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**INTERNATIONAL MEDIATION: A
KEY ANSWER FOR THE
RESOLUTION OF MODERN
CONFLICTS**

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ABSTRACT

International mediation is one of the mechanisms contemplated in public international law that to pacifically settle conflicts. It is a diplomatic process in which a third party to the dispute, the mediator, voluntarily intervenes on his own initiative or on the request of belligerents, in order to help the resolution. His political nature makes it a very flexible tool and impeded doctrine to regulate it under a systemic definition. Only handful of scholars began to treat the subject in the 1980s. International mediation is, nonetheless, a specifically interesting tool for the resolution of current complex conflicts in which are fighting a mosaic of actors of all nature, using totally new *modus operandi*, on territories exceeding the traditional battlefield. Considering those new geopolitical stakes and aware of their incompatibility with the traditional perception of warfare in order to maintain international peace, the importance of a reconsideration of peacebuilding strategies, including the need to bolster mediation, have been stressed by diplomats and researchers those last two decades. It is time to encompass a new approach of international mediation, incorporating in its definition the changes that had already occurred in its components and practice, and adapting it even better to modern conflicts which resolution requires good preventive and communicative strategies, more than authoritative response through diplomatic or military pressure.

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ABBREVIATIONS

DPA: Department of Political Affairs

DPPA: Department of Political and Peacebuilding Affairs

EU: European Union

HC: Hague Convention on Pacific Settlement of International Dispute

HRC: Human Rights Council

ICJ: International Court of Justice

IS: Islamic State

MID: Militarized Interstate Disputes

MSU: Mediation Support Unit

OSCE: Organization for Security and Co-operation in Europe

PBSO: Peacebuilding Support Office

PCIJ: Permanent Court of International Justice

UN: United Nations

UNDESA: United Nations Department of Economic and Social Affairs.

UNGA: United Nations General Assembly

UNGEM: United Nation Guidance for Effective Mediation

UNSC: United Nations Security Council

UNSG: United Nations Secretary-General

US: United States

USSR: Union of Soviet Socialist Republic

WB: World Bank

INTRODUCTION

Simulque doctus [...] parum profici armis, si iniuriae sequerentur, causas bellorum statuit excidere.

“Next, with thorough insight into the feelings of his province, and taught also, by the experience of others, that little is gained by conquest if followed by oppression, he determined to root out the causes of war”.

Tacitus, *Agricola*, XIX, 1¹.

“- The war between the Tutsi and the Hutu, is it because they do not have the same territory?

- No, it is not that, they have the same territory.

- So... they do not have the same language?

- No, they speak the same language.

- So, they do not have the same god?

- No, they have the same god.

- Then... why are they waging war?

- Because they do not have the same nose”.

FAYE G., *Petit pays*².

On 16 May 2020 Félicien Kabuga is arrested in Paris, after twenty-five years escaping justice. His crime? Having orchestrated the *Tutsi* genocide in Rwanda that occurred between April and July 1994. The subject raised discussions on all sides. Practical questions: “should the International Court of Justice be competent to judge him, or should it be the Rwandan domestic courts?” “What was the true role of the French authorities in the genocide?” And theoretical ones: “how can the murder of a one million population had been justified solely by an ethnic difference?” “To be that cruel, are not the human beings intrinsically hostile to the others?” The controversial debate about the inherent virtue, or meanness, of the human beings’

¹ TACITUS, *De vita et moribus Iulii Agricolae* (lit. “On the life and character of Julius Agricola”), 98 AD.

² FAYE G., *Petit pays*, Grasset et Fasquel, 2016, p. 9.

“essence” has been a mainstay of philosophy for centuries, and still continues to be source of prolific doctrine³. The reality is in fact not binary. Otero, teacher in philosophy of law explains that the individuals are instinctively selfish in the sense that they will always primarily search to satisfy their personal desire. If this statement could evidently be discussed, what it rightly implies is that humans do have a conflictual nature that lies on objective reasons. The *Hutu* were not born preconditioned to hate the *Tutsi*; there would have been no genocide if no political interests had led to foment a hatred propaganda. Are then people naturally incapable to consider the interests of others before thinking about preserving their own ones? While this question can continue to be debated, as long as they will live in society, people will have to set rules in order to prevent the incompatibilities of their respective needs to interfere in their relations. However, even living according to a socially regulated order, disagreements can emerge. To face it, means of conflict settlement had to be found.

One of the first mean employed to resolve an issue is the use of violence, whatsoever the form it could take, physical, verbal or gestural. War is the expression, at the large collective scale, of this kind of violence animated by the goal of imposing its will to the rival group – or groups. Another spontaneous behavior is to adapt this will in order to make it compatible with the pretensions of the opponent. In that case, even though the gain can be less than the initial expectations, resolving pacifically the disagreement by unilaterally submitting or by finding a consensual solution, usually presents the advantages of preserving a convenable relation with the other party and avoids the costs that could entail a violent fight. Finding an agreement is a suitable mean of resolution as it aims to partially preserve both parties’ interests. Though, it is not always an easy task and the parties might struggle to achieve it by themselves. The intervention of a third figure in order to help parties settling the issue, by observing the problem from an “outsider” point of view, understanding its real causes and offering them another perspective, is a method that has been practiced since the dawn of times. Mediation is one of the first mechanism that was invented for that purpose.

From a juridical point of view, the specific term of “mediation” that is commonly used nowadays is a legal concept referring to a practice of conflict settlement, born in the United States (US) in the second half of the 20th century, as an alternative to the judicial resolution. This mechanism is frequently used in private law, especially to solve family issues. It is not the type of mediation that interests our present study: it will only be question of public international

3 See MORINEAU J., *La Médiation Humaniste*, Eres, 2016, p. 41.

mediation, which is one of the few formal existing means of pacific and political settlement of international dispute. Are those two types of mediation totally different mechanisms then? It is true that they both operate in totally different benchmarks. The most private and intimate sphere for one, the diplomatic one for the other. However, they use the same method: the voluntary help of a third party, the mediator, who suggests solutions to the disputants. In the sake of the same goal: the reconciliation of the latter. Sharing the same principle: a non-compulsory character.

International mediation is part of the international law system. It is codified by international treaties, especially the Hague Convention on Pacific Settlement of International Dispute of 18 October 1907⁴ (HC), and the United Nations (UN) Charter of 1945⁵. However, its use still remains quite uncertain. Owing to its political nature, this pacific mean is not determined by any very specific procedure by the texts, expressing itself flexibly, depending on the circumstances. Scholars did seek to make systematic analysis of that practice. The research in the field continues to be very moderate in comparison to the stake it represents. Indeed, international mediation possesses eminently interesting characteristics for the effective resolution of modern conflicts.

The concept of “modern warfare” does not only imply a temporal dimension. It also refers to a way of waging war that is in total contrast with the anterior traditional military strategies due to the notable change in many of its characteristic traits such as its actors, weapons or battle fields. Although some historians consider that this shift in the concept began with the wide spread of gunpowder weapons from the in the end of the 16th century, a much more contemporary approach will be contemplated here. The term of “modern conflict” must be understood, for the purpose of the present study, as referring to a recent period of time, beginning more or less after the end of the Cold War, including present time as well as the next years to come. War is still the scourge of today’s world peace. According to the Uppsala Conflict Data Program, between 2012 and 2018, more than 720 000 people were killed in international conflicts. During the only year of 2018, 165 conflicts have been identified⁶. Since 2012, this number follows an upward trend. Afghanistan, Ethiopia, Yemen, Burkina Faso,

⁴ Hague Convention on Pacific Settlement of International Dispute, (Hague I), of 18 October 1907, consolidated version of the Convention of 29 July 1899.

⁵ UN Charter, of 26 July 1945, signed in San Francisco.

⁶ DEPARTMENT OF PEACE AND CONFLICT RESEARCH of Uppsala University and the Centre for the Study of Civil War at the Peace Research Institute Oslo. See its interactive map of conflicts, visited on: <https://ucdp.uu.se/encyclopedia> [Accessed on 19/05/2020].

Lybia⁷; the list of current territories under tension could be longer. Finding rapidly solutions to tackle those trends is fundamental, and international mediation is one of the key answers. What are the reasons that make international mediation such an adequate answer to the effective resolution of modern conflicts and what are the requirements for its effectiveness?

The objective of that work is to demonstrate how the very advantageous features of international mediation could appropriately adapt to the necessities of today's complex conflicts. It will be shown that international mediation, for being more malleable than the other possible means of dispute settlement, has indeed a great potential that must be reconsidered. Nonetheless, to be effective, it needs to be coherent with the aim it purchases. In the present case, because it aims to resolve of modern conflicts, then their precise mechanic must be previously analyzed. Just as the conflictual nature of human beings, the existence of disagreements lies on objective reasons. This means that by identifying their causes, and by treating them, conflicts can be effectively resolved. The structure of this work will encompass this idea through a three-stages approach. First a general presentation of international mediation will be given in order to contour the subject that interests us. Then, to understand the factors mediation aims to treat, an overlook to the panorama of modern conflicts will be given. Finally, a new approach of the mechanism will be proposed in order to ensure its effectiveness by adapting its particular characteristics to the new stakes raised by those conflict factors.

⁷ Five first countries in conflict among the “Ten Conflicts to Watch in 2020” provided by the International Crisis Group, visited on: <https://www.crisisgroup.org/global/10-conflicts-watch-2020> [Accessed on 20/05/2020].

I – A GENERAL PRESENTATION OF INTERNATIONAL MEDIATION

1. An historical and etymological overview of mediation's origins

1.1. An ancient and wide-spread mechanism

Mediation is certainly one of the most spontaneous mechanisms for pacific resolution of conflict. The word is found carved on 5000 years old Sumerian clay tablets clay written in Mesopotamia, cradle of our classic culture, by the same civilization that invented writing⁸. References to acts of mediation are abundantly present in the most ancient written documents. In the *Bible* – ca. 2000 BC –, Homer's *Illiad* – ca. 750 BC – or even in Sophocles' *Ajax* – ca. 500 BC –, testimonies of the practice can be found⁹ The example of the group of emissaries coming from various Greek city-states in order to mediate the first Macedonian war in 209 BC is often mentioned for being a well-documented historical case¹⁰; it is not an isolated one though. Moreover, such practice arose in all cultures. In smallholder's ancient communities, someone of authority was chosen to help the resolution of disputes like the figure of the *pater familias* in ancient Rome or the African clan assemblies that were in charge of designating this eminent personality¹¹. In some countries inspired by Confucianism that considers private litigations as an unacceptable obstacle to the prior conservation of harmonized society, such as China or Japan, this system was even institutionalized. Mediation is thus a common instrument that, as we can easily imagine, has taken many different forms over times depending on the context in which it was used. The inconsistency of the mechanism is precisely one of its very prominent characteristics, and one of its most interesting assets.

Properly speaking, international mediation developed during the second half of the 20th century with the first peace studies made by authors such as Galtung, Boulding or Burton. However, it truly started to be shaped during the 1970s when other authors as Oran Young, Bercovitch, Zartman or Mitchell considered it as a fully-fledged research

⁸ MORINEAU J., *La Médiation Humaniste*, 2016, p. 55.

⁹ BERCOVITCH J., "The Structure and Diversity of Mediation in International Relations", in BERCOVITCH J., RUBIN J. Z., *Mediation in International Relations. Multiple Approaches to Conflict Management*, St. Martin's Press, 1992, p. 1.

¹⁰ DIEHL P. F., GRIEG J. M., *International Mediation*, Polity Press, 2012, p. 1.

¹¹ See OTERO M., "Las Raíces Históricas y Culturales de la Mediación", in SOLETO H., OTERO M., *Mediación y Solución de Conflictos. Habilidades para una Necesidad Emergente*, Tecnos, 2007, pp. 173-178.

field in international law studies¹². It is also during the same period – and in the US to be precise – that private mediation appeared as an official alternative mean to judicial resolution of conflicts. As we saw, mediation was used long before that, but it was a common manifestation, to resolve both private and public discrepancies, rather than a legal instrument. Before the formal birth of international law in the 19th century, there was then no strict distinction between private and diplomatic mediation, but an overlook at History reveals that the mechanism has always been a privileged one for international matters¹³. All along the Middle Ages, priesthoods and prelates were important mediators, using the legitimate moral authority of “man of peace”. Sometimes, this role was carried out by kings or emperors, just as the actuation of the French emperor Napoleon III in the talks between Austria and Prussia on the 26 July 1866. Why such a frequent practice of mediation in international relations? One of the major problems that face international law being its low power of coercion, mediation seemed to be a particularly appropriated solution. It is still the case today. This is why it interests us so much: more than being just an spontaneous response to solve conflicting people’s disputes, it is also an old, natural, and preponderant mechanism in the preservation of an international order. That explains why, even if it is has only been conceptualized recently, it was already present in the first multilateral treaty that addressed the conduct of warfare: the HC of 1907. But what exactly is “mediation”?

1.2. The essence of mediation revealed by its etymology and religious references

As for every notion that needs to be clarified, we shall begin by looking at its etymological meaning. *Medius*, *-a*, *-um*, in Latin refers “to who is in the middle, at the intermediary, to what is in the middle in a special and temporal sense, and thus also in a moral sense, to what is not incline to one side or another, to the indifferent, to the indeterminate”¹⁴. The adjective can be found conserving the same meaning, of course submitted to phonetic changes, in many other ancient languages like the Greek – under the forms of *mésos*, *meson* –, in Sanskrit – *mádhyah* –, in Avesta – *maidya*, or even in

¹² DIECKOFF M., *La médiation internationale dans la résolution des conflits : un regard théorique*, Inrem (Institut Nationale de Recherches de l’École Militaire), Sheet n°6, 2011, p. 1.

¹³ See OTERO M., *op. cit.*, p. 175.

¹⁴ ERNOUT A., *et. al*, *Dictionnaire étymologique de la langue latine. Histoire des mots*, 4th ed., Klincksieck, 1979.

Celtic Gaelic, Gothic and Oscan¹⁵. Therefore, the word “mediation” involves something that is *indifferently* situated between two sides, an *intermediary*, a point of connection: the mediator. The mediator is thus at the heart of mediation. We could thus wonder what is separating the mediator from a mere messenger. The answer will be found by looking at the other early references about mediation: the religious allusions.

The etymologic meaning only evokes an indifferent mediator, though he purchases in fact a very specific purpose. The religious origins of mediation can enlighten us about it. Those are especially important to consider because the very first references to mediation are related to the religious sphere. The Latin words *mediator* and *mediatrix* – the feminine form – commonly refers to *Mercure* (or *Hermes* for the Greek) in the Pagan culture¹⁶ who is “the mediator between life and death, day and night, livings and dead, sky and earth, the shelter and the outside”¹⁷. In turns, the biblical references present Christ as the mediator between God and the Man, as it is affirmed by Saint Thomas Aquinas in his *Summa Theologiae*: “his office is to join those for which mediation is employed: because the extremes join in the middle”¹⁸. What we can deduct from the analysis of those passages is that the mediator intervenes actively between two actors, not merely to connect them, but to reunify them. He must find a way to “join” those two “extremes”, those two apparently incompatible entities, like “day and night”, by leading them towards a middle ground. The mediator is an indeterminate figure with a very determinate objective: the reconciliation of two antithetical positions. He is not a mere passive messenger because he has a different objective, and thus must play an active role to reach it. A third actor that resolves discrepancies between opposite parties reminds the role of the judge. It is true that the mediator and the judge are originally connected. Nevertheless, the latter is a figure of authority in charge of maintaining the public order, while the former’s *rationale*, his reason to intervene, is totally different. The next sentence of Saint Thomas’s text can enlighten us about it. It states that besides Christ, who is the “only perfect mediator between God and the men”, there are other “people [...] which cooperate [...] in the union of the men and God”, and expresses his wish that “every mediator would search such virtue” by acting that way. In other words, what Saint Thomas is telling here

¹⁵ PUY F., “Introducción. La Expresión “Mediación Jurídica”: un Análisis Tópico”, in SOLETO H., OTERO M., *op. cit.*, pp. 28-30.

¹⁶ Sometimes authors designate *Nestor* and not *Mercure* to be the incarnation of the Hellenistic mediator, such as QUINTILIAN, in *De Institutione Oratoria Libri, ca. 92 AD*, Lib. 12, cp. 10., pars. 58-60.

¹⁷ BERMEJO J. C., *Mitología y mitos de la Hispania prerromana I*, 1st ed., Akal, 1982, p. 160.

¹⁸ SAINT THOMAS AQUINAS, *ca. 1274, Summa Theologiae*, 3, 26,1 *Respondeo*.

is that mediators are acting virtuously and of their own will. Apart from their possible moral obligations, they are not compelled to do so. They are not specifically trying to protect one side either. Their only satisfaction is to see the conflict resolved. This aspect is a central one to understand the concept of mediation: *the mediator is not an authority detaining a coercive power* over the parties and solely aims to join them on a common ground.

Thus far, we solely focused on mediation's archaic manifestations to understand its "fundamental essence". This introductory work was necessary. As said before, the notion of "mediation" can be relatively inconsistent. Keeping in mind what was its original *raison d'être* and fundamental characteristics will be helpful to search for a more specific definition of international mediation.

2. A nonconsensual doctrinal definition

2.1. The fundamental aspect: a tripartite relation

There is no consensual definition of mediation among the doctrine. What is more, for a long time the scholars were not even believing that a systematic analysis leading to the establishment of a fundamental pattern of the practice could be possible. They preferred to maintain it in a blur, comparing it to "a roughly charted sea [which] changing contours are not clearly discernible"¹⁹. Stevens, an author that realized a crucial work the theorization of the concept, affirmed that "an analysis of mediation is not possible except in the context of general analysis of bargaining negotiations"²⁰. This statement is indeed the starting point for defining mediation: it is "*the continuation of negotiations by other means*"²¹. Thus, in the mediation process, just as in any negotiation process, the opponent parties are the main deciders. For this reason, all the factors – the external context, the actors' behaviors etc. – that are likely to affect the parties' predispositions to cooperate in bargaining proceedings have a similar impact in the mediating process.

The other most important element that will affect the parties' predispositions to reach an agreement is the mediator, and more specifically, the mediator's *resources and*

¹⁹ MEYER A. S., "Functions of the Mediator in Collective Bargaining", *Industrial and Labor Relations Review*, 13(1), 1960, p. 160.

²⁰ STEVENS C., *Strategy and Collective Bargaining Negotiations*, McGraw Hill, 1963, p. 123.

²¹ BERCOVITCH J., *op. cit.*, p. 3. The italic is ours.

influence. The range of resources that can be offered by the mediator is very wide. They may take the form of “opportunities, acts and objects that can be used to effect a change in the behavior or perceptions of the disputing parties”²². They mostly include “reward, coercion, referent, legitimacy, expertise and information”²³, but are not limited to those examples. The starting point of mediation is thus a tripartite relation between the parties, opposed by incompatible interests, and the mediator, in possession of key resources. This system is the heart of mediation. All the other surrounding contextual elements will exert their influence on it.

