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# International peace mediation through a legal lens

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*Mediation has recently emerged as a suitable method of resolving armed conflicts (international peace mediation), with a significant increase in the amount of conflicts being resolved by “negotiated settlement” as opposed to military dominance. Development of the international peace mediation discourse has, however, been ad hoc and disjunctive, resulting in a significant disparity regarding its conceptualisation, a lack of established accountability mechanisms, and the absence of a pragmatic coherent framework. This article highlights how the application of the extant framework on mediation in legal discourse can provide clarity in defining and developing an understanding of international peace mediation. It focuses on the case study of the international peace mediation efforts in the Aceh region of Indonesia.*

## INTRODUCTION

There is a substantial body of literature that analyses the use of mediation for resolving armed conflict.<sup>1</sup> A criticism of the literature that has attempted to conceptualise international peace mediation is that it tends to be descriptive rather than theoretical. Studies which have attempted to analyse the impact of mediation have emphasised its general importance; they have not, however:

fully address[ed] the relationship between specific mediation styles and crisis outcomes. Nor do they attempt to address the issue of how the use of different styles might operate by affecting the bargaining environment.<sup>2</sup>

Before the usefulness of applying the legal conceptualisation of mediation to international peace mediation can be assessed, it is first necessary to provide a brief overview of the current legal discourse on mediation. Thus, the first part of this article presents a discussion of facilitative, evaluative and transformative mediation. The article then goes on to analyse the diversity and variety of concepts and theories of international peace mediation, highlighting how the types of mediation described in the extant literature on international peace mediation would fit within, and be clarified by, the legal framework of mediation. The last section then provides a case study on the Aceh region of Indonesia to support this argument.

## LEGAL CONCEPTUALISATION OF MEDIATION

The conceptualisation of mediation in legal studies proffers a concise structure of analysis and categorisation. There are various long-established mediation styles within the legal framework, the

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<sup>1</sup> Bolger S, Daly B and Higgins N, “International Peace Mediators and Codes of Conduct: An Analysis” (2010) *J Hum Assist*, <http://www.jha.ac/2010/08/04/international-peace-mediators-and-codes-of-conduct-an-analysis> viewed 3 August 2011; Bercovitch J, “International Mediation” (1991) 28(1) *Jour Peace Res* J 3; Bercovitch J and Rubin J, *Mediation in International Relations – Multiple Approaches to Conflict Management* (St Martin’s Press Inc, 1992) pp 1-2; Carnevale P and Pruitt D, “Negotiation and Mediation” (1992) 43 *Ann Rev Psych* 561; Wall J, Stark J and Standifer R, “Mediation: A Current Review and Theory Development” (2001) 45 *J Con Res* 370. The Human Security Brief 2007 stated that a growing number of conflicts are ending in “negotiated settlements” rather than fought out until one sides prevails militarily and provides statistics on this trend: Human Security Report Project (Simon Fraser University, Canada, 2007). The International Crisis Behavior project stated that mediation was employed in 131 of the 447 crises which occurred around the world between 1918 and 2005 – see <http://www.cidcm.umd.edu/ich> viewed 19 September 2011.

<sup>2</sup> Bardsley K, Quinn D, Biswas B and Wilkenfeld J, “Mediation Style and Crisis Outcomes” (2006) 50(1) *J Con Res* 58 at 62.

primary categorisations being facilitative, evaluative, and transformative mediation. While theorists of international peace mediation have sometimes recognised the existence of this legal framework,<sup>3</sup> they have failed to consider how the legal conceptualisation of mediation could help to develop an understanding of international peace mediation.

### Facilitative mediation

The purpose of facilitative mediation is for the parties to voluntarily reach “a consensual solution”.<sup>4</sup> A facilitative mediator has a very minimal role during the process, acting only to encourage and promote communication between the parties, in an effort to help the parties come to an agreement.<sup>5</sup> Some commentators perceive this mediation style to be a “cooperative process”.<sup>6</sup> Brown explains that the facilitative mediation style allows the parties retain autonomy as to how best to resolve their dispute and requires the mediator to remain neutral in facilitating communication between the parties.<sup>7</sup> He envisages the facilitative mediator as assisting parties to assess their respective situations. This type of mediator does not put forward recommendations or possible solutions, as the parties are deemed capable of doing so without interference.<sup>8</sup> Riskin highlights that the parties are best positioned to seek a resolution to redress their particular objectives because the facilitative mediator:

assumes that the parties are intelligent, able to work with their counterparts, and capable of understanding their situations better than the mediator ... Thus, the facilitative mediator assumes that his principal mission is to clarify and to enhance communication between the parties in order to help them decide what to do.<sup>9</sup>

