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The Conflict Resolution Movement

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Abstract
The study and practice of conflict resolution has become a remarkable worldwide social movement in recent years. Legislation creating conflict resolution programs—writing into law new forms of resolving conflict fundamentally different from existing models centuries old—has been enacted in virtually every nation in the world in the decade since the late 1980s. What is the reason for conflict resolution's unparalleled proliferation in the comparatively slow-moving field of law, cutting across so many national, cultural, racial, ethnic, and political lines? What exactly is conflict resolution? Why do so many different disciplines lay claim to it? Where did it originate What are its implications for the future of handling social conflict? The author addresses these questions in the course of providing an introduction to the field, a review of conflict resolution in history, and a survey of contemporary legislation worldwide in an appendix to the article. Analysis of the conflict resolution movement reveals that its strength results from a stead dissemination of spiritual principles designed for the forging of world unity by Bahá'u'lláh, the prophet-founder of the Bahá'í Faith, more than a century ago.

In recent years, the field of conflict resolution has blossomed into a remarkable worldwide movement. Although clearly focused upon the legal community from conception,[1] conflict resolution has a multidisciplinary and international ancestry, befitting its newly global appeal.

Many questions arise when reflecting upon conflict resolution's phenomenal growth. What exactly is conflict resolution? How did the movement originate? How can scholars and practitioners from so many seemingly disconnected fields claim to be engaged in its practice? Is it really a worldwide movement, and if so, why? What explains the widespread interest from so many fields? What are its implications for future community life? This article seeks to (1) consider these questions while providing an introduction to the field; (2) examine the field's historical roots and worldwide proliferation; and (3) analyze its popularity in light of what the teachings of the Bahá'í Faith have to say about conflict, unity, and a world in the throes of convulsive transition.

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[1] For example, in 1977, no United States state bar association and only two law schools had dispute resolution programs. In 1987, the number of such programs grew to 110 and 100 respectively. Even more remarkable was the expansion from zero to 4,500 jurisdictions providing child custody and visitation dispute resolution, and the number of community mediators from 5,000 to 20,500 in that same ten-year period (Kelly, "No Room to Dispute ADR's Promise" 11). The movement in United States courts has progressed from a few conferences and mediation programs in the 1970s to the Judicial Improvements and Access to Justice Act of November 1988, Pub.L.No.100–702, 102 Stat. 4644, pursuant to which the United States Congress created a committee to study its use in the federal courts, to the committee's April 2, 1990, report to Congress recommending six forms of conflict resolution for the courts, to the October 7, 1998, passage by Congress, by a vote of 405-2, of the Alternative Dispute Resolution Act of 1998, signed into law by United States President William Clinton, October 30, 1998. This new legislation requires *every* federal district court in the nation to establish its own alternative dispute resolution program. For a review of the growth of ADR in United States administrative agencies, see Mester, "The Administrative Dispute Resolution Act of 1966: Will the New Era of ADR in Federal Administrative Agencies Occur at the Expense of Public Accountability?" 169–73. An outstanding general research tool is the Ohio State University's *Journal of Dispute Resolution* 13.4 (1998), an entire journal edition dedicated to a bibliography of dispute resolution.

An Introduction to Conflict Resolution

Given the persistent confusion of terminology, this introduction begins with a definition of terms. The phrase "conflict resolution" is a general term, embracing a variety of practices and procedures that resolve disputes using an intermediary other than a court. Alternative dispute resolution, dispute resolution, or just the initials ADR, are similarly general expressions, used principally by lawyers, judges, court personnel, scholars, and practitioners familiar with the field through the legal community. A few programs use the phrase "conflict management." Although some make fine distinctions between the management and the resolution of conflict, the programs are essentially the same.

In this article, these terms are used interchangeably, although ADR is slightly more applicable to court programs (known as court-connected or court-annexed programs). Mention should also be made of the limited scope represented by the term ADR. It is as if the trial is seen as the normative standard for dispute resolution. Apart from the disruptive consequences awaiting a society fixated on lawsuits, the fact is that litigation seldom ends with trial, verdict, and judgment. In the United States, for example, most jurisdictions have pretrial settlement rates of 90-95% of civil cases. Thus, a vast, complex, expensive, inaccessible, and feared legal system exists for a relatively small number of disputes.

Moore's Continuum of Conflict Resolution

One of the best-known theoretical frameworks of conflict resolution was formulated by Christopher W. Moore, who viewed methods of intervening into conflict as falling along a continuum expressed as a horizontal line (7). At the left side of the continuum line are conflict resolution procedures that permit the parties (called disputants) to retain decision-making authority. An example is simple amicable resolution. At the right side of the continuum line are procedures in which disputants have lost control of decision-making authority. Examples are litigation, where a judge or jury decides the outcome, or even violence and war.

Other undesirable consequences arise in moving from the left to the right side of the line. Decision making becomes vested in parties who are very likely strangers to the disputants and who know less about the problem, the relationships, and the case history than do the disputants themselves. The viability of the relationship between the parties and the probability of that relationship surviving the conflict lessens. This is particularly undesirable for disputants having interests in continuing the relationship, or at least ending it on amicable terms, such as divorcing parents of minor children, next-door neighbors, or some business partners. Equally troublesome in moving to the right side of the line is the shift from win/win to win/lose outcomes. This terminology, now in common usage, was developed by mediators to depict the difference between resolutions requiring a "winner" and a "loser" (win/lose), and resolutions satisfying the underlying interests of all disputants (win/win). Lastly, with procedures on the right side of the continuum, the likelihood of the decision becoming final and the dispute concluding sh1inks, while the chance of irreparable damage to health, safety, welfare, and financial well-being expands.

The Practice of Conflict Resolution

A variety of practices are associated with the conflict resolution movement. One example in North America is *conciliation,* a term often used in connection with labor-management negotiation or

family law court programs designed to counsel divorcing couples.[2] In Europe and European-based legal systems, conciliation refers to a process arising during arbitration when a disputant seeks settlement. As noted below, conciliation and mediation are often confused.

Other practices include *group-facilitated decision making*,[3] often used in public policy controversies, and some forms of consultant training, particularly concerning race and ethnic relations, cultural diversity, or sexual harassment. Some universities and practitioners focus on negotiation as a discrete discipline. Although a related skill, negotiation is narrower than conflict resolution. Moreover, negotiation is as relevant to advocacy, that is, representing a particular point of view or disputant, as it is to conflict resolution.

Some other court-related procedures are *early neutral evaluation*, with a court-appointed expert analyzing a case and informing litigants of its strengths and weaknesses; *settlement conferences* where litigants and judge discuss settlement; *mini-trials* and *summary jury trials*, which are abbreviated trials; and *settlement weeks*, where the court selects cases to bring before a panel of volunteer lawyers for settlement talks.

After World War II, a number of universities founded peace studies programs, such as those at Columbia University, the University of Toronto, and Wayne State University. In recent years, most of these peace studies programs were in decline, losing student enrollment, funding, and influence. Today, many are moving toward conflict resolution and showing signs of rejuvenation.

Because of this ill-defined scope of activities, people in many disciplines such as law, human resources, business and management, counseling, therapy, corporate consulting, teaching, administration, facilitation, and ombudsman programs may claim to be practitioners in conflict resolution. Many hear the phrase "conflict resolution" and conclude that since they occasionally settle disputes, they practice conflict resolution. However, a fundamental understanding of neutrality is often missing with such claims.

The term *third-party neutral,* employing neutral as a noun, has two meanings. In one sense, it refers to a person with no relationships producing in fact, or giving the appearance of, bias. It also denotes one with no decision-making authority. This concept partly distinguishes conflict resolution. For example, a middle manager trying to settle a conflict between disputing employees, all of whom are employed by the same entity, is not a third-party neutral and is unlikely to utilize the procedures and strategies that mediators or arbitrators use. Moreover, there are no professional associations, ethical codes, professional journals, or other indicia of a discrete field connected with the manager's actions.

There was a time, a few years ago, when many judges or lawyers claimed experience in conflict resolution from participation in judicial settlement conferences. Professionals in the conflict resolution field were duly chagrined. They see lawyers as experienced in advocacy or negotiation and judges as skilled in decision making. This view has prevailed, and the typical North American lawyer today acknowledges the differences among advocacy, decision making, opinion giving, and neutrality.

Notwithstanding the many types of conflict resolution, the most important forms of conflict resolution are clearly mediation and arbitration. As such, they require closer analysis.

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[2] For example, 29 U.S.C. 172(a) creates the "Federal Mediation and Conciliation Service" to minimize labor strife, and Ariz. Rev. Stat. 25–381.07 et seq. creates a "Director of Conciliation" to manage divorce case activity. For the term's use in arbitration, see appendix-discussion on arbitration in Europe.

[3] See, for example, "Public Policy Disputes: Special Cases, Special Challenges."

Mediation: The Heart of the Movement

Most of the excitement generated by conflict resolution concerns the North American mediation model. This is not a bias in favor of North Americans, who have generated their share of the world's heritage of conflict. It is simply a fact that the rapid growth, refinement, and new applications of mediation arose in North America. Further, the overwhelming majority of universities granting degrees in conflict resolution, and of academic faculty, authors, journals, publications, experienced practitioners, professional associations, conferences, and programs, whether public or private, are in North America.

Now that other regions of the globe are becoming interested in conflict resolution as a field, there is reason to hope that other nations and cultures will improve on existing models and develop new applications, further enriching the field with breadth and insight. Indeed, one of the most striking characteristics of mediation is its capacity to touch on methods of dispute resolution stretching far back into familial and cultural traditions throughout the world.

There is extensive cooperation among North American practitioners, and the model is substantially the same in Canada and the United States. This is particularly noticeable when compared to other models such as European conciliation, discussed below. The North American model typically defines mediation as a voluntary, confidential process where an impartial third-party neutral assists disputants to reach a mutually acceptable resolution.[4] These words have become terms of the art with very specific meanings.

Voluntariness implies there should be no rules, orders, or procedures compelling participation, at least in the ideal setting. Parties are to remain free to use, continue, or discontinue mediation at all times, without any mandated consequences. The phrase "mandatory mediation" is thus theoretically an oxymoron. In reality, there are many mediation programs, particularly court-annexed and in-house ones (within a single organization), imposing official or unofficial sanctions for failure to participate.

Confidentiality is equally essential. Ethical standards for mediators require the honoring of promises of confidentiality made to disputants. Mediators also assure disputants that any information confidentially revealed to the mediator will not be disclosed unless authorized by that disputant.[5] The mediator is most likely to acquire confidential information in a process mediators call the caucus. This term, despite its Latinate sound, has an Iroquois etymology, reflecting the Iroquois tradition of consultative decision making. Mediators confer separately with disputants for a variety of reasons. For example, a caucus may be used to break an impasse, to assess the strength

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[4] For a more detailed definition, see Moore, *Mediation* 15–20.

[5] The Ethical Standards of the Society of Professionals in Dispute Resolution (hereinafter "SPIDR" and "SPIDR Standards") and the Model Standards of Conduct for Mediators, developed jointly by the American Bar Association (ABA), SPIDR, and the American Arbitration Association (hereinafter "ABA Standards"), make mediator confidentiality a matter of ethics. SPIDR Standard 3 states "[m]aintaining confidentiality is critical to the dispute resolution process." ABA Standard, Section V, reads "A Mediator shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality" and "[t]he mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy." Mediator confidentiality is variously protected by law. Most United States states have legislation protecting confidentiality, but few court decisions interpreting the laws. See, for example, Ariz. Rev. Stat. 12-2238(B); Cal. Evict. Code Sections 703.5, 1152.5, Cal. Code Civ. Pro. Sections 1775.10 and 1775.12; Conn. Gen. Stat. Ann. Section46b–53 (West 1983); Fla. Stat. Ann. Section 44.101 (West 1998); Mass. Gen. Laws Ann. Ch. 233 Section 23C (West 1995); Colo. Rev. Stat. Section 13–22-307; Okla. Sta. An. tit. 12, 1805–1813 (West Supp. 1993); Iowa Code Ann. Section 679.12 (West 1987); N.Y. Jud. Law Section 849–b (McKinney Supp. 1992); Tex. Civ. Prac. & Rem. Code Ann. Section 154.073 (Vernon Supp. 1997).

of a disputant's adherence to a position, to assist a disputant to clarify a position, or to restore orderly communication. The caucus, like the third-party neutral, is an important distinguishing feature of mediation. In other procedures, such as litigation or arbitration, it is usually unethical for the third party to confer separately with the disputants.[6]

Impartiality refers to the absence of bias favoring one party or the other. Academicians sometimes have difficulty with the notion of impartiality, pointing out it is probably impossible to remain completely unbiased. But practicing mediators seem to understand what is really meant is substantial or functional impartiality leaving the outcome little influenced by the mediator.[7] This can only be fully understood when considered with the concepts of neutrality and mutually acceptable resolution.

