



Doctoral Thesis

Proposal

Mediation in Conflict Areas

Challenges and Chances

(Working Title)

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1. Research Questions and Topic

The dissertation shall deal with the role of mediation in the international field. The opportunity of peaceful conflict resolution is of particular interest. Mediation shall be examined whether the practical implementation and the increased application of mediation are unrealistic projects or contain latent potential. The mode of application in the international practice is a further focus of the dissertation project. Moreover, opportunities to improve and advance the implementation of mediation will be observed.

The dissertation aims at responding to the following research questions: What is the status of the practical application of mediation in the international field? Here, the frequency of occurrence and the prospect of success are of special interest. In which manner is mediation applied in the international field? How does the mediator proceed? Which results and effects can be achieved by mediation and to which extent are those outcomes accepted by the people concerned? Focus will be given to the examination of advantages and disadvantages of mediation. Furthermore, the subject of mediation must be addressed leading to the question which conflicts are appropriate for mediation?

The dissertation project relates to the academic field of Public International Law. Mediation aims at establishing sustainable peace and shall render military interventions obsolete by contributing to peaceful conflict resolution. The dissertation project, therefore, covers the subject of mediation especially inter-cultural mediation. Moreover, aspects of human rights and fundamental rights will be included in the dissertation. Here, it is crucial to examine advantages and disadvantages of mediation regarding human rights violations.

2. Preliminary Table of Contents

1. Introduction

2. Mediation

2.1 Definition and Types

2.2 Application in the International Field

2.3 Advantages

2.3.1 Empowerment

2.3.2 Increase of Acceptance

2.4 Disadvantages

2.4.1 Trust Building

2.4.2 Lack of Publicity

3. Case Examples

3.1 Ecuador and Peru

3.2 Kosovo

3.3 Kenya

3.4 Burma

4. Comparative Analysis

5. Conclusion

3. Content

3.1 Mediation

The second chapter – after the introduction – contains fundamental issues concerning mediation. First, the term mediation will be defined and relevant elements will be explained. Here, it must be pointed out that there are different types and models of mediation ranging from a very passive role of the mediator to active engagement into conflict resolution by the mediator, which leads to an approximation of mediation to arbitration. In general, a mediator is seen as impartial third party that improves the communication between the conflicting parties. In addition, the mediator is responsible to compensate imbalances of power. Furthermore, this chapter deals with training and requirements of mediators in the international field. It is crucial to have a look at the persons and institutions acting as mediators. States, international organisations as well as individuals are engaged in the resolution of international conflicts. Special focus must be, moreover, given to mediators of the United Nations and to the role of diplomats as mediators.

The third sub-chapter addresses benefits and opportunities of mediation. Mediation aims at the promotion and improvement of conflict resolution skills. In this way, the parties themselves should come to a solution rather than transferring the responsibility to a third party namely to a judge. In this context, empowerment plays a crucial role. The parties shall experience themselves as active and powerful; this should not only apply for the present conflict, but it should rather have positive impact also for future conflicts and their resolutions. The active participation of the parties in the conflict resolution leads to an increased acceptance of the result. The jointly elaborated solution is rather accepted and implemented than a decision imposed by a third party as for example court rulings.

The fourth sub-chapter discusses the challenges and disadvantages of mediation. Trust building can be seen as challenge as it turns out to be extremely time consuming. Furthermore, challenges arising in group mediations will be dealt with. Besides, it is necessary to pose the question whether conflict resolution in the international field and building sustainable peace are illusory. The confidentiality of mediation is a rather ambivalent principle. On the one hand, it is a necessary prerequisite for trust building and for an open intercourse between the parties. On the other hand, confidentiality can lead to problems. This is the case for gross human rights violations where the offender might prefer mediation in

order to avoid a public court ruling. The perpetrator can be held accountable with both a judgement and with public "naming and shaming". Due to confidentiality, mediation is not suitable for every conflict, but the methods of conflict resolution must be adapted to subject and situation.

