

## TRANS-BORDER DISPUTES MEDIATION IN THE MIDDLE EAST – A CASE STUDY ON THE ISRAELI-PALESTINIAN CONFLICT

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### 1. Introduction

*"...Man's illusions are of all sorts and kinds... The greatest of them all are those which cluster round the hope of a perfected society, a perfected race, a terrestrial millennium... One of the illusions incidental to this great hope is the expectation of the passing of war. This grand event in human progress is always being confidently expected, and since we are now all scientific minds and rational beings, we no longer expect it by a divine intervention, but assign sound physical and economical reasons for the faith that is in us... (however) ...only when man has developed not merely a fellow feeling with all men... when he is aware of them not merely as brothers that is a fragile bond but as parts of himself, only when he has learned to live, not in his separate personal and communal ego-sense, but in a large universal consciousness, can the phenomenon of war, with whatever weapons, pass out of his life without the possibility of return... Meanwhile that he should struggle even by illusions towards that end, is an excellent sign; for it shows that the truth behind the illusion is pressing towards the hour when it may become manifest as reality..."*

*Sri Aurobindo on the Passing of War<sup>1</sup>*

Global society is changing. We are moving towards a single world order, a single civilization. Symbolically the collapse of the Berlin Wall serves to remind us that boundaries are a thing of the past. China's entry into the world market is yet another sign that the governments around the world are becoming like-minded, with one purpose in mind, that of living together in harmony. Apartheid has been challenged successfully and new forms of governance are being observed in South Africa as well as in other parts of the world.

While new issues are being discussed, what must not be forgotten is that old ideologies die hard. The concept of being ruled is being opposed vehemently, as can be seen in the Israeli-Palestinian conflict. At the same time, in order to protect the world from being held to ransom by nuclear powers, the world has to unite in opposing such practices e.g. nuclear testing in North Korea and Iran.

In a diverse community, alone, conflicts will be the norm. What more when it concerns nations and national sovereignty? Protests will naturally come forth, sometimes in the milder forms, such as protests against visits by unwelcome world or international figures, or at other times, make take the form of violence as happened in the 911 tragedy. How can the world become a better place, with a balance struck between different mindsets? Global society has to be propelled towards the recognition of a multicultural, multi-ethnic, pluralistic global system. Disputes have to be viewed as being resolvable in an amicable manner, rather than resorting to the time-old remedy of superpowers declaring wars. The prevailing sorry state of affairs in Vietnam, Afghanistan and Iraq speak for themselves regarding the destructive state of wars. What is more devastating is the prolonged crisis in the Middle East, the war between Israel and Palestine. The price of war is ravaged countries and loss of innocent lives.

The recent war in Iraq speaks volumes, after 6 years, dissent and bloodshed is still continuing. War is not the answer to trans-border disputes, no matter what the offending nation is involved in. Disputes have to be resolved by other methods, and for cross-border disputes, mediation or negotiation may be the better choice. Why mediation or negotiation? In this paper, the two terms are used interchangeably, as both share a common agenda, that of trying to reconcile the differences of two parties, without imposing any of their own beliefs, but steering the parties toward the common good. Neither one will be winner or loser, both will be winners and losers in their own right. The following discussion shows the reason why mediation will be a better alternative than other drastic measures in resolving trans-border conflicts.

Before delving into the discussion on mediation, it is appropriate that a short historical background of alternative dispute resolution mechanisms is examined.

<sup>1</sup> Quotation obtained from website: <http://www.tamilnation.org/conflictresolution/index.htm>, site accessed on 14.4.2007.



## 2. Historical Background Of ADR

The use of ADR in commercial disputes is not a new concept. The discontent during the eighteenth and nineteenth centuries where the bourgeois mentality was that of essentially individualistic philosophy of rights rather than interests had already paved the way for ADR usage. A right of access then, which caused the discontent, was that judicial protection was reserved for an aggrieved party who had a formal right to litigate a claim and who could afford the associated expenses. Thus, justice in the *laissez-faire* system then existing was only available to those who could afford its costs. Hence the discontent and the desire to transform a system that did not provide justice to all persons. Such a system was against the basic human rights principles of rights to work, health, to material security and education that are affirmed in most modern constitutions.<sup>2</sup>

The trend moved towards achieving peace and harmony among relationships, towards a state of social cohesion, rather than justice at all costs. Different jurisdictions practised the form of dispute resolution by the peers or elders. For example, in Malaysia, disputes were resolved in early days by the *Penghulu* (village headman); in Bangladesh, the *shalish* was convened to hear disputes brought by women and in India, woe betide any person who dared disobey a verdict of the *Panchayat*, (gathering of village elders, headed by the village headman).

Thus, dispute resolution was seen in a new light, that which was embedded in social relationships, thereby paving the way for the notion that ADR was an interest-based concept rather than a rights-based mechanism. The courts became only one of many avenues available for the resolution of disputes. According to Cappelletti and Garth, effective access to justice is the most basic requirement of a modern, egalitarian legal system. Effective access to justice need not always be found in the courts as research shows that more than 97% of cases filed in the United States never make it into a courtroom because nearly all of them are resolved along the way by some form of ADR process.<sup>3</sup>

The need to preserve social relationships was getting higher. Courts severed relationships, some beyond repair. There was a need for a reform of dispute settlement that left parties' relationships impaired and shattered. Problems needed to be resolved but relationships had to be maintained, at a cordial and civil level. ADR mechanisms addressed the problem, without creating rifts between parties as was done by the adversarial system of litigation that was practised in this country. An inquisitorial system, one that went to the root of the problem, and sought to satisfy all persons concerned in a non-adversarial manner, needed to be created. And thus ADR was born.

