The Effect of Context Factor on the Selection of Mediator

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Paper draft prepared for the second Workshop on International Negotiation and Conflict Resolution

International Conference Hall, General Building of Colleges, National Chengchi University, Taipei City, Rep. of China, October 25-26, 2004
I. Introduction:

In the 2004 National Day speech, President Chen Shui-bian of Taiwan called for peace talks on the basis of 1992 Hongkong negotiation. Mr. Chen proposed “both sides should seriously consider the issue of arms control and take concrete actions to reduce tension and military threats across the Taiwan Strait. In the long term, both sides, Mr. Chen emphasizes, should formally end the state of hostility across the Taiwan Strait and Establish confidence-building measures through consultations and dialogues.”

Although international media regarding Chen’s speech as a peace overture from Taiwan, Beijing government has a different interpretation indicating Chen Shui-bian’s firm stand on Taiwan independence. Zhang Mingqing, a spokesman for the Taiwan Affairs Office categorically pointed out "Chen Shui-bian declared that he intended to ease the tense atmosphere and the confrontation across the Taiwan Strait, yet he stubbornly insisted on his separatist stand that there is one country on each side of the strait." ¹ For Chinese government, Chen Shuibian has not demonstrated his sincerity for promoting resumption of talks between ARATS and SEF and, as a result, the cross-Strait political deadlock can hardly be broken.

In fact, this kind of scenario has been emerged repetitively. Whenever touching up the resumption of cross-strait talks, each side would insist its basic principles. China continued to insist that any discussions with Taiwan could begin only when Taipei accepted “one China” principle on the basis of 1992 consensus. Taiwan, at most, would like to discuss the issue of “one China.” Consequently, the stalemate endures.

What if there is a third party enter into the scenario? Therefore, I would like to investigate into the effects of context factor on the role of mediator and conflict resolution.

II. International Mediation:

In the post-Cold War period, two heterogeneous forces, i.e. globalization and localization, have influenced on and perplexed interactions between states as well as those within state. Nowadays, international and domestic elements are entangled into any conflict. For example, local insurgents, Iraqi interim government and multinational peacekeeping forces are involved into current conflicts in Iraq. Or in Northern Ireland conflicts, there are multiple parties such as British government, Irish government, nationalist parties, unionist parties.

International conflicts have been waning down after the collapse of the Soviet Union and its Eastern European Empire. Some scholar even argues that the opportunities for conflict are multiplied manifold. Current increasing multi-facet conflicts have produced far-flung effects.

To manage these rising conflicts, mediation or the intervention of the third party should be one of the most useful methods.

What is mediation? After analyzing different definitions, Bercovitch proposes that mediation is a process of conflict management, related to but distinct from the parties’ own negotiations, where those in conflict seek the assistance, or accept an offer of help, from an outsider (who may be an individual, an organization, a group, or a state), to change their perceptions of behavior, and to do so without resorting to physical force or invoking the authority of the law.

To analyze international mediation, the contingency model has been widely used, because “mediation is shaped by the context and characteristics of a situation.” According to this model, three clusters of variables (i.e. context, process, and outcomes) are interacted with each other; the interaction of context and process variables would affect the success of outcome; context variables include nature of the mediator, nature of the parties, and nature of the dispute. In this study, I will focus on the nature of the mediator.

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3 Ibid., p. 7.
5 Ibid.
In the past, many scholars prefer to use “Outsider-Neutral Model” and to explore the impact of mediator’s nature on the outcome of mediation. The core concept of this model lies in the importance of externality (coming from outside the conflict situation) and neutrality (having no connection or commitment to either side in the conflict) in successful mediation.\(^6\) Traditionally, the characteristic of impartiality or even-handedness has high correlation with effective mediation. In the similar vein, the mediator comes from a third party. In the North American intergroup and interpersonal conflict management, mediation is commonly defined as a rather narrow, formal activity in which an impartial, neutral third party facilitates direct negotiation.\(^7\)

According to “Outsider-Neutral Model,” the basic arguments are as follows: \(^8\)

1. The neutrality-based mediator is called the Outsider-Neutral.
2. Outsider-neutral maintains distance from and is not connected to either disputing parties.
3. The third party doesn’t have any investment in any outcome except settlement, and does not expect any special reward from either side.
4. Mediators’ neutrality shields the legitimacy and authority that are created primarily through their professional role, position, and function.
5. The assurance of neutrality in mediation creates the necessary perception of mediator legitimacy, professionalism, and fairness.

The scope and extent of international mediation is much more broad and diverse. The complexity of international and intercultural conflicts calls forth perhaps a greater variety of mediator roles; hence we find the mediator-broker and the mediator-conciliator among many others.

