



**CANADIAN GLOBAL AFFAIRS INSTITUTE**  
**INSTITUT CANADIEN DES AFFAIRES MONDIALES**

# **Canada and Mediation: Issues and Considerations**

by Peter Jones  
January, 2017

# POLICY UPDATE

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## ► Executive Summary

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- If Canada is to become more involved in mediation, each case requires a disciplined approach to determining how Canada's interests will be affected by the mediation approach selected. Mediation is multifaceted. One way to describe this is in terms of mediations which seek the **management**, the **resolution**, or the **transformation** of a conflict. Conflict **transformation** involves actors advocating policies designed to alter the status quo. Conflict **management** or **resolution** types of mediation may be seen as "safer," but may be criticized by some as lacking in the imagination to address the deep-rooted causes of a conflict.
- Mediation can also raise issues with respect to international justice. Often, the achievement of an agreement to end the fighting requires some form of leniency for those who have been engaged in it.
- Another issue is whether Canada wishes to establish criteria for its involvement in mediation and what these might be. Intuitively, mediations in conflicts where we have an expertise, or some other comparative advantage, make sense. But few countries who are active in mediation actually do this. Instead, they tend to go where the need is.
- Other countries active in mediation support efforts at different levels. They support Track Two and Track 1.5 projects which can open doors to potential official involvement in mediations. Support for broader, grassroots reconciliation projects, known in some circles as "Track Three," is also important to encourage traditionally disenfranchised voices (women, minorities, etc.) to be represented in a peace process. This suggests that an inventory of those Canadians who have shown a proven aptitude to do this work at multiple levels is necessary as well as a strategy to provide them with long-term support for their efforts and a mechanism (perhaps informal) to promote cross-references between their work and Canada's official mediation capacity.



## INTRODUCTION

**T**he Trudeau Government wants to make mediation an area of foreign policy focus.<sup>1</sup> Of course, Canada may decide that its engagement in mediation will consist of supporting others, as, strictly speaking, the Minister's mandate suggests. However, if Canada decides that it wishes to become a more active mediator itself, it is suggested that there are *at least* four sets of issues to consider:

- The question of what *kind* (or kinds) of mediation Canada may wish to engage in, and how “muscular” it can expect to be as a mediator;
- The issue of how involvement as a mediator may affect support for international justice;
- The question of whether there are particular subject areas for mediation, or particular regions of the world in which Canada may have an advantage; and
- The question of at what level, or levels, Canada seeks to be a mediator.

These four set of issues are interlocking and define what kinds of mediations Canada may wish to become involved with and how. These issues are a matrix which can be combined in a variety of ways to produce different approaches to mediation, each with its considerations.

### SECTION 1: WHAT *KIND* (OR *KINDS*) OF MEDIATION MIGHT CANADA WISH TO ENGAGE IN?

Mediation, though intuitively obvious as a basic concept, is multifaceted. While there are many ways to describe this, the field tends to speak of mediations which have as their objective the **management**, **resolution** or **transformation** of a conflict. Each of these is different.<sup>2</sup>

Conflict **management** tends to accept that the power structures and other objective factors which define the situation are beyond the scope of the mediation to change. The objective of mediations is thus to work with those in power to *manage* the conflict so as to prevent or contain outbreaks of violence. Mediation activities are often about bringing people together quietly to anticipate and defuse potential triggers to renewed violence. Mediations of this type can have the effect of freezing a conflict and some in the field thus decry conflict management approaches. This criticism, though valid, misses the point that sometimes this is all that is possible, and that lives are saved by these efforts. Moreover, an intractable conflict which is well managed over time can lead to change as people may begin to wonder why the dispute lingers. Over time, this can lead to opportunities for the resolution of the underlying dispute.

Conflict **resolution** mediation occurs where the fundamentals have shifted such that a *resolution* of the motivators of the conflict is possible. These mediations are therefore about helping those in conflict to re-define what the conflict is about, leading to fundamental changes in positions. Moments for conflict resolution often have to do with significant changes in the situation (or, often more importantly, with the *perception* of such changes), which lead the parties to begin to re-assess whether continued fighting is really in their interests. These are fragile moments. Not



all of the combatants reach this conclusion at the same time, and it is not certain that there are important people on the other side who also believe that the time may have arrived for change.