### Why ADR?

#### The Benefits

The arguments in favour of ADR date back to the early nineteenth century. Access to justice was the major reason why ADR was eagerly sought after. The bourgeois mentality that justice was only available to the rich was gradually eroded and ADR ensured that the ordinary or poor man in the street had a chance to have his grievances resolved.

Delays in court proceedings were not favourable especially as such delays were due to the fact that there were too many cases in court. ADR would help clear the backlog of cases pending in the courts. Courts would be relieved of the massive backlog of cases where effective ADR measures are employed by parties, since not all actions that are filed have to actually end up as full-blown trials, especially if the courts themselves practised tier system pre-settlement and pre-trial ADR measures.

Parties who shy away from the rigorous formalities governing court proceedings would be more comfortable with ADR mechanisms which provide for a more informal mode of dispute resolution, where the procedure may actually be tailor-made according to parties' desires. Having their disputes resolved, especially in a win-win manner would enhance public confidence in access to justice.

Greater client participation in the process of finding a solution was an added advantage of ADR. Additionally, the informal process of ADR would in fact be highly effective in directing the parties perception towards the root cause of the problem. Therefore, ADR would actually be instrumental in removing or preventing such problems from occurring in future.

Consensus-driven solutions replacing imposed legal orders and judgments which may be difficult to enforce was another vital proponent of ADR.<sup>4</sup> Decisions would be more readily accepted by the parties who

<sup>2</sup> The Preamble of the French Constitution of 1946, which was incorporated into the Preamble of the present Constitution of 1958, acknowledges that the addition of new "social" and "economic" rights to the traditional civil rights is "particularly necessary in our time": see Mauro Cappelletti & Bryant Garth, "Access to Justice: The Worldwide Movement to make Rights Effective - A General Report", Vol. 1, AW Sijthoff International Publishing Company, BV, 1978, p.8.

<sup>3</sup> Jeffrey D. Paquin, Michelle Joy Weeksler, Jennifer Boyens Victor, "Finding the Cure for Commercial Conflict: Designing and Implementing Commercial Alternative Dispute Resolution Programs", ADR Report, Vol 2, No 13, June 1998. Sourced from the website: <http://www.adrcms.com/article5.html>. Site accessed on 8 January 2002.

<sup>4</sup> Julie Macfarlane, "The Challenge of ADR and Alternative Paradigms of Dispute Resolution: How should the Law Schools Respond?" The Law Teacher (1997) 31(1), 13.



had a part to play either in the selection of the tribunal or in actually crafting out their preferred settlement.

Resolving conflict without official intervention and the rigidity of court mechanisms would help preserve the cordiality of business relationships, especially those who wish to continue their business negotiations on a long-term basis. Continuation of relationships, especially business partners would be preserved. A long drawn-out bitter court battle would effectively sever future cordiality.

Corporations are protected in that their reputation is guarded against the unwanted publicity press reports that accompany court hearings.

Court actions have attracted a number of complaints. Parties have alleged that too much money is spent on legal fees. The time factor is costly in the light of commercial values. Court actions are too complex and the whole process may be far too incomprehensible for the ordinary man in the street to understand. Solutions to the dispute are delivered by a "stranger" from a pre-determined and limited range of win-loss options. More often than not, the solutions are determined on a "rights-based" concept rather than an "interests-based" concept. Parties are not the major players in the dispute resolution mechanisms and often accept the decisions delivered with shrugged shoulders.

Parties needs, interests and to a certain extent, their rights are served, and with speed. Justice is not delayed, for justice delayed is justice denied. Some ADR mechanisms, may, depending on the number of persons involved in the dispute resolution process, result in a reduced cost for the disputants and a speedy resolution of their grievances than if they were to begin and continue with a court action.

In jurisdictions where legal aid was increasingly being available, ADR mechanisms would mean a reduction in the taxpayer's money being used for funding legally aided cases.

ADR, used as a tool of access to justice, can be vital to the development of a nation. In Bangladesh, women in particular face cultural and economic barriers which result in a violation of their legal rights, merely because they are women. Legal processes and principles exclude protection to women and these women have a common avenue as a redress mechanism. Women caught in a local dispute bring their grievances to the local village *shalish* in which a council of elders and opinion leaders hears a case and delivers a decision.<sup>5</sup> In India, disputes by villagers would be heard by a gathering of elders, headed by the village headman. This gathering is called the *panchayat*.

### The Weaknesses

Buckstein raises the fear that an adversary may perceive an ADR overture as a sign of weakness but discounts it as being a prudent business negotiation. Properly presented, an ADR overture will be perceived not as a sign of weakness, but as a sign of a businessperson's desire not to allow litigation to destroy a relationship or to swallow massive resources of both parties in the form of time and money. No businessperson, according to Buckstein, would want to have a reputation of being litigious or "hard-nosed". He strongly advocates that attempts to seek an early reconciliation of a dispute will always be recognised as a prudent business decision.<sup>6</sup>

At the same time, however, the reluctance to use ADR systems still prevails. Attitudinal problems of denying that problems exist, the "no problem here" attitude of large corporations often takes centre stage and these people contribute to the problem by their very attitude. Goals of large corporations focus on the "repair" principle rather than the "prepare and prevent" principle.<sup>7</sup> A commercial corporation, which has a ready and customised ADR program would, according to Paquin, Weeksler and Victor, "avoid commercial illness" which "illness" would lead to "negative consequences such as unnecessary expense, negative publicity and destroyed relationships".<sup>8</sup>

### Mediation

The process of mediation involves an attempt by an unaffiliated third party to assist the disputants in finding a solution to the dispute.<sup>9</sup> The process is entirely consensual and non-binding. If disputing parties agree to attempt to

<sup>5</sup> Programs by Country sponsored by the Asia Foundation. Sourced from the website: <http://www.asiafoundation.org/programs/prog-asia-bang.html>. Site accessed on 4 January 2002.