2.2. Finding an accurate definition by selecting the very essential characteristics

The doctrine’s proposals for definition are abounding. Since there is no consensual answer, each author is offering his vision, emphasizing the characteristics that he considers essential. Some preferred to underline the mediation’s *rationale*, like Dryzek and Hunter, who presented “a process in which the parties to a dispute attempt to reach a mutually agreed solution under the aegis of a third party by reasoning through their differences”²⁴. Others, on its *objectives and process*, such as the Blake and Mouton’s definition, which states that mediation is a process involving “the intervention of a third party who first investigates and defines the problem and then usually approaches each group separately with recommendations designed to provide a mutually acceptable solution”²⁵. Or even, for some, on the mediators’ particular *attributes* and *modus operandi*. Davis and Dugan chose indeed to describe it as a “third party dispute settlement technique integrally related to the negotiations process whereby a skilled, disinterested neutral assists parties in changing their minds over conflicting needs mainly through the non-compulsory applications of various forms of persuasion in order to reach a viable agreement on terms at issue”²⁶.

²² *Idem*. p. 19.

²³ RAVEN B. H., “Political Applications and the Psychology of Interpersonal Influence and Social Power”, *Political Psychology*, 11(3), 1990, pp. 493-520.

²⁴ DRYZEK J. S., HUNTER S., “Environmental Mediation for International Problems”, *International Studies Quarterly*, 31(1), 1987, p. 89.

²⁵ BLAKE R. R., MOUTON J. S., *Solving Costly Organizational Conflicts*, Jossey-Bass, 1985, p. 15.

²⁶ DAVIS H. E., DUGAN M. A., “Training the Mediator”, *Peace and Change*, 8(2-3), 1982, p. 85.

The last definition already gives us a pretty complete idea of what is international mediation. Its accuracy can be discussed though. In particular, the statement relative to the mediator's neutrality. It is true that the etymological designation pointed an indeterminate mediator, morally equidistant from each side. Let us not be mistaken here: if the etymological designation indeed presented an impartial mediator, it surely did not present a neutral one. The mediator, shall we remember, is not a mere messenger. Bercovitch and Rubin's work – a reference for any researcher studying that field – highlighted this recurrent confusion between the notions of *impartiality and neutrality*²⁷. Usually the pitfall consists in calling a “neutral mediator” a mediator equally trusted by both sides²⁸. Other scholars, Greig and Diehl, share that view. They rightly observed that “it is best that [neutrality] not be part of the central definition [...] but rather be considered as a potential variable in assessing the success of mediation”²⁹.

In his own definition of mediation, instead of considering the formal role of the mediator, Bercovitch prefers to focus on the process in which the mediator alters the dynamics between the conflicting parties bargaining. Indeed, he defines mediation as “a process of conflict management, related to but distinct from the parties' own efforts, where the disputing parties or their representatives seek the assistance, or accept an offer of help, from an individual, group state or organization to change, affect or influence their perceptions or behavior, without resorting to physical force or invoking the authority of the law”³⁰. This definition is constructed on what he considered to be the four main elements of the “mediation system”: *the parties, the mediator, the process and the context*. This approach seems to be appropriate. Those elements will be treated, one by one, in the rest of our study.

²⁷ BERCOVITCH J., *op. cit.* p. 6.

²⁸ As it is done for example by two scholars, Kochan and Jick in an article published in 2011; *cf.* KOCHAN T., JICK T., “The Public Sector Mediation Process: A Theory and Empirical Examination”, *Journal of Conflict Resolution*, 22(2), 2011, pp. 209-240.

²⁹ DIEHL P. F., GRIEG J. M., *op. cit.*, p. 5.

³⁰ BERCOVITCH J., *op. cit.*, p. 7.

3. A legal form of peaceful conflict settlement

3.1. The international legal framework for conflict settlement

International public law is the instrument that regulates the relations between the actors of the international community. Following the consolidation of that community, which began, more or less, with the 15th century³¹ and culminated in the 20th, international public law consequently evolved to protect a global order³². The preservation of peace is thus a fundamental pillar of international law. Ideological movement promoting the resolution of international disputes through law arose at the end of the 19th century, leading to the celebration of the HC, first in 1899 and then in 1907 on the initiative of the Czar Alexander II of Russia. Those treaties set up the principles for laws of war, disarmament, and war crimes. It codifies thus the settlement of conflicts that interests our study. The international organizations created along the last century laid down many other rules complementing them. Resolution of international disputes is delicate to regulate because it is very difficult to impose an obligation of result to belligerents. Instead, of an obligation of result, the parties are bound by an *obligation of behavior* which is, in particular, articulated around three principles, one being the fundamental pillar from which stem the other two. It is essential to know them if we want to measure the weight of mediation in the preservation of the global order.

There are two possible paths “to maintain international peace and security”³³: the use of force and the peaceful means of resolution. Mediation belongs to the second one. Those peaceful means of resolution occupy a very special place in international law because of the general *principle of non-use of force* between States. This pillar of international *jus ad bellum*³⁴ is stated by the first article of first treaty of the HC – among the three that are composing it –, according to which contracting parties must act “with a view to obviating as far as possible recourse to force in the relations between States”. The location in the text reveals the importance of that statement. Although the Convention

³¹ This period corresponds to the emergence in Europe of nation States. The Treaties of Westphalia signed in 1648 that put end to the Thirty Years’ War represent a significant step towards the affirmation of States’ full sovereignty as opposed to the papal power.

³² See JUSTE J., *et. al.*, *Lecciones de Derecho Internacional Público*, 3rd ed., Tirant lo Blanch, 2018, pp. 21-25.

³³ Article 1.1 of the UN Charter, *op. cit.*

³⁴ *Jus ad bellum* refers to the law regulating the situations in which policy makers will consider a resort to violence acceptable and the punishment for States that initiate violence. It is complementary to *jus in bello* that establishes the prohibited conducts for parties engaged in conflict: the international humanitarian law.

only seems to establish a mere recommendation, it will transform into a real prohibition by posterior norms. The *Covenant of the League of Nations of 1919* was the following step towards prohibition, but “as long as the Pact was [...] accepting other manifestations of armed force” it was still “not possible to talk about a real obligation”³⁵. It happened ten years later with the *Kellogg-Briand Pact of 1928*³⁶ which solemnly declares in its first article to “condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy”. The notion of “war” here should be interpreted in a broad sense as referring to the general use of force. Today, the main safeguard of that principle is the article 2.4 of the UN Charter, which confirms the need for this broader interpretation by compelling all Members to “refrain in their international relations [...] the threat or use of force [...] or in any other manner inconsistent with the Purposes of the United Nations”. This general prohibition to use force is highly important because, as it has been said, the international law of dispute resolution is both difficult to regulate and to ensure. Avoiding conflict appears to be the best solution. But why is it relevant to our study if mediation, for being an instrument of conflict resolution, is necessarily posterior to the use of force? Both conflicts and mediation are concepts that evolved. Today, a conflict that can heavily threaten international peace does not necessarily include the use of physical force; and mediation can play a key role in the avoidance of conflicts. Those aspects will be developed further on in this paper.

The other two principles that are regulating the settlement of conflict are the *obligation to use pacific means of resolution* and the *freedom for choosing those means*. Knowing the vulnerability of the principle of prohibition to resort to force, we understand the importance of that other two principles. The second part of the pre-cited article one of the HC provides that “the Contracting Powers agree to use their best efforts to ensure the pacific settlement of international differences”. Once more, posterior texts came to reaffirm this original declaration. First the Kellogg-Briand Pact in its second – and last – article³⁷. Then, by the UN Charter in its articles 2.3³⁸ and 33³⁹. This last article is opening

³⁵ REMIRO A., *et al.*, *Derecho Internacional Curso General*, Tirant lo Blanch, 2010, p. 604.

³⁶ General Treaty for Renunciation of War as an Instrument of National Policy, also called “Kellogg-Briand Pact” or “Pact of Paris”, of 27 August 1928.

³⁷ Article 2 of the Kellogg-Briand Pact provides that “the High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means”.

³⁸ Article 2.3 of the UN Charter provides that “all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”.

³⁹ Article 33.1 of the UN Charter provides that “the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by

the Chapter IV which develops the different mechanisms for pacific resolution of conflicts. Then, three declarations implemented by United Nations General Assembly (UNGA) resolutions: the Declaration on the principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the UN Charter⁴⁰, the Manila Declaration on the Peaceful Settlement of International Disputes⁴¹ and the Declaration on the prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the UN in this field⁴². Even with all those instruments reiterating the need for States to “exclusively [use] peaceful means” to “settle its international disputes”⁴³, in addition shored up by the ICJ jurisprudence⁴⁴, the protection of the principle is not flawless. The obligation of behavior and not of result evoked before gives to the States a quite significant room for manoeuvre. The obligation is thus an “imperfect one”⁴⁵, relying mainly on States’ “good faith”⁴⁶. Moreover, the scope of the principle is restrained by its circumscription to situations that are, according to the article 33.1 of the UN Charter, “likely to endanger the maintenance of international peace and security”. The subjectivity of that statement is even more problematic considering the indirect global consequences that can produce any diplomatic action.

The freedom in the choice of the means is the counterbalance principle of the obligation to peacefully resolve disputes. It is a natural consequence of the principle established by the 2.1 of the UN Charter: “the sovereign equality of all [UN] Members”. This freedom is consecrated by all legal sources⁴⁷ of pacific settlement of dispute mentioned in the previous paragraph, and especially the article 33.1 of the UN Charter that lists the

negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice”.

⁴⁰ UNGA, Resolution 2625 (XXV), of 24 October 1970.

⁴¹ UNGA, Resolution 37/10, of 15 November 1982.

⁴² UNGA, Resolution 43/51, of 5 December de 1988.

⁴³ Article I. 2. of the Manila Declaration on the Peaceful Settlement of International Disputes, Resolution A/37/10, of 15 November 1982, which reiterates the article 33.1 of the UN Charter.

⁴⁴ The ICJ particularly underlined that the principle of pacific resolution of international disputes was complementary to the prohibition to use force and constituted a customary rule of international law which is “manifestly imperative”; cf. ICJ, *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d’Amérique)*, Judgment of 27 June 1986, *ICJ Reports 1986*, par. 290; and ICJ, *Plateau continental de la mer Égée, mesures conservatoires*, Order of 11 September 1976, *ICJ Reports 1976*, par. 35.

⁴⁵ REMIRO A., *et al.*, *op. cit.*, p. 605.

⁴⁶ Article II. 2. of the Manila Declaration.

⁴⁷ Including the international case law of the ICJ which states that “any resultant disputes are required to be resolved by peaceful means, the choice of which, pursuant to Article 33 of the Charter, is left to the parties”. ICJ, *Fisheries Jurisdiction (Spain v. Canada)*, Judgment of 14 December 1998, *ICJ Reports 1998*, par. 56.

main instruments existing for the pacific resolution of disputes. It recognizes to the parties the right to employ any “other peaceful means of their own choice”. Depending on the state of mind of the parties, the means that they will choose will vary.

This legal presentation helped us situate mediation in its general legal framework. Now that we know about the legal obligations that surround mediation, but that we are also aware of their moderated compelling character, we understand that these are factors that play on the parties’ choice to resort to mediation. This choice will depend on the characteristics of each existing pacific instrument and on the parties’ stakes. For instance, because mediation is a process deprived of bounding effects, the fact that the obligation to solve conflicts without using force predominantly relies on the parties’ good faith is strongly affecting the decision to look for mediation rather than another mean. This is what we are going to detail now by studying what separates mediation from the other pacific forms of conflict settlement. It will enlighten on the reason why its characteristics are such interesting assets for the purpose of modern conflict resolution.

3.2. Distinction with the other peaceful forms of conflict settlement

Article 33.1 of the UN Charter gives a list *ad exemplum* of the main pacific forms of conflict settlement. They fall into two categories: the *jurisdictional* – or “juridical” – modes of resolution, and the *political* – or “diplomatic” – ones. The *arbitration* and the *judicial settlement* are the two possible jurisdictional solutions. Their process is strictly regulated by the texts and the organ deciding on the issue⁴⁸ must apply the rules of international law – except if parties make a joint demand for an *ex aequo et bono* resolution which is common in arbitration. This is the first difference with mediation that does not follow, for its part, any strictly preestablished norms. To enter in arbitration or in the judicial settlement, the agreement of both parties is necessary. Yet, once the decision is pronounced, they are forced to respect it⁴⁹. This is the second difference with mediation for which the implementation of the final agreement is only based on the parties’ good faith. The effectiveness of these juridical mechanisms is probably their principle benefit. It makes them privileged means of resolution, as stated by the article 38 of the

⁴⁸ Article 92 of the UN Charter provides that: “*the International Court of Justice shall be the principal judicial organ of the United Nations*”.

⁴⁹ See JUSTE J., *et. al.*, *op. cit.*, p. 550.

HC that qualifies arbitration as “the most effective, and, at the same time, the most equitable means of settling disputes which diplomacy has failed to settle”. Still, the last part of this article reveals that juridical mechanisms shall operate after a previous intent with diplomatic methods. Why so? First of all, even though arbitration can be largely designed by the parties⁵⁰, from a practical point of view, juridical mechanisms are much more rigid than the diplomatic mode of resolution and usually imply a longer and heavier process; this is another difference playing, this time, in favor of mediation. Moreover, from a theoretical point of view, submission to juridical settlement is, somehow, the confession of parties’ incapacity to reach a common ground by themselves. This last distinction with mediation goes in fact beyond the simple theoretical plan because the question of parties’ true reconciliation affects the conflict resurgence in the future. It will be demonstrated in the next part of this study.

Among the political means we can find – from the less to the most compelling method – *inquiry*, *negotiations*, the *good offices*, *mediation*, and *conciliation*. Inquiry, according to the article 9 of the HC, aims “to facilitate a solution of [...] disputes by elucidating the facts by means of an impartial and conscientious investigation”. Determining the facts originating the conflict is essential to the formulation of a settlement solution. This function is ascribed to a special commission constituted with the parties’ consent, only actor of the process. It is a peculiar instrument because there is no multipartite composition like in the other methods. Above all, it is not an autonomous mechanism since it only “facilitates” the posterior resolution by another form of settlement. For that reason, we could hardly compare it to mediation. In fact, a complete mediation process must include a preliminary phase of investigation, which is not properly speaking the process of inquiry regulated by international law, but which responds to the same logic. The same happens with diplomatic negotiations in the sense that they present substantial similarities – mediation being the “continuation of negotiations by other means” – but are formally different mechanisms because they have significantly different structures. Mediation can be considered a more “methodic” mechanism since it requires the presence of a third actor, while diplomatic negotiations give complete freedom to the parties to manage how they want to solve their dispute.

⁵⁰ This very interesting characteristic explains why some international instruments favor the submission to arbitration by authorizing it for a very large panel of disputes, such as the American Treaty on Pacific Settlement “Pact of Bogota”, of 30 April 1948, or the European Convention for the Peaceful Settlement of Disputes, of 29 April 1957.

Negotiations are extremely important. They represent the very basic groundwork of any conflict resolution – including the jurisdictional settlement because there should always be a previous intent with political means. Generally, they take place through the celebration of consultations in which the parties can “exchange [their] views”⁵¹ in order to find an agreement. But not only: they also serve to determine “the manner of implementing the settlement”⁵². Nonetheless, our objective here is to examine a legal instrument that could ensure as much as possible the pacific resolution of modern conflicts, and negotiations are too inconsistent to be compatible with such a systemic study.

On the other hand, conciliation is the most rigid of the political means. As well as in mediation, it implies the presence of a third actor. In the case of conciliation, a commission is formed with the mandate to come up with concrete solutions. Even though the conflicting parties remain free to reject the proposal, conciliation is binding them at a higher degree. They do not maintain their entire sovereignty because they are not the deciders of their own faith, as opposed to mediation which, as provided by the article 6 of the HC, “have exclusively the character of advice, and never have binding force”. Also, while mediation always remain a voluntary form of intervention⁵³, many treaties⁵⁴ imposed the recourse to conciliation in some situations⁵⁵. Obligatory conciliation is indeed a good transactional solution between the ones advocating for the implementation of obligatory jurisdiction and the ones that defend the total freedom of parties in their choice of means for solving discrepancies. This dual nature is an advantage that does not have mediation, much more informal, and that can explain why conciliation is a more generally spread mechanism. However, the over flexibility of mediation could transform into its greatest asset considering the specificities of modern conflicts, the complexity of which requires malleable procedures of resolution.

⁵¹ Article 283 of the UN Convention on the Law of the Sea, of 10 December 1982.

⁵² *Idem*, par. 2.

⁵³ The article 5 of the HC, indeed provides that: “The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute or by the mediator himself, that the means of reconciliation proposed by him are not accepted”.

⁵⁴ Such as the Vienna Convention on the Law of Treaties, of 23 May of 1969, entered into force on 27 January 1980, in its article 66; or the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, of 14 March 1975, in its article 85.

⁵⁵ See PASTOR J. A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, 23rd ed., Tecnos, 2017, pp. 636-637.

Finally, the last mean cited by the article 33.1 are the good offices. They are often associated with mediation because they also imply the intervention of a third actor that cannot prescribe them to adopt a specific conduct. If the configuration seems to be the same, they are in reality two totally different processes. While the third party in the good offices – usually another State – only facilitates the contact between the opponents without taking position on the substantial matter, the mediator, as explained previously, is an active character⁵⁶. As a matter of fact, the very light presence of the third party in the good offices almost categorizes it as a bipartite relation instrument. The mediator is much more than a mere facilitator. His role, such as described by the article 4 of the HC, consists in “reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance”, which undoubtedly implicates that he take position on the substantial matter. He truly is the “variable” of the equation, the new element entering a preset arena, modifying the previous circumstances, to try to untangle the inextricable bargain. Thus, mediation is a flexible mean of resolution, more than conciliation, that allows mediator to truly influence its effectiveness, more than diplomatic negotiations or good offices. Such characteristic makes it adequate to solve today’s geopolitical tensions. The international organizations peacemakers recently realized it. As a consequence of this renewed interest, the status of international mediation has been changing those past years.

3.3. The renewed interest of the UN for international mediation

“Emphasizing the importance of a comprehensive approach to sustaining peace, particularly through the prevention of conflict and addressing its root causes, [...], national reconciliation and unity, including through inclusive dialogue and mediation, access to justice and transitional justice [...]”, among others, this was the objective pointed out by the UNGA Resolution 70/262, of 27 April 2016, on the UN peacebuilding architecture⁵⁷. It tells a lot about the evolution of the attention given to mediation since the end of the Cold War. Created to ensure the maintenance of international peace and security, the UN have played the first role in international conflict settlement for more

⁵⁶ COMBACAU J., SUR S., *Manuel de droit international public*, 6th ed., LGDJ, 2004, p. 561.

⁵⁷ UNGA Resolution 70/262, of 27 April 2016 on the United Nations peacebuilding architecture, p. 2.

than seventy years now⁵⁸. The organization, through its Secretary-General (UNSG), more exactly by the intermediary of its envoys, provides services of good offices and mediation. They can be engaged by the latter on its own initiative – of course, subjected to the parties’ approval –, on the parties’ demand, or pursuant the UNGA or the Council’s (UNSG) one. This last organ has a special mandate in that field. He takes the relevant measures to support peacemaking programmes and sends politically strong messages to potential belligerents in order to discourage their quarrelsome ambitions.