The objective of mediation at this stage is often to reach out to those who believe that the time may have come for change and to help build bridges between them. A review of the mediation efforts which led to the Good Friday Agreement in Northern Ireland and the end of apartheid in South Africa, for example, demonstrates that mediation efforts were largely about this bridge-building type of activity which allowed coalitions of those who were willing to consider change to reach out tentatively to each other and solidify their views on each side.<sup>3</sup>

Of course, conflict **management** and conflict **resolution** mediation activities are not in isolation from each other. Often, the ongoing management of the situation can help people come to the realization that deeper efforts can be made to resolve the conflict. For the mediator, being involved over time in helping to manage the conflict can position one as a trusted entity and thereby able to build bridges when and if a situation opens up to the possibility of resolution.

Conflict **transformation** is different. It holds that the basic structure of the situation perpetuates the conflict and must be transformed.<sup>4</sup> Often, those who practice conflict transformation reach out to local communities to empower them to transform the underlying causes of the dispute. At its most aggressive, conflict transformation is not so much mediation as **advocacy**. It seeks to empower groups to transform a situation which is believed to have caused, and which sustains the conflict. Practitioners of conflict transformation, often at the NGO level, have a dim view of conflict management and conflict resolution. In particular, mediators working with local elites to try to manage or resolve the conflict, strikes conflict transformation practitioners as wasteful, or even unethical, as it is these elites who sustain the conflict in the first place. For those practicing transformative mediation, the objective is to support those seeking far-reaching change in areas such as human rights, economics, environmental justice and social-political reforms.

The differences between these types of mediation are important. Does Canada seek an advocacy role, or is to help to manage and/or resolve conflicts? How would either role affect our interests, and those of key allies? Obviously, much will depend on the circumstances. This tends to argue against hard and fast rules, and in favour of a more flexible approach. But these differences and nuances need to be understood and analyzed in each case where Canada may become a mediator.

The issue is complex in that the prospect of achieving a lasting peace in long-standing conflicts is increased when the peace process incorporates constituencies not usually represented in traditional forms of elite-oriented mediation. These include women, minorities, indigenous groups and others. In this sense, the advocates of conflict transformation are correct, even if the more aggressive proponents of it may be doctrinaire in their rejection of conflict management and resolution. The trick is to avoid “either/or” situations, and to design a peace process which allows for dialogues at multiple levels which include actors across a broad spectrum. While a country may act officially in a conflict management or conflict resolution capacity, it can also encourage



an inclusive overall peace process through creative support of grassroots initiatives to assist disenfranchised communities to play a role (this will be further discussed in Section 4).

Aligned to the question of what *kinds* of mediation a country like Canada might become involved in, is the issue of what power it brings to a mediation situation. The term “muscular mediation” was coined by Touval to describe a situation whereby a mediator is able to use “carrots and sticks” to bring the conflicting parties to agreement. This kind of mediation is only possible by a power which brings reward and coercive power to the table.<sup>5</sup> Middle-power mediators do not have this power, but rely on “good offices,” professionalism and a reputation for fairness to be seen as potential mediators.<sup>6</sup> Often, middle-power mediators can get the discussions going because they are seen to be “non-threatening,” but it is a great power, such as the US, that will conclude the process. But the role of the middle-power is crucial (if often unheralded) in opening up channels and getting the parties to the point where a process exists which can be built upon by a great power mediator.

## SECTION 2: MEDIATION AND JUSTICE

Involvement in mediation could raise issues regarding international justice. Can mediators help societies in conflict to achieve both peace and justice, and in what measure? Unless one side can completely defeat the other, only a negotiated agreement will end the fighting. Such a process will include, on one side or both, calls for amnesty or leniency – people who could keep fighting won’t agree to stop if they think they will be going to jail.