3.2 Case Examples

The third chapter wants to illustrate the elaborated theory in four case studies. These case examples shall depict various conflict situations in different geographical areas. The chosen case studies should demonstrate possible outcomes achieved by mediation. The first case example deals with the violent border conflict between Ecuador and Peru from 1995 to 1998. The Military Observer Mission was established in accordance with the Peace Declaration signed in 1995. The proposed solution was accepted by both nations and the border dispute formally came to an end in 1998. The second case study examines the current situation in Kosovo. Latest events and tensions on the border between Kosovo and Serbia are of particular interest. Besides, the situation in the north of Kosovo and in the city of Mitrovica will be dealt with.

While the first two case examples give an insight into border-related issues, the following two case studies involve post-election violence. The third case example elaborates on the mediation process in Kenya after the election in 2007. Challenges and difficulties mediators had to face and the lack of willingness of the parties to contribute to the mediation process will be looked at in detail. The fourth case study is dedicated to the current situation in Burma. Here, various issues are worthy of thorough analysis as for example difficulties concerning the election in 2010 and lack of democracy. In addition, the long lasting armed conflict and the ethnic conflict, which is also an important issue regarding the case example of Kosovo, should be observed.

3.3 Comparative Analysis

The fourth chapter aims at the analysis of the four case examples with regard to the theoretical considerations elaborated in the previous chapter on mediation. Success, challenges and opportunities of the different mediation processes shall be compared and evaluated. In this way, a comprehensive analysis of the practical relevance, of achievements and of the realisation of mediation in the international field shall be provided.

4. Methodology

Most of the information that will be used in the dissertation comes from literature research mainly at the Law Faculty of the University of Vienna. This literature includes monographs, academic papers and essays. Besides, it is essential to take recent dissertations into account. At the University of Vienna, there are some useful dissertations about intercultural mediation, United Nations dispute settlement or the violent conflict between Kosovo and Serbia. These dissertations can serve as source for my own dissertation.

The dissertation project at hand shall have practical significance and shall, therefore, make a valuable contribution in the field of public international law and conflict resolution. As the dissertation project examines the practical application and possibilities of mediation, it is obvious to include the analysis of conflicts and previous cases as core pillar. Regarding the four practical examples, it is of course desirable to gain background information by observing field work. For this purpose, I should identify appropriate projects and contact persons involved in those projects.

The work and practice of international mediators is a particularly interesting issue for this project. The dissertation shall give an appropriate impression of proceedings of both mediators of international organisations and those of non-governmental organisations. Besides, the dissertation project would immensely benefit from experiences and field reports contributed by mediators of the United Nations, the European Union or the Organisation for Security and Co-operation in Europe. Therefore, I expect to include expert interviews as sources. For instance, I intend to talk to the Rapporteur on Kosovo for the European Parliament.

Nevertheless, I will have to face certain problems and challenges during research. It is clear to me that it might be difficult to gather significant material about the process of mediation in international conflicts. One of the most important principles of mediation is confidentiality; that is why the results are not publicly available. The same problem occurs in connection with diplomatic interventions and the relevant documents. These difficulties might be overcome by interviewing mediators and other persons concerned in a reasonably abstract way.

5. Time Plan and Finance

In the first year (March 2011 - March 2012), the first section of the PhD will be completed. In the summer semester 2011, I passed the lecture and the course on legal methodology and a seminar on human rights with Prof. Nowak. The seminar for the presentation of the dissertation project will be completed in the winter semester 2011/2012 also held by Prof. Nowak.

With regard to the trans-disciplinary dissertation topic, a specialization is useful in order to acquire and deepen interdisciplinary knowledge. This specialization will be carried out by the completion of appropriate Baskets of Electives (“Wahlfachkörbe”) like mediation and other forms of alternative conflict resolution, law of international relations and fundamental and human rights. Regarding the dissertation, first research work is undertaken and the proposal is created. Finally, the further procedure and the doctoral thesis agreement (“Dissertationsvereinbarung”) will be discussed with the dissertation supervisor.

In the second year (March 2012 - March 2013), the Baskets of Electives and the third seminar will be completed. The majority of the compulsory subjects provided in the doctoral program and the optional subjects for the Baskets of Electives will be passed in the first year. In the second year, the focus is, thus, placed on research. Moreover, expert interviews will be conducted and a first draft of the dissertation will be created.