The flexible nature of facilitative mediation enables the parties to develop greater appreciation for their respective positions, as well as ensuring that they are actively engaged in resolving the dispute. Love describes the facilitative mediator’s role as facilitating “evaluation by the parties”, while the mediator remains non-evaluative.<sup>10</sup>

### Evaluative mediation

Unlike facilitative mediation, where the mediator acts as an impartial third party, the evaluative mediator has a much more central role in the mediation process. The mediator presents the parties with an evaluation of the strengths and weaknesses of their respective positions, and proposes recommendations regarding resolution.<sup>11</sup> Riskin describes an evaluative mediator as someone who:

assumes that the participants want and need her to provide some as to the appropriate grounds for settlement ... and that she is qualified to give such guidance by virtue of her training, experience, and objectivity.<sup>12</sup>

Folger and Bush have described evaluative mediation as a “problem-solving approach”.<sup>13</sup> The mediator is directive in nature; he/she seeks to identify the underlying objectives of each party and

<sup>3</sup> See fn 2 in Beardsley et al, n 2 at 62.

<sup>4</sup> MacFarlane J, “The Mediation Alternative” in MacFarlane J (ed), *Rethinking Disputes: The Mediation Alternative* (Cavendish Publishing, London, 1999) p 2.

<sup>5</sup> Palmer M and Roberts S, *Dispute Processes: ADR and the Primary Forms of Decision Making* (Butterworths, 1998) p 126.

<sup>6</sup> Feinberg K, “Mediation – a Preferred Method of Dispute Resolution” (1988-1989) 16 Pepp L Rev 5 at 7.

<sup>7</sup> Brown C, “Facilitative Mediation: The Classic Approach Retains its Appeal” (2003-2004) 4 Pepp Disp Resol LJ 279 at 283.

<sup>8</sup> Lande J, “Toward More Sophisticated Mediation Theory” (2000) J Disp Resol 321 at 323.

<sup>9</sup> Riskin L, “Understanding Mediators’ Orientations, Strategies, and Techniques: A Grid for the Perplexed” (1996) 1 Harv Negot L Rev 7 at 24.

<sup>10</sup> Love L, “The Top Ten Reasons Why Mediators Should Not Evaluate” (1997) 24 Fla St U L Rev 937 at 938-939.

<sup>11</sup> Riskin, n 9 at 21; Bush R, “Substituting Mediation for Arbitration: The Growing Market for Evaluative Mediation, and What it Means for the ADR Field” (2002) 3 Pepp Disp Resol LJ 113; Brown, n 7 at 283.

<sup>12</sup> Riskin, n 9 at 24.

<sup>13</sup> Folger J and Bush R, *The Promise of Mediation* (Jossey-Bass Publishers, San Francisco, 1994) pp 12, 16.

makes recommendations as to possible solutions to facilitate those objectives. The evaluative mediator actively seeks to persuade the parties to accept a settlement proposal, proposing “position-based compromise agreements”.<sup>14</sup>

### **Transformative mediation**

Transformative mediation has been described as:

a process in which a third party works with parties in conflict to help them change the quality of their conflict interaction from negative and destructive to positive and constructive, as they explore and discuss issues and possibilities for resolution.<sup>15</sup>

The focus of transformative mediation is not on achieving a resolution, but on this shift from “negative and destructive to positive and constructive”.<sup>16</sup> Folger and Bush contend that this style of mediation has a transformative effect on individuals and society because of its emphasis on empowerment and personal responsibility, rather than achieving a specific outcome,<sup>17</sup> which allows the parties to develop a sense of compassion and understanding for the other party’s position. This style of mediation necessitates quite an involved role for the mediator, as he/she attempts to foster the empowerment dimension of mediation, with the main emphasis on the transformative potential rather than on reaching a settlement. Bush and Pope have identified listening skills, reflection and summarising as the key skills of the transformative mediator.<sup>18</sup> Transformative mediation can be successful even where there is no resolution between the parties because the inherent essence of transformative mediation is on empowerment and recognition.