This problem is well-known in conflict mediation and resolution circles. It raises tensions between the needs of conflict resolution, and those of international justice.<sup>7</sup> On its face, the choice is simple; those who have committed crimes either go to trial or they don’t. Either they are let off in hopes of ending the fighting – which inevitably means prioritizing the goal of saving future victims by trading away the ability to seek justice for past victims – or we prolong the fighting, thereby creating more victims, in hopes eventual of justice. The fact that this choice is made against the backdrop of a peace process whose ultimate success can never be assured further complicates the moral ambiguity inherent in these situations.

The approach taken by the field is to try to overcome the stark choice posed by this peace vs. justice question through a focus on a third element; reconciliation. This “restorative justice” approach involves creating requirements which emphasize the need for healing, often in the form of a truthful accounting of past actions, and on restorative actions to make amends for those actions. None of these steps can ever fully replace justice for previous victims of the conflict, but they can assure that the perpetrators will have to confess their actions and atone in some way. They may also help a society to eventually heal the scars of the conflict.

For mediators, much reflection is required. Dealing with those who have fought wars, as mediators must by definition do, usually requires dealing with those who have committed crimes. It often requires discussions of how they might escape a trip to the International Criminal Court



in The Hague, or some other tribunal. While there are methods in the field to achieve a measure of restorative justice, these may not satisfy supporters of international law.

Of course, Canada can avoid this messy problem by not becoming a mediator itself, but rather supporting others, primarily financially. Such an approach would allow Canada to claim to be a more active supporter of mediation, while not soiling its hands. But it would also amount to a *de facto* declaration that Canada is a fair weather supporter of peace processes – willing to help pay for them, but not to get directly involved. Other countries who play the role of mediator have confronted this question and have tended to resist choosing one path or the other, preferring instead to do both. As a start, Canada may wish to study how they have dealt with it. In the end, however, if Canada is serious about playing a role as a mediator, some difficult choices have to be made. Unless the Government is prepared to confront these, talk of a mediation role in Canadian foreign policy may be misplaced.

### **SECTION 3: WHERE AND ON WHAT SUBJECTS SHALL CANADA MEDIATE?**

Another set of considerations surround the matter of whether there are particular types of conflicts, or regions of the world where Canada might usefully mediate. It may be argued that Canada, due to its history or experience, has comparative advantages in mediating disputes around such matters as federal relations; resource disputes; boundary issues; and others, or that Canada may have advantages as a mediator in certain regions where history or other connections give us a particular standing. This idea carries within it the implicit notion that a high degree of subject-matter expertise is required to mediate a dispute. Intuitively, this makes sense. The issues on the table are often complex and a sophisticated understanding of the possible options is necessary.

Amongst mediation experts, however, there is a counter-intuitive view that deep subject-matter expertise is neither essential nor helpful.<sup>8</sup> This view holds that a generalist approach to the subject of the dispute is best, allied to a deep expertise in mediation for two reasons. First, long-standing, intractable conflicts are rarely about any one issue – even if it appears so on the surface. Instead, the particular issue which may be spoken of as the key problem is often the tip of an iceberg of much deeper historical, social or other differences. Therefore, having too great an expertise in the surface issue can blind a mediator to the deeper problems.

Second, a mediator's role is not to settle the problem, but rather to encourage the disputants to find ways to settle it. The mediator should not get down in the weeds, but ask far-reaching questions as to the underlying causes in order to raise the discussions up from the day-to-day and suggest consideration of possible alternate ideas. A mediator who is in the weeds with the disputants, can miss opportunities. Of course, subject-matter expertise is important. But mediators must remember that they are there to be mediators, not participants in a discussion which has already yielded no results. Therefore, many mediators hold that, while it is important to have expertise in the subject matter (and probably more expertise than one lets on), the key is



to be expert in the task of bringing the parties into a discussion about the deeper questions of the overall dispute.<sup>9</sup>

If this line of reasoning is correct, it suggests that a country seeking to be a mediator needs to cultivate expertise in mediation itself and be able to field people who are adept at these skills. The expertise in the particular subject matter in dispute can be acquired as needed. This has been the experience of nations which have played this role, such as the Scandinavians.