<sup>6</sup> Mark A Buckstein, "An Introductory Primer on Pre-Litigation: ADR Counseling for the Outside Lawyer", (1997) 52 Jan Disp Resol. J. 35.

<sup>7</sup> Jeffrey D. Paquin, Michelle Joy Weeksler, Jennifer Boyens Victor, "Finding the Cure for Commercial Conflict: Designing and Implementing Commercial Alternative Dispute Resolution Programs", ADR Report, Vol 2, No 13, June 1998. Sourced from the website: <http://www.adrcms.com/article5.html>. Site accessed on 8 January 2002.

<sup>8</sup> *Ibid.*

<sup>9</sup> Broadly, mediation can be described as "assisted negotiation" or "assisted decision-making". According to J. Folberg and A. Taylor, in "Mediation: A Comprehensive Guide to Resolving Conflict without Litigation", Jossey-Bass, San Francisco, 1984, at p.



mediate their dispute, the principal issue will be the selection of a suitable mediator. A typical mediation involves presenting the problem to the mediator selected by the parties and then be guided by the mediator in arriving at their solutions. The mediator makes suggestions; the parties craft their own solutions to the problem.

The caucus process has become one of the most effective and well-respected techniques for successful mediation. In that process, the mediator deals separately with each of the disputants in an attempt to effect a form of "shuttle diplomacy" that continually brings the parties closer and closer together while softening the parties' positions. The mediation process has been found to be most effective where the parties are desirous of maintaining a continuing business relationship or where it is important to the parties and perhaps to third parties not involved in the process that a "win-win" solution be found so that both parties retain their reputation and self-esteem.

The mediation process is completely consensual. There is no requirement that an agreement must be reached. But the parties play a much more significant role in mediation than in the arbitration and litigation processes which, by and large, are controlled by the advocates. For that reason, many advocates have been suspicious of mediation and reluctant to try the process.

Hill<sup>10</sup> says that mediation is suitable for the following reasons:

- When the parties can benefit by continuing to do business together after the dispute is resolved;
- When one of the parties wishes to maintain or to enhance its public reputation as a good business partner;
- When the cost of litigation or arbitration will be high;
- When the dispute centers around complex factual issues. Factual issues can often be better appreciated by business people familiar with the industry than by lawyers or judge;
- When neither party requires a determination of legal issues. If a determination is required, arbitration or conventional court proceedings are appropriate. However, in some cases, lawyers do not agree on the correct legal analysis but are willing to allow a mediator to help them find a compromise position that is mutually acceptable.

In Malaysia, mediation is slowly gaining ground as an ADR mechanism. The "doyen" of mediation schemes, the Insurance Mediation Bureau was established as a non-profit company under section 24 of the Companies Act 1965 in 1991.<sup>11</sup> The Banking Mediation Bureau was set up in 1997 to investigate into complaints by consumers as to unfair practices by the banks. Two years later on 5<sup>th</sup> November 1999, the Bar Council of Malaysia established a Malaysian Mediation Bureau (MMC). The objectives of the MMC are to promote mediation as a means of alternative dispute resolution and to provide a comprehensive range of mediation services for civil disputes of all kinds. However, for the time being, the MMC only extends its services for all commercial disputes only. The most recent development is that mediation has been introduced as an additional tier of ADR in construction contracts.<sup>12</sup> Despite the recent developments in the area of mediation, it has yet to gain the popularity that arbitration has achieved.

4, mediation is "a process by which participants, together with the assistance of a neutral third person or persons, systematically isolate dispute issues, in order to develop options, consider alternatives and reach a consensual settlement that will accommodate their needs. Mediation is a process which emphasises the participants' own responsibilities for making decisions that affect their lives".

<sup>10</sup> Richard Hill, "Non-Adversarial Mediation", article sourced from website: <http://www.divorcelawinfo.com/mediation/arbmed3.html>, site accessed on 11.4.2007.

<sup>11</sup> The Insurance Mediation Bureau was established in 1991 to resolve disputes pertaining to insurance claims. For a comprehensive account of the establishment and workings of the Bureau, see S. Sothi Rachagan, "An ADR for Consumer Disputes in Insurance", paper presented at the Conference on Conflict Resolution in the Asia Pacific Region: Culture, Problem Solving and Peacemaking, organised by The Asia Foundation, Universiti Sains Malaysia and the Asia Pacific Peace Research Association, 22-26 May 1994, at Penang, Malaysia.

For an account of the need for dispute resolution mechanisms in banking disputes, see S. Sothi Rachagan, "Procedures for Resolution of Consumer Grievance with Banking Services", paper presented at the Seminar on Consumer Protection Provided by Banks and the Banking System in Malaysia, organised by Perak Consumer Association, 11-12 February, 1995, at Ipoh, Perak, Malaysia.

<sup>12</sup> Mediation has been proposed as the first tier of dispute resolution in construction contracts executed under the PAM 1998 Standard Form of Contract (the standard form of contract issued by the Architects Association of Malaysia, used in private projects).



### Characteristics And Working Of Mediation<sup>13</sup>

Mediation proceedings usually begin with facilitation by the mediator, when he will assist the parties towards a negotiated solution. After hearing the facts, he may evaluate the dispute and give an objective opinion regarding the reasonableness or otherwise of their positions. Finally, a mediator will try to de-conflict or defuse the situation, by steering the parties towards a win-win situation, i.e. each of the parties may need to sacrifice something, in order to arrive at a mutually acceptable solution.

One of the classic characteristics of mediation is that both the process and the outcome are non-binding. No two mediation proceedings are alike, and there are no set rules or formal guidelines as to how a mediation should be conducted. The flexibility of mediation somehow is commensurate with the non-binding nature of a mediation settlement. However if parties are in agreement with the settlement then it takes the form of an enforceable contract.

