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Introduction

Bias, Prenegotiation and Leverage in Mediation

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Abstract
Although analysts have long held that bias disqualifies a mediator, more recent analysis, pioneered by Saadia Touval, shows that bias can be quite helpful to mediation under the assumption that the mediator delivers the agreement of the party toward which it is biased. Of course, the mediator is still expected to be trustworthy in dealing with the parties and reliable in communications. Prenegotiation and diagnosis, probably the least analyzed early stages of negotiation, are shown to be crucial to a successful negotiation and the necessary preconditions to an efficient and effective process. Leverage, the term for "power" in negotiation, is a scarce resource and takes the form of effective persuasion rather than material inducements and punishments; it depends above all on the need of the conflicting parties for an agreement, which in turn depends on the attractiveness of their alternatives or security points (BATNAs).

Keywords
Negotiation, mediation, bias, leverage, prenegotiation, diagnosis, alternatives

Mediation as a subject has undergone analytical development alongside its Siamese-twin subject, negotiation, and conceptual awareness of crucial aspects of mediation has expanded enormously over recent decades (Stenlo 1972; Kressel and Pruitt 1985; Touval and Zartman 1985, 2007; Mitchell and Webb 1988; Bercovitch 1996, 2007, 2008; Crocker, Hampson and Aall 1999). Mediation is third-party diplomatic intervention that enables conflicting parties to conduct negotiations that they are unable to do alone. Thus, it has its own concepts but also shares concepts relevant to negotiation.

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The common characteristic of all the cases studied in this issue is their failure in the long run and in many instances in the near term as well. They were not designed to fail (a criticism leveled at the 1999 Rambouillet negotiations on Kosovo [Zartman 2005]) and so their shortcomings should have some lessons for both analysis and practice. Reasons for failure can be laid to matters concerning bias, prenegotiation, and leverage, all matters prominent in the work of Saadia Touval, to whom this issue of *International Negotiation* (and the next one) are dedicated.

Bias is a subject on which Touval wrote the definitive and pioneering treatment in 1975. The notion of the unbiased mediator doubtless had come from earlier analyses of collective bargaining and the mediator's role in labor-management negotiations, where impartiality and neutrality were long viewed as prime necessities. The necessity of an unbiased position had been commonly accepted knowledge to this point (and unfortunately continues among some authors to this day); Touval cited Modelski, Edmead, Stevens, Young, Jackson, Curle, Ott, Northedge and Donelan, Cot, Raman, and Boulding (Touval 1982: 10–15, 333–334). This notion also comes from a popular commonsense image of the mediator, who stands between the parties and is not part of them; s/he must not destroy the triadic structure of the mediation (Touval 1982: 15). It is not surprising that Touval's clarification came from the Middle East, where Egyptian President Sadat had just banked on improving Egypt's fortunes by playing on the "biased" mediation of Secretary Henry Kissinger.

Bias gives the mediator entry and even leverage over at least one of the parties and, reciprocally, over the other. The condition of effective bias is the concomitant supposition that the biased mediator will deliver the party toward which it is biased (Touval and Zartman 1985: 257). The mediator has the challenge of using and redressing its bias by engaging it in the negotiation. Game theorists have rediscovered this utility lately, without even having read the literature some 30 years old.

At the same time, there remains a commonsense notion associated with impartiality that could be termed reliability or trustworthiness or even impartiality in the etymological sense of not being a party to the conflict with one's own interests in a particular outcome. The mediator is expected to carry messages honestly, help look for a stable and mutually satisfying solution, and provide balanced benefits to the negotiating parties. Höglund and Svensson (in this issue) refer to the latter as (the absence of) content-bias, while the previous discussion referred to source-bias, distinguishing past ties from present behavior.

The following articles tell more about bias. In Alejandro Corbacho's analysis, Switzerland was certainly unbiased in the Falklands/Malvinas affair and unable to bring about any progress, whereas the US, known and shown to be biased in favor of the UK, was sought by newly democratic Argentina as a vehicle for bringing the UK to the negotiations and an important, if symbolic, umbrella agreement.

Höglund and Svensson's focus on the bias-delivery notion in Sri Lanka brings out a complex result. Fixing on the need to appear impartial, Norway and the Sri Lanka Monitoring Mission (SLMM) continually tripped over their feet and were criticized alternately by one side and the other in an asymmetrical context for partiality, much like a man trying to keep his balance on a spinning log and being accused of not standing up straight! But overwhelmed by the preoccupation and resulting dilemma, the mediators never turned to use consistent bias for the purpose of delivering an agreement

On the other hand, Turkey regarded the EU (correctly) and the UN (less completely) as biased in Greece's and hence (Greek) Cyprus' favor, and therefore expected their assistance in securing agreement to an outcome acceptable to Turkey. This, the UN mediators – Secretary-General Kofi Annan and his Special Representative Alvaro deSoto – did but they and the EU were unable and unwilling, respectively, to deliver Greek/Cypriot agreement to the negotiated terms. Bias was merely confirmed and reinforced. Saskia Ramming's study explains why: Not only was the EU vulnerable to the pressures of its Greek member and the threat of a Greek veto, but the UN had assumed that Turkey was the problem and paid little attention to the need of delivering a Greek/Cypriot acceptance of an agreement.

