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Mediation-Negotiation: A Template Therapy For Global

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Abstract

This article examines mediation and negotiation as a remedy to conflicts happening around the world. Based on the fact that human beings and conflicts are inseparable, it is imperative to seek out for methods in resolving these disputes without spilling blood. Mediation which alters the dynamics of negotiation has proven to be an important tool in resolving conflict at various fields. The article takes account of certain conflicts such as the Iraq-Iran conflict, Kuwait-Iraq invasion and the Nigerian-Cameroon border disputes and examined the interplay of mediation and negotiation in resolving such complex disputes.

The article highlights the efficacy of mediation and its ability to resolve disputes in the most amicable way possible, proving in every sense solution to disputes without the loss of lives providing a neutral party and professional assistance as regards conflicts brought for its relief. It concludes that these Alternative Dispute Resolution processes should be utilized more often as it is more advantageous coupled with the successive outcomes it guarantees. Finally, this article recommends that resolutions are done through mediation reducing the need for military aggression in the guise of resolving disputes, encourage parties' dialogue and promote resolution agreement that will be of public benefits.

Keyword: Alternative Dispute Resolution, Conflicts, Mediation, Negotiation.

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Introduction

John Burton asserts that conflict is a generic phenomenon that knows no system boundaries.[2] Whether we are dealing with interpersonal, community, ethnic, or international relations, we are dealing with the same ontological needs of people, requiring the same analytical processes of conflict resolution.[3] Anything that would lead to a disagreement produces conflicts. Owing to Attendant divergence in aims, objectives, ideas, beliefs, norms, values, customs and traditions fuels the inevitability of conflict.

In our world today, there exist countless conflicts which threaten global peace. From the United Kingdom (UK) and the United States of America (USA) engaged at war in Afghanistan and Iraq, through to insurgencies in Algeria, Burma, Nigeria, Columbia, civil wars in African nations, as well as conflicts between the people in China, Iran and Israel[4], depicts the unwholesome state of things globally. The particular cause of these conflicts are not uniform in themselves as they differ based on either ethnicity, religion, governance, politics resource allocation etc. The main issue of contention is how these conflicts may be resolved in the bid to achieving global peace.

The use of negotiation as an Alternative Dispute Resolution (ADR) process has proven itself as a viable tool in managing and resolving conflicts around the world. However, negotiations may fail owing to greed, intransigencies, poor relations etc. thus making a third party neutral intervention eminent. The intervention of third party to facilitate communication and help the disputants to search for a solution is known as mediation. This paper advocates for

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[2] John W. Burton, Conflict resolution as a political theory *http://cardata.gmu.edu/docs/teaching/TEACHING%20PLATFORM/course%20501/ UNIT%203/Burton%20- %20Conflict%20Resolution%20as%20a%20Political%20Philosophy%20copy.pdf* accessed 21st July 2019

[3] Ibid

[4] Vikas Shah (2009): Thought Economics: Global Conflict: Causes and Solutions for Peace, an interview with Kristiina Rintakoski Executive Director of the Crisis Management Initiative *http://thoughteconomics.blogspot.com/2009/07/global-conflict-causes-and-solutions_16.html* accessed August 12, 2019

negotiation which will in certain circumstances migrate into mediation as a therapy to most of the global conflicts provided the parties in disputes are willing to resolve their differences.

Negotiation and Mediation

It is imperative to assert that negotiation and mediation are Alternative Dispute Resolution (ADR) processes that are non-violent by nature. Negotiation involves disputants exploring solutions to their mutual problems independently without any intervention from a third party.[5] The disputing parties have firm control of the entire discussion as there is no third-party facilitator. Negotiation could be a fast and inexpensive mode of managing and settling conflicts at whatever level. Fisher and Ury[6] argues that we negotiate because we desire an outcome better than what we would have had without negotiating.