However, the “Insider-Partial Model” is forwarded for the study of international mediation. In this alternative model, the internality and partiality of mediator become the key concept, instead of externality and neutrality.\(^9\) The basic arguments of the model include: \(^10\)

1. The insider-partial are the “mediators from within the conflict.”
2. The acceptability of the insider-partial depends on its connectedness and trusted relationship with the conflicting parties.

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\(^7\) Ibid.

\(^8\) Ibid., p. 57.

\(^9\) Ibid., p. 58.

\(^10\) Ibid.
(3) The mediators enjoy trust from both sides partly because they do not leave the post-negotiation situation and must live with the consequences of their work. (4) The mediators are more likely to rely on interpersonal communication as a way to reach consensus in a traditional cultural settings.

We further suggest, from our observations of Central American mediation, that the insider-partial mediator complements quite usefully those interveners who bring neutrality from outside the conflict situation.

From the observations of mediation on Central American crisis, a refined “Insider-Partial Model” was presented. The negotiations, which led to the resolution of crisis and the conclusion of Esquipulas Agreement, did reveal to us how precious might be the indigenous elites for conflict moderation and settlement in developing countries. The conflict management in Central America involved many insiderpartials, including insider-partial, the mediator-negotiator, the mediator-legitimizer, and the sympathetic third party, at different level with distinct function. In addition, external third parties, international organization, and other international interveners are also included into this refined mediation model.

The effective combining of such local resources with external third parties in Esquipulas can be seen as a contribution to the theory and practice of international third-party intervention.

From preceding discussion, there are two different kind of mediator with distinct feature: the outsider-neutral and the insider-partial. The Central American case indicates that the latter model applies developing countries well.

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12 Ibid., pp. 72-73.
III. Case Study of Moktada al-Sadr’s Uprising in Iraq

For the purpose of transferring sovereignty back completely to a democratic elected government, the American authority in Iraq must have a stable and order society and lay the foundation for the general election held January 2005. In view of this, current policy priority for the Iraqi provisional government and the American authority must conceive ways to resolve conflicts as soon as possible.

To managing conflicts, it is obvious for both the American authority and Iraqi provisional government that they must make a bargain with insurgents about laying down their weapons and participating future political process. Without trust between them, mediation looks like the best way to bring concerned parties together sitting at the table and conducting negotiation.

Mr. Moktada al-Sadr was the first and obvious target. Mr. Sadr launched the most serious uprising in April 2004, after American authorities shut down his newspaper because they said it was printing anti-American lies.\(^{13}\) However, the American authority claimed that Sadr had implicated into the murder of a rival cleric, Abdul-Majid Khoei, in April 2003 and the Iraqi judge had already issued a warrant to apprehend him.\(^{14}\) Mr. Moktada al-Sadr’s father, Ayatollah Muhammad Sadig al-Sadr, was a respected religious leader in Iraq known for opposition to Saddam Hussein and has outstanding political vision for Islam. Therefore, there is opportunity for the authority to approach and persuade Mr. Sadr. In addition, the Mahdi Army, which is constituted of armed Sadr’s supporters, is the only insurgent group with identified leader and representatives.

Young Sadr won many supports in Iraq and his uprising was spread over to several cities. In the beginning, the supporters of Sadr really dealt a big strike toward U.S. forces. For example, U.S. forces suffered their bloodiest week (from March 31 to April 6) in Iraq since the fall of Baghdad, reporting 40 combat deaths\(^{15}\). At one point in early April, Mr. Sadr’s forces, known as the Mahdi Army, made successful campaign and controlled government buildings in at least six cities in southern Iraq. His fighters in Najaf and Kufa, cities where the young cleric often gives his fiery sermons, held out the longest.\(^{16}\) Another important holdout is Sadr city, an eastern

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Baghdad impoverished neighborhood named after Ayatollah Muhammad Sadig al-Sadr.