Aware of the changing nature of conflict, “particularly in recognition of intrastate conflicts as a threat to international and regional peace and security”⁵⁹, the UN recently changed its approach, shifting “*from a culture of reaction to a culture of prevention*”⁶⁰. Consequently, it showed a totally renewed interest for mediation, mobilizing important resources to “Strengthen [...] the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution”⁶¹. The Department of Political Affairs (DPA), created in 1992 to respond to these new priorities, last year associated with the Peacebuilding Support Office (PBSO), established in 2005 by General Assembly and Council’s resolutions⁶², to form the new Department of Political and Peacebuilding Affairs (DPPA). This organ works closely with the Mediation Support Unit (MSU)⁶³ and manages the Standby Team of Mediation Advisers⁶⁴, supporting negotiations and holding expertise on a very wide range of issues. Moreover, it developed an online mediation support tool called “UN Peacemaker” which includes an extensive data base to help professionals’

⁵⁸ See HAMZA A. M., TODOROVIC M., “Peaceful Settlement of Disputes”, *Global Journal of Commerce & Management Perspective*, 6(1), 2017, pp. 11-17.

⁵⁹ UN Guidance for Effective Mediation, Annex to the UNSG Report A/66/811, of 25 June 2012, on *Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution*, p. 4.

⁶⁰ See the DPPA web article of presentation of their action in prevention and mediation, visited on: <https://dppa.un.org/fr/prevention-and-mediation> [Accessed on 15/05/2020]. The italic is ours.

⁶¹ UNGA Resolution 65/283, of 28 July 2011, *Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution*.

⁶² Established in 2005 with the passage of UNGA Resolution 60/180, of 20 December 2005, on the Peacebuilding Commission; and UNSC Resolution 1645, of 20 December 2005.

⁶³ Established in 2006, it works closely with the Department's regional divisions to plan and support mediation efforts in the field. Among its functions, MSU provides advisory, financial and logistical support to peace processes; works to strengthen the mediation capacity of regional and sub-regional organizations; and serves as a repository of mediation knowledge, policy and guidance, lessons learned and best practices; see the DPPA web article of presentation of their action in prevention and mediation, *op. cit.*

⁶⁴ The Standby Team is an "on call" group of experts established in 2008 that can be deployed to assist mediators in the field. They have provided support in dozens of negotiations, and hold expertise on issues including power-sharing, natural resources and conflict, constitution-making, cease-fires and other security arrangements, and gender issues as they relate to conflict. They have the flexibility to deploy on short notice to assist UN or non-UN mediators globally, or to provide analysis and advice remotely. See the DPPA web article of presentation of their action in prevention and mediation, *op. cit.*

work, containing more than 750 peace agreements, guidance material and information on the UN's mediation support services.

Since 2015, the dynamism around mediation indeed moved up another gear. Numerous reports called for increased investment in conflict settlement area⁶⁵. When entering in function in December 2016, the new UNSG Guterres announced in his inauguration speech that *a more creative diplomacy* was needed to prevent conflict escalation, in particular by improving the use mediation. In accordance with this view, he established the High-Level Advisory Board on Mediation in September 2017, formed by eighteen members, current and former global leaders, senior officials and renowned experts. Above all, was developed in 2016 by the UNSG, on the request of the UNAG, the UN Guidance for Effective Mediation (UNGEM) that identifies a number of “key fundamentals” that should be considered in a mediation effort to address new conflictual issues. Some of those key fundamentals will be developed further on, especially in the last part where we will try to expose the necessary improvement of mediation for its adaptation to modern conflicts. The attention paid in this guidance to the comprehension on the causes of conflict indicates that the perspective over mediation truly changed these past years. Indeed, “*an effective mediation process responds to the specificity of the conflict*”, and because “each situation must be approached differently”⁶⁶, pretending to mediate modern conflicts without a perfect knowledge on the subject is a total nonsense. It seems that there is finally a real political will to promote international mediation, but the battle is not yet won. Today's diplomatic global tensions shall not be underestimated. Peacemakers will have to respond fast with concretized and coordinated actions if they want to ensure modern conflict resolution.

⁶⁵ Such as the High-Level Independent Panel on Peace Operations Report A/70/95-S/2015/446, *Peace Operations on uniting our strengths for peace: politics, partnership and people*, of 17 June 2015, which referred to the prevention of armed conflict as the “greatest responsibility of the international community”; the 2018 joint report of the UN and the World Bank (WB), *Pathways for Peace : Inclusive Approaches to Preventing Violent Conflict*; the UNSG Report 2009/189, *Enhancing mediation and its support activities*, of 8 April 2009, which examined the mediation challenges faced by the UN and its partners and outlined some considerations for strengthening mediation processes.

⁶⁶ UNGEM, *op. cit.*, p. 3. The italic is ours.

This light but general presentation of international mediation taught us that it is an ancient device oriented to the pacification of dispute between two – or more – parties, in which appears a third actor, the mediator, deprived of any binding authority, who aims to improve the chance of success of their negotiations by offering his resources. Nowadays, it belongs to the main mechanisms of pacific resolution of disputes contemplated by international law. The formal obligation for States to always resort to one of those mechanisms when they are facing a conflict did not grant it a major place in international relation studies until soon, when a true political will has finally been expressed to increase efforts in that field. The enthusiasm about international mediation is not a coincidence. This mechanism presents some assets that are particularly adapted to the characteristics of today's modern conflicts: a high flexibility that is not causing prejudice to its organized procedure. Why are those assets particularly adapted? This is what we are now going to understand by analyzing mediation context: the conflict trends and factors that it aims to solve. Then, by joining our knowledge of mediation to what we learned about its context, it will finally be possible to fully understand and rethink the three other items of the system: the parties, the mediator and the process.

II – TODAY’S CONFLICTS’ GENERAL PANORAMA

1. Definition and evolution of conflicts since the Second World War

1.1 The notion of international dispute

There is not a single definition of the notion of “international dispute” or “international conflict” – the terms of “conflict” and “dispute” being used indifferently. Finding a definition relying on the socio-politic perspective is source of a prolific doctrine⁶⁷. The professor de Visscher, for example, sustains that to be considered an international dispute, the object of the tension must be sufficiently circumscribed to be based on clear pretensions that can be rationally examined⁶⁸. On the other hand, the technico-juridical definition given by the International Court of Justice is more commonly accepted. It states that “a dispute is *a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons*”⁶⁹. Moreover, its objective nature implies that the mere denial of its recognition by the parties cannot affect its existence⁷⁰. Some of the international disputes can be solved by the application of international law rules; they are considered as “juridical conflicts”. On the other hand, those that cannot be resolved juridically are called “political conflicts”; international mediation, as we know now, is a tool used to avoid them. More specifically, it is usually used to avoid armed conflicts, which include both “interstate war at high and low intensities” and intrastate war such as “civil war [or] ethnic war”, “as well as violence that falls short of war, such as militarized disputes, terrorism, and riots or strikes”⁷¹. All those types of conflicts

⁶⁷ See PASTOR J. A., *op. cit.*, pp. 609-611.

⁶⁸ DE VISSHER C., *Théories et réalités en droit international public*, 3rd ed., Pedone, 1960, pp. 94 ff. and 429 ff.

⁶⁹ PCIJ, *Mavrommatis Palestine Concessions (Greece v. UK)*, Judgment of 30 August 1924, *PCIJ Series A n° 2*, p. 22. The italic is ours.

⁷⁰ ICJ, *Interpretation of the Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion of 30 March 1950, *ICJ Reports 1950*.

⁷¹ SZAYNA T. S., *et. al.*, *Conflict Trends and Conflict Drivers. An Empirical Assessment of Historical Conflict Patterns and Future Conflict Projections*, RAND Corporation Research Report, 2016, p. 9. Because this report served as an important source of information for the purpose of this study, it must be observed that if it is accurate for being fairly recent and based on a very large range of data base, as any source of information, it is of course somehow biased. The RAND Corporation is an American nonprofit global policy think tank for research and analysis, originally created by Douglas Aircraft Company to offer its services to the United States Armed Forces.

have evolved in history, making mediation process evolve consequently. Understanding this evolution is thus essential to understand mediation and to guarantee its effectiveness.

2.1 General evolution of conflicts since the Second World War

The end of the Second World War represents the beginning of a completely new global order where governance is notably a matter of international and regional organizations. The radical transformation of context also comes from the emergence of new dilemmas for international security, especially the new forms of waging war due to technological progress. Indeed, with the nuclear bomb, as the stake is not only about having a better military capacity than the enemy, the fighters are now playing in many other arenas, such as the bacteriological, cultural, economic, spatial or even cyber spaces. Taking the end of the Second World War as starting point, we will schematize the presentation of modern conflicts by distinguishing two characteristic periods of time.

The first one lasted during the whole Cold War. It was basically shaped by a bipolar repartition of the geopolitical world between two superpowers, the US and the Soviet Union (USSR), indirectly fighting through proxy wars. International mediation truly expanded in that context, led by those superpowers mediators and their hegemonic ambitions⁷². In fact, this period can be divided in two, considering that the post-decolonization is the real starting-point of “modern interstate system”. The “third world” wars of independence in the 1970s represent a key event for mediation study as they gave birth to many still unresolved issues, the roots of today’s conflicts⁷³.

⁷² See TOUVAL S., “The Superpowers as Mediators”, in BERCOVITCH J., RUBIN J. Z, *op. cit.*, pp. 232-248.

⁷³ To give a juridical example, the total failure of African Constitutions to ensure democratic institutions is mainly due to the process in which those fundamental norms have been artificially implemented after the declarations of independence. This weakness of the State in many African countries is now responsible for the lack of development by creating a favorable context for war and insecurity; see DOSSO K., “Les pratiques constitutionnelles dans les pays d’Afrique noire francophone : cohérences et incohérences”, *Revue Française de Droit Constitutionnel*, 90(2), 2012,

The second period, which begins with the end of the cold war, was also marked by a whole new geopolitical context in which the US were left the world's only "sheriff", provoking "a shift in the drivers, nature, and intensity of intrastate conflicts"⁷⁴, overall in Western Europe where the fall of the USSR left behind insecure and multiculturally desegregated countries. This second period is, once more, cut in the middle by a breaking event that interests mediation very particularly: the 9/11 terrorist attacks. The ultra-securing discourse after 2001 led to a more proactive military action of the US through a greater role in multilateral interventions and even preventive strikes⁷⁵.

Looking at this extremely summarized historical panorama, we can see that "conflict", which concept necessary includes an initial disagreement, took different forms over time. This is not only due to the new means for making war but also to the evolution of military strategical culture. Each country organizes its military strategies in function of its own culture and history. By knowing them, the mediator will be in a better position to anticipate the actors' moves. The cultural aspect is a fundamental one in tomorrow's global peacebuilding – it is sadly missing from the UN's programme for sustainable peace –, we will come back later on this aspect when studying the mediator's profile. The American traditional war culture has been truly affected since 2001. Built on "power and use of force"⁷⁶ and advocating offensive attacks or even preventive strikes, it is struggling to adapt to new complex forms of conflict marked by the superposition of actors and goals. Overconfident in its scientific and technological progress, the American army "*mixes up the fight and war [...] forgetting [...] that the goal of conflict is peace*"⁷⁷. This statement made by Giuli in an article of 2019 perfectly sums up the situation. The Second World War taught us that war could be as much destructive for the winner than for the defeated⁷⁸, leading, for that reason, the global community to establish rules

pp. 57-85; and DARGENT F., "Échecs du mimétisme de l'Afrique noire", *Revue du Droit Public*, 5, 2017, pp. 1347-1374.

⁷⁴ SZAYNA T. S., *et. al.*, *op. cit.*, p. 81.

⁷⁵ See GIULI J., "Des cultures stratégiques", *Inflexions*, 11(2), 2009, pp. 123-136. The italic is ours.

⁷⁶ GIULI J., *op. cit.*, p. 125.

⁷⁷ *Idem*, p. 126.

⁷⁸ DELAIGUE A., "Colin Gray, La guerre au 21^e siècle : un nouveau siècle de feu et de sang", Book review, *Res Militaris*, 1(1), 2010, p. 4.

prohibiting violent fighting based on the principle of non-intervention. However, the notion of “peace” again changed, requiring now a pacific form of interventionism. “*Sustainability*” is the key to 21st century international law. This new vision, expressed by the UNGA in its Resolution of 27 April 2016 – claiming that “sustaining peace is a shared task and responsibility that needs to be fulfilled by the Government and all other national stakeholders”⁷⁹ – is the reason for the recent shift in the UN’s approach to mediation. What are the characteristics of today’s issues that explain such a radical change in the historic conception of war as the first mean to reestablish peace? The answer can only be found once today’s conflict trends have been understood.

2. Understanding conflict trends to ensure an effective mediation

2.1. A global decrease of conflicts

Many researches try to investigate the changes of conflict trends in order to predict the upcoming ones. Only the very general aspects are going to be explained here, but the more precise mediator knowledge about it, the more adequate its action. The report⁸⁰ made in 2016⁸¹ by the RAND Corporation analyzes all the major conflict data base information provided since the end of the Second World War. Each data set uses its own definition of conflicts that sometimes led to distinct results, although “the general trends revealed by each of the data sets are largely the same”. The first observation that is made is that “at the global level and in aggregate terms, conflict has declined in frequency and intensity”⁸². The development during all the second half of the 20th century of the codification and protection of the human rights along with the construction of international organizations is clearly a reason

⁷⁹ UNGA Resolution 70/262, *op. cit.*, p. 2.

⁸⁰ SZAYNA T. S., *et. al.*, *op. cit.*, p. XX.

⁸¹ The project began in October 2012, a draft was completed in September 2013, it was reviewed and revised in 2014, then provided to the Army in April 2015 and finally updated in July and August of 2016.

⁸² SZAYNA T. S., *et. al.*, *op. cit.*, p. 40.

and, at the same time, a consequence of such global violence decrease. Nonetheless, this is not true for all types of conflicts when individually considered.

All ranges of intensity and incidence considered, it results in *interstate violence significantly decreasing* since their peak in the 1980s, at the end of the Cold War. Military disputes and crisis, that can take the form of exchange of threats or troop mobilization, have usually been mitigated before the outbreak of major hostilities. A better crisis mediation process can be one of the main factors explaining the conflict de-escalation. On the other hand, the Militarized Interstate Disputes (MID)⁸³ data set shows that *low-intensity and minimum-violence MID*s did not follow such trend: the first ones have remained at an overall stable level since the early 1990s and the second ones have even been at higher levels since 1990, reaching a peak in the early 2000s. This suggests that, at the same time, and counterintuitively, the role of former dispute resolution procedures “make[s] crises and militarized disputes somewhat more likely”⁸⁴. Indeed, if the negotiation process avoids the explosion of violence, the disagreement usually does not totally disappear, shelving a highly tensed situation unresolved, breeding ground for long-term animosities. As an example, the cease-fire negotiated by the UN in the 1949 between Pakistan and India during the first Kashmir war did not guarantee peace in the region where the situation is still, seventy years later, extremely tense, leading to recurrent border skirmishes and rebels insurrections⁸⁵.

⁸³ MIDs are defined as “united historical [cases] of conflict in which the threat, display or use of military force short of war by one member state is explicitly directed toward the government, official representatives, official forces, property, or territory of another State”; cf. SZAYNA T. S., *et. al.*, *op. cit.*, p. 219; and see PALMER G., *et. al.*, “The MID4 Data Set: Procedures, Coding Rules, and Description”, *Conflict Management and Peace Science*, 32(2), 2015, pp. 222-242.

⁸⁴ SZAYNA T. S., *et. al.*, *op. cit.*, p. 18.

⁸⁵ On the 31 October 2019, India formally revokes Kashmir's constitutional autonomy and splits the region into two territories that will be directly ruled by the central government. One week after, a grenade attack killed one person and injured at least 45 people; cf. *Aljazeera*, “India: Two killed, several wounded in Kashmir grenade attacks”, 26 November 2019, visited on: <https://www.aljazeera.com/news/2019/11/india-killed-wounded-kashmir-grenade-attacks-191126140031755.html> [Accessed on 22/05/2020].

2.2. But an increase of low to medium intrastate violence

The increase of small scale conflicts is not the only trend that allows us to reconsider the common optimistic opinions that sustains that today's world is more peaceful than it has never been in its whole History, basing themselves on the numbers showing a global reduction of intense interstate violence since the end of the Second World War. Paying attention to the intrastate conflicts' trends should indeed worry the historians and scientologists. *Intrastate conflict* includes all forms of violence that occur within a state, ranging from war to anti-government demonstrations. Because it encompasses so many different types of violence, research sometimes struggles to measure them and to detect clear patterns. It is then important to be careful when looking at numbers. For our current subject though, since we are not entering further in details, we can affirm without taking much risk to mistaken that the aggregate trends in intrastate conflict reveal that they are also following the “general decline in frequency [...] and intensity [...] although there has been an uptick in some types of intrastate armed conflict since 2012”⁸⁶. Nevertheless, this trend is, once again, only showed to apply more specifically to the most dramatic for high-intensity violence when, in reality, trends in other forms of low to medium intrastate violence, including antigovernment demonstrations, guerilla warfare, riots and terrorism, show more limited evidence of this consistent downward trend. There is even an upward number of those kind of conflicts in recent years⁸⁷.

The RAND Corporation report rightly recalls that it is necessary to put these observations into perspective. The remaining intrastate violence, in an important proportion, “consists of long-running or repeated conflicts, rather than frequent outbreaks of brand-new conflicts”⁸⁸, which could in part explains the upward trend of violence that falls short of war. But should a context of “long-running or repeated conflicts” be preferred to a context of “frequent outbreaks on new conflicts”? First

⁸⁶ SZAYNA T. S., *et. al.*, *op. cit.*, p. 20.

⁸⁷ The UNSG Report A/72/707-S/2018/43, of 18 January 2018, on *Peacebuilding and sustaining peace*, precisely mentions in its introduction the increase of violence those last three decades that justifies the very priority given to peacemaking programmes; *cf.* par. 3.

⁸⁸ SZAYNA T. S., *et. al.*, *op. cit.*, p. 21.

of all, the humanitarian balance-sheet of ongoing internal tensions, appreciated on the long-term, even without any real armed conflict, can be significant. Secondly, the indirect consequences can be just as murderous. Intrastate chronic instability usually disturbs security in the whole region⁸⁹, sometimes causing real snowball effects in the surrounding territories. This phenomenon is observable with the dangerous *proliferation of non-state actors* that foments a form of violence that transcends territorial boundaries. It is exactly what happened with the Islamic State (IS): appeared in Irak in 2014, it spread in Middle East making use of the weakness of States during the Arabic spring, especially the Syrian civil war and the withdrawals of American troops in Irak⁹⁰. Finally, those less violent events can perfectly lead to additional violence and, sometimes, escalate into civil or ethnic wars. Terrorism is a good example as it aims to call people's attention before directly causing deaths – the majority of terrorist attacks actually do not cause any deaths. However, it surely does indirectly when it sparks crisis. More people died because of the war in Afghanistan started by Bush's administration in response to the 9/11 attacks than in the towers. The RAND Corporation report rightly explains that “terrorists often use violence to call attention to themselves or their cause, and would rather have lots of people watching the attack than lots of people killed by the attack”. This restructuration of conflicts marked by an increase of low to medium violence, inevitably, also affects mediation's structure.

2.3. A radical change in the tripartite structure of mediation due to the proliferation of erratic actors

Hence, it is not only the number but also *the nature of conflicts* that has fluctuated these last decades. Not all types of conflicts followed the same trend, and not all geographical regions were equally concerned. *Low-level political events* became much more frequent, especially in the recent years, in majority concentrated

⁸⁹ See MILLER B., “Conflict Management in the Middle East: Between the “Old” and the “New””, in DIEHL P. F., *et. al.*, *Regional Conflict Management*, Rowman & Littlefield, 2003, p. 158.

