy is 59.7 years, literacy rate is 53.7 percent and unemployment rate is 1.8 percent).

The changing speed of life twists the pace for living in every dimension of society. In the context of globalization, highly developed countries are trying to settle in the moonstar whereas the least developed countries like Nepal still cannot reach in their rural areas.

By the end of 2000, the country completed four decades of her planned development. However, more than 45 percent of the total population is below poverty line. Nepal's fragile hill and mountainous topography cannot provide enough room to manipulate available space for food production through area expansion. Limited growing season in high altitude itself becomes a natural constraint to increas(ing)

annual food production. Machined agriculture is possible only in Tarai region in which large cities and industrial areas have already occupied cultivable land.

Geographical setting itself is a problem because being a landlocked country it has faced the problem of international, and inter and intra regional transportation...Being situated between...China and India, industrial production of Nepal cannot compete in global market. These countries have sufficient market for mass production and they can produce (at) cheap cost. However, in Nepal, production cost is raised due to small-scale production and inland transportation.

Political situation and recent change

Nepal has been facing political instability since the period of unification of the country. Struggle for power has come a long way since the intrigues between Rajendra Laxmi and Bahadur Shah, among the Thapas and Pandeys, though Ranas, through Panchyat system and democracy and even today ('s) struggle...between multi-party democracy and People's Republic. Struggle for power has (been in the) shadow (of) development activities.

In the 1990's, multi party democracy was re-establish(ed) in Nepal. By the re-establishment of democracy, expectation of Nepalese people raised immediately. People expected radical change in development...However, this was not an easy task for the first elected government. Member(s) of elected government and high level bureaucrats (were misled) into corruption and abuse of authority...Problem(s) of transparency, commitment, effective administration and management were raised. These situations (showed weak) administration and lack of impartial bureaucracy....

Due to lack of vision in political leaders, politics for development became directionless. Due to the problem of corruption and abuse of authority, the Maoist political party introduced the people's war—

a new and most serious problem. Violence started in between hope and sorrow. In the beginning of the people's war, contemporary government fail(ed) to understand the cause of the people's war...(while the Maoist party won the admiration of unemployed and poor people in remote areas).

(Now seven years have passed, claiming more than 7000 lives.) A number of infrastructures like telecommunication towers, highways, bridges, airports, hydropower projects, power transmission centers, water supply, schools, post offices, and even health centers and other service centers, were bombed and destroyed...The country's economy has been ravaged...The number of tourist(s) coming to Nepal has been reduced to the minimum. Village agriculture has (been) adversely affected since young men and women either joined in war or left the villages due to fear of being killed. The government has diverted more than sixty percent of (its) development budget to security expenses to stop the war....Insurgency has become a new and very serious problem.

Due to the struggle for power, problem of proper person in proper position is common in every sector. Economists who do not take social variables and geographical constraints into account have often dominated the National Planning Commission and (the result) is failure (for) adopted development...strategies. Without changing the feudal structure of the society by the growth of critical mass of intellectuals, social change and development is not imaginable.

APPENDIX IV: UKRAINE

Leyla Mustafaveva

The name of the country itself suggests that it is "at the edge." Bordering Russia and reaching the Black Sea to the south, Ukraine is experiencing its eleven years of independence since the Soviet Union fell apart and into the pieces from which it was made. With a continuing currency crisis, wide-spread

corruption, an increasing unemployment rate, plummeting figures reflecting life expectancy, brewing ethnic conflict in Crimea and the Carpathian Mountains, and a less than stable legal system, Ukraine is indeed on the edge. Understandably, conflicts abound.

The IMF and the World Bank continue to prescribe remedies to set the country on a certain track. The country's leadership does its best to follow the prescriptions. People do what they can to get by. In accordance with the general precepts pertaining to conflict resolution, however, it is important to note that most effective solutions to ongoing conflicts cannot be dictated from above or outside.

This is not merely for moral reasons, but for practical ones: without the participation of all groups involved in a conflict, any prevention or settlement will be of limited efficacy and duration.