The literature on international peace mediation tends to acknowledge the existence of the legal categorisations of mediation, but attempts to re-evaluate and re-categorise the approaches to mediation in the context of armed conflict – to re-invent the wheel of mediation. It is submitted that a return to the legal framework would provide a stronger paradigm, through which international peace mediation could be more readily understood, and perhaps be utilised more effectively. The proceeding discussion provides an analysis of how international peace mediation is conceptualised in peace studies literature and highlights how the legal framework could provide a better and more cogent paradigm to analyse mediation in armed conflict situations.

### **CONCEPTUALISATION OF INTERNATIONAL PEACE MEDIATION**

Bercovitch and DeRouen identified three different mediation strategies or styles of mediation, namely, communication-facilitation mediation, procedural-formulative mediation and directive mediation.<sup>19</sup> Each different mediation strategy supposedly informs and influences the behavioural tactics of the mediators. The mediator who adopts the communication-facilitation style is to refrain from any efforts to influence the progress of the mediation process, and remain impartial during the process; he or she simply facilitates communication between the parties and ensures that they have access to any relevant information which may assist them.<sup>20</sup> Bercovitch and DeRouen’s account of communication-facilitation mediation is remarkably similar to that of facilitative mediation.

Bercovitch and DeRouen’s second style, procedural-formulative mediation, envisages much more involvement by the mediator in the process: he or she actively engages with the parties, and takes a

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<sup>14</sup> Riskin, n 9 at 46.

<sup>15</sup> Bush R and Pope S, “Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation” (2002-2003) 3 Pepp Disp Resol L J 67 at 83.

<sup>16</sup> Della Noce D, Bush R and Folger J, (2002) “Clarifying the Theoretical Underpinnings of Mediation: Implications for Practice and Policy” 3 Pepp Disp Resol L J 39 at 51.

<sup>17</sup> Folger and Bush, n 13, p 36.

<sup>18</sup> Bush and Pope, n 15 at 88-90.

<sup>19</sup> Bercovitch J and DeRouen K, *Mediation in Internationalized Ethnic Conflicts: Assessing the Determinants of a Successful Process*, (2004) 30(2) *Armed Forces and Society* 147.

<sup>20</sup> Bercovitch and DeRouen, n 20 at 156-157.

direct approach in organising and conducting the mediation. This type of mediator goes beyond ensuring that the lines of communication are open, creating a more appropriate forum for the process.

In the third style, directive mediation, the mediator deliberately attempts to change the “substance of the bargaining process” as well as the parties’ motivations by providing incentives for the parties to reach a resolution. Bercovitch and DeRouen perceive this mediation style as being the most effective in successfully resolving conflicts.<sup>21</sup> Both the second and third styles of mediation described here reflect the characteristics of what is commonly understood as evaluative mediation within legal discourse.

Within peace studies literature there is almost a complete lack of consensus as to the meaning of mediation. Different names have been given to mediation styles which are essentially the same type of mediation. Beardsley et al categorised their own three mediation styles: facilitation, formulation and manipulation.<sup>22</sup> They describe facilitation mediation as enabling the mediator to persuade the disputing parties to engage in discussions with each other, thus enabling the parties to reach a “mutually acceptable” resolution.<sup>23</sup> The mediator is a facilitator of communication and provider of information necessary for the parties to come to a “mutually preferable” result.<sup>24</sup>

Their second style, “mediation as formulation” sees the mediator actively engaging in the mediation process. This type of mediator adopts an interventionist approach if necessary to prevent a stalemate in the mediation process. The description of this style of mediation is almost identical to the directive mediation style identified by Horowitz in peace studies literature, and also the evaluative mediation style that exists within legal discourse.<sup>25</sup>

The third style of mediation recognised by Beardsley et al is manipulative mediation. As the name suggests, the mediator very deliberately attempts to encourage, perhaps even coerce, the disputing parties into reaching a resolution. The mediator exerts his/her power and leverage to incentivise the parties; for example, financial aid may be offered as a “carrot” and the threat of economic sanctions may be used as a “stick”.<sup>26</sup> Interestingly, Beardsley et al acknowledge that what they describe as manipulative mediation is referred to as “directive mediation” by other commentators such as Kressel, Bercovitch and Horowitz.