⁹⁰ See ASSEMBLÉE NATIONALE[France], *Rapport d'information n° 3964, de la Mission d'information sur les moyens de Daesh*, of 13 July 2016, pp. 13-15.

in Africa and the Middle East. The increasing pressure in Maghreb exploded with Arabic spring in 2011. Libya is still unsuccessfully searching for a way out of the crisis despite the UN effort to unite parties. African Saharan countries also suffer from the inextricable revolutionary conflicts as in South Sudan, Central African Republic, Mali, Nigeria or Somalia; the whole Middle East region crystallizes world's tensions where exterior powers, especially regional but not only⁹¹, are evolving in a complex game of influence. The extremely violent ongoing civil wars in Syria or Yemen perfectly illustrate the increasing phenomenon mentioned above of "proliferation of non-state armed actors which, genuinely or as proxies, enter the space of the political fray"⁹². Those *new actors*, such as terrorist organizations, criminal or paramilitary groups, directly interest the mediation process as they are totally *changing the basic tripartite structure*. The mediator's task is hindered by a first obstacle: "whom to talk to?"⁹³. The scattering of the conflicting parties causes an eminent problem: usually, those groups do not follow a unique and coherent strategy that will allow negotiations. This is for example what happened with the Syrian opposition forces disagreement causing the failure of the Geneva II Peace Talks in January 2013. In addition, rebel groups are sometimes not even recognized by the international community, which complicates the mediator's task even more. This happens a lot with secessionist movements that flourished during the last decades, representing now about 40% of total existing tensions⁹⁴.

"The reality is simple and will perpetrate during the 21st century"⁹⁵. All those groups becoming more and more powerful are the new reality that mediators must face. According to Goya, a French military officer and specialist of the question, "we are in a big world civil war between the States and armed groups,

⁹¹ Great powers such as European, American or Russian forces have a determinant influence over those conflicts by supporting regional actors. As an example among a multitude of other possible ones, Vladimir Poutine and Recep Tayyip Erdoğan's Sochi Agreement of 22 October 2019 conducted Russian Military Police to install and assure a buffer zone in North Syria; *cf. The Guardian*, "Russia steps up its presence in north-east Syria after Turkey deal", visited on: <https://www.theguardian.com/world/2019/oct/23/russia-steps-up-presence-north-east-syria-after-turkey-deal> [Accessed on 21/05/2020].

⁹² DA ROCHA J. P., "The Changing Nature of International Mediation", *Global Policy*, 10(2), 2019, p. 102.

⁹³ *Idem.*

⁹⁴ *Idem*, p. 104.

⁹⁵ GAUCHON P., "Les guerres de demain", Interview of Goya, *Conflits*, 29 June 2018, visited on : <https://www.revueconflits.com/les-guerres-de-demain/>

religious, politic, criminal sometimes”⁹⁶. They must adapt their techniques according to the changing nature of conflicts, and they must adapt fast. In order do so, just as the UNSG Report on Peacebuilding and Sustainable Peace advocates⁹⁷, they must imperatively understand the factors responsible for those change; otherwise, the probability for renewed conflict will stay high.

3. Understanding the responsible factors for new conflicts

3.1. The importance of studying conflict factors

Discerning clearly the factors for conflicts trends is not an easy task. There is such a variety of them⁹⁸. At the same time, none should be underestimated. The better they are understood by the mediator, the better chance he has to eradicate the deeply rooted discord. Indeed, the conflicts “do not emerge out of thin air”⁹⁹, the resurgence of half of them in the three to five years¹⁰⁰ that follow is the inevitable effect of a lack of interest for their thorough causes. Furthermore, it also allows to undermine the upcoming conflicts and to *prevent a new outbreak*. For instance, could the Arabic spring really not have been avoided? The tension in the whole region was palpable long before Mohamed Bouazizi’s immolation. “Tunisia: repression + lack of social justice + denial of possibilities for pacific change = time bomb” was twitting Mohamed ElBaradei, former General Director of the International Atomic Energy Agency, on 13 January 2011. If more attention had been paid to Egypt and Tunisia and that time, who knows how the situation could have turned out? Is it getting off track to consider this preventive task as a part of conflict resolution mechanism for being, by definition, anterior to the crisis? It is

⁹⁶ *Idem*.

⁹⁷ It specially states that “the collective work of the United Nations system to advance human rights should help to identify the root causes of and responses to conflict”; *cf.* UNSG Report, *Peacebuilding and Sustainable Peace*, *op. cit.*, par. 21.

⁹⁸ See the extensive list provided in Sargsyan’s monograph; *cf.* SARGSYAN I., *Mediation in theory and Practice: Lessons of Nagorno-Karabakh*, Armenian Center for National and International Studies Monograph, 2003, p. 2.

⁹⁹ NATHAN L., “When the Flames are Licking at the Door: Standing Mechanisms for Conflict Prevention”, *Global Policy*, 10(2), 2019, p. 47.

¹⁰⁰ VETTOVAGLIA J., “Médiation internationale. Étincelles et barils de poudre”, *Études*, 3, 2014, p. 17.

not: disputes are the result of complex interactions and do not just start with the first perceptible act of violence. The task of peacemakers also includes the prevention of armed conflict which is “not merely a priority, but the priority” according to Guterres’ first speech of his mandate addressed to the UNSC¹⁰¹. There is no reason to think that the mediator’s ripe moment to enter the arena must be after the trigger of the first hostilities. This element will be developed in the third part of this paper. For the moment, we shall have a slight overview of some of those main factors of conflict.

The RAND Corporation’s report lists the ten most relevant key factors from there point of view, among the dozens of potential variables, to explain he conflicts trends they observed. These factors are the followings: the capacity of State institutions, the prevalence of consolidate democracies, the degree of ethnic and sectarian polarization, the rate of economic growth, the extent of economic interdependence, the degree of US preeminence, the capabilities of international organizations, the strength of international norms, the diffusion of lethal technology and the extent of resource stress. This list is non-exhaustive. Though, it is easy to relate the factors mentioned above with every other factor mentioned by any other author. Conflicts occurrence is, as any social matter, *multifactorial*. Every circumstance influences not only the result but also the other circumstances. The scheme is not linear – cause, influence, consequence –, it is not exactly a web neither, but it is circular. It is closer to planet rings, where the whole system is composed of infinite elements that mutually influence one another. That is why conflict resolution settlement mechanisms are so important and must permit to dig up the germs of conflict before they bloom: if not, the causes will continue to fuel other causes creating inextricable vicious circles. Some of the factors listed by the RAND corporation that will be commented below, through a small sample of examples, must then be understood as absolutely non-exhaustive and all related to the other ones by looping effects.

¹⁰¹ GUTERRES A., Remarks to the Security Council Open Debate on "Maintenance of International Peace and Security: Conflict Prevention and Sustaining Peace, 10 January 2017, visited on: <https://www.un.org/sg/en/content/sg/speeches/2017-01-10/secretary-generals-remarks-maintenance-international-peace-and> [Accessed on 20/05/2020].

3.2. The relation between political factors and new economic stakes

Political and economic factors are usually the first factors mentioned when thinking about the creation of international tensions. “Economic growth” and the “prevalence of consolidated democracies” are evident safeguards against the apparition of conflict.

A consolidated democracy offers, of course, a favorable context for the consolidation of long-term peace because of the implementation of a strong culture of the rule of law. Nevertheless, if this democratic appearance is used as a smokescreen to legitimate fraudulent democracies the opposite result regarding the risk of violence will be obtained¹⁰². The international organizations are often falling into the trap by privileging the implementation of democratic State institutions¹⁰³ rather than ensuring the people’s wellbeing; only the second is the guarantee of the first one and not the opposite. By stating that passing from “consolidated democracies to autocracies historically has been extremely rare and is unlikely in the absence of extreme economic decline”¹⁰⁴, the RAND Corporation’s researchers do not seem to conduct a misleading judgment, but they tend to rely on a probably overoptimistic and simplistic point of view. Indeed, the general rise of populism and political extremes all over the world those last few years demonstrate that there is no certainty about the future of today’s democracies.

¹⁰² The failure of the African constitutions that establish democratic institutions without being respected in the practice is a good example of such a smokescreen for legitimacy; see DARGENT F., *op. cit.*, p. 8-9.

¹⁰³ For instance, the conditions to countries for obtaining economic help imposed by some organisms, such as the World Bank (WB), the International Monetary Fund (IMF), the European Union (EU) or the G7, that are usually related to the demonstration of good economic results as well as the respect of human rights, can provoke counterproductive consequences in those countries where importance will be given to short-term results, damaging sustainable prosperity. It also sometimes depraves countries that cannot reach the development thresholds required from a very needed help. Among others, it was the case of Ghana, Zimbabwe, Burkina Faso or Tanzania. The WB and the IMF’s “structural readjustment programmes” have been, for that reason, subject to many criticisms. The implementation of the “Poverty Reduction Strategy Papers” aimed to respond to those criticisms to “respect partner countries’ ownership of their poverty reduction strategies, and [...] be aligned with partner countries’ national development strategies”, but still cannot be considered as very successful; cf. UNHRC, *Guiding principles on extreme poverty and human rights*, A/HRC/21/39, of 18 July 2012, par. 93; and see LOPEZ-JACOISTE E., *El Banco Mundial, el Fondo Monetario Internacional y los Derechos Humanos*, Aranzadi, 2013.

¹⁰⁴ SZAYNA T. S., *et. al.*, *op. cit.*, p. 50.

If the political factor is, undoubtedly, a crucial one, it is important not to fall “into a reductive mono-causal explanation”¹⁰⁵. For Vettovaglia, an analyst in geopolitics, the *demographic and economic* aspects are in fact overhanging the political ones. He explains it in his work “*Conflits et médiation internationale*”. The author’s analysis is very interesting because it does not only states that an instable economic field is a prior reason for the creation of conflicts, but it also evokes the way new African and Middle-East civil wars are positioning the economic determinants in the center of conflict development and perpetuation. In those wars where the rebels no longer receive the majority of their financial support from the foreign powers as they did during the Cold War, a *parallel economy* has developed inside the regions, based on looted rents¹⁰⁶, weakening even more the political institutions there. These new strategies of local economic implementations are far from the functioning of former wars of liberation for political power. For example, the establishment of IS was only possible because of the jihadist obtaining rents from their control of the territory. This is a very important shift to take into consideration for the resolution of conflicts evolving non-states actors. While they are still formally designated the same term of “civil war” they were before, they are now taking place in a whole new strategic playground.

3.3. The socioeconomic factors conjugated with the degree of ethnic and religious polarization

The economic instability is a strong factor because it affects almost all the other ones. Social prosperity directly depends on it. The “capacity of State institutions”, in other words their ability to provide public goods – infrastructure, security, etc. – diminishes the risk of intrastate insurrection because it grants to its population wellbeing. It has been shown that there was a direct correlation between the level of *human development and education* and armed conflicts: where only 5% of the countries with high level of development are affected by armed conflicts,

¹⁰⁵ VETTOVAGLIA J., *op. cit.*, p. 19.

¹⁰⁶ See HUGON, P., “Conflits armés, insécurité et trappes à pauvreté en Afrique”, *Afrique Contemporaine*, 218(2), 2006, p. 38.

more than half of the countries with low level are. Poverty incites social tensions. Thus, there is also a direct correlation between low GDP per head and the occurrence of armed conflicts¹⁰⁷. Collier, a researcher in socio-economy, estimates that those two elements are inversely proportionate and reveals that 73% of the poorest countries in the world have recently faced a civil war¹⁰⁸. It is indeed not difficult to understand that “in a context of unemployment and exclusion” – as it happens in many African countries – “war becomes [for some] an access point to the standards of consumption they were previously excluded from”¹⁰⁹.

This relation between war and high level of GDP is probably not very surprising, but it must be analyzed more specifically from the perspective of the African and Middle Eastern current situation. In regions where the frontiers, artificially decided by the old colonial powers, ignore the incredible ethnic, linguistic, religious and cultural diversity¹¹⁰, the *feeling of exclusion* of the people – from labor market, political life, basic living standards etc. – materializes in a strong identitarian closure, leading to sectarianism and religious extremism. Religious factions find, sadly, their best audience among *young populations* “easy target for those searching to exploit their situation of weakness”¹¹¹. How not to understand the temptation for this youth that has lost its hope for a future or for freedom, to find in armed groups structures giving them “means of subsistence, a place, a recognition and a feeling of security or power”? A 2012 UNSG report attends that one of the main causes of conflicts in Africa is precisely the marginalization of young people from career opportunities¹¹². Being aware of this threat becomes an even more critical priority knowing that 60% of Africa’s

¹⁰⁷ See CHÂTAIGNER J. M., “Pauvreté, fragilité, conflits : le développement entravé”, in VETTOVAGLIA J., *et. al.*, *Déterminants des conflits et nouvelles formes de prévention*, Bruylant, 2013, pp. 178-200.

¹⁰⁸ See COLLIER P., *The Bottom Billion. Why the Poorest Countries Are Failing and What Can Be Done About It*, OUP, 2007.

¹⁰⁹ VETTOVAGLIA J., *op. cit.*, 2014, p. 23.

¹¹⁰ African territorial heritage of colonialism also strongly affects resources – mineral resources, fertile lands, near ports etc. – repartition, responsible for the “most economic and political problems in Africa” as stated by the UNSG in his Report A/67/251, of 27 July 2012, *Causes of conflict and the promotion of durable peace and sustainable development in Africa*, par. 41.

¹¹¹ VETTOVAGLIA J., *op. cit.*, 2014, p. 23.

¹¹² UNSG states that “one of the underlying reasons behind the North African revolts was the disenfranchisement of youth and their lack of economic prospects”; *cf.* UNSG Report A/67/251, *op. cit.*, par. 40.

population is under 25 years of age and that recruiting efforts by extremist groups focus mainly on youth¹¹³.

This phenomenon questions the essential factor causing the emergence of violence in the case of a territory knowing a high degree of *ethnic and religious fragmentation*¹¹⁴. As a matter of fact, individually considered, this factor does not seem very significant. However, during a crisis, sectarian polarization becomes a “significant contributing factor for violence, especially when strengthened by socioeconomic and sociopolitical grievances”¹¹⁵. It is particularly true when some groups are deliberately mistreated by the State¹¹⁶ or when they have secessionist demands. Even though it may not lead to actual conflict, it may work to prolong and increase tension. Indeed, as Vettovaglia says, “identities are always murderous, once threatened, the individual or the group quickly withdraw on their communities”¹¹⁷. High *rents inequalities* among population is a very propitious cause of conflict. The conclusion should it not be that the economic factor is, for that matter, the real cause of conflict and not the cultural differences? Those differences are also an important ingredient for the complete recipe because they increase the probability to create dangerous communitarianism; but the same result could also be reached in other circumstances. For instance, fundamentalist discourses also strongly impacted small part of the European youth that was not concerned by socioeconomic insecurity. What are the similarities between the situation of those young people then? The feeling of exclusion, a search for identity. The feeling of being misled by governments, a search for answers. Here is something crucial for peacemakers to acknowledge: searching to increase GDP surely helps to avoid conflicts, but it does not always eradicate their fundamental cause. If no attention is paid to the deep feelings of the population there will always be a risk to see the emotions exploding into violence.

¹¹³ OBONYO R., “La jeunesse et la montée de l’extrémisme”, *Afrique Renouveau*, December 2019 – March 2020.

¹¹⁴ See the UN Economic Commission for Africa Report, *Diversity Management in Africa: Findings from the African Peer Review Mechanism and a Framework for Analysis and Policy-Making*, 2011.

¹¹⁵ SZAYNA T. S., *et. al.*, *op. cit.*, p. 50.

¹¹⁶ UNSG Report A/67/251, *op. cit.*, par. 59.

¹¹⁷ VETTOVAGLIA J., *op. cit.*, 2014, p. 23.

The phenomenon of communitarianism described above falls within the context of today's predominance of intrastate tension because religious or ethnic polarization is much more a driver for those kind of conflicts than for interstate disputes. At the same time, because it is common to see the conflict spreading across borders, which is "especially likely where ethnic kin-groups in neighboring state become involved"¹¹⁸, it also integrates the idea of the importance of borders in the organization of modern wars. Ideologies are not territoriality limited, same as the new erratic actors that convey them. In a century where globalization instituted international norms without considering the multiculturalist reality, the "cold universality of humans' law" reduced people's feeling of belonging to their nation. This mistrust in the institutions' capacities is reinforced by other factors. The planet climate disaster that is occurring is one of the firsts.

3.4. The level of resource stress: the African time bomb

Once again, the economic factor influences the others. Combined with the highly preoccupant *demographic issues*, it increases the risk of *resource stress*. We especially the African uncontrolled demographic expansion¹¹⁹ that affects modern conflicts the most. Vettovaglia considers resource stress as the most propitious factor to generate conflicts. He especially points out the problem of *arable lands rarefaction*, worsened by the *degradation of the ecosystems*¹²⁰. Adding to the math the tens of thousands of hectares sold to Arabic countries and to China¹²¹ those past years, the result is staggering. In fact, what makes the situation that worrisome is the absence of awareness about it: the rehabilitation of agriculture does not figure on the UN millennium objectives' list and is, sadly, almost always treated along

¹¹⁸ SZAYNA T. S., *et. al.*, *op. cit.*, p. 50.

¹¹⁹ In 2017 the African population was estimated to 1,25 billion people. This number should double before 2050; *cf.* UN DESA, *2019 Revision of World Population Prospects*, visited on: <https://population.un.org/wpp/> [Accessed on 18/05/2020].

¹²⁰ See the UN-HABITAT Guidance, in collaboration with the Standing Committee of the project composed of the EU, UNDESA, UNDP, UNEP, UN-HABITAT, DPA and PBSO, the *Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict*, 2012.

¹²¹ China have passed more than thirty treaties to acquire arable lands in Africa in exchange of "technology and investment in infrastructure and formation"; *cf.* PERROT S., MALAQUAIS D., "Penser l'Afrique à l'aune des globalisations émergentes", *Politique Africaine*, 113(1), 2009, p. 13.

with general environmental issues. As Professor Harissou was observing, “the occidentals [...] actually do not realize that most of the today’s very mediatic conflicts have for real origin the occupation and appropriation of the lands”¹²². As there is a total absence of political commitment in this field coming from the African elite – who prefers to feed at low price urban populations that are able to overthrow a regime, rather than engage uncertain process of modernization for farmers leaving far away in the country-side –, without collective consciousness and a strong international pressure the demographic expansion of the continent will continue to reveals the deficit of agricultural infrastructures¹²³. It is a fertile ground, at least, for the seeds of conflicts to take root.

The problem of resource stress of course does not only concern the African continent. The environmental global emergency’s geopolitical consequences are not limited to the conjunction of agricultural lands and urban demographic expansion. However, the example was an interesting one because it primarily concerns region of the world currently most prone to conflicts. The two other main geopolitical stakes for this region are probably the *desertification* due to climate change and, related to it, the *control of water supplies*¹²⁴. Also worsened by demographic trends, they are responsible for the growing environmental migration waves which will concerns around 140 million people before 2050¹²⁵. We are facing here one of the most – or the most? – prominent factor of this century’s upcoming conflict.

¹²² HARISSOU A., “Le titement foncier au service de la paix en Afrique”, in VETTOVAGLIA J., *et. al., op. cit.*, 2013, pp. 201-212.

¹²³ It can be observed that this not the case in China or India even though they also have to deal with demographic constraints because they present good irrigation and rural electrification.