However, circumstances arise when direct negotiation between disputing parties will fail. For the purpose of making the disputes resolved as soon as possible, the next logical step is to seek the assistance of a third party neutral. The third party assists the disputants to reach an agreement as he/she doesn't stand in the position of a judge or an arbitrator imposing a solution on the parties in disputes. This method is known as *'mediation'*. Mediation is the broad term used to describe the intervention of third parties in dispute resolution process.[7]

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[5] Roy J. Lewicki, Stephen E. Weiss and David Lewin, '*Models of Conflict, Negotiation and Third-Party Intervention: A Review and Synthesis'* Journal of Organizational Behavior, Vol. 13, No. 3, Special Issue: Conflict and Negotiation in Organizations: Historical and Contemporary Perspectives (May, 1992), <https://www.jstor.org/stable/2488468> accessed 13th August 2019.

[6] Roger Fisher, William Ury et al (1991): *Getting To Yes: Negotiating Agreement Without Giving In,* 2nd ed., New York: Pengium Books p.100

[7] Christopher Moore, '*The Mediation Process: Practical Strategies for Resolving Conflict'*, 3rd., (San Francisco: Jossey-Bass Publishers, 2004). <https://www.beyondintractability.org/bksum/moore-mediation> accessed 13th August 2019.

Negotiation is the most flexible, informal, and party-directed method; it is the closest to the parties' circumstances and control, and can be geared to each party's own concerns[8]. Mediation arises either based on the agreement of the disputants that a mediator should intervene or where after direct negotiations had already taken place but broke down, parties in disputes can subsequently agree for the intervention of a third party neutral (mediator). In a mediation procedure, the third party plays the role of adviser to both parties. He works with the parties to resolve their dispute by agreement, rather than imposing a solution[9].

The term 'conciliation' is sometimes used to describe the same process of involving third parties, usually in the context of labour relations when neutral intervention is used to break a stalemate, domestic relations or international commercial matters.[10] However, in recent times, mediation and conciliation have been used interchangeably. On the usefulness of mediation, Northrop F.S.C states that:

> *The "first best" and socially proper way to settle disputes used by the "superior man," was by the method of mediation, following the ethics of the "middle way". This consisted in bringing the disputants to something they both approved as a settlement of the dispute, by means of an intermediary. This middle man served largely as a messenger. Proper behaviour prescribed that he refuse even to arbitrate the differences at the request of the disputants. "Good" dispute settling consisted in conveying the respective claims of the disputants back and*

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[8] Lew Julian et al (2003): *Comparative International Commercial Arbitration*, Netherland: Kluwer Law International, p. 13

[9] Ibid p. 13

[10] *Alessandra Sgubini, Mara Prieditis & Andrea Marighetto,* 'Arbitration, Mediation and Conciliation: differences and similarities from an International and Italian business perspective' August

2004<*https://www.mediate.com/articles/sgubiniA2.cfm#bio*> accessed 13th August 2019.

> *forth between them until the disputants themselves arrived at a solution*
> *which was approved by both.'[11](after such and extensive quotation.*

Mediation is negotiation carried out with the assistance of neutral third-party at the instance of the parties[12]. Mediation is an alternative to adjudication in which a neutral third party who has no final decision-making authority intervenes in negotiations to assist resolution of conflict[13]. It is imperative to note that mediation alters the dynamics of negotiation[14]. Negotiation which involves just the parties in dispute talking directly to each other in private, employing strategies and tactics such as the integrative (win-win) and distributive (win-lose) approach as well as going through different phases[15] to reach an agreement, automatically changes when the parties seek the help of a mediator to settle their difference. However, in mediation, mediators work with the disputants in reaching a common ground through revealing areas in their conflict that shows weaknesses in their cases as well as proffering ways of reaching an agreement.

It has been said that mediators often view the alternative process as serving a variety of objectives beyond merely facilitating settlement.[16] In addition mediation has been viewed as a problem-solving aid that helps parties to reach more satisfying resolution through generating 'win-win' solutions[17]. Moreover, some claim that mediation may work to achieve social justice by

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[11] Northrop F.S.C (1958): "The Mediational Approval Theory of Law in American Legal Realism, Virginia Law Review Vol. 44 347, 349"

[12] MacFarlane J.: An Alternative to What? In MacFarlane (ed) Rethinking Disputes: The Mediation Alternative p.1

[13] Center for Dispute Resolution (CDR) Associates, Mediation 1 (1989) (defining mediation in manual for mediators); Linda R. Singer (1994): Settling Disputes: *Conflict Resolution in Business, Families, and the Legal System* 2nd Ed.