Collectively, these studies show that mediators should focus on developing delivery, not avoiding bias, and that bias, often source- rather than content-based, can be employed constructively to bring it to an agreement that attracts the other party. It is actually the movement of the bias-favored party that causes the movement of the other party toward an agreement point, a mechanism that illustrates the complexity of mediation. But, to go further, the source-biased mediator must also provide current content to the favored side, based on its past relations, to induce it to accomplish the movement-producing movement of its own. In the Falklands, the US produced support for the British thesis and recognition for the Argentine regime. In the Middle East, the US assured Israel with arms at the same time as it was inducing it to withdraw from Sinai and Golan. In contrast, the EU had already paid off Greece with an unconditional (Greek) Cypriot accession and its sack of inducements was empty.

While *prenegotiation* or *diagnosis* is not specifically identified in the work of Touval, his studies of the Middle East (1982) and Yugoslavia (2002) spend appropriate time on the preparatory work of the mediators before they actually swing into action. Prenegotiation functions have been identified regarding costs and risks, parties and issues, and support and bridges (Stein 1989), and diagnosis involves clarifications about real interests, nature of conflict, and parallels and precedents (Zartman and Berman 1982). Persistent attention by the "godfather of the Americas" throughout the second half-decade of the 1980s brought the Falklands/Malvinas situation into a vague conflict management phase where the parties sat at the table on occasion, the UK admitted the islands as a "disputed

territory," Argentina admitted British presence in the area, diplomatic relations were restored, and Argentina emerged from its pariah status. Mediation helped the parties reduce the danger of escalation, define and narrow the boundaries of the conflict, identify trade-offs, and establish the agenda for eventual negotiations, thus increasing chances of success for negotiations by achieving success in prenegotiations, as Alejandro Corbacho's article lays out.

The reverse occurred in Cyprus and Sudan. As Amira Schiff's study shows, it is not that time was not spent in attacking some of the prenegotiation functions, but that the mediator was never able to get the parties to resolve them, preferring to use the semblance of negotiation for tactical purposes to strengthen their positions. Never having completed prenegotiation, the parties were not able to tackle negotiation effectively, despite appearances. As Sean Brooks' study shows, the Darfur movements were too busy defending their positions and engaging in turf wars with their rival colleagues to examine basic prenegotiation questions, and the hurried mediator picked them up where they were in the process without forcing them back into introspective diagnosis. This point underscores in a new way Fisher and Ury's (1982) emphasis on interests rather than positions, and points out an increasingly evident obstacle in negotiating with insurgent rebels: they simply do not know what they want, what their alternatives are, and how to negotiate between the two.

It would take a large comparative study to go on to the next step to identify which of the prenegotiation and diagnosis functions are most important and most difficult to achieve and how best to do so. But these studies suggest some initial hypotheses: delimiting the issues and reducing costs and risks involved in handling them are crucial priorities, and developing common awareness on the alternatives (security point) available to each and both sides is basic to their negotiating behavior. Since these are basic issues, analysis then goes back to parties' interest and motivation in engaging in negotiations. As all of the articles conclude, when parties find the terms offered simply unacceptable, whatever the consequences, and then when they find nonacceptance and its consequences (security point) preferable to acceptance, mediation has its basic challenge laid out: either help shape mutually acceptable terms or help bring out the costs of the security point(s).

The mediator's *leverage* underlies his/her ability to follow either strategy, but the first often depends on the second. In Cyprus, Sudan and Sri Lanka, neither was accomplished successfully. The UNSG team was quite aware that the EU had undercut its leverage by providing Greece/Cyprus with an alternative that was at least as good if not better than the proposed agreement (although somehow the Greek Cypriots were unable to understand that an island with 5,000 Turkish troops for a limited time was better than an island with 25,000 troops for an indeterminate future), as Ramming shows. In Sudan, Brooks shows how leverage over the Minawi faction of the Sudan Liberation Movement (SLM) created an

exclusive agreement that by its very nature undercut leverage over the Abdel Wahid faction of the SLM and the Justice and Equality Movement (JEM), just as the model formula in the Comprehensive Peace Agreement (CPA) with the southern rebels had undercut leverage over prospective parties to the Darfur Peace Agreement (DPA). In Sri Lanka, Höglund and Svensson show how the issue of bias and other efforts to establish impartiality undercut the mediator's ability to devise an acceptably balanced formula or devalue the alternatives.

Touval's original work in 1985 listed three sources of leverage, but by the time of the USIP contributions (1994, 1997, 2004, 2007) it was increased to five, where it has stayed ever since: persuasion, extraction, termination, deprivation and gratification. In the Falklands/Malvinas case, the US mediator's leverage was limited to persuasion for the most part on both sides of the strategic choice: devising acceptable terms of trade and bringing out the unacceptability of continuing the stalemate. In the end, a little extra gratification was thrown in, as Corbacho shows, through full acceptance of the new Argentine democracy and renewed military supplies.

The five cases presented in this issue of *International Negotiation* are cases of failure, or limited success in the Falklands/Malvinas case. They are also cases that use concepts developed by Saadia Touval as part of his important contribution to the study of mediation. However, the most important general insight of his work (Touval 1998, 2007) is that the effectiveness of mediation depends on the parties' sense of a need for its services and for an outcome. Mediation is at the mercy of the disputants, and it is the ultimate challenge of the mediator to cultivate that sense of need. By showing how they failed, these cases can help understand how to make it succeed.

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