¹²⁴ “The next war in Middle-East will be fought over water, not politics” was stating Boutros Ghali in 1985; quoted by IZQUIERDO F., *Guerra y agua. Objetivos y actitudes de los actores en el conflicto por el agua en Palestina*, doctoral tesis, Universitat Atònoma de Barcelona, 2002, p. 9. The control of water supplies is indeed a preponderant cause of wars and will worsen in the next years. Many examples could be given. Among others: the ambition for of Israel to control of River Jordan – its main source of drinking water – for the trigger of the Six-Day War in 1967; the question of the access to the Shatt al-Arab in the Iran-Iraq war in the 1980s; the consequence of the dried up in the 1990s of the Wadi Barada river in Syria on the uprising against Bashar al-Assad in 2011, etc.

¹²⁵ See RIGAUD K. K., *et. al., Groundswell: Preparing for Internal Climate Migration*, WB Report, 2018.

4. The provisions for upcoming conflicts

Studying the factors that originate conflicts is not only important to solve them, it is also an instrument to anticipate them, to prevent them. Some of the elements mentioned above are unmistakable sources of future issues. For instance, the fact that the level of resource stress is very unlikely to improve permits to predict with a high level of certainty that there will be an increase number of conflicts related to it. The data provided by scientists and experts is a good indicator; however, it cannot be considered perfectly reliable. Indeed, there is *always a risk that unpredictable events will occur* and blur statistics. The unexpected Coronavirus crisis was a perfect example of such vulnerability. The RAND Corporation researchers, for example, affirmed in their report that the economic issues, as a factor of conflict, were very likely to diminish in the next years because “greatly increased economic volatility is a much more plausible future than one in which a large number of already wealthy States see their overall GDP levels decline significantly” adding that only a “severe shock, such as a global pandemic or ecological disaster”¹²⁶ could perturb this analysis. Well, it seems that this last comment appeared to be more realistic than their prevision. Nevertheless, we can hope that the States will manage to overcome the economic backlash due to those “sever shocks” and that the looming long-term trend will be, indeed, an increase in trade interdependence.

Now that we are aware of the very speculative character of future conflict previsions, we can have a look to the general upcoming trends. A baseline projection by 2050 can be determined by measuring the trends in each one of the key factors for conflicts mentioned previously. Indeed, if the increase of a factor favoring peace is measured, it is possible to conclude that there will be a lower number of conflicts, and inversely. Some factors can be identified as more relevant to future trends in conflicts than others: the “prevalence of consolidate democracies” and “rate of economic growth” for interstate wars, “ethnic and sectarian polarization” and “extent of resource stress” for the intrastate side. Because the current global context shows a better economic interdependence between States and

¹²⁶ SZAYNA T. S., *et. al.*, *op. cit.*, p. 55.

a higher level of democratization among societies, *a general reduction of interstate conflicts can reasonably be foreseen*. Indeed, even the threat that represents the rise of populism on the future of democracies expressed earlier does not seem to be, at that moment and in our interconnected world, a sufficient circumstance to trigger violent interstate rivalry. On the other hand, the reinforcement of ethnic and sectarian tensions and, above all, the preoccupying reduction of environment resources are pointing to *a general augmentation of intrastate conflicts*. Prevision for upcoming conflict trends seems to correspond to the current observable trends: *a smaller number of conflicts, mainly low and middle-intensity intrastate*. The proposal for a new approach of mediation made in the third part of our study will essentially focus on this baseline. Hence, it is important to keep in mind all the factors mentioned previously while reading the third part of this study because, after being useful for the explanation and the prevision of conflicts, they will also inspire new solutions to conflict resolution. This is basically the approach adopted recently by the UN, as mentioned before, in its Resolution of 27 April 2016.

The “diffusion of lethal technology”, related to the “strength of international norms”, are two factors that are also worth commenting. The RAND Corporation is inclined to think that a greater diffusion will incite interstate wars. The veracity of this statement depends on the type of weapons that is considered. The development of nuclear weapons, counterintuitively, incited countries to reach alternative solutions to armed conflicts and thus reduced interstate conflicts. However, “lethal technology” is today a much wider concept than the solely destructive military capacity: it includes “nuclear, chemical, biological, radiological weapons, precision munitions, or disruptive cybertechnology”¹²⁷. The technological progress made in all those fields can induce *new forms of interstate conflicts*. In that context, their regulation by international norms appeared to be a necessary safeguard¹²⁸; it is not “bulletproof” though. First, the capacity of international community to sanction the violation of peaceful norms is limited. Secondly, consensus is lacking over the *jus ad bellum*, and over the *jus in bello*. If

¹²⁷ SZAYNA T. S., *et. al.*, *op. cit.*, p. 69.

¹²⁸ Many international treaties are regulating more specifically the use of specific types of weapons, such as the Biological Weapons Convention, of 10 April 1972.

the protection through the article 2.4 of the UN Charter of territorial integrity, historically a primary cause of interstate tension, may have reduced conflicts¹²⁹, the *legitimacy of international intervention* is today very controversial among the major powers to prevent atrocities against civilian populations¹³⁰. In addition, some authors noticed that norms regarding territorial integrity could exacerbate intrastate conflicts in context of postcolonial States when the borders “are not fully accepted by segments of their populations and lacking in institutional capacity to govern their territories”¹³¹. This phenomenon is amplified by the flourishing global military industry – the five countries integrating the UNSC being very ironically among the top six biggest weapons exporters in the world¹³² –, a scourge that international norms for peace have not been able to deter¹³³. Thirdly, new forms of making war are still lacking clear international regulation, sometimes due to the uncertainty of the concept of “use of force” proclaimed by the article 2 of the Charter. Nevertheless, in respect of the article 31.1 of the Vienna Convention on the Law of Treaties that codifies the customary international rules on the interpretation of Treaties, “in the absence of a treaty definition, the concept of “force” must be interpreted in good faith in accordance with the ordinary meaning to be given to the term in its context and in the light of the Charter’s object and purpose”. A new major issue is for example the case of *cyberattacks* that is still not regulated by any treaty and for which the application of pre-existing legal rules, concepts and terminology, is not an easy task because it presents too specific characteristics¹³⁴.

¹²⁹ See ZACHER M. W., “The Territorial Integrity Norm: International Boundaries and the Use of Force”, *International Organization*, 55(2), 2001, pp. 215-250; and HENSEL P. R., *et. al.*, “Territorial Integrity Treaties and Armed Conflict over Territory”, *Conflict Management and Peace Science*, 26(2), 2009, pp. 120-143.

¹³⁰ For instance, Amnesty International called in its 2014 annual report for renouncement of veto rights by five permanent members of UNSC in situations of mass atrocities; *cf.* AMNESTY INTERNATIONAL, *The State of World’s Human Rights*, Report, 2014–2015.

¹³¹ SZAYNA T. S., *et. al.*, *op. cit.*, p. 62; and see JACKSON R. H., ATZILI B., “When Good Fences Make Bad Neighbors: Fixed Borders, State Weakness, and International Conflict,” *International Security*, 31(3), 2007, pp. 139-173.

¹³² BOWLER T., “Which country dominates the global arms trade?”, *BBC News* Web article, of 10 May 2018, visited on: <https://www.bbc.com/news/business-43873518>

¹³³ Small arms and light weapons are believed to be the first cause of violation of humanitarian law and human rights. Causing around half a million death annually, some consider them as the real “*weapons of mass destruction of our times*”; *cf.* YIHEDEGO Z., *Arms Trade and International Law*, Hart, 2007, p. iii.

¹³⁴ See MELZER N., *Cyberwarfare and International Law*, UN Institute for Disarmament Research Report, 2011, p. 6.

"The next war will begin with a massive cyberattack to destroy military capacity [. . .] and paralyze basic infrastructure such as electric networks" stated Guterres, the UNSG in a speech addressed to the Human Rights Council (HRC) at the United Nations in Geneva in February 2018¹³⁵. Internet, "the fastest and most powerful technological revolution in the history of mankind"¹³⁶, is indeed the next main arena in which are going to play future belligerents; tomorrow's mediators will have to adapt to it and be themselves "connected actors"¹³⁷. This example perfectly demonstrates that the notion of "war" has changed, along with the evolution of the notion of "peace", questioning inevitably the legitimacy of the international principles that are regulating it.

Now that we know both about the concept of international mediation and the stakes of tomorrow's conflicts, it is time to rethink the mediation structure by adapting it to those new necessities. Following our guideline, we will look at the three other elements composing the mediation system: the parties, the mediator and the process. Once the basic notions explained, we will try to highlight some of the solutions, or at least a sample of them, that will necessarily have to be developed for tomorrow's effective mediation.

¹³⁵ See FIDLER D. P., "The UN Secretary-General's Call for Regulation Cyberwar Raises More questions than Answers", American Council on Foreign Relations Blogpost, of 15 March 2018, visited on: <https://www.cfr.org/blog/un-secretary-generals-call-regulating-cyberwar-raises-more-questions-answers> [Accessed on 22/05/2020].

¹³⁶ MELZER N., *op. cit.*, p. 3.

¹³⁷ See DA ROCHA J. P., *op. cit.*, p. 106.

III – TOWARDS A NEW APPROACH OF INTERNATIONAL MEDIATION

1. The parties of international mediation

1.1. The multiplication of erratic parties requiring an inclusive mediation

The parties are the starting point of the whole operation. They are the raw material that the mediator will have to work on. In order to do so, the mediator has to adapt his technic to the type of parties he deals with. The change in the actors taking part in international relations has direct consequence on international mediation. Originally thought to reconcile States as described in the first treaties regulating international mediation, the mechanism is now frequently used to resolve disputes involving other types of bargaining parties: transnational criminal organizations, religious factions, narcotraffickers and human traffickers, cartels and warlords, secessionist movement, etc. As said before, what is changing is not only the nature of the parties but also their number, reshaping the tripartite original form of mediation.

From a practical point of view, the evolution to a multilateral form *hinders the holding of negotiations*. Sometimes, discordance between some of those groups can thwart reaching an agreement. It is even more problematic when the process cannot even start because the erratic groups are not recognized by the other party or by the international community. In an article intitled “Changing Nature of Mediation”¹³⁸ published in June 2019, Da Rocha prescribes to *rethink the right to self-determination of secessionist groups*. He urges “prepared mediators” to “remind governments of the potential consequences of failure”¹³⁹. His advice should be followed. The fact that the “sovereignty of the State is no longer considered unconditional”¹⁴⁰ is a reality that must be faced. Refusing to engage negotiations with some actors, pretending they do not exist, does not solve the existing issue and might reinforce the feeling of rejection along with the separatist tendencies. Future international mediation must be *inclusive* to adapt to the reconfiguration of stakeholders. “Inclusivity” is precisely one of the eight recommendations of the UNGEM, which sustains that “an inclusive process is more likely to identify and address the root causes of conflict and ensure that the needs of the affected sectors of the population”¹⁴¹. This new approach is not always easy to implement. Negotiations

¹³⁸ DA ROCHA J. P., *op. cit.*, p. 106.

¹³⁹ *Idem.*

¹⁴⁰ *Idem.*

¹⁴¹ UNGEM, *op. cit.*, p. 11.

involving many actors are more complicated to conduct and the final agreement, even though it will have greater legitimacy, will hardly satisfy all parties. A solution to address this dilemma is to find pragmatic solutions by conceiving mediation not as a single negotiation table but as a process with multiple “discussion formats and issues which are brought in at different periods”¹⁴². Thus, inclusive mediation requires the mediator to be *agile* in order to facilitate interaction between all actors, and *creative* at the same time by proposing mechanisms capable to include all perspectives in the process.

1.2. The new parties’ rationale and resources

Another difficulty to get some erratic actors to the negotiation table is related to their *rationale* to enter the process of mediation. Indeed, depending on their nature, the parties are not looking for the same benefits by accepting the same mediator’s services. Insofar as mediation is voluntary – aside from the fact that the UN Charter compels the parties to always seek a pacific way of resolution in the first place –, getting the parties to cooperate requires *preconditions*.

The first precondition, according to Susskind and Babbitt¹⁴³ – both experts in domestic and international public disputes –, is related to the disputants’ will to reach a favorable outcome. The most important is for them to *realize that they are unlikely to get what they want through unilateral action*. This can only happen once the parties re-evaluate their ability to impose their will on the other, either military or ideologically. It is very common that their subjective confident perspective makes them underestimate their opponent’s situation or overestimate their own. One example of such wrong assumption occurred during the conflict between Iraq and Iran in 1974. Even though Saddam Hussein, backed up by Soviet military supplies, defeated the Kurdish separatist movement, he did not anticipate the considerable leverage that Anwar Sadat – the Egyptian president – could apply on both sides, preventing Iraq’s victory over its

¹⁴² OSCE, *Regional organizations in conflict mediation: lessons of experience & cooperation with the United Nations*, Report of the Third and Fourth Meetings of Regional, Subregional and other International Organizations on Preventive Diplomacy and Mediation, hosted by the League of Arab States in Cairo on 5-6 February 2014, and by the EU in Brussels on 5-6 May 2015, 2016, p. 23.

¹⁴³ See SUSSKIND L., BABBITT E. F., “Overcoming the Obstacles to Effective Mediation of International Disputes”, in BERCOVITCH J., RUBIN J. Z., *op. cit.*, pp. 30-51.

neighbor. Hussein had then to face the fact that “it was less risky to live in a Gulf dominated by Iran than to oppose it”¹⁴⁴.

The second precondition is related to this first one: the parties must see in the alternative offered by mediation *a better ratio cost-benefits* – which can be economic, political, human, psychological etc. – than the one they would have reached without it. When he steps into the arena, the mediator changes the balance of powers by bringing new *leverage resources*. Among many others: influence with incentives or threats of withdrawal – the “carrot and the stick” policy –, new ideas and perspectives, prestige, experience or face-saving¹⁴⁵. Those means of pressure have different impact depending on the type of parties that are involved. When the disputing parties are States, they may accept to initiate the conflict resolution process to *preserve their diplomatic image* as a demonstration of their goodwill. Another reason can be to use the mediator as an umbrella for not assuming themselves the responsibility in case of negotiation failure. But what about it in the case of erratic parties that do not have such reputation to preserve? In situations in which the international community refuses to recognize their claims or even denies their own existence, it is easily understandable that this kind of diplomatic pressure will not be their main reason to accept mediation. On the other hand, there are some resources that could interest them better. To give an example in relation with the new economic stakes of conflicts that have been mentioned before, the promise of economic help or the delivery of some supplies to non-state that have little financial resources could have better impact on them. But not all mediators are able to provide such resources. For instance, the operations led in 1982 by the Organization for African Unity to mediate the conflict between Chad and Libya encountered logistic and financial problems that put at risk the peacemaking mission¹⁴⁶. The Organization tried to request the UN to finance technical and material assistance to their project but only elicited a UNSC Resolution¹⁴⁷ calling for voluntary contributions.

Mediation is “*a matter of interpersonal influences*”¹⁴⁸. While mediator wants to affect the attitudes, perceptions and behaviors of the parties, these will try to affect the mediator to reach what they consider being a favorable outcome. The parties’ *rationale* will then essentially

¹⁴⁴ LIEB D., “Iran and Iraq at Algiers, 1975” in TOUVAL S., ZARTMAN W. I., *International Mediation in Theory and Practice*, Westview Press, 1985, p. 81.

¹⁴⁵ See BERCOVITCH J., *op. cit.*, pp. 14 *ff.*

¹⁴⁶ AMOO S. G., ZARTMAN W. I., “Mediation by Regional Organizations: The Organization for African Unity (OAU) in Chad”, in BERCOVITCH J., RUBIN J. Z., *op. cit.*, p. 142.

¹⁴⁷ UNSC Resolution 504, of 30 April 1982, on establishment of a fund for a peace-keeping force of the Organization of African Unity in Chad.

¹⁴⁸ CARNAVALE P. J., CHOI D. W., “Culture in the Mediation of International Disputes”, *International Journal of Psychology*, 35(2), 2000, p. 106. The italic is ours.

depend on the mediator's identity and resources he has to offer. Knowing the parties' needs and interests – who they are, what they aspire to, why they acted that way – is the key to the success of mediation. This is precisely the task of a well-prepared mediator¹⁴⁹.

2. The specificities of future mediators

2.1. Preconditions for the choice of mediator

A good mediator cannot be any third entity. He must present skills, reputation and, above all, by trusted by the parties. *Being acceptable to the parties* is indeed another precondition for mediation. Apart from the “objective” criterion of the resources he can offer, the decision about the mediator's identity is also governed by a very subjective element: he must inspire *confidence* to all the parties. At least, he must be the “least unattractive” among all possibilities. That was the case during the 1966 Indo-Pakistani conflict where Great Britain, the US and the UN were potential intermediaries, though none of them were chosen in the end for being considered as not sufficiently impartial¹⁵⁰, benefiting instead the USSR. Such confidence may stem from the personal relationship between the parties and the mediator, or from the trust they have in his capacity to successfully lead mediation.

In case of multi-actor conflicts, not all may consent on the choice of mediator. Partial consent, as the UNGEM observes, endangers the process because the reluctant parties will unlikely show good faith nor be committed to productive negotiations¹⁵¹. To resolve that difficulty, the Guidance recommends mediators to *previously create common understanding* with the parties on his exact role and on the ground rules of the process through formal mandates or informal arrangements. This will indeed address the insecurities of the skeptical actors, especially in case there would fear to be arrested for being subjected to warrants issued by national or international authorities¹⁵². Yet, in the case that some stakeholders still reject mediator's services, groundwork shall be engaged with them through informal contacts parallel to the holding of negotiations between the parties that welcomed mediation. *Consent* must be given by all and during the entire process. For that reason, the mediator shall periodically assess

¹⁴⁹ “Preparedness” is precisely the first guideline enumerated by the Guidance; cf. UNGEM, *op. cit.*, p. 6.

¹⁵⁰ THORNTON T. P., “The Indo-Pakistani Conflict: Soviet Mediation at Tashkent, 1966”, in TOUVAL S., ZARTMAN W. I., *op. cit.*, p. 145.

¹⁵¹ UNGEM, *op. cit.*, p. 8.

¹⁵² *Idem*, p. 11.

his acceptance to the parties and bring back the ones that would move off the process, combining always, as appropriate, *transparency* with respect of *confidentiality*¹⁵³.

The last precondition listed by Susskind and Babbitt requires this confidence to be based on the mediator's *sufficient authority* to speak in the name of the whole community and to "change the direction of a dispute [allowing] officials to step back from previously held positions without loss of face"¹⁵⁴. The need for a strong leadership mediator is amplified when the parties dread the reprisals from their own side for having accepted negotiations and that they do not have the sufficient political strength themselves to assume their decision¹⁵⁵. Here is one of the perks of mediation: its informal aspect permits to engage secretive talks. In situations where the parties were reluctant to sit at the table with their enemy, mediation offers this indirect connecting point that simple bilateral diplomatic negotiations are not able to provide. This aspect of mediation suits well the phenomenon of multiplication of non-conventional parties.

Is strong leadership still a fundamental element, as sustained by Susskind and Babbitt thirty years ago? Because of the benefits that a lead mediator offers – just cited above –, the precondition is just as valid today than it was before in case of interstate conflicts involving games of high degree diplomatic influence. However, the importance of non-conventional actors in modern conflicts – for example terrorist groups that precisely condemn institutional powers – has created, in some cases, the necessity to have *an equal footing mediator*. According to the Report of the Third and Fourth Meetings of Regional, Subregional and other International Organizations on Preventive Diplomacy and Mediation, this is particularly the case when "mediation contributes to stabilizing conflict situations, providing a framework where key actors meet and discuss technical issues (ceasefire monitoring, refugee issues, etc.)"¹⁵⁶. If, in a given situation, the criterion of consent on the figure of the mediator is not compatible with the choice of a diplomatically powerful one, the priority must be given to this first criterion. An interesting proposition of the cited report consists in finding an intermediary position by the implementation of "mediation structures that evolve over time, with a lead mediator [...] at the

¹⁵³ *Idem*, p. 9.