In the midst of this discouraging news about the troubled times in Ukraine, it might be helpful to keep in mind some things which come together as other things fall apart. The Ukrainian Mediation Group (UMG) is a network of eight regional centers which provide conflict resolution services throughout the country. The indigenous effort to systematize practical approaches to dispute resolution began in the 1980's when UMG Director Nikolai Borisov began mediating between striking coal miners and labor management in the Donetsk region of the former Soviet Union.

Since that time, the UMG has expanded its repertoire to include projects geared toward promoting dispute management in enterprise restructuring and privatization, court-based mediation, civil society dialogue between ethnic groups in Crimea and the Carpathian Mountains, conflict prevention through mass media operations, and dispute resolution in school systems.

Many of projects operate without funding, and succeed due to a seemingly endless supply of energy and enthusiasm. The UMG consists of twenty-five paid staff members and over one hundred volunteers,

including psychologists, lawyers, judges, teachers and students. In a country plagued by crippled industries and massive unemployment, the UMG regional centers are encouraging places to be.

In 1994, the Ukrainian Mediation Group joined into a partnership with Search for Common Ground, an international non-governmental organization dedicated to transforming how the world deals with conflict--away from adversarial approaches toward cooperative solutions. The goal of Search for Common Ground in Ukraine (SCG/Ukraine) is to strengthen civil society by building capacity and institutions to deal with conflicts constructively and cooperatively by (the) following means:

- Project activities include supporting and expanding a network of trainers and mediators throughout Ukraine;
 - Providing mediation and consulting services;
 - Supporting existing conflict resolution institutions and building new ones;
 - Providing conflict resolution skills training and training of trainers;
- Awareness building of conflict resolution as a viable option within Ukraine society at multiple levels.

The working partnership has been supported with grants from the ARD/Checchi Rule of Law Consortium, Carnegie Corporation of New York, Eurasia Foundation, International Renaissance Foundation (Soros), MacArthur Foundation, C.S. Mott Foundation, Ira Wallach, and the United States Agency for International Development.

The SCG-UMG collaboration has led to a series of professional exchanges, mediation training seminars, and project developments which have encouraged the Ukrainians' efforts to influence the ways in which their society deals with conflict. The results have been many. In Donetsk and Odessa, the district courts

are creating a place for mediation in order to alleviate overloaded dockets and promote alternative dispute resolution as an important aspect of legal reform. UMG mediators have been consulting Ukrainian and foreign enterprises as they seek to build conflict management systems into labor agreements and contracts.

Multi-ethnic mediation teams are working together to prevent violence in Crimea, where regional stability is threatened by competing ethno-national ambitions. During the Soviet era, Crimean Tatars (indigenous people of the Crimean Peninsular) and many other smaller ethnic groups were deported *en masse* to Central Asia. The return of these formerly deported minority peoples adds considerably to the typical post-Soviet strains on an already fragile social and economic infrastructure. Although many people in Crimea will claim to live peaceably with their neighbors, their protests are reminiscent of those made in the Former Republic of Yugoslavia in the early 1990's. As of yet, thankfully, there has not been a catalyzing force for violence on the Peninsula. However, this parallel should not go unnoticed and demands intervention.

The European Center for Common Ground and the Ukrainian Center for Common Ground have cooperated with government, labor, the private sector, donor organizations, and other NGO's to improve community and ethnic relations in Crimea. Two mediation groups have been established in Crimea and have worked to bring together diverse local groups to resolve issues and concrete problems of common concern (unemployment, citizenship, ecology, discrimination, religious-based issues, etc.) The main work in Crimea involves the use of problem solving skills, which, while second nature in the West, are lacking in post-Soviet Ukraine. The main methodology for the work of the organizations in the region is to facilitate group discussions followed by cooperative work in the communities.

In addition to the work of the Local Working Groups, the Ukrainian Center for Common Ground expanded its conflict prevention tools by developing small projects involving the Crimean youth, such as

Peace Camps focused on Crimean multi-ethnic heritage and aimed at developing cultural diversity management skills. And in schools, children learn about conflict resolution as they role-play historical scenes. It is not rare to find children from the school mediation programs lingering in the courtyards after class. They will not go home until they have successfully reached an agreement between historical figures such as the Mongol Tatar Sultan and the Kievan Prince or Khrushchev and Nixon. With these children as Ukraine's future, the country may be on the edge of something remarkable indeed.