The word *neutral* stems from the Latin *ne*, meaning "not" and *uler*, denoting "either." This is complemented by the root of mediation, which is the Latin *medius*, meaning "middle." The mediator's lack of decision-making authority that could favor one disputant over another is the single most fundamental component of mediation, imperative in understanding how mediators function. Like the neutral gear in a car, neutrality means incapable of making a decision in one direction or the other. The disputants are therefore free to communicate with the other disputant through the mediator, since the mediator will never make a decision or reveal a confidence. Although the mediator does not make a decision and avoids expressing any opinion tending to favor the positions of either side, resolutions reached in mediation are generally upheld as binding contracts by the courts.

The concepts of mutual acceptability and process specialist (an expert in the process of facilitating mutually acceptable resolutions) are related. This contrasts with content specialist, an expert in knowledge of the matter in controversy. For example, in a dispute between environmentalists and a lumber company, a content specialist may have knowledge about old-growth forests, the effects of lumbering on forest ecosystems, or the economic, employment, and wage conditions of a particular community. Process expertise concerns negotiation, bargaining, impasse breaking, orderly communication, and procedural matters.

Why is the absence of power so important? To illustrate the power of nonpower, consider the experience of one public school in Phoenix, Arizona. In the mid-1990s, this school was suffering dangerous ethnic conflict among its teenage students, who were primarily of White, Hispanic, and African American heritage. School authorities, rather than employing authoritarian tactics and "ordering" unity, as if that were possible, used outside mediators to work with the entire student body for many weeks.

Eventually, the students hammered out rules reflecting ingenuous principles, such as "no ethnic jokes." The student-generated rules were nothing that any rookie assistant principal could not have distributed to the students in a handbook the first day of class. However, because the students had to produce the principles, negotiate, ventilate emotions, and gain a sense of

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[6] For example, the American Bar Association Code of Judicial Conduct, Canon 3 (A) (4) provides that a "judge should . . . neither initiate nor consider *ex parte* or other communications concerning a pending or impending" case (where *ex parte* means contact with only one party).

[7] Both the SPIDR and ABA Standards require mediator impartiality. See SPIDR Standard "Responsibilities to the Parties, No. l" ("[t]he neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action"). ABA Standard II and accompanying comment is "A Mediator shall Conduct the Mediation in an Impartial Manner. The concept of mediator impartiality is central to the mediation process." While most mediators eschew expressing opinions, a dwindling few believe disputants want an evaluation, sometimes called evaluative, as distinguished from facilitative, mediation. See, for example, Moberly, "Mediator Gag Rules: Is it Ethical for Mediators to Evaluate or Advise?" 669.

ownership, they became the enforcers of their own rules, hanging them on banners in the school and reminding fellow students when a rule was violated. Does any parent of a teenager doubt that if school authorities had done all the work for the students, distributing the same rules on the first day of school, the effectiveness would have been far less?

Harvard Law School professor Frank E. A. Sander stated that it is this quality that makes mediation the "sleeping giant of ADR."[8] This aspect of mediation has come to be known as "transformation," as in the well-known 1994 work *The Promise of Mediation* by Bush and Folger. Mediators believe that disputants permitted to reach their own resolutions are more likely to empathize with other disputants and to honor their agreements. When disputants are ordered to comply with a decision made by a stranger, human immaturity unfortunately often produces a residual amount of resentment. Appeals, resentment, attempts to undermine, reprisals, and retaliation are the norm.

The Stages of Mediation

Mediators generally follow a mediation model, taking disputants through a series of stages. The number of stages vary, but essential procedures are standard. Initially, the mediator may engage in some form of *pre-mediation research* of the dispute and discuss issues with the disputants separately. Next, the mediator brings the disputants together, explaining the process (known as the "mediator's monologue"), and setting or negotiating *ground rules*[9] regulating communication, such as no interrupting, no profanity, and commitment to the process.[10] At this stage, the communication is primarily from the mediator to the disputant.

Third, disputants take turns making opening statements, explaining their positions to the mediator. At this stage, communication flows from disputant to mediator. The other disputant is asked to listen without interrupting. This allows the mediator time to understand the dispute and to model *active listening* (focused attention, no unnecessary interruption, and body-language cues indicating intense interest) to the other disputant. Often, it is the first time a disputant has explained his or her views with the other disputant listening.

Fourth, the mediator *clarifies positions, starts building an agenda*, and may start working with the disputants to *generate options*. There may be interim stages of bargaining and negotiation. At these stages, the mediator tries to get disputants to focus on an easel, blackboard, or piece of paper, which has the beneficial effect of "objectifying" the issues into a mutual problem the disputants must together work on resolving. Eventually, but only if and when the time is ripe, the mediator shifts disputants to *bargain directly with each other*. Lastly, the mediator works with the disputants to *write an agreement expressing a settlement* that is mutually acceptable to the disputants.

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[8] See Reuben, "The Lawyer Turns Peacemaker" 55.

[9] The ground-rule stage is typically important yet simple. It can, however, be excruciatingly slow and difficult. One memorable example was the eighteen-month-long negotiation at the Paris Peace Talks in the early 1970s between the United States and Vietnam, over the shape of the meeting table. To experienced mediators, this was not so unbelievable. The disputants were engaged in a conflict of historic dimensions with grief, loss of life, political dogma, and countless social ramifications. Negotiators were as concerned with their constituencies as with the other disputant. They needed to look "tough," or political pressure could have forced an end to the talks. Also, a mistake over the shape of the table had minimal consequences; a mistake over other issues could echo through generations. This experience also illustrates the role of patience in peacemaking.

[10] This process can get dangerous; a standard ground rule of the City of Phoenix's mediation program and of mediators al the Office of the Arizona Attorney General is "no weapons allowed"!

During the entire process, the mediator utilizes a host of skills and tactics designed to facilitate agreement and break impasses. The skills are too numerous to detail here; however, mention should be made of a few key skills with some theoretical foundation.

Mediators distinguish between position and interest. A position is a demand for a specific outcome or behavior. Positions are usually expressed emotionally as categorical imperatives such as "no," "never," "no way," and "must." To illustrate, assume two neighbors are disputing over a dog barking incessantly at night while the owner, neighbor *A,* is at work. *A* desires the dog for protection of her house while she is working at night. Neighbor *B* cannot sleep at night because of the barking. An example of a position *A* might take is "There is no way I'm getting rid of my dog." *B* might take a position such as "The dog goes, or I sue."[11]

An interest may be defined as the underlying motive or reason why a disputant is making a specific positional demand. In this hypothetical scenario, *A'*s interest is in protecting her house. *B'*s interest is in sleeping. Notice that at the level of position, there is absolute conflict. The demands for outcomes that the dog stay or go are utterly incompatible. At the deeper level of interest, however, there is no conflict; the protection of *A*'s house and *B*'s sleep are not opposing desires. Indeed, the disputants may even find they have common interests such as neighborhood security.

The main tool mediators use to assist disputants to recognize their interests and move off positions is *reframing*. This is a method where the mediator recognizes a position being stated by a disputant and then restates the statement in a manner expressing the interest, not the position. Other tools are *BATNA* and *WATNA*. These acronyms respectively stand for "best" and "worst" alternatives to a negotiated agreement. They are techniques of questioning a disputant, usually in a caucus, to get the intransigent disputant or one who has unrealistic expectations for the outcome, to understand the consequences of a failure to reach an agreement in mediation.

To increase the likelihood of settlement, mediators sometimes negotiate media blackouts or promises of no discussions with nondisputants during the proceedings. Another tactic is the *moving deadline,* placing disputants on a strict timeline and threatening to end the mediation, but gradually extending the deadline as disputants edge toward settlement.[12] The mediator uses reframing, the caucus, and other techniques to bring the disputants toward mutual resolution.[13]

The Many Applications of Mediation

One reason for mediation's appeal is its application beyond civil court. In criminal cases, it has come to be known as restorative justice. Originating primarily in Canada and now spreading throughout the United States, restorative justice is found in court systems or prosecuting attorneys'

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[11] This example is less humorous than it seems. The City of Phoenix, Arizona, receives an average of 100 complaints a month, more than 1,200 a year, about barking dogs—so many that it lists an official phone number entitled "barking dogs."

[12] Striking examples of this technique were the United States-brokered 1995 Dayton Peace Accord talks concerning Bosnia and the Israeli-Palestinian talks in Maryland, October, 1998. In Dayton, the talks occurred over a weekend. United States officials publicly announced prior to the negotiations that if agreement was not achieved by midday Sunday, they would call an end to the talks and send the parties home, presumably to resume warfare. The United States diplomats publicly announced extensions starting Sunday afternoon, then throughout the day and into Monday until an accord was reached. In the 1998 set of talks, United States officials issued a similar statement. The talks were repeatedly extended until they nearly reached a full week. Another arena where this often occurs is United States labor-management collective bargaining where Federal Mediation and Conciliation Service mediators extend talks through nights into subsequent days.

[13] For additional impasse-breaking techniques, see Chang, untitled chapter in *ADR Personalities and Practice Tips*.

offices and is often titled Victim-Offender Mediation Programs (VOMP). The format is substantially the same as that for other mediation, except it is generally conducted after conviction. The sole issue is how the defendant can make restitution to a victim. This method is often used in juvenile cases.[14]

School-based peer mediation programs have increasingly been established in public schools in what has become a major movement by itself. The programs date to the early beginnings of the modern conflict resolution movement, starting in the 1970s in San Francisco, Cleveland, and Cambridge.

These peer mediation programs teach basic mediation principles to children and youth from elementary through secondary schools. Some school districts employ full- or part-time peer mediation coordinators. The model is very similar to adult mediation, except confidentiality is not necessarily protected, and there is always an adult with the student mediators. Most peer mediators work in teams of two, in a process known as co-mediation. Sometimes student disputants are given the incentive of avoiding or lessening impending discipline if they are able to work out a resolution.[15]

Mediation has been applied to domestic relations cases such as divorce and child custody, securities broker disputes,[16] business contracts,[17] environmental cases,[18] public and private employment,[19] Americans with Disabilities Act cases, employment discrimination charges with the United States Equal Employment Opportunity Commission under the Civil Rights Act of 1964[20] and other disputes. A number of religious groups have become noted for "faith-based" practice. Best known are members of the Bahá'í Faith,[21] the Friends (Quakers), and the Mennonites.

In the United States, there are several national professional associations and organizations. Foremost are the American Bar Association Section of Dispute Resolution, with legal professionals and judicial membership; the Society of Professionals in Dispute Resolution

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[14] There are two models of juvenile mediation. One is the combined juvenile-parent model developed in the 1980s by the Children's Hearings Project of Cambridge, Massachusetts. There are now more than sixty such programs in the United States. That model uses a family-oriented process involving structured "daily living agreements" between parent and teen. The other, more widespread model, is the VOMP model, bringing juvenile offenders together with victims who agree to participate, to negotiate restitution. See Smith, "Using Mediation in Juvenile Justice Settings" 10–11.

[15] The first successful comprehensive peer mediation program was the "playground project" started in 1976 with the founding of the San Francisco Community Board Program by a Bay Area lawyer, Raymond Shonholtz. Cleveland's program started in 1980 when the Cleveland State University Law School faculty designed a truancy mediation program for Cleveland Magnet High School. For a general source, see Moriarty and McDonald, "Theoretical Dimensions of School-Based Mediation" 176.