¹⁵⁴ SUSSKIND L., BABBITT E., *op. cit.*, p. 33.

¹⁵⁵ For example, the Camp David negotiations were only possible because President Sadat and Prime minister Begin had sufficient political authority, even if they were not supported by all their constituents.

¹⁵⁶ OSCE Report, *op. cit.*, p. 12.

pinnacle of the conflict cycle” and that would slowly distance itself, “as the situation stabilizes and mediation needs are at a lower level”¹⁵⁷.

From everything that has been said, it appears that although leadership is, undoubtedly, an important variable of international mediation, it is probably not one of its preconditions anymore. Being acceptable to all parties, for its part, still belongs to the list. Consent over the choice of mediator will depend on the adaptation of his characteristics to the dispute he aims to resolve.

2.2. Types of mediators and adaptation of their specificities to modern conflicts

We understand that the appropriate mediator cannot be any objectively good mediator: his competences must be adapted to the situation. There are three categories of mediators: individuals, States and organizations – or institutions. We will try to present each of them, paying attention to their respective specific traits that are interesting for the solving of modern conflict. Of course, some of the characteristics that will be evoked when studying one type of mediator are not exclusive to that type and could be shared by others depending on the situation.

2.2.1. The States

States, through their representatives, are the *most common mediators*: they represent around half total international mediation efforts¹⁵⁸. Their actions operate through what is called “*Track I diplomacy*” or “*official diplomacy*” which is an instrument of foreign policy that takes place at a state-to-state level – through the use of intermediaries – and following strict protocols¹⁵⁹. Their first characteristic is thus to have, in general, a *great leadership*, which is, as said before, beneficial to resolve interstate conflicts but not always for intrastate ones.

During the Cold War the US and the USSR were from far leading the international mediation scene. Between 1945 and 1989, the US got to mediated fifty-seven conflicts worldwide and thirty more in Latin America while the USSR mediated seventeen conflicts and additional cases in Eastern Europe¹⁶⁰. Because the first works on international mediation began

¹⁵⁷ *Idem*.

¹⁵⁸ GARTNER S. S., “Third-Party Mediation of Interstate Conflicts: Actors, Strategies, Selection, and Bias”, *Arbitration Law Review*, 6, 2014, p. 275.

¹⁵⁹ DE MAGALHAES J. C., *The Pure Concept of Diplomacy*, ABC-CLIO, 1988, p. 17.

¹⁶⁰ TOUVAL S., “The Superpowers as Mediators”, *op. cit.*, p. 235.

at the same period, they were giving strong importance to the analysis of the methods used by the two superpowers. Even if they were using different technics, both of them presented a strong capacity of leverage: authority and diplomatic credibility, significant economic incentives, military guarantee. Occupying a foremost place as mediator was for those superpowers a necessary way to maintain their expansionist influence and to prevent the other one from spreading his own influence¹⁶¹. Indeed, when states are offering their mediation services, they always have personal interests at stake. They can seek to reinforce their relations with the parties or to avoid the bad consequences the absence of an agreement could also have on them. They could even simply try to put on a brave face at the diplomatic level. We are here far from the “impartial” or “virtuous” mediator evoked at the very beginning when looking at the origins of mediation. States are indeed *the most partial type of mediators*. Is it an argument in favor or against the implication of State mediators for modern conflicts? To find out, it is necessary to discern to what extent is partiality affecting mediation.

The *notion of impartiality* in international mediation has originated a very prolific doctrine. As we remember, Diehl and Grieg considered it as a variable in assessing the success more than a true component of mediation. The biased behavior it entails can be caused by the mediator’s wish to protect his own interests or the ones of a party in particular. Regarding the first cause, it could be argued that a mediator with strong interests at stake will be even more devoted to its task, improving the effectiveness of the process¹⁶². The reverse of the medal is that those interests might influence his attitude, diverting him from what should be his goal: the peaceful reconciliation of the parties. For example, in context of civil wars some state’s economic interests can easily govern his will to see vanishing as soon as possible the rebel insurrection in his neighbor State without trying to analyze the real reasons of the rebels’ wrath. The flaws of partiality are even clearer concerning its second cause. If a mediator does not treat parties the exact same way, favoring one side, the other side can refuse to cooperate by showing ill will when bargaining or implementing the agreement. Overall, the failure of negotiations can fuel the discontent and feeling of betrayal of the party that has been aggrieved, reducing the

¹⁶¹ *Idem*, pp. 232-233.

¹⁶² An example of this phenomenon is the 1998 Geneva Talks involving the two Koreas, China and the US. Those last two powers, that directly fought one against the other forty-five years before during the Korean war, collaborated actively for peace and stability in the region because it was in both of them best economic interest; cf. CARNAVALE J. CHOI D. W., *op. cit.*, p. 109.

chance to initiate a new conflict resolution process. This explains why the UN consider impartiality as “a cornerstone of mediation”¹⁶³.

A biased mediator is not always a threat for mediation though. It is even more, a mediator that has a “bias of source” in favor of one party can be more desirable. This notion, according to Carnevale and Choi in a paper proving the *positive influence of culture on mediation*, refers to the “expectations that stem from the mediator’s closer personal, political, or economic ties with one party”. It is opposed to the “bias of context” which pertains “to mediator behavior, for example one side being favoured over the other in a mediator’s settlement proposal”¹⁶⁴. Indeed, when one side is not inclined to negotiate, choosing a mediator with whom it is sharing close ties is a good incentive to cooperate. Moreover, a culturally biased mediator can be a *good interpret* when the parties have apparently antithetical ideologic positions. For instance, during the Iran hostage crisis, the Algerians mediators, politically closer to the Iranian cause, perfectly benefited to both sides as the US needed an intermediary with a deep knowledge of their opponent politics and access to their revolutionary forces¹⁶⁵. Finally, to give a last argument to show the possible perks of a “source biased” mediator, a university study made in 1996¹⁶⁶ revealed that those kind of mediators were potentially more inclined to make fair decisions, and that, by doing so, they were earning better acceptability from the side that was expecting the mediator to be aligned with the other one.

The positive impartiality resulting in fairness described above is in fact not exclusive to States. Individuals and organizations also present those “bias of source”. On the other hand, the more negative form of impartiality that comes from the desire to protect its own interests at stake, is much more of a State characteristic. It is not, at first sight, a favorable asset to resolve modern conflicts. Leadership, the other major State characteristic that has been mentioned here, is no longer always beneficial neither. Of course, those observations are relatively simplistic and many empiric counterexamples could be given. However, even though States remain the most important mediators today, *their characteristics do not seem to adapt best to the new conflict trends*. For their part, the services of international organizations defending humanitarian values seem to be increasingly required as they correspond better to the trend of

¹⁶³ UNGEM, *op. cit.*, p. 10.

¹⁶⁴ CARNEVALE P. J., CHOI D. W., *op. cit.*, p. 4.

¹⁶⁵ *Idem*, p. 4; and SUSSKIND L., BABBITT E., *op. cit.*, pp. 35-36.

¹⁶⁶ CARNEVALE P. J., CHOI D. W., *op. cit.*, p. 5.

promoting a more philanthropic mediation, deprived of any other interest other than the preservation of peace – which still might appear utopic for some.

2.2.2. The international organizations

Since the end of the Cold War, the role of global and regional organizations in the protection of peace has increased substantially. Those structures are now also important Track I mediators. The UN, of course, occupy the first place in conflict management, providing services for about a third of all conflict resolution processes¹⁶⁷. If the mediation effort of the European Union (EU), the African Union and the Arab League only represents about half of the one of the UN, their *local implementation is an asset* that the UN, *a priori*, do not have¹⁶⁸. This characteristic is considerably advantageous for the resolution of future conflicts as it grants better *legitimacy* and *efficiency* to the mediator. Indeed, the legitimacy of totally outsider actors to mediate intrastate conflicts is not easy to justify, unless the situation precisely requires an absolutely non-related or very neutral, mediator is needed. For a long time, intrastate conflicts were excluded from the scope of international mediation according to the – already mentioned – principle of sovereignty of all state. The new vision of peace which “no longer consists in the non-intervention, or in the military action to refrain an aggression”, precisely requires intervention “to guarantee the protection of human rights”¹⁶⁹. Regional actors can benefit from a presumption of pursuing that philanthropic goal to maintain peace in their territories.

Another characteristic of regional organizations is their proximity with the conflict actors. The benefits of a mediator close culturally have already been demonstrated. The *comprehension of the disputants’ history and culture* is important for mediation efficiency as it improves the chance of being accepted by local stakeholders¹⁷⁰. It is particularly true when those stakeholders base their action on ideological revindications. Moreover, it prevents the dialogue between parties to be disrupted by misunderstandings. Wrong interpretations of the

¹⁶⁷ GARTNER S. S., *op. cit.*, p. 275.

¹⁶⁸ The UN is of course also implemented at the local level through numerous regional missions, but in general its legitimacy to directly intervene on that territories is less than the regional organizations concerned.

¹⁶⁹ LAUGHLAND J., “Juger la Guerre”, *Conflicts*, 5 October 2019, visited on: <https://www.revueconflicts.com/conseil-de-securite-onu-guerre-paix-justice-jurisprudence-nuremberg/> [Accessed on 22/05/2020].

¹⁷⁰ It explains the dateless existence of religious mediators: sharing the same religion than the parties is an inestimable asset. Religious mediators also earn legitimacy from their potentially international profile and their peaceful reputation. For instance, one of the reasons that incited Iran and Iraq to agree on mediation in 1974 was precisely the fact that the mediator, the Algerian president Boumedienne, was Muslim.

other side's intentions are major cause of negotiation failure¹⁷¹. In order to avoid it, international organizations envoys are making good use of their cultural and personal background.

Finally, even though their role is still quantitatively inferior – representing around 4% of all mediation effort¹⁷²–, transnational actors, including *non-governmental organizations* and some other institutions such as the Vatican¹⁷³, have significantly increased their influence as mediators. They were indeed previously totally excluded from the domain of conflict resolution, even though the article 71 of the UN Charter was already recognizing them that function. If those organizations still cannot compete with the diplomatic poise of the highly influential mediators that are states or the UN, they are truly appreciated for their “knowledge of the ground, [...] their presumption of impartiality or because they are inclined to give interest to conflicts neglected by international organizations”¹⁷⁴. Furthermore, they are very efficient as they perform in specialized field of action. These competences are adapted to new trends of conflicts. Individuals are as well likely to present similar characteristics.

2.2.3. *The individuals*

Individual mediation is part of *Track II* mediation – as opposed to official Track I – and may be carried out *formally* by “a political incumbent, a government representative or a high-level decision maker” not acting within his functions in representation of his State's institutions, or *informally* by private practitioners¹⁷⁵, such as the Quakers, or knowledge scholars, such as Doob, Kelman or Hare¹⁷⁶. Formal mediation usually takes place in the diplomatic arena, with a more determinate structured procedure and presents better chance to affect directly a political

¹⁷¹ Professor Emeritus Hare shows the importance of knowing the parties' culture to avoid using a language that would be considered as offensive for the parties. He gives the example of one of its own experience as individual mediator in Cyprus, explaining that it had sometimes been necessary to change the words employed in the documents for that reason, although this vocabulary could not have been considered offending for an exterior observer; cf. HARE P., “Informal Mediation by Privates Individuals”, in BERCOVITCH J., RUBIN J. Z., *op. cit.*, p. 57.

¹⁷² SOLVEIG H., “Le rôle des organisations internationales dans les guerres civiles depuis 1945”, *Relations Internationales*, 176(4), 2018, p. 3.

¹⁷³ The Pope has always been a major actor in international relations, including mediation. A very famous example of papal mediation in the Beagle Channel Dispute that opposed Chile to Argentine between 1979 and 1985; see PRINCEN T., “Mediation by a Transnational Organization: The case of the Vatican”, in BERCOVITCH J., RUBIN J. Z., *op. cit.*, pp. 149-175.

¹⁷⁴ SOLVEIG H., *op. cit.*, p. 7.

¹⁷⁵ It is estimated that experimented private mediator groups furnish 3% of total international mediation efforts; cf. SOLVEIG H., *op. cit.*, p. 3.

¹⁷⁶ Bercovitch observes that their “background, attitudes and behavior may enable disputants to engage in productive conflict management”; cf. BERCOVITCH J., *op. cit.*, p. 11.

outcome; it loses in flexibility though¹⁷⁷. Similar characteristics are observed between States mediators and individual formal mediators as they inspire authority, which is adapted if the conflict consists in a geopolitical game of interstate influence. However, they are considered less impartial than informal mediators who inspire another form of confidence based on neutrality, experience, good will. Individual formal mediators are still considered much more impartial than States. Thus, they can be a good alternative to the problem of Track I mediation partiality. This is the reason why it is common to see *former Head of State mediators*: they are more easily accepted by the parties, have more time available, and at the same time, still show great capacity of leverage¹⁷⁸. Another great advantage of private mediators compared to diplomatic ones is that they are not submitted to the international pressure that would prevent them from recognizing the existence of secessionist movements, terrorist organizations, or other forms of controversial groups¹⁷⁹. Nevertheless, there is one element that States mediators – or mediators mandated by organizations with important economic reserves – have and that individuals, in theory, do not: extensive material resources. As said, those resources are a potentially strong incentive.

Individual mediators can rely on other resources to leverage: their *personal skills and knowledge*. Those capacities are fundamental to find creative solutions¹⁸⁰ to the complexity of inextricable modern conflicts. The scholars Carment and Hoffman explain that although official mediators are needed to help agreements, unofficial mediators can be very effective persuaders to reorient the perceptions of the parties' values and opportunities¹⁸¹. Mediator's "leadership" was a precondition for mediation; now it is only a variable of its effectiveness. Today "experience" which is only a variable for effectiveness, will become a precondition. All indicators are pointing towards a professionalization of mediation. The UNGEM urges for the selection of "competent mediator with the experience, skills, knowledge and cultural sensitivity for the specific conflict situation" that would be surrounded by "a team of [...] experts in the design of mediation processes, country/ regional specialists and legal advisers, as well as with logistics, administrative and security support"¹⁸². In parallel, individual informal mediation is

¹⁷⁷ About the strength and weaknesses of Track I and II mediation, see MAPPENDERE J., "Track One and a Half Diplomacy and the Complementarity of Tracks", *Culture of Peace Online Journal*, 2(1), 2007, pp. 67-68.

¹⁷⁸ OSCE Report, *op. cit.*, p. 13.

¹⁷⁹ See HARE P., *op. cit.*, pp. 58-59 and 61-62.

¹⁸⁰ *Idem*, p. 61.

¹⁸¹ See CARMENT D., HOFFMAN E., *International Mediation in a Fragile World*, Routledge, 2018.

¹⁸² UNGEM, *op. cit.*, p. 7.

expanding quickly through the creation of committees of experts such as the Mediation Support Net¹⁸³, usually handled by transnational organizations.

Finally, private mediators allow a more “*human mediation*”. They are more empathic and better interpret the feelings of the populations, which should not be neglected. Their services are especially adapted to get *close to erratic parties*. Indeed, because individuals are less intimidating, they are more easily trusted by those parties and can influence them better. Women mediators are specially appreciated for that reason. Perceived “in many cultures [...] as less threatening, as less political”¹⁸⁴, women mediators are very active in clearing the ground for peace. The need to reach gender equality among mediators is proclaimed by quantity of reports on sustainable peace¹⁸⁵. Unfortunately, in spite of the repeated calls in that sense, Track I mediation is still predominantly led by men, women’ effort delegated to less visible tasks which grants them, unfairly, less merit. More than the mediators, what should evolve to adapt to the new forms of conflict is the mere definition of mediation¹⁸⁶ as it is no longer only a question of interstate diplomatic relations, but a process taking place through local peacebuilding missions.

3. The process for an effective mediation of modern conflicts

At this stage of the study, the context, the parties and the mediator are now familiar elements to us. The process is the only one of the four constituting the mediation system that is left to investigate. Because the process is the most malleable of those four elements, studying the process will permit to propose real changes in the approach of the mechanism. However, before doing so, we must know what effective mediation is and how to evaluate it.

¹⁸³ The Mediation Support Net was established in September 2008 and convened for the first time in Switzerland. It has been growing since then, welcoming new member organizations; cf. MEDIATION SUPPORT NET, Web page of presentation, visited on: <https://mediationsupportnet.ethz.ch/> [Accessed on 20/05/20].

¹⁸⁴ TURNER C., “Absent or Invisible? Women Mediators and the United Nations”, *Global Policy*, 9(2), 2018, p. 248.

¹⁸⁵ The 2018 UNSG Report states that “another important element of the [UNGA Resolution 70/262 and UNSC Resolution 2282 (2016)] was the recognition of the importance of women’s leadership and participation in conflict prevention, resolution and peacebuilding and the need to increase the representation of women at all decision-making levels [...]. The consideration of gender-related issues in all discussions pertinent to sustaining peace should remain at the front of the efforts of the United Nations and the international community”; UNSG Report A/72/707-S/2018/43, *op. cit.*, par. 3.

¹⁸⁶ In her article Turner advocates for a redefinition of the term of “mediator” that would also include Track II actors and not only UN envoys like it is the case at this time; cf. TURNER C., *op. cit.*, pp. 249-251.

3.1. The difficult evaluation of mediation effectiveness

Finding a process that guarantees the success of mediation is not an easy task. Foremost, what does “mediation success” even mean? Scholars agree to disagree on the question. The most obvious answer will be to consider that mediation succeed when the violent conflict has been eliminated: the cease of hostilities or their avoidance. This is the view shared by Zartman¹⁸⁷. Bercovitch, for its part, distinguishes various forms of success depending on the type of agreement reached, or depending on the concrete improvement of the situation, such as a reduction of death, the creation of a space for dialogue between the parties, etc.¹⁸⁸ The problem of such empirical appreciation is that it does not include the real perception. Aware of it, Bercovitch prefers to give importance to another preponderant indicator: the accordance of the result with the parties’ goals and expectations. He identifies four elements that witness success: “fairness”, “efficiency”, “effectiveness” and “perception”. Those benchmarks must be part of the evaluation. However, their eminently subjectivity cannot furnish rigorous and exploitable conclusions. Thus, a definition that will take into account both objective and subjective criterion, in other words, that will consider the extent of violence reduction – main goal of the conflict settlement mechanisms – without leaving behind the subjective feelings of the bargaining actors – important factor in their dispute’s outbreak –, seems to be a more suitable proposition. Success should then only be considered *if the deep factors that originated the conflict have been transformed in order to become harmless*. Mediation, indeed, is a question of large-scale structural change¹⁸⁹. Of course, this indicator is not unique nor flawless. After all, the best solution, as reminded by Bercovitch, is probably to evaluate mediation according to the significant criteria to its own efforts and making judgments in specific cases.