[14] Goldberg Stephen et al (2007): *Dispute Resolution: Negotiation, Mediation and Other Processes*, 5th Ed. Aspen Law Publishers

[15] Preparation, Presentation, Bargaining and Closing or Agreement phase

[16] Robert Bush and Joseph Folger (2004): *The Promise of Mediation: The Transformative Approach to Conflict*, San Francisco: Jossey-Bass Publishers

[17] Roger Fisher and William Ury (1991): *Getting Yes: Negotiating Agreement Without Giving In*

cultivating self-help skills, empowering communities, and reallocating power among groups.[18]

As stated earlier, mediation was originally used in labour or industrial dispute. Moreover, as a result of its acceptance in this field, mediation was used in an increasingly broad range of non-labour disputes: divorce, environmental, housing, institutional (including prisons, schools, and hospitals), small-claims, personal injury and insurance, and general business disputes, as well as claims involving governmental agencies[19]. However, mediation acts as a potential for responding to urban conflicts.

Mediation Process

Mediation is fundamentally a process of assisted negotiation[20]. Hence the strategies used in negotiation such as the integrative and distributive strategies are central to mediation. The major difference between negotiation and mediation is the presence of the mediator whose neutrality is imperative towards the success of the mediation process. A mediator is essentially a facilitator of communication between disputants, assisting them to engage in a dialogue directed toward mutual resolution of their dispute. However, the role of a mediator is never static as it varies based on the circumstances of the conflict before him. Nevertheless, the roles may include being a facilitator of communication, arranger of processes to inform and enlighten the disputants, impresario of structured dialogue, encourager of problem-solving, generator of possible solutions or shuttle-diplomat using control of the information flow to focus on areas of agreement without the risks of much face-to-face confrontation by the parties[21].

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[18] Bush and Folger(2004): *The Promise of Mediation: The Transformative Approach to Conflict*

[19] Singer L.R. (1990): *Settling Disputes: Conflict Resolution in Business, Families, and the Legal System*, Boulder, Colo.: Westview Press

[20] Marcel K.W & Wiseman, P. (1987): "Why We Teach Law Students to Mediate, Journal of Dispute Resolution Vol. 77"

[21] Rau Scott et al (2006): *Mediation and Other Non-Binding ADR Processes* 3rd Ed., New York: Foundation Press p. 14

The strength of mediation is predicated on the fact that the parties achieve their own resolution of dispute without being bound to a formal, and possibly inflexible, legal solution[22]. The benefits of mediation include:

I.   Parties keep control over the outcome of their own problem
II.   Disputes can be settled promptly. A mediation session can be scheduled as soon as both parties agree to use mediation to resolve the dispute.
III.   Mediation promotes better relationships through cooperative problem-solving and improved communication.
IV.   Both facts and feelings are considered with the help of an impartial mediator
V.   Mediation is private and confidential. The mediator and parties must maintain, to the full extent required by law, the confidentiality of the information disclosed during mediation.
VI.   Mediation is voluntary, and may be terminated at any time by a party or mediator
VII.   Mediation costs may be significantly less than taking a case to court[23].

For the management and resolution of conflicts involving nation-states, interstate or intrastate conflicts, the following processes for a successful mediation are stated below:[24]

Assess the Conflict: The first step in any mediation effort should be to assess the conflict. Conflict analysis should provide a contextualized understanding of the conflict and answer questions of strategy: at what level to engage, how to gain leverage, and know who to focus efforts on. In essence, assessing the

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[22] Lon Fuller (1971): "Mediation – its Forms and Functions, Southern California Law Review 44"

[23] Mediation: Another Method for Resolving Disputes
www.alabar.org/brochures/mediation.pdf accessed August 13, 2019

[24] Pildat Background Paper: Conflict Management The Mediation Process *www.pildat.org/publication/conflict_management-themediationprocess.pdf* Accessed August 13, 2019

conflict at hand involves understanding the rationale behind the conflict, who are the actors etc.[25]