[16] See, for example, Coakley and Bedikian, "De-mystifying Securities ADR: Reform and Resurgence after McMahon" l 76. For an article on Canadian securities arbitration, see Rogers. "Securities Arbitration in B.C.: A Solution in Search of a Problem" 53.

[17] For example, the Center for Public Resources in New York City maintains a registry or "Corporate Policy Statements," signed by corporate officers pledging that in the event of a dispute with another company making the same or similar pledge, it will first explore ADR before litigation.

[18] For example, see Harrison, "Environmental Mediation: The Ethical and Constitutional Dimension" 79.

[19] See, for example, Dibble, "Alternative Dispute Resolution of Employment Conflicts: The Search for Standards" 73, and Wiltenberg et al., "ADR Flexibility in Employment Disputes" 155.

[20] Pub.L. 88–352, tit. VII, 78 Stat. 241, 42 U.S.C. Sect. 20000e, et seq. The United Stales Equal Employment Opportunity Commission started mediating ADA and employment discrimination cases nationwide in the late 1990s.

[21] For example, of the approximately 300 programs offered at the 1997 National Conference on Peacemaking and Conflict Resolution, about 10 percent were presented by members or the Bahá'í Faith.

(SPIDR), a general association of practitioners and scholars; the Academy of Family Mediators (AFM), specializing in divorce and family law; the National Institute of Dispute Resolution (NIDR), promoting research and public policy; and the National Association for Community Mediators (NAFCOM), representing nonprofit community mediation centers. The former National Association of Mediators in Education (NAME), with membership mostly drawn from educators in peer mediation programs, recently merged with NIDR. In July 1998, NIDR, SPIDR, and NAFCOM signed a memorandum of understanding expressing intent to merge. In early 1999, they began meeting regularly under the loose affiliation name known as the National Council of Dispute Resolution Organizations (NCDRO).

The National Conference on Peacemaking and Conflict Resolution (NCPCR), affiliated with George Mason University's Institute for Conflict Analysis and Resolution, sponsors the world's largest conflict resolution conference. NCPCR is not a membership organization, and its events, held every two years, are remarkable for their size, diversity, and representation from scores of nations.

Arbitration

Arbitration, in contrast with mediation, is more formal. In arbitration, disputants submit their dispute to private decision-makers who generally follow professional rules, such as those of the American Arbitration Association (AAA), in rendering binding awards. Frequently, arbitration is as complex as litigation, typically including lawyers, rules of procedure and of evidence, and pretrial discovery (court procedures such as depositions and interrogatories permitting litigants to obtain information from each other before trial). Since arbitrators issue awards, there is little opportunity for transformation.

So why use arbitration? Although it is much more formal than mediation, it is nevertheless generally swifter than litigation. Further, arbitrators are considered more predictable than juries, which, in turn, may aid settlement talks. It is harder to win appeals of arbitration awards compared to court judgments, since appeals are restricted to a few issues, such as whether the arbitrator exceeded the scope of authority or whether there was fraud. Arbitration also affords greater privacy and control to disputants than does litigation.

Arbitration is traditionally used in North America in certain fields such as construction, labor-management relations, sports and entertainment law, employee grievances, and some consumer services such as health care. In Europe and countries with systems based upon European legal traditions, arbitration is often the dispute resolution format of choice, particularly in consumer and commercial disputes.

There are arbitration provisions in international law and supporting institutions. The United Nations Commission on International Trade Law (known as UNCITRAL) supports international arbitration of trade disputes and has rules of arbitration and conciliation. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") of 1958, is an international standard for recognition of arbitration awards. The International Commerce Commission (ICC) publishes arbitration and conciliation rules. The World Intellectual Property Organization in Geneva has arbitration, expedited arbitration, and mediation rules. The AAA supplements its domestic rules with Rules of International Arbitration.

Conflict Resolution in History

Conflict resolution, in the broad sense of social practices, procedures, or institutions dedicated to resolving conflict, is ancient. The following examples of procedures, selected from a variety of cultures and ages, are not intended to be a comprehensive historical survey, but rather a brief illustration of how long civilization has coped with the task of efficiently settling human conflict through alternatives to existing official structures and through facilitated discussions. What is most striking about these examples is how little matters have changed through the ages.

Colonial North America

In colonial North America, for example, arbitration flourished:

> Arbitration in Connecticut before 1700 was a consensual process. No one compelled disputants to submit their differences to the judgment of arbitrators, whose only authority came from the parties themselves and whose awards were legally unenforceable. Arbitration was also a community affair. Disputants and arbitrators alike tended to come from the same town. People chose arbitration over law when they knew one another and trusted each other to treat as final an award that had no legal effect. They also chose arbitration for its relative speed, inexpensiveness, and informality. . . .
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> By submitting to arbitration, disputants expressed a willingness to compromise that was absent from litigation. They came to arbitration together, rather than as a plaintiff and defendant, without the heightened sense of being adversaries that such labels imply. These qualities made arbitration attractive in situations where the parties, for whatever reasons had to be able lo continue to deal with one another, as was the case in tightly knit communities where disputes arose. . . . (Mann 1428–29)

The Aboriginal New World

The European colonists were not the first to practice structured negotiation and facilitated conflict resolution in the New World. Centuries before the colonial era, the Great Peacemaker, Deganawideh, founded the famed Iroquois League of Six Nations[22] in the aboriginal Americas, based on “The Great Law of Peace”:

> With the statesmen of the League of Five Nations, I plant the Tree of Great Peace. . . .
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> The first party is to listen only to the discussion of the second and third parties and if an error is made, or the proceeding irregular, they are to call attention to it and when the case is right and properly decided by the two parties they shall confirm the decision of the two parties and refer the case to the Seneca statesmen for their decision. When the Seneca statesmen have decided, in accord with the Mohawk statesmen, the case shall be referred to the Cayuga and the Oneida statesmen on the opposite side of the house. . . .

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[22] The Iroquois League was a confederation of five nations, the Mohawk, Oneida, Onondaga, Cayuga, and Seneca, until the late eighteenth century when the Tuscarora nation’s petition to be annexed was accepted.

> [W]hen the Mohawk and Seneca statesmen have unanimously agreed upon a question, they shall report their decision to the Cayuga and Oneida statesmen, who shall deliberate upon the question and report a unanimous decision to the Mohawk statesmen. The Mohawk statesmen will then report the . . . case to the Firekeepers, who shall render a decision as they see fit in case of a disagreement by the two bodies if they are identical. The Firekeepers shall report the decision to the Mohawk statesmen who shall announce it to the open Council. . . .
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> I [Deganawideh], and the United Chiefs now uproot the tallest tree . . . and into the hole thereby made we cast all weapons of war. Into the depths of the earth . . . flowing to unknown regions we cast all the weapons of strife. We bury them from sight and we plant again the tree. Thus shall the great Peace be established and hostilities shall no longer be known between the Five Nations, but peace to the United People. The Great Creator has made us of one blood, and of the same soil he made us, and as only different tongues constitute different nations, he established different hunting grounds and territories and made boundary lines between them.[23]

Classical Islam

One of the titles attributed to the seventh century prophet-founder of Islam, Muḥammad, was arbitrator (*hakam*). This stemmed from Muḥammad's arbitration (*ta<u>kh</u>im*) of conflicts in the early Muslim community. Examples of the use of arbitration and creative administrative efforts to design effective dispute resolution procedures can be found throughout Islamic history:

> Islamic law recognized the legality of arbitration as a peaceful means or settling disputes both in civil and public law. Prophet Muhammad was appointed by the tribal chiefs of Mecca to settle the dispute which arose between them. . . . This event occurred around the beginning of the seventh century A.D. . . . After the advent of Islam, the

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[23] "The Great Law of Peace of the Longhouse People," *White Roots of Peace*. If the reader will permit a digression, in the 1980s and early 1990s I visited Iroquois communities in western New York State with the United States Bahá'í National Committee on Women. I had the memorable experiences of witnessing Iroquois consultation in the famed "Longhouse" and visiting the grave of Handsome Lake, the great Iroquois spiritual leader of the early nineteenth century, who spoke to United States President Thomas Jefferson on spiritual matters and who had visions of a coming unity of all people. The Iroquois Great Law of Peace established a model of federal governance, the principle of gender equality in North America before European settlement, and influenced framers of the United States Constitution, including Benjamin Franklin, and founders of the Women's Movement, including Elizabeth Cady Stanton. Congress acknowledged this in concurrent resolution S.Con.Res.76, September 16, 1987 (the anniversary date of the United States Constitution), referring, inter alia, to "the contribution of the Iroquois Confederacy of Nations to the development of the United States Constitution" and noting Franklin's and George Washington's admiration of the Iroquois system. See Johansen, *Forgotten Founders*, concerning the Iroquois influence on the Constitution. An absorbing source on Handsome Lake is Wallace, *The Death and Rebirth of the Seneca*. Stanton and other figures of the Women's Movement such as Susan B. Anthony lived in the former Iroquois territory. It is hardly chance that the world's first women's rights conference occurred in 1848 in Seneca Falls, New York, on land named after and rich with Iroquois tradition of women's rights. Stanton often acknowledged her inspiration by the Iroquois. Another remarkable aspect of the Movement's origin was its occurrence the same year the Baha'i heroine Ṭáhirih publicly discarded her face veil in Persia, dramatically rejecting oppression of women. In 1989, memorializing this synchronism of history, the Bahá'í Committee on Women presented the Village of Seneca Falls an exquisitely beautiful tapestry portraying Ṭáhirih removing her veil while, on the other side of the planet, Stanton spoke at the Seneca Falls conference, on land with a history of equality of the sexes based on the Great Law of Peace. The tapestry, created by artist Vickie Hu Poirier, hangs today on the wall in the room where the town council sits.

Prophet resorted to arbitration in his dispute with the Jewish tribe of Quraiza. Another important historical example of arbitration was that to which the partisans of the Fourth Caliph . . . and those of [the] Governor of Syria, resorted. The agreement signed in the year 37 A.H. (A.D. 657), in which the Caliph appointed Aba Musa . . . and Mu'awiyah appointed 'Amr . . . as arbitrators empowered lo settle their dispute according lo the rules of the Koran and the Tradition. . . .

> Islamic law recognizes the validity of arbitration, whether between two Muslim parties or between Muslim and non-Muslim groups. Apart from arbitration, Islamic law recommends mediation, particularly between Muslim groups, as a preliminary peaceful step before resorting to war. The following Koranic verse is relevant in this connection:
>
> If two groups of the Believers fight with one another, then make peace between them. And if two of them oppress the other then fight against the oppressor until he yields, then make peace between them justly, and act equitably. God loves those who are equilable.[24]
>
> This verse . . . applies to rebels. But its international connotation is of capital importance, because it promotes cooperation for the cause of international justice, enjoins mediation and conciliation as a preventive measure, and finally imposes the use of sanctions in aid of the oppressed party against the aggressor. (Mahmassani 272–73)

Professor Reuben Levy of Cambridge University described the differences between a judge (*qadi*) and the newly created office of the court of "The Reviewer of Wrongs" in the Abbasid Era (ca. A.D. 750-910/132A.H.-A.D. 910/297 A.H.):

> The difference between the qadi and the reviewer of mazalim was that the latter had much wider powers. He could check unsupported denials on the part of litigants and restrain acts of violence on the part of wrongdoers . . . [and] take time to investigate evidence and consider all sides of a case-action not permitted to ordinary judges, who are compelled to settle cases out of hand; *he could refer litigants to persons of responsibility who would act as arbitrators*—a proceeding not open to the qadi, except by consent of both parties. . . . (Levy 349; emphasis added)

Ancient Rome

Rome had proceedings similar to pretrial and court-connected proceedings, most prominently early neutral evaluation, in the contemporary United States ADR movement:

> The surprising amount of discretion allowed to the magistrate is explained by the nature of his role within the organization of justice under the republican constitution.