There is another main difficulty for the evaluation of mediation: the interpretation of the results. First, the subjective aspects of conflicts resolution, like those evoked above, are extremely hard to quantify. Bercovitch himself concluded that “our theoretical ambitious must be tempered by the constraints of a complex reality”¹⁹⁰. Then, even when we do possess quantified statistics, the possible contradictions between the different data base pervert comparative analysis. Indeed, the sources do not always use the same census method or the same basic definitions for every indicator. The lack of harmony in doctrinal approaches of

¹⁸⁷ ZARTMAN W. I., “La politique étrangère et le règlement des conflits” in CHARILLON F., *Politique étrangère : Nouveaux regards*, Presses de Sciences Po, 2002, pp. 275-299.

¹⁸⁸ BERCOVITCH J., *op. cit.*, pp. 22-24.

¹⁸⁹ See MARRET, J. L., *La fabrication de la paix : Nouveaux conflits, nouveaux acteurs, nouvelles méthodes*, Ellipses, 2001.

¹⁹⁰ BERCOVITCH J., *op. cit.*, p. 24.

mediation – as we experimented more than once in this paper – does not help to resolve those discrepancies. Overall, as Wall and Lynn rightly observe, the problem is not only that different definitions and operational process are used, but that there is *no clear explicative structure that would allow to evaluate mediation on a defined theoretical basis*¹⁹¹. Those quantitative and methodological discrepancies are dangerous: they can obstruct our perception of ongoing tensions with doubtful numbers and percentages and distort the real goal of mediation by “letting short or middle-term results prevail [...] on the operational mode and its subjective consequences at middle or long-term”¹⁹². It is especially the case when researchers decide to ignore the criterion of a long-term peace in their definition of conflict success, such as in Kreutz’s analytical method.

Finally, apart from those theoretical issues, the direct relation between the mediator’s action and the conflict outcome is also more than questionable. Can a perceptible change of behavior in parties’ positions, which positively affects the outcome of sorts, “be attributed to the wisdom and experience” of the mediator? And vice versa, “if the disputing parties show no change whatsoever, should this be described as mediation failure?”¹⁹³ They are so many elements, internal or external to the dispute, that are entering the parties’ sphere of interactions, that it will be almost impossible to attribute the entire success or failure of the process to only one of them. Nevertheless, the consequences of some strategies employed by the mediator are more easily discernable than others. For instance, the manipulation strategies of powerful mediators – that are directly oriented towards the triggering of a reaction from the recipient actors, like the offer of a potential reward – can provoke a direct perceptible change of attitude facilitating the identification of its cause. The communicative and facilitative strategies of individuals usually experience the opposite situation: the cause-consequences effect struggles to be singled out and sometimes hides the mediator’s efforts, diminishing his true merits. Track II mediators are especially concerned by this phenomenon although the structural work they realize is more than recommended for an effective mediation process. Studying mediation’s temporal particularities and phases will demonstrate it.

¹⁹¹ See WALL J. A., LYNN A., “Mediation: A Current Review”, *Journal of Conflict Resolution*, 37, 1993, pp. 160-194.

¹⁹² FAGET J., “Les métamorphoses du travail de paix. État des travaux sur la médiation dans les conflits politiques violents”, *Revue Française de Science Politique*, 58(2), 2008, p. 320.

¹⁹³ BERCOVITCH J., *op. cit.* p. 22.

3.2. The right timing for an effective mediation process

3.2.1. *Mediation ripeness*

Contrary to almost every single other aspect of international mediation, the timing is probably the only one that generates consensus among specialists: “to have chances of success, mediation should intervene at the right moment”¹⁹⁴. The *ripeness* of mediation is crucial for its effectiveness as it is, we remember, one of the preconditions to enter the process. Zartman particularly studied the question of the right timing for mediation. He states that the conflict can only start to be resolved when a *mutually hurting stalemate* occurs, in other words, when each of the protagonists realizes that he cannot solve the problem by himself nor tolerate the costs of conflict¹⁹⁵. However, the doctrinal consensus falls apart when it comes to the designation of this particular ripe moment. Zartman’s school of thoughts considers that a quick intervention right after conflict outbreak maximizes chances of success. Mediators must then be able to discern the future risks of tensions in order to react fast. It is the mission led by the standing teams of peacemakers that maintain their presence on unstable territories. This aspect of mediation will be developed further on.

Zartman explains that another ripe moment can occur after a long period of time. This opinion, also endorsed by authors such as Regan or Stam, seems coherent with the idea that to start negotiating the parties must face a mutually hurting stalemate due to the oversized costs of war they are no longer able to support. However, in many “modern scenarios” there is no correlation between passage of time and the reduction of the belligerent pretensions. Sometimes, it even produces the opposite effect. It is wrong to think that, in the context of asymmetric wars, states can afford to delay the beginning of negotiations, waiting for the insurrection groups to exhaust their little war resources. Those groups, especially for guerrillas or terrorist groups, can benefit from a long-running war as it affords them time to reinforce their economic and political position in the region¹⁹⁶. The longer intrastate wars perpetuate, the weaker national institutions become – both ideologically and objectively speaking –, and the more difficult it will be to rebuild a peaceful climate after truce. Mediation true goal, it must be recalled, is not to obtain an agreement signed by the disputants, but *to reinstate peace*. Even more dangerous is when, instead of forcing parties to negotiate, the increase of their loss can transform the reasons for

¹⁹⁴ DA ROCHA J. P., *op. cit.* p. 101.

¹⁹⁵ See ZARTMAN W. I., “Ripeness: The Hurting Stalemate and Beyond”, in STERN P., DRUCKMAN D., *International Conflict Resolution After the Cold War*, National Academy Press, 2000, pp. 225-250.

¹⁹⁶ See the *Rapport d’information* n° 3964 of the French *Assemblée Nationale*, *op. cit.*, pp. 45-57 and pp. 71-106.

entering in conflict in the first place into irrational hatred. An evident illustration is the Israeli-Palestinian endless conflict. What this shows is that the question of “ripeness” is not only a temporal one. It encompasses an undeniable subjective aspect. That is why some authors, such as Hart or Kleiboer, judged that Zartman’s vision was erroneously treating time as an independent variable. Instead, they prefer to talk of “willingness”¹⁹⁷ – as referred to the parties’ willingness to resolve the dispute – or “negotiability”¹⁹⁸. Da Rocha rejoins their opinion: “rather than a linear process or an explicit choice at one particular moment in time as posited by the ripeness theory, negotiability represents an evolving social process involving the participation of different actors within a group”¹⁹⁹.

Why is the right timing to begin mediation so important? The decision to enter into mediation is part of the process, and the process is under the supervision of the mediator. There are some aspects influencing the process that are impossible for him to manage, such as contextual circumstances change. But others are within reach. Among them, the parties’ desire to resolve the dispute. Indeed, once understanding that the right timing for mediation is in fact governed by the parties’ subjective positions, “the moments in which mediation could occur are more numerous because they no longer depend on a specific situation on the ground, but on the protagonists’ desire to find a solution to their quarrel”²⁰⁰. Thus, the mediation process does not begin with the first confrontation of the two parties, but with the mediator paving the way towards “negotiability”.

Although the notion of “ripeness” is generally specifically used to refer to the right moment for entering into negotiations, the condition must apply all along the operation. Accepting to initiate mediation does not mean being ready, all of a sudden, to meet face to face with a long-standing enemy. Because “negotiability represents an evolving social process”, the parties’ desire to cooperate is not immutable. The mediator must become the guide that accompanies both sides, making sure that their perception of the situation is ripe enough to move forward in the process. Otherwise, *unnaturally forcing ripeness might cause its failure* by a turning inwards of the protagonists or the reach of a precarious agreement doomed to be

¹⁹⁷ See KLEIBOER M., “Understanding Success and Failure of International Mediation”, *The Journal of Conflict Resolution*, 40(2), 1996, pp. 360-389.

¹⁹⁸ See PEARLMAN W., “A Composite-Actor Approach to Conflict Behavior”, in CHENOWETH, E. and LAWRENCE, A., *Rethinking Violence: States and Non-State Actors in Conflict*, MIT Press, 2010, pp. 197-219.

¹⁹⁹ DA ROCHA J. P., *op. cit.*, p. 102.

²⁰⁰ DIECKOFF M., *op. cit.*, p. 10.

infringed²⁰¹. This idea rejoins the already mentioned need for the mediator to periodically assess the parties' consent. Da Rocha wisely advises mediators, "even in the most intractable of conflicts [...], to constantly assess readiness and availability of the leadership to think about their interests and the benefits of peace and the costs of war"²⁰². Once more, the flexibility and secrecy of mediation turn out to be particularly adapted to the recommendations for 21st century sustainable peace. Unfortunately, Da Rocha explains that the securitization of the post 9/11 discourse leads to more repressive instruments that reduce space for dialogue. Reestablishing it is a long process; it starts before negotiations and must be maintained afterward.

3.2.2. *Mediation phases*

The process, once started, can be divided into various chronological phases. Generally, the authors identify three: *pre-negotiation*, *negotiation* and *implementation* of the agreement²⁰³. The objective of the initial phase is to get the parties to the table²⁰⁴. However, from everything that we now know about mediation, we understand that the goal of this phase is in fact larger than that: it also ripens the ground for effective negotiations. Preliminary work must permit "preparedness" – one of the eight UN guidelines – for both mediator and the parties. First, the mediator shall acquire a perfect knowledge of the conflict by a rigorous *work of investigation*. He needs to know perfectly the factual chronological events that led to the conflictual situation as well as the parties' psychological positions. It is a fundamental requirement: neglecting some elements can lead to further discordance, and eventually, to the failure of mediation. The collect of information can be a very long process. Some professional informal mediation groups, such as the Quakers²⁰⁵, show a real experience in that field. Hare's narrative of the Cyprus

²⁰¹ The last guideline of the UNGEM is precisely to make sure that the negotiations will permit to implement "quality peace agreement". The UNGEM indeed provides that "peace agreements should end violence and provide a platform to achieve sustainable peace, justice, security and reconciliation"; cf. UNGEM, *op. cit.*, p. 20.

²⁰² DA ROCHA J. P., *op. cit.*, p. 102.

²⁰³ SUSSKIND L., BABBITT E., *op. cit.*, pp. 36-38.

²⁰⁴ The terms of "getting to the table" and "getting an agreement" are actually the ones used by Greig's to refer to the "pre-negotiations" and "negotiations" phases. Yet, we preferred to use the terms of Susskind and Babbitt to present the different phases here instead of Greig's notions, even if the authors wanted to express the same idea, because the first ones are less limited than the second; cf. GREIG M., *op. cit.*, p. 16.

²⁰⁵ The Quakers is probably the most famous and old group of private practitioners. They have been committed to the resolution of conflicts for a very long time: their first mediation occurred before the American War of Independence in 1774 when David Barclay and John Fothergill attempted to mediate between the British Cabinet and Benjamin Franklin. In the 1970s it was estimated that 10% of the diplomatic community had met each other under Quakers-sponsored auspices; cf. THE QUAKERS, Web page of presentation, visited on: <http://www.quakersintheworld.org/quakers-in-action/210/-International-Mediation-and-Conciliation> [Accessed on 21/05/20].

Resettlement Project²⁰⁶ gives an idea of the many operations it requires and their difficulty. Unfortunately, this stage is “diplomatically depreciated” in comparison to Track I mediation. Maybe some high-profile mediators enjoyed popularity, such as Hammer or Bunche, but the majority of individual mediators do not receive such publicity. As it is explained by Mappendere in a paper written in 2005, Track II actors “have been stuck in their position unable to move their initiatives up the chain of leadership, blaming the arrogance of official diplomacy” while diplomats have been “frustrated by the naivety of Track Two actors who through their lack of political sophistication interfere with national interests”²⁰⁷. The pre-negotiation phase is nevertheless absolutely crucial because it also plays a key role in *preparing the parties to truly accept truce*. Expressing their reasons for acting that way, being listened to, and knowing that their opinion is going to be taken into account by a wise mediator who has the capacity to influence the other side: this is mediation’s heart. Hare explains that the preliminary reports that were sent to the parties after collecting the other side’s opinion, more than being real supports of negotiations, were intended to show parties that their views had been understood. If this phase of the process is well achieved, even if negotiations cannot occur – due to, for example, to an exterior change of situation reshuffling cards, just as it happened in Cyprus in 1974 – a huge improvement will still have been made towards pacification. None of this work should be considered useless because there is no agreement signed at the end. On the opposite, an agreement without true reconciliation cannot insure the elimination of violence.

Once everything is settled for parties to, finally, sit at table, the negotiation phase can begin. Following the drafted agenda of negotiations, the parties will try to find a common ground, inspired by the mediator’s propositions. His panoramic view of the conflict acquired thanks to the rigorous work of investigations carried out during the anterior phase is essential in order to identify the “sticking-points”, to construct tradeoffs and to prepare drafts²⁰⁸ that seem fair to both sides. Once again, if reaching an arrangement is the evident objective of that phase, it is not limited to that. Another prior objective is, we mentioned it before, to *keep negotiations on track*. The elements that may obstruct negotiations can be related to the parties’ behavior, to the mediator’s – which is less common – or, more dangerous, to exterior influence.

²⁰⁶ The Cyprus Resettlement Project took place in 1972 and lasted until the invasion of the Turkish army in 1974. It was intended to mediate the dispute opposing Turkey to Greece. Among the many operations that had been led during the preliminary work phase, the team of mediators made ground investigations, living in local villages during several months to truly understand civilians’ perceptions. They tried to accumulate the largest amount of information possible from all level of society, sending reports to both parties – that could check their accuracy – or by creating workcamps; cf. HARE, *op. cit.*, pp. 54-60.

²⁰⁷ MAPPENDERE J., *op. cit.*, p. 77.

²⁰⁸ SUSSKIND L., BABBITT E., *op. cit.*, p. 38.

Contextual events are real threats because the mediator cannot control them; theoretically at least. Why “theoretically”? Because the mediator is not totally deprived of means: his role during the whole process will specifically be to *pay attention to the surrounding circumstances to try to anticipate them*. Above all, he must not forget to be inclusive and must not overlook the interests of third parties with indirect stakes²⁰⁹ when deciding on the agreement.

Mediation does not end up with the signature of an agreement: it must be then duly implemented. We recall that implementation is failing in half of the cases. It is fundamental for the mediator to make sure that the parties are going to respect their own engagements. For their parts, the parties will want to know that the mediator is capable to supervise the implementation. Strong authority is, in that case, helpful to prevent the infringement of the agreement. How to conciliate it with an informal and humanizing mediation? As many individual mediator networks are being developed through international organizations, a solution would be to let those experts in charge of the concrete ground operations *using the organizations transcendancy* as safeguard. This is the method employed by the UN DPPA, especially through its Standby Team already mentioned. Nevertheless, the real goal would be to reach a scenario where there will be no need for such authority because the parties, once the agreement signed, will have definitely buried their old rancor. Utopic? In some cases, probably. Nevertheless, the aim of tomorrow’s peacemakers is to tend towards this scenario. Our suggestion is to transform mediation in a more constructive process where mediators will limit their role to a *strictly facilitating one*, using their strategies of communication before using their dissuasive capacities. The necessity to develop new forms of dialogue with erratic parties, that can easily remain suspicious towards their interlocutors, led specialists to advocate for a *reinforced Track II* mediation²¹⁰ that would expand itself beyond the timeline of the traditional three stage conception of the process: preventing conflict and searching long-term peace, these are the stakes of future mediation techniques.

²⁰⁹ *Idem*.

²¹⁰ See the report of the UNDP Bureau for Policy and Programme Support, with support and funding of the EU, *Supporting Insider Mediation: Strengthening resilience to conflict and turbulence*, 2014.

3.3. The solutions for a structural peace

All along this study, we discovered the objectives for future mediation through the explanation of its components. To be reached, those objectives need to override the simple theoretical sphere and to encounter a practical implementation. A major issue jeopardizes the empirical demonstration of their effectiveness at the present time: the real doctrinal shift in the conception of peacebuilding methods, that began with the advent of the 21st century though it only receives concrete political support this last decade, is not old enough to offer an abundant number of exploitable examples. However, we will try to embrace a concrete approach by detailing some concrete techniques, which was the last element missing to this global study of international mediation.

3.3.1. Preventive mediation

Ki-moon, the previous UNSG, in the foreword of the UNGEM, affirmed that mediation was “one of the most effective methods of preventing, managing and resolving conflicts”²¹¹. Prevention of conflict is the cornerstone of the job of the peacemakers, that is certain. The methods employed for prevention are mainly based on groundwork team efforts, such as humanitarian assistance – construction of infrastructures, provision of vital supplies, etc. – raising awareness of local populations – creating educative or cultural programmes, etc. – and control of the inside tensions – investigation about the situation, dialogue with all level society actors, early warning of potential risks, etc. Thus, is prevention truly the mediator’s task or is it the task of other peacemakers specialized in those methods? Mediation is, as indicated *supra*, “a process of conflict management”, and conflict is “a disagreement [...] between two persons”. As soon as there is a disagreement, mediation can exist, not before; but it could preexist to the violent outbreak. There are two types of prevention: *structural prevention* and *operational prevention*. The first one “is a long-term and multifaceted endeavor to tackle the root causes of violent conflict” while the latter “entails immediate diplomatic, political or military efforts to avert imminent violence in crisis situations”²¹². Thus, when “conflict prevention” takes on this last meaning, it can be conciliated with mediation. In that case, the mediators are sometimes

²¹¹ UNGEM, *op. cit.*, p. 1.

²¹² NATHAN L., *op. cit.*, p. 46.

identified as “Track III mediators”²¹³ or “insider mediators”²¹⁴. This kind of *ad hoc* prevention, though, is less effective than a standing-prevention mechanism. Indeed, apart from the already mentioned benefit of an ongoing presence in the conflict arena to early detect tension, it enables peacemakers to acquire the necessary understanding of the conflict history and of the conflict parties’ perspectives. Also, obtaining the consent for third parties to intervene in the heat of an escalating crisis can be made difficult by the parties’ lack of objectivity at that moment. This explains why *institutionalized operational prevention*, an intermediary mechanism that “prevent[s] a conflict from becoming violent” as well as “low-level violence from escalating into large-scale violence”²¹⁵, is particularly interesting. This standing method that allows mediator to be part of the preventive operations is little documented – operational prevention in general is – and can only be illustrated by very few examples²¹⁶.

One of those examples took place in Nigeria after the 2015 election that removed President Jonathan from power. The National Peace Committee in Nigeria (NPC), formed few months before the election and chaired by a former Nigerian head of state, General Abdulsalami Abubakar, managed to get all the parties to sign a code of conduct²¹⁷. They also discouraged negative campaign tactics in local hot spots. One of the reasons for the committee success is the inclusion of prominent Christian and Muslim religious leaders among its members which helped to prevent religious and ethnic animosity. Another example of institutionalized operational prevention success is the UN Interim Force in Lebanon and the UN Special Coordinator for Lebanon mandated in 2006²¹⁸. Again, it demonstrated that “*soft diplomacy*” performed better in de-escalating violence without losing face than coercive measures or threats. This “hard leverage”, that can be provided, as we saw, by highly authoritative mediators, is not

²¹³ TURNER C., *op. cit.*, p. 245.

²¹⁴ The UNDP explains that “insider mediation processes preserve the essence of [mediation]: mediators also support negotiations - as well as a variety of other forms of dialogue - to prevent, manage and resolve conflict. What distinguishes insider mediation from other forms of mediation is that it involves credible figures, groups or institutions internal to a conflict, who are able to use their influence to play a role – often largely behind the scenes or in undefined capacities – which directly or indirectly influences the trajectory of conflict in a constructive manner”; *cf.* UNDP Bureau for Policy and Programme Support Report, *op. cit.*, p. 8.