The key to a successful mediation is the role of the mediator in guiding the parties expertly through the dispute towards settlement. An expert mediator will create a productive discussion and steer the parties towards seeing the dispute in an objective and impersonal manner. He will be the one to separate the problem from the person.

A mediator's duty is to determine the factual scenario so that the parties are aware of the facts surrounding the dispute. He has to empathise with the parties and help them to generate new ideas. He has to be creative and yet realistic. Mediators are skilled in persuasion and the art of listening. They must be able to persuade the parties to abandon their hard positions for softer and attainable solutions to the problem. This is where the background knowledge of the mediator will play an important role in the mediator understanding the problems that surround the dispute.

### Qualifications Of A Mediator<sup>14</sup>

A good mediator must be impartial and a skilled listener. Listening is an art and a skill; while a person who merely hears something is not exercising his mental faculties to see through what the person is actually saying. Listening might appear to some a trivial skill that everyone has, but this is not the case. According to Hill, multi-national companies spend significant amounts of time training their people in listening skills: these involve actively focusing on what the other person is saying, asking probing questions to elicit further information, and paraphrasing what the other person has said in order to make sure it has been heard correctly.

The ideal mediator would be a person who is experienced and knowledgeable about the dispute of the parties, e.g. a doctor to mediate in medical disputes; an engineer to mediate in disputes concerning engineering works and an academician to mediate in disputes involving academicians.

The ability to imagine new shapes for a compromise is critical. Suppose that two people are having difficulty deciding how to divide the top of a table between themselves. An imaginative mediator might point out that perhaps they should consider how to divide the legs of the table also, and it may turn out that one party has a clear preference for the legs, and is willing to let the other party have more of the top in exchange for the legs.

Last, but probably most important, is the seemingly obvious point that a person must be willing to act as a mediator. Anyone who has acted in this capacity well knows that it is a high stress exercise, and can be stressful until the point that settlement is reached. However, it can be frustrating if the parties reach a deadblock. It is important for a mediator to be calm, full of courage and confidence and possess the required stamina to withstand negotiations that can go on into the wee hours of the morning.

### Case Study – The Israeli-Palestinian Conflict

The purpose of focusing on this particular example is that a number of attempts have been made and yet peace is still hovering on the far horizon. It is not always the case that mediation or negotiation will work in all cross-border friction. However, the discussion will show the reason why mediation is apparently not working in this case study. I shall give a brief background to the conflict, and then discuss the peace processes and leave it open as to the outcome.

#### How It All Began

During World War I, the British High Commissioner in Egypt, Sir Henry McMahon, corresponded with Husayn ibn'Ali, the patriarch of the Hashemite family and Ottoman governor of Mecca and Medina to lead an Arab revolt against the Ottoman Empire which was aligned with Germany against Britain and France in WWI. McMahon promised that in return for the support of the Arabs, the British Government would support the establishment of an independent Arab state under Hashemite rule in the Arab provinces of the Ottoman Empire including Palestine.

In 1917, at the end of the war, Lord Arthur Balfour, the British Foreign Minister announced that Britain supported the establishment of a Jewish national home in Palestine. This second deal was made with

<sup>13</sup> Richard Hill, "Non-Adversarial Mediation", article sourced from website: <http://www.divorcelawinfo.com/mediation/arbmed3.html>, site accessed on 11.4.2007.

<sup>14</sup> *Ibid.*



the Jews. A third deal was purportedly made between Britain and France to divide the Arab provinces of the Ottoman Empire and have divided control over the region. But the British and French regimes obtained their respective shares – France over Syria and Lebanon and Britain over areas that now comprise Israel, West Bank, Gaza Strip and Jordan. This act of the British and French was viewed with great hostility by the Arabs who viewed their occupation as a violation of right to self-determination.<sup>15</sup>

#### A. Land – The Claims

The Jews entered Palestine in the 19<sup>th</sup> century, claiming that they were entitled to reclaim their ancestral homeland.<sup>16</sup> The Palestinian Arabs were unhappy with this intrusion, and the unhappiness grew into concern when the Jews started buying land, evidencing the permanent nature of their occupation. The Israelis claim that all that part of land<sup>17</sup> occupied by the Palestinians constituted land promised to Abraham and his descendants.<sup>18</sup> The Palestinian-Arabs<sup>19</sup> claim that the disputed area was their land and opposed the occupation of the Jews. The Jews began to defend their rights to the disputed land and the struggle began.<sup>20</sup>

#### B. Land – The Alleged Dispossession

The insurgency by the Jews in 1919 has been linked<sup>21</sup> to the Zionist movement<sup>22</sup> that has wholly different intentions i.e. to completely dispossess the Arabs so that Israel could form a wholly Jewish state. The gradual takeover of Palestine was done by the Jews buying lands and ensuring that all lands bought by the Jews were never re-sold to any person other than a Jew. The exodus of the Jews from other parts of the world, and their purchase of lands in Palestine had driven the Palestinians to leave their homeland<sup>23</sup> and the Arab community continued to oppose this growing threat to eradicate the existence of Arabs<sup>24</sup> in Palestine.

<sup>15</sup> Joel Beinin and Lisa Hajjar, *Palestine, Israel and the Arab-Israeli Conflict*, The Middle East Research and Information Project: [http://www.merip.org/palestine-israel\\_primer/intro-pal-isr-primer.html](http://www.merip.org/palestine-israel_primer/intro-pal-isr-primer.html) - accessed on 16.10.2003.