[24] Arberry's 1955 translation of Qur'án 49:9 was: "If two parties of the believers right, put things right between them; then, if one of them is insolent against the other, fight the insolent one till it reverts to God's commandment. If it reverts, set things right between them equitably, and be just" (231). Rodwell's 1909 translation was: "If two bodies of the faithful are at war, then make ye peace between them: and if the one of them wrong the other, fight against that party which doth the wrong, until they come back to the precepts of God: if they come back. make peace between them with fairness, and act impartially; God loveth those who act with impartiality" (469).

> He was not a judge pronouncing final judgment, but an official who undertook a preliminary examination of the claims and defenses advanced on either side. The aim of this preliminary examination (proceedings *in iure*) was to determine whether such claims and defenses involved in any right or interest worthy of protection and therefore warranting trial. The trial itself (*iudecium*, or proceedings *apud iudicem*) was held by a private citizen, the *iudex privatus* (private judge), who rendered final judgment under the authority and instructions of the magistrate. (Wolf 72–73)

The Roots of the Contemporary Conflict Resolution Movement

Notwithstanding the history of attempts to devise sound peacemaking procedures, there are more immediate causes of the contemporary conflict resolution movement. First, a yearning has grown for personal empowerment in the United States.[25] The post-World War II "baby-boom" generation is likely the best educated and most affluent in history. It is a generation seeking more control over personal decisions, trusting expert opinions less and challenging them more, whether those opinions come from lawyers, physicians, professors, financial advisors, or military commanders.

The social change and turmoil associated with that same generation—the civil rights, 1960s counterculture, environmental, and other movements—have directly contributed to the conflict resolution movement. Especially noteworthy are the neighborhood legal centers started in the 1960s. The greater accessibility to legal services served as an incubator for the movement.

The most frequently cited causes of the movement by far are frustration with the cost, perceived bias, delay, and role of money in the courts. Added to this is disdain for lawyers. This reason requires further analysis.

A Crisis in the Courts?

It may be surprising to learn that similar complaints have been registered over the centuries, for example, by Voltaire in 1745.[26] Most criticism originates from the perception that moneyed classes in business and political quarters have vested interests in preventing lawsuits, narrowing grounds for civil liability, and quashing class actions.

By assailing lawsuits and lawyers without thoughtful analysis, one presupposes most litigation is unfounded, defendants and their allies innocent, and defense lawyers just. It is at least equally plausible lo believe that there is rampant social injustice and that defendants and their lawyers—most of whom represent insurance companies, corporations, governments agencies and employers—operate out of narrowly defined economic and political self-interest at the expense of consumers, taxpayers, the environment, laborers, and the average individual. In the U.S., and many other countries, this disunity is further aggravated because litigants who usually defend civil lawsuits are strongly associated with one political party, while those litigants associated with the filing of lawsuits are generally associated with a different political patty. What is likely going on here at the psychological level is that the typical person tends to identify with one side or the other, thus spawning a prejudice. But, often overlooked in analyzing controversial issues is the underlying and aggravating roles of the adversary system of law and public discourse, both

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[25] See the passage of the Universal House of Justice's statement on peace concerning personal empowerment discussed below.

[26] See Voltaire's letter of 1745 reprinted in Gout, "Trade Pacts, Regional Organizations and Dispute Resolution Systems Regarding the European Union" 42.

medieval legacies. By habitually pitting one side against the other, the adversary system and public debate process aggravate lesser disputes into greater ones, force parties to invest in winning at all costs, and treat all disputes in a one-size-fits-all fashion. In effect, our disunified view of society, which is at the core of the problem, has codified the disunity, causing further and often unnecessary or exaggerated conflict.

This is more than an obscure debate. Several leaders in the ADR field, including Laura Nader, professor at the University of California at Berkeley (an anthropologist who was an early figure in the movement), and her brother, consumer advocate Ralph Nader, have warned of clangers posed by ADR, whether inadvertent or intentional, in denying access to courts, thus limiting legal representation and precluding legal precedent.

Few would disagree, despite ample failures, that the courts have played a crucial role in United States history by protecting minority rights. Included in this formula are the civil rights, women's rights, and environmental movements. Would the United States be better, for example, if the decision of *Brown v. Board of Education of Topeka, et al.*,[27] desegregating public schools, had been settled by mediation between the parties, rather than becoming a landmark precedent?

While those cautioning against cutting off access to the courts have made a legitimate point, there is more at stake than an interminable debate between narrow political outlooks. If it is the adversarial system itself that is the problem, not simply the voraciousness of plaintiffs or the greed of defendants, then we must look far deeper than court dockets or lawyers to find root causes of social disunity.

Support for this analysis is found in a 1967 message of the Universal House of Justice, the supreme governing body of the Bahá'í Faith, concerning the relationship of Bahá'ís to politics. The House explained "the first step essential for the peace and progress of mankind was its unification." Unfortunately, "most people take the opposite point of view: they look upon unity as an ultimate, almost unattainable goal and concentrate first on remedying all the other ills of mankind." If humanity knew better, it would understand "these other ills are but various symptoms and side effects of the basic disease—disunity" (*Wellspring of Guidance* 131). Accordingly, it is the practice of deliberately pitting parties against one another, whether in litigation, the media, political life, or elsewhere, that is a source of disunifying attitudes in the first place.

The problem is aggravated when the only acceptable forum provided to disputants is litigation. This one-size-fits-all remedy itself aggravates disputes into more complicated, costlier, and slower affairs. It is this problem Sander identified in 1976 at a watershed event in the ADR movement. Addressing the American Bar Association National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (which has come to be known as the "Pound conference"), and in subsequent efforts, he advocated ADR and visualized a future "multi-door courthouse." The courthouse of the future should provide, he said, not just an arena for warring litigants, but arbitration, mediation, and other services to which disputes can be triaged, depending on the facts. Different options, symbolized by a court with many doors and expressed in the phrase "fit the forum to the fuss," would be available to disputants.[28]

Some people have difficulty reconciling an overarching principle of "justice" with process-centered conflict resolution. Such difficulty is rooted in equating justice solely with outcome. The process, that is, how justice is administered and achieved, is as important as the results. Fairness must be experienced, not simply decreed. Justice is not simply a fair result, it is also connected to

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[27] 347 US 483, 74 S.Ct.686, 98 L.Ed. 873 (1954). This was the topic of the annual Frank E.A. Sander Lecture at the annual convention of the American Bar Association in August 1999 in Atlanta in which the author participated.

[28] Sander, "Varieties of Dispute Processing" 65.

social order. For example, laws typically state that red traffic lights signify "stop" and green lights mean "go." There is nothing inherently heinous in driving past a red light. If the world had decided differently on the choice of colors, no vast social catastrophe would have resulted. It is the order or unity created by acceptance of the color scheme that matters. Justice emerges from order.

Similarly, in the countless disagreements of life, many disputes do not call into question grand universal principles. For example, a dispute between an insurer and a motorist over a damaged vehicle may have a range of outcomes acceptable to both disputants. There is no single just figure, and the process is as important to social order as the resolution.

The old common law rule in the criminal law acknowledged this point in distinguishing between *malum in se* and *malum prohibitum*.[29] Acts *malum in se*, such as murder, were recognized as universally contemptible, however variously defined and punished. In contrast, wrongs designated as criminal merely because society found them necessary to prohibit were *malum prohibitum*.

Conflict Resolution Worldwide

An extraordinary gathering in the history of the conflict resolution movement occurred in April 1998. Representatives of scores of nations gathered in Washington, DC, for the first American Bar Association Section of Dispute Resolution conference dedicated exclusively to conflict resolution worldwide.

In the 1980s, ADR conferences and articles were often sprinkled with phrases like "the wave of the future."[30]30 It was now apparent that ADR and, in particular, mediation, had truly become a movement of global proportions. A new level of zeal was also being infused into older programs like arbitration, with a swelling number of disciplines "getting into the action."

Consideration of legislation the world over confirms the movement's appeal and effect on existing programs, particularly in the 1990s. The survey in this article's appendix is an introductory review of selected programs from around the world, demonstrating ADR' s advance. It is not intended as a comprehensive analysis of every national ADR program, which, indeed, would be impossible in an article of this length. Commercial ADR is highlighted, since it has experienced the fastest growth. Nations uncertain about ADR in family or criminal law may still be eager to facilitate international commerce. Conciliation and mediation provisions are similarly stressed, since that is one of the most important areas where the North American mediation model and prevailing systems elsewhere in the world intersect and convergence seems probable.

Summary of Conflict Resolution Worldwide

The survey (appended to this article) of recent developments around the globe, as cursory as it must be in an article of this length, nevertheless demonstrates that conflict resolution has indeed become a worldwide phenomenon. The vast proliferation in the 1990s of legislation, funding, conferences, and academic attention concerning mediation worldwide, as well as the rejuvenation of arbitration programs and the efforts, sometimes strained, to portray conciliation as mediation, leads ineluctably to the conclusion that this is one of the most remarkable developments in contemporary legal history.

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[29] See, for example, *State v. Horton* 139 N.C. 588, 51 S.E. 945 (1905).

[30] See, for example, Schavrien, "ADR No Longer the Wave of the Future" 1008.

Could overcrowded court dockets alone have given rise to such a phenomenon? If so, why, given the long history of mediation and arbitration, did this movement not arise sooner? Why is there such an interest in personal transformation if the paramount goal is getting rid of cases? Perhaps the movement is more symptom than cause. Perhaps there is something greater astir. For consideration of this possibility, the reader is invited to consider some of the fundamental principles of the Bahá'í Faith.

Analysis of Conflict Resolution and the Bahá'í Teachings

Analysis of how the conflict resolution movement may be related to the Bahá'í Faith requires consideration of four great aspects of Bahá'í teachings: arbitration, consultation, an age of transition, and grassroots communication.

Arbitration

We begin with consideration of a few writings and utterances of the central figures of the Bahá'í Faith. Nearly a century ago, 'Abdu'l-Bahá, the duly authorized head of the Bahá'í Faith, directly referred to arbitration, noting that in the nineteenth century Bahá'u'lláh[31] "wrote Epistles to all the kings and rulers of nations, summoning them to arbitration and universal peace" ('Abdu'l-Bahá 27) and that in order to establish "peace and international agreement" it is "incumbent upon them to establish a board of international arbitration" (203). He specifically urged the establishment of "[a]n arbitral court of justice . . . by which international disputes are to be settled" (317).

Although in these and other passages and talks, 'Abdu'l-Bahá linked arbitration to international disputes, his endorsement of the process draws attention to its usefulness. Moreover, arbitration of private disputes was expressly endorsed by Shoghi Effendi (the Guardian of the Bahá'í Faith). He explained to the National Spiritual Assembly of the Bahá'ís of the United States (the elected national administrative body of the Bahá'í Faith in the United States) that a local spiritual assembly (the elected local Bahá'í governing administrative body) may function as a board of arbitration. The National Spiritual Assembly subsequently published this principle in 1956, noting "[t]he local Assembly, as the Guardian has stated, can act as a board of arbitration if the couple disagrees about the terms and conditions of divorce, and when it so acts the couple are to abide by its decision."[32] Thus, there is direct guidance in the teachings of the Bahá'í Faith

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[31] The prophet-founder of the Bahá'í Faith, 1817-1892. 'Abdu'l-Bahá (1844-1921) was Bahá'u'lláh's son. 'Abdu'l-Bahá's grandson, Shoghi Effendi (1897-1957) in turn became leader (called "Guardian") after 'Abdu'l-Bahá's death.