Ensure mediator readiness: At this point, the person acting as a mediator must satisfy himself and the parties of his readiness and competence to mediate. He or she must answer questions such as whether he/she has the right skills, the right resources, and the right support to be successful. Where the mediator through self-assessment shows that he or she can make a real contribution, then the mediator can have faith in such assessment and act accordingly.[26]

Ensure Conflict Ripeness: It is imperative to note that many mediation studies give considerable attention to the concept of conflict ripeness. A conflict may become ripe for negotiation when the enemy is aware of the fact that they are in a mutually hurting stalemate and sense that a way out is possible. The mediator must ensure that the conflict is ready to be tackled.[27]

Conduct Track-I Mediation: Once the mediator has assessed the conflict, determined his/her readiness to act and evaluated the conflict before him/her, the mediator can begin negotiation. Responsibilities that is saddled on the mediator at this stage include laying the groundwork, creating roles for all relevant actors, handling logistics, actually conducting negotiations, fitting the public into the process, and working with the media.[28]

Encourage Track-II Dialogue: There is a growing consensus among both official and unofficial actors that no single actor or activity is sufficient to build sustainable peace in situations of complex conflict. Track-II, or unofficial diplomacy conducted among grassroots and middle level opinion leaders can be a valuable adjunct to the formal peace negotiations. In addition, it can help local community engage in the kinds of tasks and make the

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[25] Pildat Background Paper: Conflict Management The Mediation Process www.pildat.org/publication/conflict_management-themediationprocess.pdf Accessed August 13, 2019

[26] Ibid

[27] Ibid

[28] Ibid

necessary psychological changes required to generate and sustain support for peace process.[29]

Construct a Peace Agreement: Here, it is the final step in the mediation process to produce an agreement that is acceptable not only to the parties to the conflict but also to the wider public coupled with standing a good chance of being implemented.[30]

Mediation and Negotiation in Global Conflict

Conflict which is inevitable among human beings is also unavoidable among nation-states. Taking account of the Iran-Iraq war which occurred between 22nd September 1980 and 20th August 1988 has been held to be the 20th century longest conventional war[31]. The underlying cause of the conflict between these countries was based on border disputes. There was initially a 1975 Algiers Agreement which served as an agreement between Iran and Iraq to settle their border disputes and serving as bilateral treaty between the two countries.[32]

However, accusations were placed on Iran for frequent and blatant violation of Iraqi sovereignty, thus making the 1975 agreement to be null and void. Iraq invaded Iran in 1980 which resulted to the death of over 400,000 people[33]. Negotiations between Saddam Hussein and the Iran government for a ceasefire broke down owing to the fact that Iraqi troops occupying Iran border areas would continue to hold that front coupled with the fact that Iran would receive no foreign support to pressure Iraq to withdraw, nor receive compensation, nor get an international condemnation of Iraq[34]. The United Nations had to

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[29] Pildat Background Paper: Conflict Management The Mediation Process *www.pildat.org/publication/conflict_management-themediationprocess.pdf* Accessed August 13, 2019

[30] Ibid

[31] Weiss Martin: War of Blackmail *www.safehaven.com/article/7228/war-of-blackmail* Accessed August 12, 2019; Carlisle Rodney P.(2003):Persian Gulf War (American at War(Fact on File)), New York: Facts on File.

[33] Hiro Dilip (1991): *The Longest War: The Iran-Iraq Military Conflict*, New York: Routledge p 205

intervene in the conflict through resolution 598 which was unanimously accepted by Iran and Iraq. The resolution was for an immediate ceasefire between Iran and Iraq alongside sending back prisoners of war to their respective countries. This resolution became effective on August 8, 1988 thus ending the war between Iran and Iraq.