<sup>16</sup> According to the Bible, Moses had taken the Jews out of Egypt into the “promised land” – Canaan. It is believed that King David conquered Jerusalem about 1000 BC and established an Israelite kingdom over much of Canaan, including parts of Transjordan. However, subsequently the Romans drove the Jews out of Jerusalem. The Romans then named the place “Palestina” in AD 135: Ami Isseroff, “A Brief History of Israel and Palestine and the Conflict”: <http://www.mideast.web.org/history.htm> - accessed on 2.11.2003.

<sup>17</sup> The state of Israel occupies all the land from the Jordan River to the Mediterranean Ocean, bounded by Egypt in the south, Lebanon in the north and Jordan in the East. The recognised borders of Israel constitute 78% of the land. The remainder of the land has been occupied by Israel since 1967 (6-day war) and under the Palestinian authority. The Gaza Strip is mainly under the autonomy of the Palestinians with small Israeli settlements: Ami Isseroff, “A Brief History of Israel and Palestine and the Conflict”: <http://www.mideast.web.org/history.htm> - accessed on 2.11.2003.

<sup>18</sup> The Bible, Book of Genesis, Chapter 16.

<sup>19</sup> An interesting fact to emerge from this biblical claim is that the Arabs maintain that since Abraham had another son (by his wife’s handmaid Hagar) named Ishmael, and Ishmael is the forefather of Arabs, then the promised land to the children of Abraham should include the Arabs as well. The Bible promises that both sons shall have great nations under them: Bible, Book of Genesis, Chapters 16, 21.

<sup>20</sup> Until 1948, all the land that is being disputed was known as Palestine. After the war of 1948-49, the land was divided into three parts, Israel, the West Bank and the Gaza Strip.

<sup>21</sup> *The Origin of the Palestine-Israel Conflict*: 3<sup>rd</sup> Ed., Including Intifada 2000, Published by the Jews for Justice in the Middle East: <http://www.cactus48.com/truth.html> - accessed on 16.10.2003.

<sup>22</sup> The Zionist movement gained Western and international support after the Nazi genocide of European Jews during World War II. This gained the sympathy of the West and the Jews, till today, have the open support of the United States in their quest for the creation of a Jewish state.

<sup>23</sup> The Jews had by now gained a reputation for fighting for their survival, though it was not stated in such diplomatic terms by Aref Pasha Dajani who expressed this opinion about the Jews: “Their history and their past proves that it is impossible to live with them. In all the countries where they are at present, they are not wanted ... because they always arrive to suck the blood of everybody”: Ami Isseroff, “A Brief History of Israel and Palestine and the Conflict”: <http://www.mideast.web.org/history.htm> - accessed on 2.11.2003.

<sup>24</sup> The majority of the Palestinians were of Arab descent since the seventh century. In fact Palestine became an Arab and Islamic country by the end of the seventh century and by the year 1516, became a province of the Ottoman Empire. The flooding-in of the Jews began around 1882 and in 1931, the Jewish population was a mere 174,606 when compared to a huge Arab majority of 1,033,314: extracted from Edward Said, *The Question of Palestine*, cited in *The Origin of the Palestine-Israel Conflict*: 3<sup>rd</sup> Ed., Including Intifada 2000, Published by the Jews for Justice in the Middle East: <http://www.cactus48.com/earlyhistory.html> - accessed on 16.10.2003.



Beinin and Hajjar said that the land may be small but as long as both parties are not willing to concede, there is no possibility of peace talks even taking off the ground.<sup>25</sup> The fear of dispossession of their native land was uppermost in the mind of the Arabs rather than the anti-Semitism as portrayed.

The growing insurgency of the Jews into Israel was serious enough to prompt the British to curb this mass amassing of property and immigration. They issued a White Paper in 1939 limiting future Jewish immigration and land purchases. This was viewed as contrary to the Balfour Declaration<sup>26</sup> and the White Paper ended the relationship between the Jews and the British.

### Israel - Persistent Forging Ahead

Israel is building a fence across the West Bank boundaries, ignoring calls from the world<sup>27</sup> not to do so. The reason giving by Israel is that the barrier is necessary for security reasons. Israeli Prime Minister Ariel Sharon stated Israel would not bow to pressure from Washington to stop building a barrier across the West Bank<sup>28</sup>. However, the continued "taking of land" by the Israeli settlers, appears to be an obvious attempt to extend the boundaries of Israel in direct contravention to UN Partition of 1947. Israel appears to be defiant, and has taken the contender's position.

Could this defiance be because of the support of the US behind Israel? The US has asked Congress to approve military aid to Israel for the year 2004 which amount is the largest military aid package that the US gives to any one country.<sup>29</sup> This decision by the US may not be a wise decision<sup>30</sup>. The task of the mediator is tougher. He may need to measure a trade-off that will counter the military aid. He has to arrive at a solution to convince the Palestinians that the aid is merely to ensure that Israel is not vulnerable to terrorist threats. He may be able to do so in the light of recent attacks against Israel and the Jews in general.

Two synagogues were targets of bomb attacks in Turkey where 16 persons were killed.<sup>31</sup> According to someone who was interviewed (name unclear), that person's view is that it may not be the Al-Qaeda movement. He explained that there were several Islamic fundamentalist groups operating independently, e.g. the Jihad, Al-Sayaf, and others. Their antagonism was generally against the West and the Jews. The interviewee likened the Riyadh and the Turkey attacks to the modus operandi of the First Reich Movement under Hitler. A mediator has to convince the parties that the military aid is a protection against sporadic attacks that may be made against Israel by fundamental Israeli

<sup>25</sup> Joel Beinin and Lisa Hajjar, *Palestine, Israel and the Arab-Israeli Conflict*, The Middle East Research and Information Project: "This is a small area: approximately 10,000 square miles, or about the size of the state of Maryland. The competing claims are not reconcilable if one group exercises exclusive political control over the total territory" [http://www.merip.org/palestine-israel\\_primer/intro-pal-isr-primer.html](http://www.merip.org/palestine-israel_primer/intro-pal-isr-primer.html) - accessed on 16.10.2003.