Similarly, Horowitz recognises that the facilitative style of mediation possesses those features previously identified by the likes of Bercovitch, De Rouen and Beardsley et al. Her description of the facilitative mediation style is identical to what is commonly understood to be facilitative mediation in legal discourse. Horowitz classifies a second style of mediation that focuses on the resolution of problems as “directive mediation”,<sup>27</sup> where the mediator exerts his or her influence over the mediation process in an effort to steer the parties towards reaching a resolution. Certainly this correlates with what Beardsley et al refer to as the “manipulative mediator” in peace studies and indeed an evaluative mediator as described within legal discourse. Interestingly, Horowitz acknowledges the legal framework of mediation in her third category of transformative mediation, which was identified in legal discourse in 1994.<sup>28</sup> She views this type of mediation as a link between facilitative mediation styles and Galtung’s transcendent transformative mediation.

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<sup>21</sup> Bercovitch and DeRouen, n 20 at 166.

<sup>22</sup> Beardsley et al, n 2 at 58-86.

<sup>23</sup> Beardsley et al, n 2 at 63.

<sup>24</sup> Beardsley et al, n 2 at 63.

<sup>25</sup> Beardsley et al, n 2 at 63. See also Horowitz S, “Mediation” in Webel C and Galtung J (eds), *Handbook of Peace and Conflict Studies* (Routledge, Oxon, 2007) pp 51-63; Riskin L, “Mediator Orientations, Strategies and Techniques” (1994) 12(9) *Alter High Cost Lit* 111.

<sup>26</sup> Beardsley et al, n 2 at 64.

<sup>27</sup> Horowitz, n 26, pp 51-63.

<sup>28</sup> Horowitz, n 26, p 58.

This brief discussion shows the dissonance among commentators within peace studies discourse as to how mediation is categorised since different commentators describe what is essentially the same type of mediation but lack consensus regarding the names of each mediation style.

### **INTERNATIONAL PEACE MEDIATION – THE CASE OF ACEH**

Application of the legal conceptualisation of mediation to international peace mediation would provide a cogent structure to enable analysis of the potential effectiveness of mediation as a conflict resolution tool. It is clear from the discussion on the legal framework above that the choice of mediator can be critical in terms of the resources that this person brings to the negotiating table. In order to ascertain the relevance of the legal conceptualisation of mediation for international peace mediation, and whether there is one mediation style that is most effective in that context, the article analyses the use of mediation during the peace process in Aceh, focusing on the specific role of Martti Ahtisaari<sup>29</sup> as a mediator in this process.

#### **Aceh**

Aceh (its full name is Nanggroe Aceh Darussalam) lies at the northern tip of the island of Sumatra, with a population of 4.01 million people.<sup>30</sup> The GAM, an armed separatist group representing the Acehnese people, was involved in a violent conflict with the Indonesian government for many years until 2005.<sup>31</sup> The conflict, based primarily on a claim for self-determination and a demand for independence, raged for over a quarter of a century. A number of mediation attempts were undertaken in the region before finally a peace deal was brokered in August 2005. This Memorandum of Understanding (MOU)<sup>32</sup> was signed by the Indonesian government and the GAM. Upon signing the MOU, the GAM conceded its demand for Acehnese independence and agreed to settle for limited autonomy. The peace deal has been slowly implemented in Aceh and violence between the GAM and Indonesian forces has almost completely ceased.

#### **Peace negotiations in Aceh**

The MOU was not the first attempt at mediation of the Acehnese crisis. In the middle of 2000, a conflict resolution organisation based in Geneva, the Henri Dunant Centre (HDC),<sup>33</sup> succeeded in brokering a temporary peace deal between the GAM and the Indonesian government.<sup>34</sup> The HDC was deemed to be an acceptable organisation to oversee a potential peace deal with the GAM because it was small, neutral and non-governmental.<sup>35</sup> The HDC was originally invited to participate in peace talks as facilitators; however, as the talks progressed, representatives from the Centre began to take on the mantle of mediators.<sup>36</sup> The first temporary peace deal brokered by the HDC was the *Joint Understanding on Humanitarian Pause for Aceh*. Finalised in May 2000, it was designed to last for a period of three months.<sup>37</sup> It was not quite a ceasefire but it allowed negotiations between the parties to the conflict to proceed. However, violations of the pause by Indonesian armed forces prompted

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<sup>29</sup> Martti Ahtisaari is a former president of Finland.