In terms of whether there are particular regions where Canada might act as a mediator, once again, there is a counter-intuitive argument against this position. In the real world, carefully laid plans to prioritize particular regions or countries are frequently upset by events. For example, Afghanistan figured nowhere on any list of Canada's defence, aid or diplomatic priorities until it suddenly became one of the largest programmes in all of these areas since 1945. It is simply not possible to state with precision and in advance where Canada might be called upon to act as a mediator. Instead, decisions will be made on the spur of the moment and with a keen appreciation for political necessities (including considerations of relations with key allies).<sup>10</sup>

At root, the argument that there are particular issues or regions where Canada might concentrate its mediation efforts is implicitly based on a notion that a mediator needs to know very well the issues and players in the dispute, while mediation abilities can be picked up as one goes along. Mediation experts argue the opposite; that mediation ability, expertise and reputation are the keys, and that knowledge of the specifics of a conflict can be acquired.

The question of whether Canada should focus its mediation activities on certain subjects or regions may also limit Canada's ability to play a role. What if there are relatively few conflicts which meet the criteria Canada might establish for itself? In some ways, the argument is akin to the question of whether Canada should re-engage in peacekeeping, but only as a peacekeeper in certain kinds of conflict situations and not in others. What if there are relatively few conflicts which meet Canada's peacekeeping criteria? Also, if Canada is to be active in this field, long-term, bipartisan support will be required. What if a set of mediation criteria are adopted by one Canadian Government, but then a subsequent Canadian Government doesn't agree with them?

#### **SECTION 4: AT WHAT "LEVELS" SHOULD CANADA TRY TO MEDIATE?**

How do countries become mediators? There is no set model. Often, personal connections or reputation lead to openings. However, in looking at countries which do this kind of work, one sees certain trends. In addition to a willingness to prioritize mediation as a field of expertise – including training, deploying and maintaining a cadre of people who do this<sup>11</sup> – these countries tend to recognize that there are multiple levels of mediation and support them as part of the creation of a broad national ability. What is meant by levels of mediation?

The mediation of long-standing, complex, intractable disputes is usually undertaken at multiple levels. Often, before official mediation begins, there are exploratory talks to see if official talks



could succeed. These exploratory talks can be semi-official or unofficial – indeed, this is often necessary if the disputants are considering significant changes to long-standing positions. Therefore, these exploratory discussions often take place on a so-called Track Two or Track 1.5 level. These unofficial talks can go on for a long time, but they can help to set the stage for productive official discussions by allowing the sides to quietly explore options and get to know each other's thinking about the possibility of compromise. Not surprisingly, countries which have come to be known as mediators are also supporters of Track Two.

This has certainly been the pattern in the Middle East,<sup>12</sup> and a similar evolution took place in the discussions which helped to lay the ground for the end of apartheid in South Africa.<sup>13</sup> Of course, not all Track Two leads to Track 1 in such a linear fashion. The real world is messy. But these cases, and others, point to a realization that mediation is a complex and multi-layered task.

Moreover, the field of Track Two is a broad one. By the creative encouragement of unofficial grassroots initiatives designed to engage communities not traditionally represented in official mediations, an area sometimes known as Track Three, it can be possible for a country to serve as a mediator and also to have a hand in stimulating the kind of inclusive process which is often necessary to tackle the deeper issues within a conflict. Track Three can include activities ranging from social reconciliation initiatives to programmes designed to train disenfranchised groups to participate more effectively in peace negotiations. These types of initiatives can also be extremely important after a peace agreement has been achieved and is being implemented.<sup>14</sup>

Countries which invest in mediation thus tend to invest in different layers of it. They do not expect that every Track Two will lead to a breakthrough; in fact, few do. Rather, as Norwegian mediator Jan Egeland says, investments in multiple layers of mediation across multiple conflicts over time is critical in positioning oneself. Egeland argues that this strategy may be thought of as “venture capital for peace” in that venture capitalists make numerous small investments across many portfolios. Only a few of them strike gold, but the strategy of being active in many portfolios increases the chances of being present at a breakthrough.<sup>15</sup> If these considerations are correct, a country considering a role as a mediator should also reflect on what it might cultivate in terms of abilities to play a role at different levels of mediation, from official mediators, to Track 1.5 and Track Two actors, to the grassroots (Track Three) level.