<sup>26</sup> The Balfour Declaration was issued in November 1917 and under this declaration, Britain supported the creation of a Jewish national home in Palestine, without violating the civil and religious rights of the existing non-Jewish communities. This declaration was made as a result of Jewish lobbying by the small British Zionist Movement, but at the same time, motivated by British strategic considerations: Ami Isseroff, "A Brief History of Israel and Palestine and the Conflict": <http://www.mideast.web.org/history.htm> - accessed on 2.11.2003.

<sup>27</sup> Israel has been reprimanded severely by the US for its persistence in building the fence: "A senior official travelling with Sharon ruled out any immediate prospect of dismantling settlements as a watchdog said there were now more than 100 settlement outposts in the West Bank. Israel is obliged to dismantle all outposts under the terms of the US-backed "roadmap" peace plan which also stipulates a complete freeze on settlement activity. Israeli military radio reported Monday that US-Israeli relations were reaching "crisis point", citing unnamed American officials who said there was growing anger over settlements and the route of the controversial barrier being built by Israel along the West Bank.": [http://www.channelnewsasia.com/stories/afp\\_world/view/57753/1/.html](http://www.channelnewsasia.com/stories/afp_world/view/57753/1/.html) - accessed on 18.11.2003.

<sup>28</sup> The barrier that runs along the boundary between West Bank and Israel, actually does not run in a straight line along the boundary, but makes loops to take in Israeli settlements encroaching into the Palestinian territory in the West Bank. Washington, the chief ally of Israel had threatened a cut of \$US9 billion in loan guarantees approved by US Congress. However Sharon thumbed his nose at Washington and made the following statement: "I myself might tell the Americans that although we won't be happy about it, if you decide to remove money, then do it - we need to build a fence in places where we know it is integral for Israel's security." Interview given to *Jerusalem Post*: <http://www.abc.net.au/news/newsitems/s969590.htm> - accessed on 19.10.2003.

<sup>29</sup> Reuters, "US will seek e2.2 billion military aid for Israel", reported on 4.11.2003, in Haaretz.com, <http://www.haaretz.com/hasen/pages/356894.html> - accessed on 4.11.2003.

<sup>30</sup> This decision by the US does not assist the conflict situation. Would this not be construed as if the US was supportive of the military actions of Israel against Palestine? The crucial thing at the moment is to build the trust of both Israel and Palestine. The US is a major player in the peace process. The Arab nations are looking to the US to garner peace in the Middle East. It may be a normal gesture by the US to provide military assistance, but to approve an amount that is the largest to be awarded to any one country and that country being Israel, means that the trust may be eroded and any gestures made by the US towards achieving peace may not be welcome. The peace process will be viewed with suspicion and the Palestinians are not to be blamed, neither the Arab nations, for harbouring such suspicion when such concessions are made towards Israel.

<sup>31</sup> CNN "Breaking News". Reported on 16.11.2003.



groups and the aid was not to be taken as primarily meant for aggression against Palestine. The feeling that the US is supportive of the military actions of Israel against Palestine will have to be erased and the mediator may have the task of requesting that the US to provide assistance to the Palestinians in rebuilding the nation<sup>32</sup> even before any peace agreement is signed.

Prior to the last seven years, the US had played a vital role in peace promotion in the Middle East. It was the US that helped force out Israel, British and French occupation troops from Egypt in 1956; President Carter who strongly advocated Palestinian rights and demanded that Israel adhere to the US Partition Plan, whilst recognizing Israel's settlement policy as illegal and President George Bush (Senior) who used the position of the US as a global leader to force Israel to begin negotiations with Palestine and used tremendous political capital to keep US aid to Israel from being used to promote settlement building.<sup>33</sup>

The aggressive behaviour of the Israeli government on the ground that the Israelis are victims of terrorism and therefore are entitled to adopt extreme measures of protection does not help the peace process move forward.<sup>34</sup> Reinhart says that there is evidence that the Israeli soldiers shoot with precision to maim Palestinians for life, even in non-life threatening situations. Doctors have attested to the fact that injuries suffered by the Palestinians are not a result of random fire, but precision aimed shots. The cruelty and harshness of the Israeli soldiers against the Palestinians will only serve to widen the already broad gap between the parties.

Israelis have continued to encroach upon and build settlements in Palestinian territory, illegally converting even more Palestinian territory into Israeli territory. Palestinians see the settlements as a sign that Israelis do not want peace or as a ploy to "grab as much land as possible" before peace talks are concluded.

Palestinians, on the other hand, are constantly resorting to suicide bombings in Israeli territory, causing deaths of civilians and children. Once such attacks take place, the Israeli soldiers increase the security controlling the movement of Palestinians into Israeli territory to conduct their everyday business. Palestinians feel that they are treated as criminals, being checked at every checkpoint, being subjected to curfews, having to beg to move from one place to another. Palestinians have to obtain Israeli approval each day to go to work, return home, go to the hospital, get groceries, or visit their own families. The Palestinians consider that this is an invasion on the basic civil rights and they feel humiliated and abused by the Israelis.<sup>35</sup>

Various attempts have been made at trying to achieve peace in the Middle East. Following Britain's relinquishment of its mandate over Palestine, the United Nations General Assembly, in 1947, voted to partition Palestine into two states, a Jewish and an Arab state. The Jews were happy, as this was a start to the establishment of a Jewish state. The Palestinians were unhappy and considered the move by the UN as a betrayal, especially as they felt that the land division was unequal, a larger portion being allocated to the Jewish portion.