<sup>30</sup> The last census of Indonesia that was carried out in 2000 put the total population of Aceh at 4,010,486, [http://www.unescap.org/Stat/cos12/eos12\\_indonesia.pdf](http://www.unescap.org/Stat/cos12/eos12_indonesia.pdf) viewed 5 August 2011.

<sup>31</sup> For further analysis of the conflict in Aceh see Higgins N and Daly B, "Resolving Armed Conflict: The Acehnese Experience of Mediation" (2010) 7(3) *US-China Law Review* 1.

<sup>32</sup> *Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement*, available on the website of the Crisis Management Initiative of the World Health Organization, [http://www.who.int/hac/crises/international/asia\\_tsunami\\_sitrep/en](http://www.who.int/hac/crises/international/asia_tsunami_sitrep/en) viewed 5 August 2011.

<sup>33</sup> Later renamed the Humanitarian Dialogue Centre.

<sup>34</sup> Kivimaki T and Gorman D, *Non-governmental Actors in Peace Processes – The Case of Aceh* (Henri Dunant Centre for Humanitarian Dialogue, Switzerland, 2007) p 8.

<sup>35</sup> Kivimaki and Gorman, n 35, p 9.

<sup>36</sup> Kivimaki and Gorman, n 35, p 13.

<sup>37</sup> *Joint Understanding on Humanitarian Pause for Aceh* (12 May 2000), <http://www.hdcentre.org/files/JoU%20FINAL.pdf> viewed 5 August 2011.

retaliation from the GAM. The pause was renewed twice, but retained its basic purpose of providing a platform for discussion between the GAM and the government. However, in 2001, violence broke out again between the parties<sup>38</sup> and continued in 2002. The GAM returned to a call for independence from Indonesia, and the government considered declaring a state of emergency.

A new peace plan was brokered by the HDC, which offered more autonomy for Aceh, and elections for a provincial legislature and administration.<sup>39</sup> This peace agreement, a Cessation of Hostilities Agreement (COHA), was signed by the government and GAM leaders in December 2002, but it was not a major success. The main problem was that of the GAM's demand for independence, which the government would not contemplate. By mid-May 2003, the peace deal seemed unsalvageable and in 2004 the situation in Aceh was reclassified by the government as a "civil emergency".

### **MOU**

On 26 December 2004, a powerful tsunami hit and devastated Aceh and many other surrounding areas. More than 170,000 people were killed and 400,000 people were left homeless by the disaster.<sup>40</sup> In the immediate aftermath of the tsunami, sporadic violence between members of the GAM and the Indonesian security forces continued. However, the tragedy prompted the parties to return to negotiations for a peace plan and in January 2005 GAM and government representatives met in Helsinki for discussions. These talks were held under the auspices of the Crisis Management Initiative (CMI). From January 17 to 19 2005, Martti Ahtisaari chaired a meeting between the GAM and the government, and other meetings ensued. One of the main reasons why the talks were successful was the sidelining of the GAM's demand for independence. It is also questionable whether such a concession would have been made had it not been for the tsunami.<sup>41</sup> The CMI prepared a draft MOU which was eventually signed on 15 August 2005.<sup>42</sup>

The MOU itself contains various provisions regarding the governance of Aceh and it foresaw the adoption of new legislation on governing the region. The *Law on Governing Aceh*, Law No 11/2006, was passed on 11 July 2006. While there have been some criticisms of this law,<sup>43</sup> it did address some of the issues which had been a cause of dissatisfaction for the Acehnese people for many years, such as religious independence<sup>44</sup> and the creation of a human rights court.

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<sup>38</sup> Human Rights Watch Report, *Indonesia: The War in Aceh* (2001) 13(4)(C) 8 at 11.

<sup>39</sup> Global Security, <http://www.globalsecurity.org/military/world/para/aceh.htm> viewed 19 September 2011.

<sup>40</sup> See MacCawley T, "After 29 Years, an Aceh Peace Pact", *Christian Science Monitor* (18 July 2005), <http://www.csmonitor.com/2005/0718/p06s02-woap.htm> viewed 5 August 2011.

<sup>41</sup> Malik Mahmud in an interview with Kanis Dursin in *The Jakarta Post* on his first visit to Aceh in over 30 years. He had been living in exile in Sweden – *Jakarta Post* (28 May 2006).