[32] The National Spiritual Assembly of the Bahá'ís of the United States, *Annual Report of 1955-1956*, 7. This arose when a divorcing couple living in the United Stales requested a spiritual assembly to serve as an arbitrator, rather than in its more familiar roles as protector and unifier, adjudicator, rule and policy maker, counselor, and guidance provider. The assembly declined, resulting in Shoghi Effendi's explanation that an assembly is free to arbitrate. Although Bahá'ís are encouraged lo bring disputes to an assembly and abide by its decision, an assembly in the United States does not assert jurisdiction over matters government has reserved for itself, such as divorce. See "By-Laws of a Local Spiritual Assembly," Article IV (an assembly "shall rigorously abstain from any action or influence, direct or indirect, that savors of intervention on the part of a Bahá'í body in matters of public politics and civil jurisdiction.") However, under certain circumstances courts accept mediated settlement agreements or arbitration awards if disputants voluntarily submitted the dispute and other legal obligations are met. This is really nothing more than the rule that private parties may select their own arbitrators and Bahá'í assemblies are as eligible as any other body. Thus, in many conflicts Bahá'ís may voluntarily agree to submit their dispute to either an assembly or others for arbitration or mediation. It should be noted that an assembly does not have jurisdiction over all matters, even within the Bahá'í administrative order. Moreover, even if it has jurisdiction it may decide not to rule. Further, unlike arbitration, its

endorsing the use of a major form of conflict resolution in public, international, and private affairs. It should also be noted that the term "mediation" has become widely used only in the past few decades. "Arbitration" has been widely used since the nineteenth century.

Consultation

A second consideration is one of the most fundamental laws of the Bahá'í Faith, the principle of spiritual consultation. Bahá'í consultation is "the bedrock" and "one of the basic laws" of Bahá'í administration applicable "to all Bahá'í activities" affecting "the collective interests of the Faith" (*Consultation* 14, 13). A thorough analysis of consultation is outside the scope of this article, which specifically concerns how the Bahá'í Faith might be connected to the conflict resolution movement. However, it is necessary to examine consultation briefly.

Bahá'u'lláh linked consultation to "heaven," "wisdom," and "compassion," lauding it as a "lamp of guidance" bestowing "understanding" (*Consultation* 1). In the process of consulting, Bahá'ís serving in administrative positions are admonished to regard the interests of others "even as they regard their own interests" (2).

Bahá'í consultation requires special "conditions" for successful group deliberation, such as "love and harmony," freedom from "estrangement," and manifesting "the Unity of God." A second condition is turning to "the Kingdom on High," a reference not only to God but also to a spiritual nature inherent in humans rendering them capable of reflecting divine qualities and asking "aid from the Realm of Glory," seeking divine assistance. Third, one must "proceed with the utmost devotion, courtesy, dignity, care and moderation" in expressing one's views. Truth must be sought, not blind insistence on personal opinion, and Bahá'í must refrain from belittling the opinion of others and should submit to majority will (*Consultation* 4). Certain inner qualities are necessary for those taking counsel together, including "purity of motive, radiance of spirit, detachment from all else save God, attraction to His Divine Fragrances, humility and lowliness amongst His loved ones, patience and long-suffering in difficulties and servitude to His exalted Threshold" (*Consultation* 3).

Consultation has a major role in resolving conflicts, in finding truth, and in future civilization. 'Abdu'l-Bahá tells us "[t]he question of consultation is of the utmost importance, and is one of the most potent instruments conducive to the tranquility and felicity of the people." Consultation is "of the utmost importance" and, if successful "will have its effect upon all the world" (*Consultation* 5). Bahá'u'lláh wrote that "[n]o welfare and no well-being can be attained except through consultation," and that, in human beings, the "maturity of the gift of understanding is made manifest through consultation" (1).

The Age of Transition

The third principle connected to the growth of conflict resolution was explained in 1967 by the Universal House of Justice when it described the process of human progress toward world unity:

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decision is subject to appeal to higher administrative authorities on open-ended grounds. See "By-Laws" Article X. An interesting instance of grassroots arbitration conducted by the Bábís, forerunners of the Bahá'í Faith, was noted in the last century: "In a land which has for years so savagely persecuted the Faith, a man who for forty years has been known throughout Persia as a Bábí, has been made the sole arbitrator in a case of dispute which involves, on the one hand, the Zillu's-Sulṭán, the tyrannical son of the Sháh and a sworn enemy of the Cause, and, on the other, Mírzá Fath-'Alí Khán, the Ṣaḥib-i-Díván. It has been publicly announced that whatsoever be the verdict of this Bábí, the same should be unreservedly accepted by both parties and should be unhesitatingly enforced" (Nabíl-i-Aẓ'am 155).

> We are told by Shoghi Effendi that two great processes are at work in the world: the great Plan of God, tumultuous in its progress, working through mankind as a whole, tearing down barriers to world unity and forging humankind into a unified body in the fires of suffering and experience. This process will produce, in God's due time, the Lesser Peace, the political unification of the world. Mankind at that time can be likened to a body that is unified but without life. The second process, the task of breathing life into this unified body—of creating true unity and spirituality culminating in the Most Great Peace—is that of the Bahá'ís, who are laboring consciously, with detailed instructions and continuing Divine guidance, to erect the fabric of the Kingdom of God on earth, into which they call their fellowmen, thus conferring upon them eternal life. (Universal House of Justice, *Wellspring of Guidance* 133–34)

The Grassroots and the World Stage

Fourth and finally, the Universal House of Justice expressly commented on the relationship between grassroots communication and world events, noting that "[a]mong the favorable signs [of a coming world peace] . . . are the spontaneous spawning of widening networks of ordinary people seeking understanding through personal communication" (Universal House of Justice, *The Promise of World Peace* 13–14). The growth of conflict resolution seems to be a prime example of this development.

Toward the Maturity of Humankind

How does all this relate to the conflict resolution movement? To begin with, we note the parallelism between the growth of conflict resolution and the fundamental Bahá'í principles of arbitration, consultation, and unity being preferred over the existing adversarial systems. There is a manifest convergence of the world's legal systems and the Baha' f principles enunciated a century ago.

How is this being accomplished? The Universal House of Justice explained in 1992 that the "powers released by Bahá'u'lláh match the needs of the times" (*A Wider Horizon* 138). This is the fuel behind the remarkable convergence. The teachings of the Faith of Baha'u'llah, spreading through the world's population and embodying powerful new concepts and remedies directly relevant to the ills of contemporary social life, are steadily reshaping and reformulating social institutions. The conflict resolution movement, then, arising parallel with Bahá'í consultation, is the early dawn of the principle of consultation among the masses, working its way through humanity and transforming outdated systems designed to cope with conflict in a more brutish age. As civilization progresses toward maturity, notwithstanding enormous setbacks, humans must become skilled in resolving and, ultimately, transforming conflict into unity, calling to mind the words of the Universal House of Justice in 1992:

> The burgeoning influence of Bahá'u'lláh's Revelation seemed . . . to have assumed the character of an onrushing wind blowing through the archaic structures of the old order, felling mighty pillars and clearing the ground for new conceptions of social organization. The call for unity, for a new world order, is audible from many directions. The change in world society is characterized by a phenomenal speed. A feature of this change is a suddenness, or precipitateness, which appears to be the consequence of some mysterious, rampant force. The positive aspects of this change reveal an

> unaccustomed openness to global concepts, movement towards international and regional collaboration, an inclination of warring parties to opt for peaceful solutions, a search for spiritual values. Even the [Bahá'í community] is experiencing the rigorous effects of this quickening wind as it ventilates the modes of thought of us all, renewing, clarifying and amplifying our perspectives as to the purpose of the Order of Bahá'u'lláh in the wake of humanity's suffering and turmoil. (*Wider Horizon* 137)

Conclusion

Social movements often rise and fall. Although conflict resolution has spread quickly, so have other movements. What distinguishes conflict resolution is not its rapid rise and global interest, not even, as uncommon as it is, its swift enactment into written law around the world. What distinguishes conflict resolution is its parallel with the rise of Bahá'í principles, set forth more than a century ago by Bahá'u'lláh for the healing of nations and unification of humankind. If Bahá'í principles truly are the source of the movement, once the masses become involved in their own struggle for mature resolution of conflict, understanding the potential for transformation, which is just another way of expressing spiritual growth and unity, there may be no turning back. Conflict resolution's continued growth seemed assured when, in 1997, on the occasion of the first graduation ceremonies for students at Landegg Academy, an international Swiss-based university inspired by Bahá'í teachings, the Universal House of Justice directed its Department of the Secretariat to comment on conflict resolution:

> The Universal House of Justice . . . [expresses] its pleasure in learning of the forthcoming launching of your new Master's Degree program. Such an initiative holds the promise of contributing significantly to the Bahá'í community's efforts to promote an ever deeper understanding of the complementarity and inseparability of the spiritual and material dimensions of reality. The House of Justice is encouraged too, by the program's intention of focussing on [the] study [of] moral development and conflict resolution, which must rank high on humanity's agenda in the decades immediately ahead. (Letter written on behalf of the Universal House of Justice to Landegg Academy, 5 September 1997)

APPENDIX

A Survey of Recent Conflict Resolution Legislation Worldwide

Apart from the undeniable enthusiasm of its supporters, one of the more far-reaching effects of the conflict resolution movement has been its propensity to become written law in so many disparate lands. Whether within countries with common law, civil (Napoleonic), religious, or tribal traditions, alternative dispute resolution (ADR), particularly mediation, seems to evoke a response of friendly recognition. Indeed, with the possible exception of the rapid adoption of Western-style commercial codes by Mideastern and Asian countries in the early twentieth century, the stunning promulgation of ADR provisions in the world's legal systems may have no parallel in legal history.

The following survey is intended to demonstrate the remarkable breadth of the new ADR legislation, particularly impressive in Latin America and eastern Asia. In Europe to date, ADR has had the effect more of rejuvenating existing arbitration practice and legislation. However, since

the mid-1990s, there is increasing evidence that mediation and court-connected ADR may soon sweep across Europe as it has already in North and South America.

Europe Generally

Despite recent signs of change, Europe just began seriously talking about ADR in the 1990s. This late interest may be clue to less-crowded dockets and greater satisfaction with lawyers than in North America, or the extensive use of arbitration in Europe. In 1998, Professor Karl Mackie of the Centre for European Dispute Resolution noted recent growth of ADR in Europe and the United Kingdom:

> The last five years have seen a remarkable transformation in attitudes in the UK to mediation use, a transformation that is steadily working its way into practice and into legal procedures. I believe we will see similar developments across mainland Europe over the next five years, indeed we are already watching the birth of these developments. . . .
>
> In continental Europe, there was the launch of a Netherlands Mediation Institute in 1993, and mini-trial rules have also been promulgated by the Netherlands Arbitration Institute and Zurich Chamber of Commerce. The International Chamber of Commerce of course has had long-standing Conciliation rules and has made recent efforts to streamline its dispute procedures. The ICC Research Institute and the French Committee of the ICC have in the meantime been helping to ensure that debate takes place on the nature of ADR and commercial mediation practice. Finally, there have also been changes to civil courts in France and Greece in 1995 encouraging court-annexed mediation although I believe limited practical experience to date. ("The Use of Commercial Mediation in Europe" 234)

Mackie pointed out another reason often given for Europe's belated interest in ADR: resistance from European professionals. European professionals often claim the practice of conciliation in arbitration cases is essentially North American mediation. To this claim, Mackie responds:

> In my experience the statement "we do it anyway" usually rests on some lack of knowledge or experience of how a structured mediation adds value to current negotiation or judicial settlement efforts. However it is true that already much informal conciliation occurs in the civil law countries particularly. However, this is generally not as structured or institutionalized as in recent common law developments. (Non-commercial mediation in family, community and labour disputes is often more structured.) (235–36)

Mackie is right. Conciliation is a feeble substitute for mediation. Insistence they are the same only highlights a profound misunderstanding, not unlike the debate between mediators and the dwindling numbers of North American lawyers and scholars unfamiliar with mediation.

Conciliation is little more than an arbitrator determining if the parties will settle. It is more formal by requiring positions (an anathema to mediators) and adhering to rules, and it is less formal (again, completely out-of-step with North American mediation) by requiring no skills training for the management of conflict. Europeans have little or no training in mediation, and there is no sense of a distinct discipline, with professional associations, stand-alone or court-annexed programs,

training standards, ethical schemes, conferences, texts, journals, and advanced degrees distinct to the field. There is no profession of "conciliator," just arbitrators occasionally assisting litigants to settle.

Conciliation in Europe resembles a North American judicial settlement conference. The settlement judge does not hesitate to render an opinion, often brutally assessing perceived weaknesses in the strength of the case presented by each litigant. The concept of transformation seems as misplaced as therapy in the courtroom.