²¹⁵ NATHAN L., *op. cit.* p. 46.

²¹⁶ Ackermann, that especially worked on conflict prevention, underlined this unfortunate lack of examples; *cf.* ACKERMANN A., “The Idea and Practice of Conflict Prevention”, *Journal of Peace Research*, 40(3), 2003, pp. 339–347.

²¹⁷ The “Peace Accord on the Prevention of Violence and Acceptance of Elections Results by Presidential Candidates and Chairpersons of Political Parties contesting the 2015 General Elections” was signed in Abuja on 10 January 2015, under the watch of Mr. Kofi and Chief Anyaoku, by the two leading presidential candidates, President Jonathan of Peoples’ Democratic Party, and General Buhari of All Progressive Congress, as well as by twelve candidates of other political parties.

²¹⁸ The figure of this Special Coordinator has been created by the UNSC Resolution 1701, of 11 August 2006. The resolution also established a cessation of hostilities at the end of the 33-day War between Lebanon and Israel.

inconsistent with prevention, “but it is antithetical to the logic of the standing mechanisms, which depend for their existence and effectiveness on the ongoing consent of the conflict parties”²¹⁹.

Unfortunately, preventive techniques are not invincible safeguards and there will always be a risk for violence to surface. The upstream work already realized will not have been useless though, as it will ease the resolution of tension by preparing the ground for further constructive methods.

3.3.2. Constructive mediation

According to the traditional conception of mediation which does not consider operational prevention as part of the mediation process, the mediator’s strategies can start operating once the parties have already resorted to force and are willing to make truce. Touval and Zartman were among the first to develop the strategies used by mediators, establishing a taxonomy of techniques that is still very relevant. It distinguishes three different types: the “*Communication-facilitation*”, the “*formulation*” and the “*manipulation*”²²⁰. The last category requires an active use of mediator’s resources, in particular material ones, and sufficient authority to influence the expectations of the parties to make them accept concessions. There are good strategies, though they are not corresponding better to the future profile of mediator defined before. The second category includes process managing techniques, such as the control of timing and parties’ consent or the establishment of protocols to keep the process moving on. These activities are indispensable to any procedure. Nonetheless, they are not, by themselves, the guarantee of effectiveness. The first type of strategies, for its part, is particularly interesting for the resolution of modern conflict. Those techniques include *making contact with all stakeholders*, *gaining their trust*, allowing them all to *discuss their interests*, clarifying the situation or *identifying the contradictions*. All those elements have already been indirectly treated while studying the parties and the mediator’s characteristics. Why are they the keys for future international mediation? They are the response to effective resolution of modern conflict because they permit to reach the parties deep feeling, deconstruct their animosities, and rebuild

²¹⁹ NATHAN L., *op. cit.* p. 52.

²²⁰ See TOUVAL S., ZARTMAN W. I., “International Mediation: Conflict Resolution and Power Politics”, *Journal of Social Issues*, 41, 1985, pp. 27-46. The italic is ours.

a new trust. The ideological grievances that fuel today's intrastate conflict actors require a constructive mediation predominantly based on those tools.

The very inspiring presentation of conflicts made by *Galtung*²²¹, renowned peacemaker and father of irenology, perfectly illustrates the power of constructive mediation. According to Galtung, there are three components of conflict: “*attitude*”, “*conduct*” and “*contradiction*”²²². The attitude is relative to the “inside”, to the personal perception of the parties. The conduct is the exteriorization of that perception which is materialized through their – violent – acts. Contradiction is situated “between” them. It is the wall that separates them, that impedes them to rejoin and to make peace. Only by resolving the contradiction will it be possible to modify the attitude and the conduct. The overhanging position of the mediator gives him a general view of the situation and permits him to identify that contradiction and to dismantle it. How? Galtung suggests a three-step method²²³ that is very similar to *narrative mediation* techniques – also called “humanist mediation” – mostly used for private litigations. First, *distance* should be maintained between the two parties. Distance indeed allows the parties to reconsider their situation, what they want and why they are in discordance with their opponent. Mediator works on each party separately, more than an intermediary, as a translator, using all his communication strategies to reach mediation ripeness. During this second step of “*externalizing conversation*”²²⁴, each has the right to express itself and to be listened to. In case one of the parties has been injured, the aggressor can say why he acted the way he did, and the victim can give his objections. The narratives shall be brief. For instance, Galtung recommend that the writings of the respective parties explaining why and how they had felt offended should not exceed one page. They do not aim to condemn the other part, but to liberate the emotions. Finally, the reunification can occur by the reconstruction of a shared narrative – which is called in narrative mediation, a “*solution-bound narrative*”²²⁵ – and by moving forward building *common projects*. Incorporating in international mediation the techniques employed to resolve private conflicts – when possible –, can offer creative solutions, especially for conflicts

²²¹ CALDERÓN P., “Teoría de conflictos de Johan Galtung”, *Revista Paz y Conflictos*, 2, 2009, p. 69.

²²² The italic is ours.

²²³ In a conference held in Monterrey, Mexico, on 24 October 2011, Galtung presented the method and gave the example of the *Jyllands-Posten* Muhammad cartoons controversy, occurred in Denmark 2005, after the publication of editorial cartoons depicting the Prophet Muhammad. The video of Galtung's presentation is disponible on the website of Transcend Media Service, one of the four pillars of Transcend International, a network for peace, development and environment founded by Johan Galtung; cf. TRANSCEND MEDIA SERVICE, Web article, visited on: <https://www.transcend.org/tms/2011/11/spanish-johan-galtung-los-tres-componentes-del-conflicto/> [Accessed on 18/05/20].

²²⁴ WINSLADE J., MONK G., *Narrative Mediation. A New Approach to Conflict Resolution*, Jossey-Bass, 2000, pp. 6-7.

²²⁵ *Idem*, p. 8.

involving multiple ideological groups where the subjective stakes are much more important than in a simple confrontation of power between two States, mainly based on the preservation of their respective objective interests, such as economic reasons.

A mechanism that would only be based on manipulation strategies could not achieve such constructive effect and thus could not successfully adapt to modern conflicts. Those kinds of conflicts could not be settled either by simply punishing, convincing or eliminating. The American army experienced it in Middle East, in particular in Irak with the Second Gulf War where the preventive American strike, far from eradicating jihadist groups, created an inextricable situation of disorder in the region. Once again, mediation shows its benefits compared to the other means of dispute resolution: without the presence of a third party, distance could not be preserved between the parties and the other existing means involving third parties – conciliation or juridical settlement – do not permit parties to realize this very necessary constructive work on themselves. Constructive mediation minimizes the risk for conflict resurgence which is essential to ensure a structural long-term peace.

3.3.3. Ensuring structural long-term peace through creative, coordinated, and participative mediation

Long-term peace is the real objective of mediation. It can only be reached through structural reforms. Unfortunately, if the virtue of sustaining peace is now well known of policy and scholarly literature, there is little prescription to combine it with the preventing techniques previously presented²²⁶. The looping aspect of conflicts, however, bounds together all the temporal stages. Prevention is in fact a way of ensuring long-term success, and supervising the implementation of the agreement is a form of preventing resurgence of violence. It explains why it is so important to look at conflict trends and factors: it permits to *identify the causes and to postliminary tackle the risks through creative solutions*; this is our answer for effective mediation of modern conflicts. The factors of tension can then inspire shared projects between the old enemies, as prescribed by Galtung. Building a common future drastically reduces probability of conflict. Apart from the subjective reasons linked to the parties reconciliation, it avoids rivalries on the resources that another State – or any actor – might otherwise seek to

²²⁶ For instance, even though the UNSC states that “sustaining peace [...] should flow through all three pillars of the United Nations’ engagement at all stages of conflict, and in all its dimensions”, its 2018 Report on Peacebuilding and Sustaining Peace ignores the challenge of sustaining the gains of preventive diplomacy; cf. UNSC Resolution 2282, *op. cit.*, p. 2; and UNSG Report A/72/707-S/2018/43, *op. cit.*

control and exploit on its and it raises the cost that belligerents will bear if a dispute emerges. The example of the EU construction speaks for itself. Another example, precisely coming from a mediation process led by Galtung, is the creation in 1998 of a natural park between Peru and Ecuador which ended 170 years of border skirmishes. The binational zone is jointly administrated, and its touristic benefits shared between both countries²²⁷.

Careful attention has been paid in the second part of this study to the major conflict factors that are of *environment*, *youth* and *communitarian closure* issues. It was not trivial: the measures undertaken in those fields are among the most appropriated to respond to the risks that represents demography, ecology, and religious radicalization. The precited example of a shared natural zone between Peru and Ecuador is encouraging. Mediators should seek the implementation of similar solutions in Africa where climate change, especially water rarefaction, will not leave many other options to the countries than the common management of their resources. Hopefully, it will also permit to reduce the influence in the region of terrorist groups that strongly depend on the traffic and exploitation of those resources. Regarding to the youth, the international actions have multiplied those last past years, in particular under the scope of the UN 2030 Agenda²²⁸ and under the Youth, Peace and Security Agenda²²⁹. This dynamism permits to enhance research, and to promote plentiful of projects²³⁰.

Thus, the answers exist. The pitfalls are just as numerous though. Considering that African economy largely relies on the exploitation of natural resources²³¹, and that between \$859 and \$1,060 billion are fraudulently embezzled by African leaders each year²³², it is easy

²²⁷ See BALAGUER A., “Una vida buscando la paz”, *El País* Web article, of 22 July 2011, visited on: https://elpais.com/diario/2011/07/22/cvalenciana/1311362293_850215.html

²²⁸ Adopted by the UNAG Resolution 70/1, on Transforming our world: the 2030 Agenda for Sustainable Development, of 25 September 2015.

²²⁹ Adopted by the UNSC Resolution 2250 at its 7573rd meeting, on 9 December 2015. During the meeting, Jayathma Wickramanayake, the Secretary-General’s Special Envoy on Youth, recall that 408 million of the world’s 1.8 billion young people were living in contexts affected by armed conflict. She pointed that potential that young people represented to achieve sustain peace not only as beneficiaries, but as equal partners in all efforts.

²³⁰ Among many others, between 2016 and 2019, the UNDESA “Evidence-based policy action on youth development in Africa: young people’s contributions to peace and security” project aimed include youth in the process of strengthening the capacities of governments and civil society. Workshops have been held in Togo, Burkina Faso and Côte d’Ivoire, bringing together participants drawn from members of youth-led civil society organizations as well as senior government officials and representatives of United Nations; see UNDESA “Evidence-based policy action on youth development in Africa”, Web article, of 28 April 2017, visited on: <https://www.un.org/development/desa/capacity-development/projects/project/evidence-based-policy-action-on-youth-development-in-africa/> [Accessed on 21/05/20].

²³¹ In 2011, it was estimated that 80% of all African exportations were semi-finished natural resources products; cf. UN Economic Commission for Africa Report, *Mesurer la corruption en Afrique : prendre en compte la dimension internationale*, 2016, p. 11.

²³² *Idem*, p. 20.

to understand that the lack of political will on resources management deeply hinders the successful implementation of structural solutions. Concerning youth, its inclusion into the political sphere is seen as a threat by some eager leaders, in power for decades. This circumstance, once more, can lead to the absence of productive measures improving the situation in that domain. Sustainable peace requires all actors to truly cooperate. It also applies to developed countries that are indirectly fomenting corruption through doubtful trade agreements, exerting tensions by coveting African natural resources and selling weapons to war-torn countries. The benefits of inclusive mediation have been demonstrated. This inclusivity must in fact not be limited to all the stakeholders in the conflict and must also reach the apparently exterior actors whose actions have very concrete consequence.

Putting together all the elements that future mediators must deal with – conflict causes, stakes of exterior actors, the parties’ personal perception, the ripeness of the process, etc. –, the task seems to be almost impossible. The complexity of modern conflicts obliges peacemakers to coordinate their efforts. *Cooperation between all mediation structures offers diversity* in the nature of mediators – individuals acting in small structures, renowned private groups, organizations, States, etc. – in their territorial scale of action – local, regional, international – and in their capacities. This diversity is indispensable to respond to the panel of factors, actors, stakes and spaces – physical territories as well as digital spheres – involved in modern conflicts. Nevertheless, the UNGEM rightly observes that “multiplicity also risks actors working at cross-purposes and competing with each other”²³³. To avoid counterproductive results, the UN paper precisely recommends having “coherence, coordination and complementarity” in mediation effort. *Complementary* refers to diversity. *Coordination*, to the need for a strong partnership²³⁴ between mediators that would permit to *share knowledge, experience and resources*. This last element could be indeed a very good palliative to the lack of resources of skillful individual mediators commented before. The 2014 UNGA Resolution 68/303 already advocated for regular dialogues between mediators and especially *encouraged regional organizations* to develop their own capacity in mediation²³⁵, in accordance with the Chapter VIII of the UN Charter, especially its article 52 that promotes the establishment of regional arrangements for

²³³ UNGEM, *op. cit.*, p. 18.

²³⁴ The Group of Friends of Mediation, launched by the foreign ministers of Turkey and Finland in 2010, plays a key role in promoting UN engagement in mediation both on the normative front and in practice. Due to its success, the model has been replicated in 2014 in the EU and in the OSCE; *cf.* OSCE Report, *op. cit.*, p. 10.

²³⁵ It is precisely the purpose of the OSCE’s Meetings of Regional, Subregional and other International Organizations on Preventive Diplomacy and Mediation that started in December 2010 with the organization of a two-day workshop on Preventive and Quiet Diplomacy, Dialogue Facilitation and Mediation, inaugurating a series of consultations; *cf.* OSCE Report, *op. cit.*, p. 9.

the purposes of local settlement of disputes. Lastly, *coherence* necessitates, first, the *avoidance of co-led mediation* initiative, privileging instead the services of one lead mediator coming from on single entity, chosen on a case-by-case basis. And secondly, rejoining what has been said *supra*, it requires the *goodwill* and support of “interested States and others” that “may not be directly involved in the mediation but still have an impact on the process”²³⁶.

Finally, active participation of all actors in the process necessarily means the inclusion of *civil society* as well. First and foremost, peace aims to protect populations²³⁷. They are not only passive actors though. They are playing an increasingly important role in the dynamic of the conflict. The new digital means, especially social networks, grants them another form of power²³⁸. The Arabic Spring perfectly illustrated that power on the triggering of civil revolutions. They are now able to access to overflowing information and to directly take part in the conflict complex mechanism by getting involved themselves or by influencing the conflicting actors. Mediators must work closely with civil society, from the preventive phase until the post-implementation one by promoting activism through grass roots missions and peacebuilding programmes. The peace process, as reminded by Da Rocha, “must be engaged not only at the level of senior officials and notables, but at the level of the different strata of society and culture through which each gives meaning to the conflict”²³⁹. Otherwise, although there might be pacification, there will be no *reconciliation*; and such result will not be consistent with the very essence of mediation.

²³⁶ UNGEM, *op. cit.*, p. 18.

²³⁷ Unfortunately, 90% of all casualties resulting from wars and civil conflicts are civilians; *cf.* WINSLADE J., MONK G., *op. cit.*, p. ix.

²³⁸ The Arabic Spring perfectly illustrated the power of social networks on the triggering of civil revolutions.

²³⁹ DA ROCHA J. P., *op. cit.*, p. 103.

CONCLUSION

“Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed”²⁴⁰.

The impact of the Second World War on both defeated and winners forced States to face that violence was no longer the most effective manner to resolve disagreements as it historically used to be. The obligation the resort to pacific resolution of conflict was then the answer. It became the leitmotiv of the brand-new organization of the UN that would ensure peace to the future generations. Unfortunately, men did not stop waging war. Since then, the geopolitical configuration of the world evolved as fast as the technologic and societal progress, inevitably affecting conflicts, transforming almost every single one of their components. The battlefield, the means, the actors, the stakes, the claims; they have all changed. Pacific mechanisms of conflict resolution have, nevertheless, theoretically still the same definition then the one provided by the international treaties one century ago, especially by the article 33 of the UN Charter. We must rethink our approach and adapt those mechanisms to the new complexity of modern conflicts. Among the existing means, international mediation seems to be the most promising.

This extremely ancient practice presents the interesting characteristic, that apparently do not show the other means, of being structured and very flexible at the same time. Such duality permits to the mediator to control the management of the process and to ensure its effectiveness by permitting to the conflicting parties to truly reconcile. Relations are at the source of conflict; they are also the condition to its resolution. A constructive system that allows enemies to take their distance, listen to the opponent, and then rebuild together a new relationship is a key to the resolution of modern conflicts where the claims of the multiple stakeholders need to be understood and not simply eliminated. In order to reach this goal, international mediation must continue to evolve in that constructive sense. It must seek inclusivity of all actors, expand its effects in time through preventive methods and long-term solutions, be led by professionalized mediators, and privilege the use of communicative

²⁴⁰ Preamble to the Constitution of UNESCO (United Nations Educational, Scientific and Cultural Organization), of 16 November 1945.

strategies. Those answers are our propositions to an effective mediation able to provide lasting peace.

If mediation can be such a powerful instrument to reduce the disputes threatening international security, should not international law try to reinforce the legal obligation to resort to mediation? The very large majority of the documents that are, today, serving as guidelines to mediation practitioners are the reports made by experts and provided by international organizations as well as UN resolutions or declarations. Those documents do not have binding effect, although the ICJ repeatedly recalled the mandatory character of UN resolutions. Above all, apart from the apparently impossibility to legally impose, at an international level, a greater cooperation in peacemaking policies, would it not be very precisely in contradiction with the inherent voluntary nature of mediation to make it compulsory? Probably. It could even be counterproductive. The real success of conflict resolution procedures can only occur if the actors involved are showing good will. A compulsory mediation will not ensure that parties show such good will; and the mediator, even if he possesses great skills, cannot promise to have sufficient capacity of leverage to make their perceptions change. How to ensure international actors good will then? It seems to be a laborious task. It is easier to directly concentrate peacebuilding efforts at a lower level, through local missions of prevention, protection and development. This is clearly the path chosen by today's peacemakers that are aware of the power that represents civil society in the creation of bottom-up dynamisms to trigger the expected structural reforms. Nevertheless, those processes are can take time to bear fruits, and the stake that represents climate change in the increase of conflicts is an emergency requiring immediate political good will. This inextricable situation does not leave much choice other than to strengthen the support to current peacemaking strategies and to continue cultivating in the minds of men the defences of peace.

There is, however, a perfectly achievable step that could significantly improve mediation's effectiveness: redefining it. More than a simple question of theoretical conformity of its traditional presentation to its new reality, or to the model it should tends to, such operation will have concrete consequences on its chance of success. Indeed, the existing definitional gap and the doctrinal discrepancies over its definition obstruct coherence in programming operations and can lead to misunderstandings. Once again, we could argue that a rigid notion of mediation will divests it from one of its greatest characteristics which is "flexibility". Being flexible does not mean being uncertain. If its flexibility is true asset, it is notably for its capacity to adapt to the specific needs of the situation and thus to ensure the resolution of the concrete

conflict factors. The settlement of modern conflicts requires specific methods. Including them in the notion of the mechanism is not contrary to its original essence. Adjoining our proposals for diversity, communication, trust and expertise in the concept of mediation will address the cultural and political barriers that prevent Track II and III mediators to receive the visibility and credibility they deserve. Greater credibility means better capacity of leverage, and better capacity of leverage means more effective mediation. It is time to create virtuous loophole to fight against conflict vicious circles.

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