<sup>42</sup> *Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement*, available on the website of the CMI, see n 34.

<sup>43</sup> For a discussion of this see Barron P and Clark S, *Decentralizing Inequality? Center-periphery Relations, Local Governance, and Conflict in Aceh*, Social Development Paper No 39 (December 2006).

<sup>44</sup> In relation to the implementation of Shariah law in Aceh, see Hillman B, "Aceh's Rebels Turn to Ruling" (2007) 170(1) *Far Eastern Econ Rev* 49; International Crisis Group, *Islamic Law and Criminal Justice in Aceh*, Asia Report No 117 (31 July 2006).

### ***The current situation in Aceh***

The peace process in Aceh is working “beyond all expectations”.<sup>45</sup> Members of the GAM willingly surrendered weapons as required under the MOU and the armed wing of the organisation was dissolved. Indonesian troops withdrew from Aceh and amnestied GAM prisoners were released from prison. However, there have been some instances of violence in the region since the signing of the MOU.<sup>46</sup>

### ***An analysis of the peace process in Aceh***

It is clear that the peace process in Aceh was complex. While the COHA and its precursors succeeded in opening up channels of communication between the GAM and the government, they failed to bring about a lasting peace in Aceh. Numerous reasons have been given for the failure of the COHA, such as uncertainty concerning the meaning of its detailed provisions and a weak enforcement mechanism.<sup>47</sup> On the surface, the MOU seemed to give Aceh a lot of powers; however, in reality, most of these powers merely repeated already existing laws.<sup>48</sup>

One big difference between the MOU and previous agreements is the provision allowing for local political parties. This issue represents one of the major concessions of the government, comparable to the GAM’s abandonment of its demand for independence,<sup>49</sup> although independence was never up for discussion in the peace talks mediated by Ahtisaari.<sup>50</sup> The MOU also allows for a much stronger monitoring and enforcement mechanism than the COHA, establishing the Aceh Monitoring Mission which oversaw the implementation of the MOU.<sup>51</sup> The CMI saw the design of a much stronger monitoring and enforcement mechanism than had been incorporated into the COHA as one of their greatest and most important challenges, with Ahtisaari himself stating that NGOs should not be responsible for monitoring peace agreements.<sup>52</sup>

### ***Applying the legal conceptualisation of mediation to international peace mediation – Ahtisaari in Aceh***

The application of the legal conceptualisation of mediation would enable a greater insight into the skills and characteristics necessary for such mediators. Reference to the legal conceptualisation of mediation could help inform the emerging professionalisation of international peace mediators by providing an appropriate template for guidelines and standards, and assist with the development of suitably flexible codes of conduct.<sup>53</sup>

What is often overlooked in the discussion of different mediation styles in international peace mediation is that the particular style used predetermines the specific role of the mediator in governing the conduct of the mediation process and also dictates how the mediator engages with the parties. However, in the context of international peace mediation, the use of one particular mediation style alone may not be the panacea to all conflicts. In some circumstances, parties to a conflict may not want to deal with an evaluative mediator and would be resistant to the mediator putting forward

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<sup>45</sup> International Crisis Group *Aceh: So Far, So Good*, Asia Briefing No 44 (13 December 2005). See also International Crisis Group, *Aceh: Now for the Hard Part*, Asia Briefing No 48 (29 March 2006).

<sup>46</sup> See World Bank/Decentralisation Support Facility, *Aceh Conflict Monitoring Update 1-31 May 2007* (2007). See also Scarpello F, “Bombs Shake Fragile Aceh Peace”, *South China Morning Post* (4 August 2007).

<sup>47</sup> Huber K, *The HDC in Aceh: Promises and Pitfalls of NGO Mediation and Implementation* (East-West Center Washington, 2004) pp 36-40.

<sup>48</sup> Aspinall E, *The Helsinki Agreement – A More Promising Peace for Aceh?* (East-West Center Washington, 2005) pp 43-44, <http://www.hdccentre.org/files/Justice%20Aceh%20final.pdf> viewed 8 August 2011.

<sup>49</sup> Aspinall, n 49, p 42.

<sup>50</sup> Aspinall E, *Peace without Justice? The Helsinki Peace Process in Aceh* (Centre for Humanitarian Dialogue, 2007) p 12.

<sup>51</sup> Aspinall, n 49, pp 46-47.

<sup>52</sup> Aspinall, n 49, p 47.