Of course, Americans are in no position to gloat. The collapse of confidence in the judicial system, frustration with overcrowded dockets, a disrespected legal profession, and litigiousness-all causes for the inception and growth of the American ADR movement-are hardly a source of national pride. It is rather more like a disease. The site where the disease hits first is likely to be the site of research on vaccines.

Another factor is Europe's tradition of arbitration. European lawmakers, jurists, and lawyers struggle with the concepts of process specialist, facilitated decision-making, and an absence of third-party decision makers. Despite a long history of negotiation, arbitration has dominated the twentieth-century European ADR landscape. More recently, Europe has embraced the ombudsman, who assists parties to reach agreement, but who freely expresses opinions and sometimes renders decisions. As a result, professionals from Europe and regions with systems based upon the European systems see less value in neutrality and transformation. The notion of a nonprofit community mediation center existing without being a court-annexed tool for "out-of-court settlements" is quite unfamiliar to Europeans and most others outside the United States.

Traditionally, arbitration is well accepted in commercial and, more recently, in consumer disputes, particularly in European Union (EU) countries. Not surprisingly, it in is those areas that European ADR initiatives are arising. Michel Gout, president of the European Council of Bars and Law Societies of the European Community points to a November 1993, "Green Paper," a comparative study of EU nations on the access of consumers to justice and the settlement of consumer disputes:

> [I]n most of the Member States, out-of-court procedures are in a large majority specifically devoted to consumer disputes. These procedures are sometimes an alternative to going to court (arbitration of consumer disputes) but more often they are complementary or pre-litigation procedures (mediation and/or conciliation). . . . [M]ost Member States have adopted a sector-related approach. Normally, initiatives are taken in a specific economic sector (bank, insurance, telecommunications, etc.). Sometimes it is the public administration (for instance in the United Kingdom) that sets up the structure, sometimes they are established unilaterally, and sometimes after "negotiation" with consumer organisations.
>
> In some Member States, the body responsible for dealing with such alternative dispute resolution is a public entity (for instance, the Consumer Complaints Board in Denmark), but in most countries it is a private body (permanent or temporary, consisting in one or several members). The method used for the body's designation also varies from state to state, in the case of collegial bodies, consumer and professional organisations are normally represented, as well as the legal status or professional associations' membership. . . .
>
> Regarding the legal effects or such out-of-court procedures, there are also significant differences, ranging from a simple recommendation (in the case or most

> private ombudsmen), to a decision binding upon the professional party but not upon the consumer (see for instance the bank ombudsman in most of the Member States) to an arbitrator's decision binding upon both parties. (Gout 24)

The European Commission's second report, issued in 1996, supported out-of-court settlement and conciliation procedures for consumer disputes. It found a need for "transparency" of procedures, independent bodies dealing with the disputes, impartiality, effectiveness, accessible language, respect for rules of the consumer's country, and strict applicability of contractual terms. Despite increased awareness of mediation, the report still found there should be a decision binding on "professionals" but not on consumers.

Austria

Austria is well known for commercial arbitration legislation dating back to its 1895 Code of Civil Procedure. More recently:

> [T]he chamber of commerce in Austria have provided for arbitration which was at first instance primarily designed for settlement of disputes between members. In the early '70s Austria became increasingly used as a neutral venue for international commercial disputes. As a result, in 1975 the Federal Economic Chamber of Commerce of Austria set up an Arbitral Centre for the settlement of disputes of an economic nature if at least one of the parties has its place of business outside of Austria. This initiative has been well received by international business circles.
>
> In 1980 a group of specialists in international arbitration from the United States, Hungary and Austria . . . studied the Austrian law and practice of arbitration in order to investigate whether they were workable for international arbitration. As a result of this work the Federal Economic Chamber made a series of proposals for amendment of provisions in the Code of Civil Procedure which have to the largest possible extent been taken into consideration in the Federal Law of February 2, 1983 concerning Provisions on Civil Procedures, in force since May 2, 1983. (Melis 2)

The Austrian arbitration rules of conciliation are similar to many other European arbitration rules of conciliation. Either party may request conciliation. Once a disputant requests conciliation, the other disputant has thirty days to respond. If the latter rejects conciliation or fails to respond in a timely fashion, the conciliation ends. If the responding disputant accepts the request, the arbitration board nominates one of its members or another "qualified person" to serve as conciliator. The conciliator studies the record and convenes a hearing where disputants submit settlement proposals (*Rules of Arbitration* Articles 1–5). If resolution is reached, the disputants sign an agreement. If no agreement is reached, the conciliation is considered to have failed. In a provision reflecting heightened understanding of mediation, statements made during the conciliation "shall not bind" disputants in subsequent arbitrations (*Rules of Arbitration* Article 5). The usefulness of this scheme is questionable, however, since disputants must initiate proceedings. This inhibits disputants from negotiation for fear of appearing weak or being on shaky legal grounds. Systems permitting third-party neutrals to initiate settlement talks avoid this problem altogether.

Belgium
As of the 1993 European Union Green Paper, Belgium had an arbitration procedure established by consumer organizations and professional bodies in the three commercial market sectors of travel agencies, laundries, and furniture sales. The arbitrator's decision is binding on all parties, and a consumer electing to go to arbitration must pay a sum based on the value of the dispute.

In banking and finance, several professional organizations have established nonbinding ombudsman procedures. Public services such as mail, telephone, and railway have ombudsman services through the Act of March 21, 1991. The Royal Decree of December 12, 1991, created appeals to an arbitration procedure.

On August 17, 1998, a new law came into effect reviving a form of arbitration known as *amiable compositeur*. Under this law, contracting parties may agree that in the event of a dispute arising out of their contract, the arbitrator may rule on fairness, not just written laws. Although not mediation, the new law may permit arbitrators more flexibility in working toward settlement.

Denmark
Denmark has a public Consumer Complaints Board for arbitrating consumer disputes. Board decisions are not legally binding, but the business community generally abides by its decisions. In November 1997, a Board committee recommended reforms eliminating lawyers in small claims cases.

France
According to Gout, France has only very recently "seen the development of an alternative system of dispute resolution" (38). He speculates that interest in ADR in France stems from a combination of factors, including the "Anglo-Saxon influence," the delay and high cost of courts, the unsuitability of the courts for settling small claims, and the fact that legislatures do not want to increase the number of judges.

It appears France, which has a very sophisticated legal system, now also has one of Europe's most comprehensive, legislative ADR and local mediation schemes. In the courts, there are two mediation provisions (Gout 40). The *Code du Procedure de Penale*, Article 41, enacted January 1993, provides for some limited mediation in criminal cases. In civil cases, France has a new procedure that is perhaps Europe's closest example of court-annexed ADR:

> The provisions of Articles 131–1 et sequitur in the *Code du Procedure Civil* [Code on Civil Procedure] have more to offer on this subject. Once court proceedings have been started, either before the Tribunal or a Court of Appeal, the judge handling a case can decide to send it for mediation. The parties must agree to this. The judge will fix a time limit for the mediator and will also predetermine his fees. The mediator will listen to both parties and third parties. It is the parties themselves who, under the guidance of the mediator, will find a compromise, which the mediator will send to the judge for endorsement. If the parties do not arrive at a solution, the mediator will inform the judge and the court process will continue as before. This original institution is in favor with the judicial establishment and just recently the Paris bar has made its own contribution. There is no doubt that this process is likely to have a great future. It combines all the advantages of mediation with the security of being overseen by a judge within the court system. (Gout 40)

In consumer disputes, a French official "facilitate[s], to the exclusion of any legal procedure, an amicable settlement of rights the interested parties" (Gout 38). Conciliators are based in every canton and, like North American mediators, emphasize informality (Decree of 20/02/1978, Article 1).

Since 1977, there has been a post office box for consumer complaints against business in France, "Boîte Postale 5000." A government agency follows up with a conciliation investigation. Similar to the format noted in other European systems, there are also conciliation committees composed of consumer and professional representatives.

Another consumer procedure is the "Overindebtedness Committee." These committees assist debtors and creditors reach amicable resolutions. The committees are composed of government and consumer representatives. Support services are provided by the Bank of France. The committees assess the degree of indebtedness, then facilitate and draft settlement agreements (*Code de Consommation*, Act of 31/12/1989, Article L 331–1). Also in commercial matters, the Paris Chamber of Commerce and Industry sponsors a mediation and arbitration center, *Centre de Mediation et d'Arbitrage de Paris*, available to its more than 250,000 members.

In labor-management affairs, the *Code du Travail*, Article L 524–1, permits the president of a Labor Law Tribunal hearing a collective bargaining dispute to select a mediator. French labor mediators have investigatory powers and may draft proposed resolutions, which, if disregarded, may be made public by the Minister of Labor. Although this is dissimilar to North American community mediation, United States labor-management mediators are also granted extensive powers (Gout 38). This is largely due to national security concerns historically associated in both nations with labor-management legislation.

Germany

Germany's Chamber of Trade and Industry processes 10,000 complaints annually. It is estimated that ninety percent of these complaints are settled amicably. The Federal Association of German Banks established an ombudsman procedure in 1992. Consumer complaints not settled within one month's time are referred to an ombudsman. Decisions on disputes concerning amounts under 10,000 Deutsche Marks are binding on the banks, but not on the consumer (Gout 27).

Greece

In addition to the 1995 court-connected mediation act mentioned by Mackie, a Greek Government Act of September, 1991, created local three-member conciliation committees composed of consumer, legal, and business representatives. The committee renders a nonbinding opinion that must be considered by any reviewing tribunal (Gout 28).

Hungary

Because of its anticipated application to domestic cases, the passage of a new arbitration act may mark the beginning of a Hungarian ADR movement. Act No. 71 became effective on December 13, 1994. Commercial arbitration "has a long tradition in Hungary [and its] legal basis was laid clown for the first time in Act No. 1 of 1911 on Civil Procedure. This 1911 Civil Procedure Code . . . Chapter 17, contained twenty-two articles (Articles 767 and 788) on arbitration" (Horvath 160). The new Hungarian act provides for conciliation rules similar to those in other European arbitration codes. However, it appears to limit conciliation to instances where "arbitral proceedings have not yet been instituted." Paradoxically, the arbitral court is authorized under the act to "conduct proceedings in respect of those cases which would belong to its jurisdiction even if the

parties have not concluded an arbitration agreement" ("Rules of Proceedings of the Court of Arbitration Attached to the Hungarian Chamber of Commerce and Industry,'' Article 45[1]); hereafter "Hungarian Rules."

Also similar to other European codes, the conciliation rules are based on the idea that one of the disputants will initiate conciliation with the arbitration court. The court forwards the request to the opposing disputant who has thirty days to respond. The opposing disputant may decline participation, fail to pay its share of a conciliation fee, or simply not respond within thirty days. In such cases, the conciliation ends ("Hungarian Rules," Article 45[2]).

If the disputants agree to conciliation, the president of the arbitration court appoints a conciliator from the list of available arbitrators. The conciliator considers the record, invites the disputants to present oral arguments, and then proposes a "peaceful settlement of the dispute." If the disputants are able to negotiate a settlement agreement, the resolution is recorded in the minutes. If no agreement is achieved, the proceedings are terminated. Statements made in the course of conciliation proceedings are "not binding" on the disputants and inadmissible in subsequent arbitration proceedings. The conciliator is disqualified from later serving as an arbitrator, representative, or advisor in an arbitration proceeding in the same case. This affords considerably more security and incentive to the disputants to submit settlement offers ("Hungarian Rules," Article 45[3]–[5]).

Ireland

Insurance and credit claims smaller than designated amounts are eligible for ombudsman assistance. Similar to other European Union nations and Better Business Bureau organizations in the United States, membership in Irish business arbitration is voluntary. Decisions of the ombudsman are binding on the businesses using the system, but not on the consumer who may seek relief in the courts (Gout 29).