In the third year (March 2013 - March 2014), the thesis will be finalized and modified according to the suggestions of the supervisor. The revised version of the dissertation will be submitted for assessment and finally the Defensio of the dissertation will take place. The dissertation will be financed with my own funds.

6. Preliminary Bibliography

BELL, Christine: *On the law of peace: peace agreements and the lex pacificatoria* (Oxford: Oxford University Press, 2008).

BELL, Christine: *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2000).

BERCOVITCH, Jacob (ed.): *Mediation in international relations: multiple approaches to conflict management* (New York: St. Martin's Press, 1994).

BERCOVITCH, Jacob (ed.): *Resolving international conflicts: the theory and practice of mediation* (Boulder: Rienner, 1996).

BERCOVITCH, Jacob (ed.): *Studies in international mediation: Essays in honor of Jeffrey Z. Rubin* (Basingstoke: Palgrave Macmillan, 2002).

BRAND, Marcus G.: *Kosovo under international administration: statehood, constitutionalism and human rights* (Dissertation Vienna University, 2002).

CARROLL, Eileen; MACKIE, Karl: *International mediation: the art of business diplomacy* (The Hague: Kluwer, 2006).

COLLIER, John G.; LOWE, Vaughan: *The settlement of disputes in international law: institutions and procedures* (Oxford: Oxford University Press, 2000).

FALK, Gerhard; HEINTEL, Peter; KRAINZ, Ewald (ed.): *Handbuch Mediation und Konfliktmanagement* (Wiesbaden: Verlag für Sozialwissenschaften, 2005).

KLEIBOER, Marieke: *The multiple realities of international mediation* (Boulder: Rienner, 1998).

KOZMA, Julia; NOWAK, Manfred; SCHMIDT, Roland (ed.): *Indicators and monitoring systems as preventive tools for ensuring peace and security and respect for human rights in external policy-making of the EU: proceedings of the COST Workshop "Human Rights, Peace and Security in EU Foreign Policy"* (Vienna and Graz: Neuer Wissenschaftlicher Verlag, 2009).

- MCILWRATH, Michael; SAVAGE, John: *International arbitration and mediation: a practical guide* (Austin: Wolters Kluwer, 2010).
- MERRILLS, John G.: *International Dispute Settlement* (Cambridge: Cambridge University Press, 2005).
- O'CONNELL, Mary Ellen: *International Dispute Resolution: Cases and Materials* (Durham: Carolina Academic Press, 2006).
- PENEDER, Reinhard: *Heal the world: holistische Konfliktlösung am Beispiel des Grenzstreits zwischen Ecuador und Peru* (Dissertation Vienna University, 2006).
- RAMCHARAN, Bertrand G.: *Preventive diplomacy at the UN* (Bloomington: Indiana University Press, 2008).
- RANDOLPH, Lillian: *Third Party Settlement of Disputes in Theory and Practice* (New York: Oceana, 1973).
- SISK, Timothy D.: *Power sharing and international mediation in ethnic conflicts* (Washington, DC: United States Institute of Peace, 1999).
- STEDMAN, Stephen John: *Peacemaking in civil war: international mediation in Zimbabwe; 1974 – 1980* (Boulder: Rienner, 1991).
- STENELO, Lars-Göran: *Mediation in international negotiations* (Lund: Studentlitt, 1972).
- TOUVAL, Saadia (Hg.): *International mediation in theory and practice* (Boulder: Westview Press, 1985).
- UNITED NATIONS – CODIFICATION DIVISION: *Handbook on the peaceful settlement of disputes between states* (New York: United Nations publication, 1992).
- VOIGT, Stefan; ALBERT, Max; SCHMIDTEN, Dieter (ed.): *International Conflict Resolution* (Tübingen: Mohr Siebeck, 2006).
- ZACH, Evelyn: *Institutional, statutory and general mediation rules for international dispute settlement* (Dissertation Vienna University, 2009).
- ZARTMAN, Ira William: *Peacemaking in international conflict: methods and techniques* (Washington, D.C.: United States Institute of Peace, 2007).