<sup>53</sup> For further discussion of the professionalisation of international conflict mediation, see Herrberg A, *Perceptions of International Peace Mediation* (Initiative for Peacebuilding, 2008) pp 19-23.

options for resolution of the conflict; instead the facilitative mediation style would be more appropriate. In other situations, the more evaluative style would be more conducive to the successful resolution of the conflict, as was the case of the mediation style employed in Aceh.

Ahtisaari's style and approach to mediation fitted within the description of evaluative mediation as conceptualised within the legal framework of mediation. As noted above, Riskin described one of the distinctive features of the evaluative mediator as being able to persuade the parties to accept the mediator's assessment of the respective party's claim. This is certainly true of Ahtisaari who was very active in "persuading the GAM to explore 'a narrow opening in the autonomy clause' ... to encourage the movement to bend to the government's position".<sup>54</sup>

The evaluative mediation style under the legal framework of mediation necessitates the full participation of all the relevant parties in the process. The very manner in which Ahtisaari governed the conduct of the Aceh mediation process exemplifies the use of the evaluative mediation style in practice. Ahtisaari enabled the parties to access opportunities to reach a peace agreement by putting in place a strict timeframe.<sup>55</sup> Undoubtedly, Ahtisaari's evaluative mediation style ensured that he was very much central to the progress of the mediation process. Ahtisaari adopted an interventionist approach when necessary to make sure that the parties moved forward during the course of the mediation process and did not dwell on the past. He refused to allow the parties to commandeer the mediation process as a means for dealing with the minutiae of the key issues under discussion, believing that this would prevent the parties from ever realising a mutually acceptable settlement.<sup>56</sup> Moreover, Ahtisaari was insistent that both the Indonesian government and the GAM engaged with, and fully participated in, the mediation process.

An evaluative mediator as conceptualised under the legal framework of mediation suggests settlement options to the disputing parties. During the Aceh peace process, Ahtisaari proposed possible options for settlement to address the interests of the parties. One example of this was the inclusion of the establishment of a human rights court in the final draft of the MOU. Ahtisaari's political clout and leverage were key factors in allowing him the opportunity to suggest proposals for resolution when mediating the MOU. His background as a former president of Finland, his connections to the European Union (EU), and his ability to garner the support of both the EU and Association of Southeast Asian Nations (ASEAN) were significant in the success of the Aceh mediation process.<sup>57</sup>

Admittedly, the devastating impact of the tsunami on Aceh provided the impetus for both the government and the GAM to re-attempt mediation efforts. However, Ahtisaari's role and influence as a mediator have been acknowledged as significant in its success.<sup>58</sup> Ahtisaari was of the view that an agreement could deal with all of the parties' issues and concerns, and that it required the parties to both commit to the process before an agreement could be reached, or indeed, implemented. Even his insistence that both parties had to fully participate in the process is a characteristic pertinent to the evaluative mediation style.

## CONCLUSIONS

A concise and coherent conceptualisation of mediation has existed within legal discourse for many years. From the discussion above, it is apparent that scholars engaged in analysing international peace mediation have, to a large extent, ignored the legal framework, and failed to provide conceptual clarity. This has impeded the study and analysis of international peace mediation because it has been impossible to create a coherent framework due to the lack of consensus regarding its definition and conception.

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<sup>54</sup> Aspinall, n 49, p 12.

<sup>55</sup> Aspinall, n 49, p 14.

<sup>56</sup> Aspinall, n 49, p 17.

<sup>57</sup> Aspinall, n 49, p 17.

<sup>58</sup> Aspinall, n 49, p 12.



Conceptual clarification of international peace mediation would contribute to its efficient and successful use in the resolution of armed conflicts. This would enable researchers to determine its effectiveness within a cogent framework. Application of the legal conceptualisation of mediation to the case of Aceh demonstrates how this framework can be readily applied to international peace mediation. Furthermore, application of legal framework to armed conflict resolution would provide an improved understanding of the necessary skills a mediator in such situations requires. Also, it would help to identify whether a particular style of mediation is more suitable than others in resolving certain types of armed conflict. The authors recommend that the legal conceptualisation of mediation be employed in future analyses of international peace mediation. It is hoped that such an analysis would inform the development of best practice of international peace mediation and ensure that international peace mediation can develop as a more successful conflict resolution tool.