Italy

Arbitration schemes exist for banking, telecommunication, and government-citizen disputes. The telecommunication scheme was created in 1989 as a pilot project in Sicily and Lombardy. The consumer must first exhaust the telecommunication company's complaint procedure. Consumers may refer disputes to regional conciliation committees, composed of one company and one consumer representative. This structure violates the "impartiality" aspect of the North American mediation model and resembles labor-management factfinding systems in the United States and Canada (Gout 29–30). The committee is authorized to file a statement of conciliation or nonconciliation. After this stage, the system reverts to the familiar European consumer arbitration model. If there is no conciliation, the consumer may take the dispute to an arbitrator who has jurisdiction up to a specified amount of damages claimed (30).

The Italian Banking Association has created an ombudsman body available to consumers for disputes below a specified amount. Decisions are binding on banks, but not on consumers. Similar systems exist for advertisement (*Codice autodisciplina pubblicitaria*) and citizen-government (*Difensore Civico*) disputes, except for the decision of the ombudsman, the *Difensore Civico*, is not binding on the government (Gout 30).

Luxembourg

The noteworthy ADR procedures in Luxembourg concern banking and finance. An Act of April 5, 1993, permits the Luxembourg Monetary Institute, which regulates banks, to help banks and

consumers settle disputes. The regulatory agency may not be in a position to be seen as a true third-party neutral according to the North American mediation model (Gout 30–31).

The Netherlands

In addition to the 1993 Netherlands Mediation Institute noted by Mackie, the Netherlands have instituted the Vernsneld Regime, a system to speed up court actions, similar to summary jury trials in the United States. It applies only to civil cases (Gout 31).

Nonbinding ombudsman decisions are available in the life insurance and banking industries. Binding arbitration is available to parties who elect to submit a dispute to a body known as the *Geschillencommissie*. This body is composed of one representative each from the consumer, business, and "impartial" sectors. The consumer is first required to exhaust the company's complaint procedures before submitting the dispute to the *Geschillencommissie*. The legal, medical, notary, and real-estate professions have established disciplinary boards authorized to issue binding decisions in disputes involving clients, patients, and customers (Gout 30).

Portugal

The Portuguese have established a number of voluntary community arbitration bodies to hear consumer cases. Several large companies, such as the Portuguese Post and Telecommunication Company, have created ombudsman offices to handle consumer complaints. The Lisbon municipal government, the National Institute for Consumer Protection, and the Portuguese Consumer Protection Association established an experimental community arbitration center in 1990. The board first attempts conciliation. If successful, a lawyer drafts an agreement. If not, the matter is submitted to an arbitrator for an award that has the legal effect of a court judgment (32).

The Russian Federation

Russian law creates an international commercial arbitration tribunal, recognizing

> the usefulness of arbitration tribunal (court of arbitration) as a widely used way of settling disputes arising in the practice of international trade, and for the necessity for comprehensive definition of an international commercial arbitration tribunal in the legislative norms; takes into account statutes of such an arbitration tribunal contained in international treaties of the Russian Federation as well as in the basic law passed in 1985 by the United Nations Commission on rights in international trade and approved by the UN General Assembly for possible use by states in their own legislation. (Preamble, "Law of the Russian Federation")

Conciliation is provided for in Russian law in much the same fashion as in other European arbitration codes:

> 1. If in the course of the arbitration proceedings the parties settle their dispute, the court of arbitration ceases proceedings and by request of the parties and in the absence of its own objections formalizes this settlement as an arbitration decision on the agreed conditions.
> 2. The arbitration decision on the agreed conditions must be taken in accordance with the terms of Article 31 and must contain a mention of it being an arbitration decision. Such an arbitration decision has the same validity and is subject to

> implementation in the same way as any other arbitration decision on the essence of the dispute. (Preamble, "Law of the Russian Federation" Section 6, Clause 30).

Spain

Article 51 of the Spanish Constitution requires the government to protect the safety, health, and economic interests of consumers. Act 26 of 1984 created consumer arbitration. Subsequent measures provide for arbitration by local prelitigation bodies. The parties are free to write conciliation or mediation into their agreement, and the arbitration committees (*Colegios Arbitrales*) issue binding decisions. Businesses agreeing to this process attach official stickers to their products for consumers to identify them. Similar to the German system, Spanish banks refer any consumer dispute to arbitration if it is two months old and has not reached settlement (Gout, "Trade Pacts" 28).

Switzerland

Swiss domestic law has elements of court-connected ADR built into the procedures:

> In most cantons, there are several courts of first instance and one court of second instance hearing appeals and recourse on points of law and, depending on the canton, on facts as well. In four cantons, commercial courts act as the sole cantonal instance in commercial litigations. In many cantons, the submission of a case to either the court of first instance or to the commercial court has to be preceding [*sic*] by a formal procedure, mainly for conciliatory purposes in front of a Justice of the Peace. (Wyss, "International Commercial Litigation in Switzerland" 144)

On January 1, 1989, the new Swiss Private International Law came into effect. It applies to international arbitration cases that involve at least one disputant who is not a Swiss resident at the time of the arbitration agreement, and provided a Swiss location for the arbitration is selected. Disputants are given wide latitude under the act to write their own arbitration rules. In the absence of contractual provisions, the act employs canton codes, ICC, UNCITRAL, or other rules.

The United Kingdom

The Consumer Arbitration Agreement Act of 1988 permits consumers, instead of the courts, to elect arbitration, without completely forfeiting access to court. The closing off of access to the courts is one reason why arbitration fails to bold the same attraction in the United States as it does in Europe. The United States constitutional system and statutory tendency to analyze disputes from a standpoint of individual rights, of which the judiciary is the historical protector, particularly against government intrusion, makes arbitration appear to be a dangerous gamble or a way for cunning opponents to cut off access to the courts. The British Office of Fair Trading also authorizes trade associations to develop arbitration procedures for member businesses.

Latin America

One writer recently described ADR in Latin America as "mushrooming with force," and now a "powerful and stabilized trend," tied to a "crisis" in "legal systems, with overloaded courts and dissatisfaction with judges, lawyers and lawmakers":

> In the last two years, in Argentina, centers for conflict [r]esolution and teaching mediation mushroomed, while Brazil—after the Arbitration law was passed by Congress—is showing a similar boom. Ecuador, Peru, Chile, Uruguay, Bolivia and Paraguay are showing slower but steady growth. (Ponieman 79)

In recent years, I enjoyed several visits to Latin America and trained Venezuelan Justices of the Peace (*Jueces de Paz*) in mediation. Venezuela has new legislation mandating the provision of mediation services throughout the nation by justices of the peace who serve specific geographical districts. Community disputes, not necessarily in litigation, may be referred to a justice. The justice first tries conciliation. Failing that, the justice is empowered by law to render a decision.

In North America, this procedure, known as *Med-Arb*, is generally seen as bordering on unethical because it conflicts with the principles of mediator confidentiality and neutrality. If the mediator may at some point become a decision maker, this inhibits the disputant from talking for fear the information may be used against the disputant by the ex-mediator, now arbitrator. Moreover, the transformation goal that mediation holds for many is lost when the mediator becomes the decision-making authority. Nevertheless, the system is probably an improvement over inaccessible litigation, particularly where a society lacks sufficient resources to train and maintain mediators and decision makers.

Several major ADR conferences have been held in Argentina, Bolivia, and Costa Rica in recent years. Latin America, as elsewhere in the world, has experienced both confusion and a steadily growing understanding:

> In all Latin American countries the ADR movement and specially mediation is growing at the full-fledged level now. (Alvarez 304)

> [R]esearch carried out in Latin America as well as in the USA, shows that there is not one unique expression to distinguish different procedures, techniques and institutes included under the name. of ADR. [T]heir [*sic*] is a certain interest in making this diversity of concepts technically clear. . . .
>
> This is exactly what is happening with the terms mediation and conciliation, which in some countries are being used as equivalents; and in other [*sic*] denote similar though not identical procedures (e.g., the conciliator is able to propose a conciliatory formula, the mediator is not allow[ed] . . . to do so). Professor Pena Gonzalez explains that some Latin American countries have followed the Colombian school, more pragmatic than theoretical naming both two [*sic*] procedures as mediation. On the contrary, Argentina has opted for Mediation to name mediation and Conciliation to name conciliation, following a clear conceptualization of judicial ideas. (Alvarez 299)

Argentina

In 1991, Argentina developed a National Mediation Plan resulting in the National Mediation and Conciliation Statute N 24.573, which came into effect in Buenos Aires, April 23, 1996. The law establishes Argentina in the forefront of Latin American ADR programs with a five-year program that compels mediation before any lawsuit is filed. Eligible mediators must be listed on the Ministry of Justice's list. To be eligible for the list, a mediator must be a lawyer with at least two. years' experience and have seventy-eight combined hours of course work and training. Confidentiality is preserved, and any applicable statute of limitations is tolled (suspended) during

the mediation proceeding. The compulsion is real; in a move certain to evoke horror among North American mediators, there is a fine for failure to participate (Alvarez 299–300).

The program has generated impressive figures. As of March 1997, 75,010 cases were selected for mediation from the Civil Court of Appeals, with only 23 per cent returned to trial. From the Commercial Comt of Appeals, 29,986 (or about 30 per cent) were returned to trial and similar success achieved in the Federal Civil Courts. Another important development is Argentina's plan for community mediation centers. Buenos Aires's constitution expressly endorses community mediation. In 1993, Buenos Aires's neighborhood legal centers
began offering community mediation (Alvarez 299–301).

Bolivia

Bolivia enacted arbitration and conciliation legislation (Act No. 1770) in March 1997. The Ministry of Justice administers "Institutional Conciliation Centers" pursuant to the act. The chambers of commerce in La Paz, Santa Cruz, and Cochabamba have also created arbitration and conciliation programs for businesses (Alvarez 303).

Brazil

Brazil enacted a new Arbitration Statute No. 9307, September 23, 1997. The Act governs arbitration in Brazil but has increased interest in ADR generally. In November 1997, the *Corte Brasileira de Arbitagem Comercial* (commercial arbitration court) was established in Brasilia. There are a number of other commercial arbitration programs offered in Brazil's larger cities (Alvarez 303).

Chile

Chile's Ministry of Justice has established community mediation centers in recent years. The Santiago Chamber of Commerce has a mediation, arbitration, and conciliation program (Alvarez 303).

Colombia

Colombia has established a remarkable 140 conciliation and arbitration centers. Some are annexed to law schools; others are connected to chambers of commerce; and still others are with nongovernmental organizations. Act No. 23 of 1991 was the enabling legislation of these centers (Alvarez 303).

Costa Rica

Costa Rica enacted the "ADR and Social Peace Promotion Act," No. 7727, in November 1997. Unlike most other world programs, Costa Rica is experimenting with the use of ADR in criminal cases. A three-year family mediation project ended in San Jose in 1997, sponsored by the United States Agency for International Development (Alvarez 303–04). Any published studies of this project were not available to this author.

Ecuador

Ecuador's Constitution of 1996 formally recognized ADR. Mediation is closely connected to arbitration procedures in Ecuador. In a noteworthy example of mediation's power to mobilize the grassroots, fifty mediators from forty different communities have been trained to offer community mediation services. One important development involved Ecuador and Peru. Both nations agreed

to submit South America's oldest extant running border dispute to arbitrations from several other nations (Schemo).

Guatemala and Peru
Guatemala and Peru enacted conciliation legislation in October 1997, and a number of arbitration, mediation, and conciliation centers have since been established in both countries (Alvarez 304).

A Word on NAFTA

An important development in the Americas advancing ADR is the North American Free Trade Agreement (NAFTA) involving Canada, the United States, and Mexico, signed on December 17, 1992. The U.S. Congressional Act implementing the treaty as part of U.S. law is P.L. 103-182, 107 Stat. 100, 33 U.S. Sections 100 et. seq. The treaty can also be found in its entirety with annotated commentary, supplementary materials and case decisions rendered under the treaty's Dispute Settlement chapter in a three volume set, *North American Free Trade Agreements*. Chapters 19 and 20 of the NAFTA Treaty provide for the creation of binational dispute resolution panels hearing arguments and rendering decisions on disputes arising under the Treaty. According to the statistics of the Mexican Trade Secretary (*Sección Mexicana del Secretariado de los Tratados de Libre Comercio*), as of November 1997, there were thirty-five cases alleging that decisions of agencies of the signatory nations had violated the Treaty.