## CONCLUSIONS

Taken together, the ideas in this paper point towards certain broad conclusions which can be thought of as a matrix of considerations.

First, mediation is a multifaceted activity and Canada should consider in each case what types of mediation it wishes to be involved in. Activities aimed at conflict **transformation** involve actors advocating policies designed to sweep away the status quo, while involvement in conflict **management** or even conflict **resolution** mediation generally may be seen as safer, but may be criticized by some for lacking in imagination to address the deep-rooted causes of a conflict. As it



considers what kinds of mediation it is appropriate for Canada to become involved with, Canada must also consider just how muscular its mediation activities can realistically expect to be and what roles it can play to support wider peace processes.

Second, the question of mediation and international justice must be considered. It does not have to be an either/or matter; there are accepted means of achieving a kind of justice for the victims of conflict, while persuading the authors of violence to stop fighting. But these means can fall short of absolute standards of justice for war crimes outlined in international law. Any country wishing to play a role as a mediator must consider this matter carefully and be prepared to deal with the sometimes morally messy compromises required.

Third, consideration must be given to whether Canada wishes to establish criteria for its involvement in mediation. Intuitively, mediating only in conflicts where we have an expertise on the matter being disputed, or where we have some other comparative advantage in terms of our relations, makes sense. But few countries who are active in mediation actually do this in practice. Instead, they tend to recognize that one goes where the need is and that the investment in an overall expertise in mediation *per se* is the key to success.

Finally, experience indicates that any Canadian approach to mediation will need to be multi-layered and support efforts at different levels. It is therefore suggested that Canada identify and support those Canadians active in mediation at the Track Two and Track 1.5 levels as an investment in opening doors to potential official involvement in mediations. In addition, support should be given to Canadian support for civil society initiatives designed to make a peace process as broad and inclusive as possible. All of this suggests, at the least, that an inventory of those Canadians who have shown a proven aptitude to do this work at each level is necessary as well as a strategy to provide them with long-term support for their efforts and a mechanism (perhaps informal) to promote cross-references, where appropriate, between their work and Canada's official mediation capacity. Above all, creativity and flexibility are required. In a larger sense, we are not so much talking about Canadian support for mediation, but rather Canadian support for peace processes – with mediation a part of a much bigger effort.

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<sup>1</sup> The Mandate letter of the previous Foreign Minister said that one of his priorities was to “...increase Canada’s support for United Nations peace operations and its mediation, conflict-prevention, and post-conflict reconstruction efforts...” Though the letter speaks of mediation in the UN context, it is believed



that this has been interpreted as a call for Canada to be more involved in mediation generally. For the text of the letter see: <http://pm.gc.ca/eng/minister-foreign-affairs-mandate-letter>. There has been discussion in past of whether Canada should develop mediation as part of its foreign policy. For more see: Jones, P., "Canada and International Conflict Mediation," *International Negotiation*, vol. 18, no. 2, 2013; Storie, F., "A Canadian International Mediation Capacity," *CIAN News*, Summer, 2006, accessed at: <http://www.ciian.org/assets/newsletters/CIAN-Newsletter-Summer2006.pdf>; and the special issue of the *Canadian Foreign Policy Journal* on Canada and mediation, vol. 19, no. 1, 2013.

<sup>2</sup> These different types of mediation are discussed in Jones, P., *Track Two Diplomacy: In Theory and Practice*, (Palo Alto: Stanford University Press, 2015), pp. 60-65.

<sup>3</sup> For more on the long-term role of quiet "management/resolution" mediation, see O'Dochartaigh, N., "Together in the Middle: Back-channel Negotiation in the Irish peace process," *Journal of Peace Research*, vol. 48, no. 6, 2011.