The Kuwait invasion of 1990 is worth examining based on the viability of mediation and negotiation. The Kuwait-Iraq war which was caused by the inability of Iraq and to repay the debt of $80billion to Kuwait being funds borrowed to finance the Iran-Iraq war[35] as well as the request of Kuwait to OPEC to increase the country's total oil production from 50% to 1.35million bpd which brought about economic sabotage in Iraq[36]. Owing to the actions of Kuwait, Iraq invaded Kuwait on August 2 1990 which claimed the lives of about 1000 Kuwait civilians while more than 300,000 people left the country[37].

Despites numerous negotiations between the major world powers and Iraq, including the United Nations, the invasion still continued until the United States of America through the use of force in January 1991[38] drove Iraq from Kuwait. It may be reasonable to submit here that the use of aggression to resolve conflict is usually not the best alternative.

The Kuwait invasion could have been averted if mediation was used to explore for other means on how Iraq would pay her debt. Mediation as an alternative dispute resolution mechanism is interest-based. It is well established that Iraq and Kuwait have different interests. The essence of mediation is on how these

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[35] Stork Joe, Lesch Ann M. (1990): Middle East Report : Background to the Crises: Why War? www.middleeast.org accessed August 12, 2019
[36] ibid
[37] See Jafi (2005): The Use of Terror during Iraq's invasion of Kuwait *http://jafi.org/JewishAgency/English/jewish%20education/Compelling%20Content/ Eye%20on%20Israel/Current%20Issues/Peace%20and%20Conflict/The%20Use%2 0of%20Terror%20in%20Kuwait.htm* accessed August 13, 2019
[38] Fairhall, David; Walker, Martin (1991): "Allied planes bomb Iraq: Kuwait's liberation begun, says US, The Guardian London"
http://www.theguardian.com/world/1991/jan/17/iraq.davidfairhall accessed August 13, 2019

divergent interests could be harmonized without giving regard to their respective rights and positions. When several negotiations have broken down between the super powers of the world including the United Nations, the United States ought to have intervened as a mediator.

The Nigerian-Cameroon border dispute over the Bakassi peninsula is another dispute which could have been resolved through negotiation and mediation without going through the rigors of litigation at the International Court of Justice (ICJ). It is however imperative to assert that the Bakassi peninsula is an oil and gas rich area which could bring about economic development in Nigeria, Cameroon and Bakassi itself. Assuming the leaders of Nigeria, Cameroon and Bakassi negotiated on how the area would be co-habited and agree on the ways in which the natural resources would be exploited, there would have been no cause for clashes between Nigeria and Cameroon. A clear example is the Joint Development Zone between Nigeria and Sao Tome Principe, which was an agreement entered into over an overlapping maritime boundary.

It is imperative to note that there is no universally acceptable strategy to the practice of negotiation. The most important thing is finding a way to resolve the contentious issues between the disputants. There are other numerous conflicts which could just be solved through negotiation and mediation without putting lives and properties of humans on the line.

Conclusion

According to Immanuel Kant 'Perpetual peace is no empty idea, but a practical thing which, through its gradual solution, is coming always nearer its final realization'[39]. World peace and development is threatened with enormous events of conflicts. There is not only political and economic breakdown but unimaginable loss of lives and properties. It is well established that human beings and conflicts are inseparable. However, these differences can be settled amicably without even shedding a pint of blood.

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[39] Immanuel Kant "Perpetual Peace"
 https://www.mtholyoke.edu/acad/intrel/Kant1.htm accessed August 13, 2019

Mediation and negotiation are non-violent Alternative Dispute Resolution (ADR) mechanisms that are highly flexible and cost effective. Negotiation which is communication with a view to reaching an agreement is considered as the first approach towards resolution of any dispute. A neutral third party steps in when negotiation between the disputants did not bring any positive results. Such neutral third party is known as a mediator who facilitates communication between the disputants as well as helping them to reach an agreement rather than forcing his (mediator) own decision on the disputants. These flexible dispute resolution mechanisms are highly recommended in solving conflicts at whatever level owing to evident advantages it poses coupled with a guarantee for successful result.

Globally mediation is now been canvassed for resolving conflicts because it will bring peace to the parties rather than escalating the conflicts.