Article 2022 of NAFTA establishes an Advisory Committee on Private Commercial Disputes to promote ADR and arbitration for private disputes arising under NAFTA. The committee is made up of public and private representatives from the three NAFTA nations. Another development is the Commercial Arbitration and Mediation Center for the Americas, jointly established by the American Arbitration Association, the British Columbia International Commercial Arbitration Center, the Mexico City National Chamber of Commerce, and the Quebec National and International Commercial Arbitration Center. Its goals are to handle disputes arising under NAFTA.

The Caribbean

Trinidad and Tobago
The Caribbean nations of Trinidad and Tobago use both arbitration and mediation:

> Commercial disputes in Trinidad and Tobago are usually resolved by negotiation or by the judges of the Supreme Court. Parties, however, also have the option to refer their dispute to arbitration or to use other forms of dispute resolution, such as mediation, which are becoming more widely accepted. (Hamel-Smith 148)

The Mideast and North Africa

At least some writers conclude the conflict resolution movement is beginning to take hold in the Mideast:

> The Middle East comprises different systems of dispute resolution in civil and commercial matters. Some systems are witnessing a radical change and development

> in the techniques and rules of dispute resolution, and some others are still at the bottom line with a suspicious look to arbitration and other ADR techniques. (Aboul-Enein 133).

Egypt

Egypt first joined the New York Convention in 1959, just a year after the Convention's promulgation. Subsequently, Egypt founded the Cairo Regional Centre for International Commercial Arbitration.

A year later, an international arbitration agreement governing multinational commercial transactions was signed. The agreement, known as the Asian African Legal Consultative Committee (AALCC), included Bangladesh, China, Cyprus, Gambia, Ghana, India, Indonesia, Iran, Iraq, Japan, Jordan, Kenya, Kuwait, Libya, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Palestine, Pakistan, Qatar, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, South Korea, Sri Lanka, Sudan, Syria, Tanzania, Thailand, Turkey, Uganda, the United Arab Emirates, and Yemen, with Botswana as an associate member (Aboul-Enein 134).

In 1978, the AALCC decided to establish arbitration centers in member states. The Cairo Centre was selected as one of the sites. The UNCITRAL Rules are used by Egypt in administering AALCC cases. A new Egyptian Law for International Commercial Arbitration, Act No. 27 of 1994, was enacted, similar to the UNCITRAL model law, applying to private and public contracts (Aboul-Enein 134–35).

Abu-Dhabi, Bahrain, Dubai, Egypt, Lebanon, Kuwait, Saudi Arabia, and Yemen, as well as Morocco and Tunisia in North Africa, have established arbitration centers. Bahrain also has a "Centre for the Gulf States" established by the High Council of the Arab States of the Gulf in 1993, designed to bear arbitration disputes between Gulf states and between Gulf and non-Gulf slates. Its other arbitration program was created by Decree No. 9, 1993, and is modeled on the UNCITRAL rules (Aboul-Enein 142–44).

Dubai's Chamber of Commerce and Industry created its current arbitration program in 1994. It provides both arbitration and conciliation procedures. Similarly, programs in Abu-Dhabi, Kuwait, and Saudi Arabia were created by their national chambers of commerce. Since 1995, Kuwait has had a system of judicial arbitration in its Ministry of Justice, for domestic cases. The Lebanese arbitration program of 1995 closely parallels the ICC Rules of Arbitration and Conciliation. A second Lebanese center follows the UNCITRAL rules. They have recently announced plans to unify (Aboul-Enein 139–46).

There are no reported published international cases from the Bahraini, Dubai, Kuwaiti, Tunisian, Lebanese, Yemeni, or Moroccan programs. although several have reported domestic decisions. This raises serious questions as to the acceptance of Mideast arbitration and conciliation centers by international business, commerce, and industry (Aboul-Enein 142–44).

Sub-Saharan Africa

Recently, the American Bar Association's Dispute Resolution Section, Business Law Section, and Executive Director's Office, together with the District of Columbia's Superior Court, sponsored a month-long training program including a dispute resolution curriculum for judges from Tanzania, Uganda, Malawi, and Zambia. Nigeria and Ghana have a growing number of academic scholars researching dispute resolution programs. The most extensive mediation efforts in sub-Saharan Africa exist in South Africa. Indeed, it is probably fair to say South Africa has been in the forefront since the 1980s, using mediation in a wide variety of disputes.

Asia and the South Pacific

Both arbitration and conciliation experienced rapid growth in Asia in recent years. "Arbitration . . . flourishes in Korea, Malaysia, New Zealand and in Thailand. Substantial interest in arbitration has been expressed in Vietnam and less than a year ago the first ICC arbitration [was conducted] in Laos" (Kaplan 122).

Hong Kong

Hong Kong, in particular, has embraced the dispute resolution movement:

> It is a sobering thought that only 13 years ago the total number of international arbitration cases handled by the Hong Kong International Arbitration Centre . . . and the China International Economic Trade and Arbitration Commission . . . was only 46 cases in the year. However, by 1995 this total had become 1100 new cases in that year—2.5 times the number of cases handled by the International Chamber of Commerce in Paris and something like 10 times the number of cases handled in that year by the London Court of International Arbitration. . . . (Kaplan 118)

Hong Kong enacted amendments to its arbitration law in 1996 in one of the colonial Attorney General's last actions prior to the return of Hong Kong to the People's Republic of China. Mediation is also obtaining more attention. The 1996 arbitration amendments declare in Section 2 that "conciliation" and "mediation" are interchangeable terms. Despite an impressive Chinese tradition of informal conciliation, formal conciliation has a more recent history in Hong Kong:

> [I]n 1982 the Arbitration Ordinance, for the first time, made reference to conciliation. The provisions relating to conciliation were strengthened by amendments, which came into force in 1990. Conciliation has, as is well known, always been a crucial feature of dispute resolution within China. Prof. Tang Houzhi has frequently stated that conciliation and arbitration are part of the same organic process. Indeed [China International Commission] arbitrators will frequently attempt to conciliate a case—often right in the middle of the arbitral hearing. (Kaplan 122)

Hong Kong lawyers seem to be gaining an awareness of the problem with having mediators in the position of making rulings:

> The combination of mediation and arbitration is known in this country through Med-Arb. We made a provision in Hong Kong that enables an arbitrator, only with the continuing consent of the parties, to act [as] a conciliator and to return to the arbitral role if the conciliation is unsuccessful. With regard to disclosures made to him during the course of the conciliation, he is bound to keep those confidential, but if the arbitration resumes, he must make such disclosure as he thinks il necessary in the interest of justice. Although this combination of arbitration and conciliation, brings shock and horror to the lips of most common lawyers, nevertheless, I emphasize that this provision is solely consensual and can work if both parties have substantial confidence in the . . . person. (Kaplan 122)

Despite this confusion, mediation is obviously obtaining interest in Hong Kong. One recent measure expressly included a comprehensive dispute-resolution procedure:

> A great boost for mediation came with the decision to build the new airport al Chek Lap Kok. In order to get to the new airport from Hong Kong Island, it was necessary for there to be a third harbour tunnel, a new rail and road link, two bridges, and a North Lantau Expressway. . . .
>
> All these infrastructural projects . . . came under the umbrella of the Airport Core Program (ACP). All the main contracts were let by government. Four stages of dispute resolution were provided for. Firstly, there was supervision and decision of the engineer. If that was not acceptable then the parties were mandated lo attempt a mediation process. The Mediation rules were scheduled to the contract. The rules provided for mediation to be administered by [the Hong Kong Centre]. Mediation was a condition precedent before proceeding to the next tier of dispute resolution. The intent was that mediation was to be over within 45 days. If one party refused participation in the mediation, the procedure was deemed over at the end of the 45 day period. (Kaplan 123)

The third stage was adjudication by an expert appointed by the Hong Kong Centre, followed finally by arbitration. And, in a change demonstrating awareness of the elements of mediation:

> We have found that in both ACP and non-ACP cases, the mediation procedure has been successful. A case is not always settled during the course of the mediation procedure itself but many have settled on the basis of the recommendation made by the mediator . . . under the Mediation Rules, the parties can require the mediator in cases where settlement is not agreed to give a recommendation. That recommendation then forms a basis of subsequent negotiations which then leads to a successful conclusion. I believe that the requirement that the mediator gives a recommendation is antithetical to the whole mediation process. Because the mediator knows that this is a possibility he starts the mediation in quasi-adversarial mode and the parties, who are trying to get the best recommendation possible, also start off in adversarial mode. This, I believe infects the whole process. I understand that this process is soon to be deleted and I wholeheartedly concur in that approach. Mediation is mediation and it is quite wrong to require a mediator to give a recommendation/decision. (Kaplan 124)

It is unclear how the return of Hong Kong to the People's Republic of China will affect arbitration. Although early indications signal continuity in commercial transactions, there is confusion. In a recent action to enforce a CIETAC arbitral award, a Hong Kong court held that the CIETAC law providing for enforcement of foreign awards did not apply to an award from the People's Republic because the award was not domestic or international (*Ng Fung Hong v. ABC*, 1 HKC 213 [1998]).

India

Recent legislation demonstrates Indian movement toward ADR, although there is little appreciation for having a mediator refrain from decision making:

> The Arbitration and Conciliation Act of 1996 has conferred statutory recognition on conciliation as a mode of dispute resolution. The act incorporates the procedure for conciliation and makes the decision of the conciliator binding on the parties. Not that conciliation was wholly unknown to the Indian law. The Industrial Disputes Act 1947, Code of Civil Procedure 1908 and the Family Courts Act 1984 have provisions relating to conciliation with a view to settling the disputes between the parties. If a compromise is arrived at through conciliation or mediation, it will be honoured by the court. (Prabhakaran 93)

New Zealand
The Aotearoa-New Zealand Restorative Justice Project has begun several initiatives. In 1989, New Zealand enacted the Aotearoa-New Zealand Children, Young Persons and Their Families Act, emphasizing family-oriented problem solving. In Auckland, two separate restorative justice efforts are functioning for adult offenders. The Maori people have strongly supported this and other restorative justice efforts. The family group conference brings offenders, families, and victims together to decide how best to deal with an offense.

South Korea
South Korea is well advanced in the ADR movement. The 1966 Arbitration Act created the Korea Commercial Arbitration Committee. Arbitral awards must be issued within thirty days of the arbitration's closing. Moreover, South Korea "has various provisions for alternative dispute resolution . . . including . . . [t]he three types are compromise (negotiation), conciliation (mediation) and arbitration" (Montagu-Smith 114)

Sri Lanka
Sri Lanka may have one of Asia's most developed and extensive mediation programs, largely based on the North American model. Christopher Moore was the primary consultant in the Sri Lankan system. The program is associated with the Sri Lankan Ministry of Justice and stresses mediator neutrality. In 1998, I had the opportunity to consult at length with a senior official of the Sri Lankan Department of Justice who advised me that her nation hopes to extend the scope of its national mediation program substantially. Sri Lanka also has an Arbitration Centre, founded in 1995 in Colombo and affiliated with the Stockholm Chamber of Commerce. Sri Lanka adheres to the New York Convention (Samuels, "Sri Lanka" 139).

Vietnam
Vietnam has shown interest in arbitration when, "[i]n 1993 Vietnam acceded to the New York Convention. In theory, foreign arbitration awards are now recognized in the Vietnamese court system" (Lawson 180).

Conclusion

If the growth of arbitration at mid-century is seen as linked to the massive proliferation of mediation in the century's closing decades, the conflict resolution movement can be seen as a worldwide phenomenon of incredible scope. In many ways, it may be the most significant secular development in modern legal history, save perhaps the development of international law. But while the growth of international law is more visible and immediately crucial to peace among the nations,

the conflict resolution movement may prove to have more far-ranging and lasting effects among the masses of humanity, often removed from international law but facing conflict daily. In this sense, the conflict resolution movement, now taking hold from Austria to Vietnam, from Egypt to Argentina, and from Canada to Korea, may signal a fundamental and historic shift to a qualitatively higher, yet remarkably simpler way for human beings to communicate when differences arise. If true, we will all be the better for it.

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