The first initiative happened in May and concerned the negotiation of cease-fire at Najaf and Kufa. With the authorization of the U.S. occupation forces, a group of prominent Shiite politicians and religious and tribal leaders played the role of insider-partial and hammered out a truce between the Mahdi Army and American forces. American officials played little role in the negotiations between Mr. Sadr and the Iraqi leaders, but they approved the agreement after receiving message form Grand Ayatollah Ali al-Sistani, Iraq’s most revered Shiite Cleric. 17 The agreement stipulates: the fighters of the Mahdi Army get of the streets and those who do not reside in those cities withdraw; U.S. demands that he disband his Mahdi Army militia and surrender on charges of murdering a moderate Shiite cleric last year were put on hold; the Americans launch a gun buyback program; at some unspecified time in the future, Shiite political leaders are supposed to negotiate Sadr’s future with him. 18

It seemed that the week-old cease-fire agreement was on the verge of crumbling in early June with heavy fighting on the streets of Kufa. However, Grand Ayatollah Ali al-Sistani played the role of mediator-legitimizer saved the truce, because his personal intervention into the process and meeting with Mr. Sadr in early June. 19 The following-up negotiations were conducted among Shiite religious leaders, Mr. Sadr’s militiamen, Najaf politicians and American officials and reached the conclusion on June 4 2004. 20

The fierce fight between Mr. Sadr and the American force resumed again and two-month-old truce ended on August 5. Although Iraq’s interim prime minister, Ayad Allawi threatened to forcibly remove armed fighters if they did not leave voluntarily, the political conference, which convened to select an interim national assembly, Iraqis attending a national political conference agreed August 16 to dispatch a delegation to meet Mr. Sadr. The eight-member delegation, led by Hussein Mohammed hadi Sadr, a distant relative of Moqtada Sadr, to persuade Sadr to end a potentially destabilizing confrontation and convert his militia into a political

organization that would take part in elections.\textsuperscript{21} Mr. Sadr made conciliation on August 18, suggesting that he would accept demands to vacate Imam Ali shrine in Najaf, disband his militia and transform it into a political party.\textsuperscript{22} Again, we can observe the role of insider-partials in mediate of conflicts in Iraq.

After Najaf and Kufa cease-fire, the focus of mediation shifted to Sadr City. Militia fighters in the Baghdad slum of Sadr City surrendered their mortars, grenades, machine guns and other weapons under an accord reached on October 9 with the interim Iraqi government.\textsuperscript{23} It goes without saying that community leaders, Iraqi officials, U.S. commanders and militia leaders mutually agreed the above-mentioned accord.\textsuperscript{24}

After the topple of Saddam Hussein regime in 2003, Iraqi people started to enjoy the air of freedom and taste of civil liberty, but democracy remains brand new to them. Like other traditional political system, religious and ethnical leaders remained wielding substantial authority toward people under their perspective jurisdiction. As a developing country, Iraq possessed a very traditional economic system. In such kind of context, mediation should be a better instrument to solve these international conflicts, i.e. the American occupation forces vs. indigenous insurgent groups. It is natural that refined insider-partial model was the best choice, which partially explained the success of conflicts resolutions.

\textsuperscript{23} The agreement has following provisions: (1) It applies only to Sadr City. (2) American forces would continue to patrol the neighborhood, but would not attack Mr. Sadr’s militia except in retaliation. (3) The American authority would begin hundreds of millions of dollars worth of reconstruction projects in the impoverished and dilapidated area. (4) The Iraqi interim government also promised to release any member of the Mahdi Army who has not been charged with a crime. (5) The Iraqi interim government agreed to pay above-market prices for the weapons. (6) The Mahdi Army has until October 15 to turn over its heavy weapons. (7) The fighter also will be allowed to keep their automatic weapons.
IV. Case Study of Northern Ireland Peace Process

The setting of the second case is quite different from the previous one. Both the British and Irish Governments are democratically elected governments. The major political parties involved into Northern Ireland peace process are legal parties with members of UK parliament and local assembly.

Historically speaking, the Northern Ireland issue can be trace back as far as to 16th century when the British colonized Ireland.25 The secession of the Irish Free State from the United Kingdom in 1922 ignited the issue of Northern Ireland because the six Irish counties remained within the Kingdom.

The division of two distinct Northern Ireland groups goes along the line of religious belief, political identification, and ethnic difference simultaneously. In these six counties, Catholics accounted for % of total population, Protestants %. Politically, the confrontation exists between Nationalists and Unionists. Ulster Unionists constitutes a majority in Northern Ireland and wished to retain regional autonomy a part of United Kingdom. Northern Nationalists were less attentive to internal power-sharing schemes than to the institutionalization of their national identity on a North-South basis.26

Following the wild eruption of communal violence in Northern Ireland in 1969, attempts were regularly undertaken resolve the crisis, because of changing relationship between the British and Irish Governments. First, two Governments joined the European Economic Community and became partners in 1973. Secondly, both sought to hold back the violence in Northern Ireland. Thirdly, both sought a political accommodation within Northern Ireland, between Northern Ireland and the Republic of Ireland and between the United Kingdom and the Republic.27

On important turning point happened on 15 November 1985 when the British and Irish Governments signed the Anglo-Irish Agreement. For the first time the Irish Government was given a consultative role in the affairs of Northern Ireland and, as a result, an Inter-governmental Conference was formed, dealing with political matters, security and related matters, legal matters and the promotion of cross-border

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27 Ibid., p. 6.
cooperation.\(^{28}\) The cooperation between the British and Irish Governments would greatly enhance the possibility for a new round of peace process.