<sup>4</sup> See, for example: Lederach, J.P., *Preparing for Peace: Conflict Transformation Across Cultures*, (Syracuse NY: Syracuse University Press, 1995); and Miall, H., *Conflict Transformation: A Multi-Dimensional Task*, (Berlin: Berghof Research Center for Constructive Conflict Management, 2004), available at: [http://www.berghof-handbook.net/documents/publications/miall\\_handbook.pdf](http://www.berghof-handbook.net/documents/publications/miall_handbook.pdf).

<sup>5</sup> See Touval, S., *The Peace Brokers: Mediators in the Arab-Israeli Conflict, 1948-1979*, (Princeton: Princeton University Press, 1982). On the "muscular" role played by US diplomat Richard Holbrooke in ending the Balkan wars see Touval, S., "Coercive Mediation on the Road to Dayton," *International Negotiation*, vol. 1, no. 1, 1996.

<sup>6</sup> Rubin has identified six distinct types of power that mediators can employ, with countries like Canada exercising power which derives from professionalism and fairness. See Rubin, J.Z., "International Mediation in Context," in Bercovich, J. and Rubin, J.Z. (eds.) *Mediation in International Relations*, (New York: St. Martin's Press, 1992).

<sup>7</sup> See Abu-Nimer, M., ed., *Reconciliation, Justice, and Coexistence: Theory and Practice*, (Lanham, MD: Lexington, 2001); and Deutsch, M., "Justice and Conflict," in Deutsch, M., Coleman, P.T., and Marcus, E.C., (eds.), *The Handbook of Conflict Resolution: Theory and Practice*, (San Francisco: Jossey-Bass, 2006, 2<sup>nd</sup> ed.), pp. 43-68. See also Aspinall, E., *Peace Without Justice? The Helsinki Peace Process in Aceh*, HD Report, (Geneva: Centre for Humanitarian Dialogue, April 2008). This report reflects on whether efforts to end fighting in Aceh had given too much priority to stopping the fighting and not enough to justice for the victims.

<sup>8</sup> See, for example, Mitchell, C.R. and Banks, M., *Handbook of Conflict Resolution: The Analytical Problem-Solving Approach*, (New York: Continuum Publishing Group, 1996), p. 86.

<sup>9</sup> See, for example, Saunders, H.H., "Interactive Conflict Resolution: A View for Policy Makers on Making and Building Peace," in *International Conflict Resolution after the Cold War*, Druckman, D., and P.C. Stern, (eds.) (Washington, D.C.: National Academy Press, 2000).

<sup>10</sup> Canada experienced this when considerations of whether and how to intervene in the African crises of the 1990s were cast aside in favour of political decisions, based on criteria quite different to those outlined in advance. See Schram, J., "Noble Commitments and Harsh Realities," *International Journal*, vol. 67, no. 2, 2012.

<sup>11</sup> For more on whether and how Canada might develop such a cadre see Jones, P., "Canada and International Conflict Mediation," *op cit*.

<sup>12</sup> See: Hirschfeld, Y., *Track Two Diplomacy Toward an Israeli-Palestinian Solution, 1978-2014*, (Baltimore: Johns Hopkins University Press, 2014); and Agha, H.S., Feldman, S., Khalidi, A., and Schiff, Z., *Track II Diplomacy: Lessons from the Middle East*, (Cambridge MA: The MIT Press, 2003).

<sup>13</sup> See Lieberfeld, D., "Evaluating the Contributions of Track Two Diplomacy to Conflict Termination in South Africa, 1984-90," *Journal of Peace Research*, vol. 39, no. 3, 2002.

<sup>14</sup> For more on Track Three, see Chigas, D., "Track II Citizen Diplomacy," on the *Beyond Intractability* website, <http://www.beyondintractability.org/essay/track2-diplomacy>, Aug, 2003. More on the range of activities that go on within Track Two may be found in Jones, P., *Track Two Diplomacy, op cit*, Chapter 1.

<sup>15</sup> Egeland, J., "The Oslo Accord: Multiparty Facilitation through the Norwegian Channel," in Crocker, C.A, Hampson, F.O., and Aall, P. (eds.), *Herding Cats: Multiparty Mediation in a Complex World* (Washington: United States Institute of Peace press, 2003), p. 543.

## ► **About the Author**

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