References

Alessandra Sgubini, Mara Prieditis & Andrea Marighetto, 'Arbitration, Mediation and Conciliation: differences and similarities from an International and Italian business perspective' August 2004<https://www.mediate.com/articles/sgubiniA2.cfm#bio> accessed 13th August 2019

Burton J. W.: Conflict resolution as a political theory *http://cardata.gmu.edu/docs/teaching/TEACHING%20PLATFORM/course%20501/ UNIT%203/ Burton%20- %20Conflict%20Resolution%20as%20a%20Political%20Philosophy%20copy.pdf* accessed 21st July 2019

Bush R. and Folger J. (2004): *The Promise of Mediation: The Transformative Approach to Conflict*, San Francisco: Jossey-Bass Publishers

Carlisle Rodney P. (2003): Persian Gulf War (American at War (Fact on File)), New York: Facts on File

Christopher Moore, '*The Mediation Process: Practical Strategies for Resolving Conflict'*, 3rd., (San Francisco: Jossey-Bass Publishers, 2004). <https://www.beyondintractability.org/bksum/moore-mediation> accessed 13th August 2019.

Dilip H. (1991): *The Longest War: The Iran-Iraq Military Conflict*, New York: Routledge

Fairhall, D. et al (1991): Allied planes bomb Iraq: Kuwait"s liberation begun, says US, The

Guardian London *http://www.theguardian.com/world/1991/jan/17/iraq.davidfairhall* accessed

August 13, 2019
Fisher, R. Ury, W. et al (1991): *Getting To Yes: Negotiating Agreement Without Giving In*, 2nd ed., New York: Pengium Books

Fuller L. (1971): Mediation – its Forms and Functions, Southern California Law Review Vol. 44

Goldberg S. et al (2007): *Dispute Resolution: Negotiation, Mediation and Other Processes*, 5th Ed. Aspen Law Publishers

Iraq-Iraq War *http://en.wikipedia.org/wiki/iran%E2%80%93Iraq_War* accessed August 13, 2019

Jafi (2005): The Use of Terror during Iraq"s invasion of Kuwait
http://jafi.org/JewishAgency/English/jewish%20education/Compelling%20Content/Eye%20on%

20Israel/Current%20Issues/Peace%20and%20Conflict/The%20Use%20of%20Terror%20in%20 Kuwait.htm accessed August 13, 2019

Kant I. "Perpetual Peace"
https://www.mtholyoke.edu/acad/intrel/Kant1.htm accessed August 13, 2019

Lew J. et al (2003): *Comparative International Commercial Arbitration*, Netherland: Kluwer Law International

Marcel K.W & Wiseman, P. (1987): Why We Teach Law Students to Mediate, Journal of Dispute Resolution Vol. 77

Mediation: Another Method for Resolving Disputes
www.alabar.org/brochures/mediation.pdf accessed August 13, 2019

Middle East Report: Stork J., Ann M. L. (1990): Background to the Crises: Why War? *www.middleeast.org* accessed August 12, 2019

Northrop F.S.C (1958): „*The Mediational Approval Theory of Law in American Legal Realism"*, Virginia Law Review Vol. 44

Pildat Background Paper: Conflict Management The Mediation Process *www.pildat.org/publication/conflict_management-themediationprocess.pdf accessed August 13, 2019*