By 1948, after a series of bloodbaths, the Jews garnered control over the area that had been allocated to them by the UN. The fighting soon became a free for all, with Egypt, Syria, Jordan and Iraq joining the fray and an Arab-Israeli war ensued. Israel received support from the Czechs and soon expanded its territories beyond the UN boundaries and this resulted in a large number of Palestinians leaving their homeland escaping the turmoil that had been caused by the wars.

The result was that there were now three divisions, Israel controlled by the Jews, the West Bank by Jordan and the Gaza Strip under the governance of Egypt and the separate Palestinian state that was established by the UN never materialized.

The first attempt at peace and resolution of the Middle-east situation was the Camp David Talks, followed by the Oslo Accords.

<sup>32</sup> The PLO's assessment of US involvement in the peace process has not been encouraging as the peace processes initiated have been one-sided. Issues at the core of the conflict, especially accepting that Israel's occupation of the Arab territory that it conquered during the 1967 Israeli-Arab War is illegal, but nothing has been done to require Israel to face up to its obligations. Peace agreements that have been drawn up by the US have not been clear in outlining both parties' obligations. Palestinians have been asked to forego some of the fundamental rights, the latest is the refugees' right of return to their lands. However, the giving up of these rights does not see a similar obligation on the part of the Israelis withdrawal from Palestinian territory in the same concrete terms. The result is a lack of faith in the peace processes initiated and a constant distrust of any peace process initiated by the US: <http://moldediplo.com/ocus/mideast/a3273> - accessed on 30.9.2003.

<sup>33</sup> "The PLO's Assessment of US Involvement in the Peace Process": <http://mondediplo.com/focus/mideast/a3273> - accessed on 30.9.2003.

<sup>34</sup> Security Dialogue 33(2), "Middle East: Peace Delayed for One Generation – At Least": <http://www.prio.no/publications/publication.asp?PublicationID=4288> - accessed on 17.10.2003.

<sup>35</sup> R Jerry Adams, "Middle East Conflict – Why?", <http://www.awesomelibrary.org/MiddleEastConflict.html> - at 3.11.2003.



## (a). Camp David Talks

The Camp David Summit held in July 2000 and the Taba Summit in 2001 were not successful in bringing the protracted conflict between Israel and Palestine to an end.<sup>36</sup> The negotiations between Ehud Barak and Yasser Arafat served more to highlight the differences between the two sides rather than to point towards an end of the conflict. The Palestinians demanded, in accordance with the United Nations mandate, that Israel should withdraw fully from all the territories it had acquired since 1967, and to allow the dispossessed Palestinians to return and repossess their homes and lands. Israel however, perceived this proposal as an abandonment of the whole of its "promised land" including land that had been acquired from Palestine over the years.

## (b). The Oslo Accords

Reinhart traces the varied peace processes initiated by both parties to the conflict<sup>37</sup> beginning with the "false expectations" of the Oslo efforts in 1993. The Palestinians initially viewed the Oslo Accord as a stepping-stone towards the building of a Palestinian state. The Oslo Accord was a document containing the Israel-PLO<sup>38</sup> Declaration of Principles, signed in 1993.<sup>39</sup> The Declaration of Principles was based on mutual recognition of Israel and the PLO, and provided for a gradual withdrawal of Israeli troops from the Gaza Strip and areas of the West Bank during a five-year period. It also made possible a peace treaty with Jordan.

The main flaws in this Declaration were that a number of pertinent issues were left unresolved.<sup>40</sup> The Oslo Accords set up a negotiating process without specifying an outcome. There was neither mention of a Palestinian state nor specific mention of the ceasing of Israeli settlement activity. Since signing the Oslo Accord, Israel has settled about 90,000 people in the West Bank. No clear boundaries were specified.<sup>41</sup> The Palestinians accepted the Oslo Accords because it did not have much diplomatic support in the Arab world. The local leaders in the West Bank were challenging Arafat's leadership.

When Israel was reluctant to relinquish control of its territories, the Hamas and Jihad started periodic acts of violence. Prime Minister Ehud Barak came to power in 1999, and concentrated on reaching a peace agreement with Syria, but that did not materialise. He made one drastic mistake, and that was to claim exclusive Israeli sovereignty over the Aqsa Mosque precinct, a Muslim holy place, and which the Jews believe to be built on the ruins of the Temple of Solomon.<sup>42</sup> The latest development is that secret talks have been held to negotiate this issue, but the core of the unofficial peace plan finalised at the weekend is an agreement to give up the right of return for Palestinian refugees in exchange for Palestinian sovereignty over the Temple Mount, or Haram al-Sharif. The fact that the claim to the Temple was made by the Israelis, has not been given due significance. At the same time, the Palestinians were deprived of the land. But the negotiation process offers the Temple Mount to the Palestinians, in return for their land and rights to their land. In assessing the discrimination that is apparent, it is suggested that a social identity theory has also served in the development of this conflict. Tajfel and Turner developed this theory that holds that "the mere awareness of the presence of an out-group is sufficient to provoke intergroup competitive or discriminatory responses on the part of the other".<sup>43</sup>

<sup>36</sup> However, the 1979 Accords were successful in bringing peace to Israel and Egypt. peace treaty was concluded and Israel returned the Sinai desert to the Egyptians.

<sup>37</sup> Tanya Reinhart, *Israel/Palestine – How to End the War of 1948*, 2003.

<sup>38</sup> The PLO (Palestine Liberation Organization) was founded with the aim of destroying Israel.

<sup>39</sup> The Oslo Accords were the result of Norwegian mediators, pursued in secret.

<sup>40</sup> Key issues like the extent of the territories to be ceded by Israel, the nature of the Palestinian entity to be established, the future of the Israeli settlements and settlers, water rights, the resolution of the refugee problem and the status of Jerusalem were set aside to be discussed in final status talks: Joel Beinin and Lisa Hajjar, *Palestine, Israel and the Arab-Israeli Conflict*, The Middle East Research and Information Project: [http://www.merip.org/palestine-israel\\_primer/intro-pal-isr-primer.html](http://www.merip.org/palestine-israel_primer/intro-pal-isr-primer.html) - accessed on 16.10.2003.