The next critical step was the first talk between Adams of Sinn Fein and Hume of Social Democratic and Labor Party in January 1988, despite the fact that the talks were to emphasize the differences rather than the similarities between them.\(^{29}\) It was argued that the Hume-Adams dialogue of 1988, revived in 1992, might be seen as the kick-starter of the peace process.\(^{30}\) In the same time, Ulster Unionist Party and Democratic Unionist Party recognized the need for some kind of dialogue, although none of the mainstream Unionist parties were prepared to go this far.\(^{31}\)

The official talks between Unionists and Nationalists parties resumed on 16 March 1991 and they engaged in substantial exchanges for the first time in 15 year.\(^{32}\) The talks covered three ‘strands’. Strand One was concerned with the internal government of the province; Strand Two its relationship with the Republic; and Strand Three relations between the UK and the Republic.\(^{33}\) The guiding rule of the talks would be that nothing would be finally agreed in any strand until everything was agreed in the talks as a whole.\(^{34}\) However, the talks didn’t last very long and broke down in July when the Loyalist ceasefire ended.

For months, the Peace Process was in a stalemate situation over the issue of the permanence of the Provisional Irish Republican Army’s cessation. The British and Irish Governments published their joint discussion documents, Frameworks for the Future, in February 1995 for the purpose of inject some momentum.\(^{35}\) Sir Patrick Mayhew, in Washington on 7 March 1995, even outlined a three-point plan for decommissioning,\(^{36}\) The British and Irish Governments, of course, fully understood the positions of two sides and key to the continuation of the peace process.

At this juncture, the intervention of the U.S. President Bill Clinton would be the key to the peace process in Northern Ireland. Well before Sir Patrick Mayhew’s visit

\(^{28}\) Hennessey, *The Northern Ireland Peace Process*, p. 27.

\(^{29}\) Ibid., p. 41.


\(^{32}\) Participants include Ulster Unionist Party (UUP), Democratic Unionist Party (DUP ), Social Democratic and Labor Party (SDLP), and Alliance Party.


\(^{34}\) Ibid.

\(^{35}\) Ibid., p. 94

\(^{36}\) Ibid., p. 87.
in Washington, President Clinton already appointed former Senator George Mitchell as the special advisor to the president and the secretary of state on economic initiatives in Ireland, organizing a conference in Washington on trade and investment in Northern Ireland and the six counties in the Republic of Ireland which border on the north.\textsuperscript{37} Later on, President Clinton went further asking Mitchell to set up a trade mission at Northern Ireland. In November 1995, President Clinton became the first American President to visit Northern Ireland while in office. He not only made the resolution of Northern Ireland conflicts as a high priority for the U.S. government, but possessed interest and knowledge about this issue.\textsuperscript{38}

The final trump card for the two Governments was the establishment of an international body with third party as chairmen so as to revive the peace process and to end the ethno-national conflict in Northern Ireland.\textsuperscript{39} In addition to former U.S. Senator George Mitchell, there were two other non-American chairmen: a Canadian (John de Chastelain, retired chief of the Canadian Defense Forces) chosen by the British, and a Finn (Harri Holkeri, prime minister of Finland from 1987 to 1991) picked by the Irish.\textsuperscript{40} Initially, they were co-chairmen of the international commission on decommissioning. Owing to their rejection prior decommissioning, the British government was forced to convene all-party negotiations through election. Subsequently, they were invited to chair the various aspects of the negotiation, which required independent chairmanship.\textsuperscript{41}

There is no doubt that Senator George Mitchell is the key figure in both missions invited by the two Governments. As mentioned before, he was appointed as the special advisor to the president and the secretary of state in charge of trade and investment affairs in Northern Ireland for about a year and had sufficient knowledge about and good communications with major political figures there. Secondly, he had close relationship with President Clinton. More important, he enjoyed President’s trust. For example, Mitchell was called back from the negotiation table to assist President preparing for Presidential Candidate debate.\textsuperscript{42} In both negotiation cases in Northern Ireland, as chairman of international commission on decommissioning and that of plenary session of the all-party talks, Mitchell was contacted and asked first by Anthony Lake, National Security Advisor to the President.\textsuperscript{43} Implicitly, he was the de

\textsuperscript{38} Ibid., p. 26.
\textsuperscript{39} Hennessey, \textit{The Northern Ireland Peace Process}, p. 100.
\textsuperscript{40} Ibid.
\textsuperscript{41} Ibid., p. 102.
\textsuperscript{42} Mitchell, \textit{Making Peace}, pp. 76-83.
\textsuperscript{43} Ibid., p. 23 and p.45
facto representative of President Clinton.