Rau S. et al (2006): *Mediation and Other Non-Binding ADR Processes* 3rd Ed., New York: Foundation Press
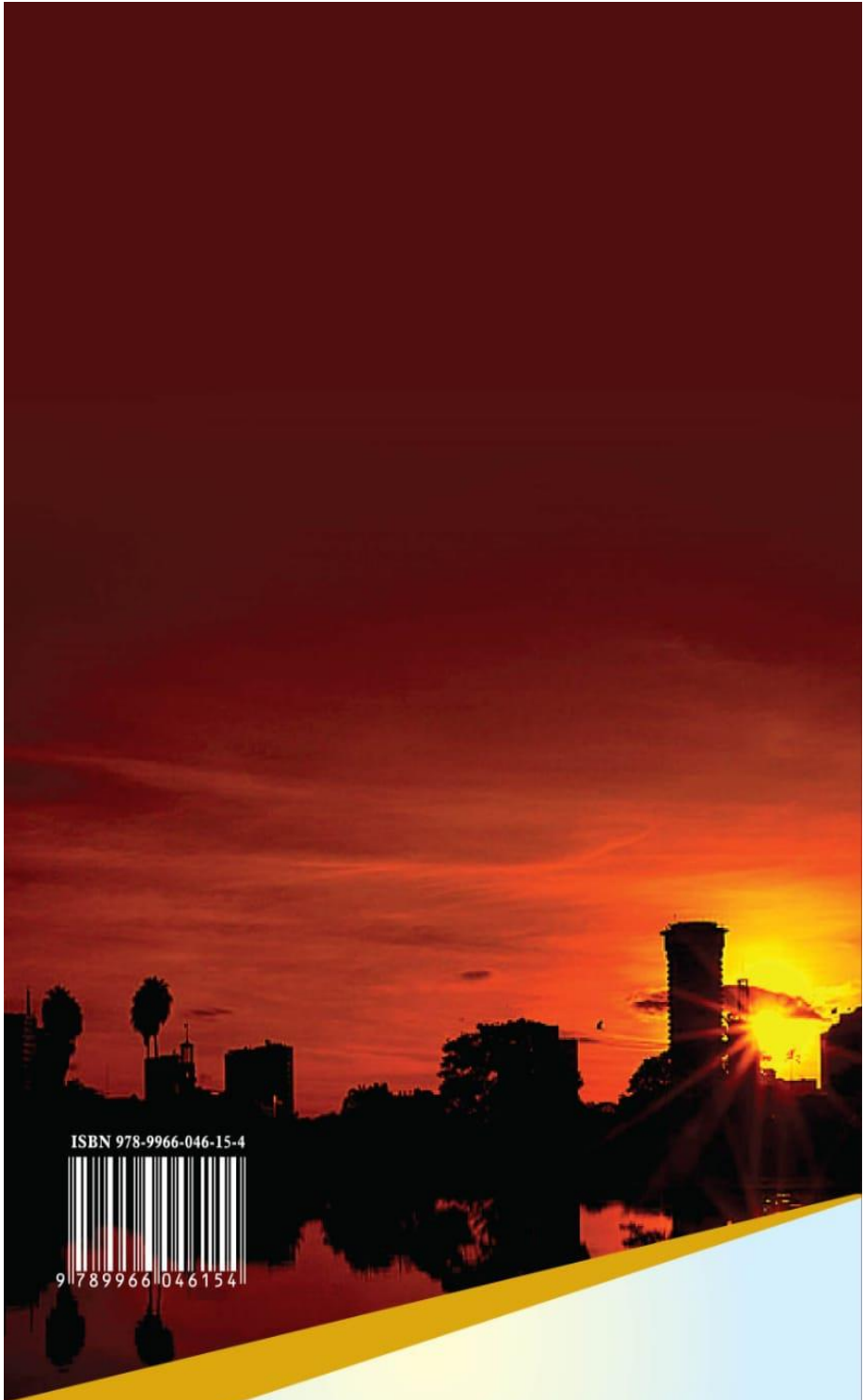
Roy J. Lewicki, Stephen E. Weiss and David Lewin, '*Models of Conflict, Negotiation and Third-Party Intervention: A Review and Synthesis'* Journal of Organizational Behavior, Vol. 13, No. 3, Special Issue: Conflict and Negotiation in Organizations: Historical and Contemporary Perspectives (May, 1992), <https://www.jstor.org/stable/2488468> accessed 13th August 2019.

Singer L.R. (1990): *Settling Disputes: Conflict Resolution in Business, Families, and the Legal System,* Boulder, Colo.: Westview Press

Vikas S. (2009): Thought Economics: Global Conflict: Causes and Solutions for Peace, an interview with Kristiina Rintakoski Executive Director of the Crisis Management Initiative
http://thoughteconomics.blogspot.com/2009/07/global-conflict-causes-and-solutions_16.html accessed August 12, 2019

Weiss Martin: War of Blackmail *www.safehaven.com/article/7228/war-of-blackmail accessed August 12,* 2019

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