<sup>41</sup> "The Oslo Declaration of Principles": <http://www.mideastweb.org/meoslodop.htm> - accessed on 30.9.2003.

<sup>42</sup> Palestinian Hopes in Tatters: <http://mondediplo.com/2000/1102mideastpalhope> - accessed on 17.10.2003.

<sup>43</sup> H Tajfel and J C Turner, "An Integrative Theory of Intergroup Conflict", in W G Austin and S Worchel (Eds), *The Social Psychology of Intergroup Relations*, cited in Dean G Pruitt and Sung Hee Kim, *Social Conflict, Escalation, Stalemate and Settlement*, 3<sup>rd</sup> ed, 2003, p. 29.



Isseroff contends that the Oslo Accords did result in a better relationship between the Israel and the Arab states. Israel now has a peace treaty with Jordan<sup>44</sup> and recognises that there will be a separate Palestinian state in future. Subsequent to these talks, there was the Road Map, which was also not accepted.

Another attempt at peace was made on April 30, 2003, when the US State Department released a Road Map for a Permanent Two-State Solution. The "goal-driven" roadmap had clear phases, timelines, target dates, and benchmarks aimed at progress through reciprocal steps by the two parties in the political, security, economic, humanitarian, and institution-building fields, under the auspices of the United States, European Union, United Nations, and Russia (the Quartet). A final and comprehensive settlement of the Israel-Palestinian conflict was proposed to come into effect by 2005 but then Israel attacked Lebanon. So, the Road Map is now in archives.

4 years on, and the peace process is still unresolved. Prompted by 7 visits by the US Secretary of State to the Middle East over the last few months, peace is still lurking in the far horizon. Israeli Prime Minister Ehud Olmert and the Palestinian National Authority President Mahmoud Abbas have agreed to meet every fortnight.<sup>45</sup> The reason for the fortnight meeting is "to discuss humanitarian and security issues" according to Ms Rice, as well as "to explore political horizons".

## Conclusion

Mediation will definitely help in settling domestic and cross-border disputes. No doubt about it but only if the mediator is neutral, objective and with a hard determination to bring the dreams of the parties to reality. Trust and confidence in the mediator will be vital. But can this be achieved when the mediator, in this case the US Secretary of State is now acting as the go-between, is perceived to be biased?

### 'Biased' Mediator

Palestinian critics say Ms Rice has shown, once again, that she is a friend of Israel, not an honest broker in this process. She has called on Arab states to recognise Israel - a demand made of the Palestinian government too, as well as a call to renounce violence and honour past peace accords. What pressure is being exerted on Israel, and what do we get in return, many Palestinians ask. Ms Rice insists no-one should doubt America's commitment to ending the conflict here. She wants Arab states to believe her. The US needs their help to stabilise Iraq and to isolate Iran. In return, they have told the US it must engage dynamically - and fairly - in mediating between Israelis and Palestinians.<sup>46</sup>

Much has been said about the role of the US in the peace process. Mediation requires impartiality, and unbiasedness. The role of the mediator is to steer the parties to achieve a result without an interest for himself, a mediator being an uninterested third party in the triad. A mediator has not only to recognize that the following issues are prevalent in the Israeli-Palestinian Conflict but has to ensure that both parties recognize the importance of these issues.<sup>47</sup>

- **Sovereignty** – each nation wants the right to self determination. So far the peace processes have failed because the proposals have denied self determination to one party or the other.
- **Borders** must be apportioned fairly. In order for that to happen some of the people may need to move. Israel has been encroaching onto Palestinian land slowly and now refuses to move. The Palestinians demand that all Israeli settlers on their land would need to move when there is a separate Palestinian state.
- **Immigration** - Israel has a law of return that allows Jews from all over the world to immigrate to Israel and be granted citizenship automatically. Israel actively seeks Jewish immigration. Palestinian refugees who fled Israel in 1948 and 1967 want the right to return to their homes in Israel (Right of Return), and Palestinians historically have tried to limit Jewish immigration to Israel and abolish the Law of Return. Many Palestinian refugee families have kept keys to their homes in what is now Israel, even though the homes themselves no longer exist. Return of Palestinian refugees and their descendants, including all those who claim the status of Palestinian refugees, would establish an Arab majority in Israel and would therefore mean the end of Israel as a Jewish state.

<sup>44</sup> Ami Isseroff, "The Peace Process is Dead, Long Live the Peace Process", <http://www.mideastweb.org/oslofailed.htm> - accessed on 3.11.2003.

<sup>45</sup> [http://news.bbc.co.uk/2/hi/middle\\_east/6500355.stm](http://news.bbc.co.uk/2/hi/middle_east/6500355.stm), site accessed on 14.4.2007.

<sup>46</sup> Extract obtained from the above BBC news clipping.

<sup>47</sup> Information obtained from website: <http://www.mideastweb.org/peaceplans.htm>, site accessed on 14.4.2007.



- **Resources** - If the states are divided, scarce common resources must be apportioned between them.

No peace plan seems to have succeeded this far. According to the Mid-East Web<sup>48</sup> there are two intractable difficulties in the way of any such plans for Israel. One is that the matter concerns land. Both parties allege that the land belongs to each of them and not to the other. The second issue is the interference from outside sources. Terrorist groups and regimes that support them continue to divide and rule and any peace process will be sabotaged by these groups. No plan can succeed until these problems are solved. Will mediation resolve these issues? The answer is yes, if the mediators are strong, determined and unbiased. And both nations are ready to give, not take.

<sup>48</sup> Ibid.