George Mitchell was handicapped to a quite extent, by three major constraints. In the first place, the distrust between two sides made very little to be done. For example, it took two months to get an understanding on the rules to be followed once the negotiations began, another two months to get agreement on a preliminary agenda, then fourteen more months to get an accord on a detailed final agenda. Secondly, the final version of agreements on three strands has to be ratified by the British and Irish Governments. However, the difference between two Governments complicated the process of ratification. The Irish government long sought to involve outsiders, to “internationalize” the problem of Northern Ireland and especially wanted to get the Americans involved. The British had resisted, on the grounds that Northern Ireland was part of the United Kingdom so the conflict there was an internal issue; to internationalize it could undermine British sovereignty.\(^\text{44}\) The Irish negotiators did try to make the annexes as comprehensive as possible, to shape as closely as they could to the Frameworks Document. The British, on the other hand, recognized that the greater the fidelity to the Frameworks Document the less likely it was that the Ulster Unionists would accept the annexes and the agreement to which they were to be attached.\(^\text{45}\)

As an impartial and neutral outsider in the negotiations, he can have trusts from both Nationalists and Unionists. In order to strengthen his impartiality, Mitchell has to abide by principles and rules strictly. For example, he insisted that participants in all-party negotiations had to make their commitment to six ‘Mitchell Principles’;\(^\text{46}\) which include:

1. To democratic and exclusively peaceful means of resolving political issues;
2. To the total disarmament of all paramilitary organizations;
3. To agree that such disarmament must be verifiable to the satisfaction of an independent commission;
4. To renounce for themselves, and to oppose any effort by other, to use force, or threaten to use force, to influence the course or the outcome of all-party negotiations;
5. To agree to abide by the terms of any agreement reached in all-party negotiations and to resort to democratic and exclusively peaceful methods in trying to alter any aspect of that outcomes with which they may disagree;
6. To urge that ‘punishment’ killings and beatings stop and take effective steps to prevent such actions.

\(^\text{45}\) Ibid., p. 164.
\(^\text{46}\) Hennessey, *The Northern Ireland Peace Process*, pp. 100-101
In retrospect, setting a deadline for the all-party talks was a proper strategy. Mitchell’s decision to move the deadline up to midnight, April 9 is a daring step. But he knew that a deadline would not guarantee success, but the absence of a deadline would guarantee failure.\footnote{Mitchell, \textit{Making Peace}, pp. 141-145.}

Furthermore, Mitchell agreed that both Blair and Ahern, who did demonstrate their flexibility, responsiveness, and determination in the final stage of negotiation, made a good pass for a touch down. In order to reassure the issue of prisoners and the status of Sinn Fein, Blair even sent a side letter including his reassuring words. A more dramatized scenario was the timely phone calls from President Clinton, another third party, to two prime ministers and major party leaders. They were impressed that he would stay up all night, to follow the negotiations, to talk with them.\footnote{Mitchell, \textit{Making Peace}, p. 178.} All these efforts constituted the final assistance to guarantee the passage of the Good Friday Agreement on April 10, 1998.
V. Conclusion:

In this article, I analyzed two different cases about the third party in the resolution of conflicts. They had different context. Politically and economically speaking, Iraq was a traditional society where personal networks and face-to-face communication are two important features. The refined “Insider-Partial Model” was more suitable for the explanation the contribution of insider-partials (such as Iraqi interim government officials, local political leaders, Shiite clerics, and even Grand Ayatollah Ali al-Sistani) to the ceasefire negotiations. Furthermore, these insider-partials, playing different role, had various kinds of close relationship with the insurgent leaders.

Northern Ireland peace process came across in a democratic society and involved parliamentary parties and leaders. In this context, the conduct of negotiations and conclusion of the agreement strictly followed agreed rules and procedures. Furthermore, the conflicting parties had to pay attention to public opinion in general, his constituents in particular. Under these circumstances, outsider-neutral model could explain how the third party functioned well and assisted to reach the agreement.

Based upon the above-mentioned comparison, we can have a tentative conclusion that different level of political, economic and social development would affect the selection of mediator to conduct negotiation for the purpose of conflict resolution.
Reference


