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FITZGERALD, E. International conflict resolution.

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**INTERNATIONAL CONFLICT RESOLUTION -
A CHANGE OF PERCEPTION**

**LLB (HON) RESEARCH PAPER
DISPUTE RESOLUTION (LAWS 532)**

**LAW FACULTY
VICTORIA UNIVERSITY OF WELLINGTON**

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1 INTRODUCTION

abstract

The nature of conflict in the international arena is shifting

A change of approach to international conflict resolution is clearly needed in the light of the changing face of global conflict from traditional state-to-state conflicts to human oriented conflicts within states concerned with issues of identity, human rights and the recognition of culture and religion. An holistic view of conflict suggests that these types of deep-rooted conflicts can only be resolved when the human dimensions of the conflict are addressed and there is acceptance and understanding of each other's needs. The task is one of changing conflictual relationships by improving methods of communication; changing attitudes; and implementing consultation between parties in order to foster constructive methods of conflict resolution.

determine factors which assist or detract from conflict

There is a need to move away from "crisis" conflict mediation to preventive intervention. A culture shift must occur where a co-operative orientation must occur on a global level, and the most effective way for this to occur is from the "grass roots" level up to the official level, with all processes working together. This reorientation involves shifting the focus of conflict away from individual issues towards the fundamentals of the relationship between the parties in conflict.

A framework for a multi-disciplinary approach to conflict resolution is needed to co-ordinate international peace efforts together so as to increase their effectiveness. This framework should consist of a combination of complementary approaches to international conflict resolution including the method of informal conflict facilitation by unofficial third parties which has proven to result in successful intervention.

"clashing of opposed principles" which is a definition of conflict that does not automatically imply a result of hostility or violence.

¹ The Concise Oxford Dictionary (8 ed, Clarendon Press, Oxford, 1991) 240.

I INTRODUCTION

The nature of conflict in the international arena is shifting from traditional state to state conflicts to conflicts within states. This paper examines conceptual work done in the field of international conflict resolution which attempts to explain this change and to invent processes to effectively manage current global conflict. This paper reviews theories of conflict processes and the causes of conflict, and examines how this work shapes current approaches to international conflict resolution. This paper also examines whether an holistic approach to conflict results in a more realistic and effective approach to conflict resolution.

The Israeli-Palestinian conflict and peace agreement is assessed as a current case study of conflict and resolution to determine factors which assist or detract from conflict resolution. The case study is also used to derive principles for effective conflict management. This paper then considers the the definition of a successful intervention before addressing the need for a framework within which to increase the effectiveness of international conflict resolution. The paper also discusses the practical implications of changing perceptions to conflict and its resolution in the international sphere.

II AN OVERVIEW OF CONFLICT

A *The Nature of Conflict*

At first impression, the term "conflict" evokes negative images of hostility, fighting or struggle. These images of conflict are valid, but they really describe a common result of the "clashing of opposed principles",¹ which is a definition of conflict that does not automatically imply a result of hostility or violence.

¹ *The Concise Oxford Dictionary* (8 ed, Clarendon Press, Oxford, 1991) 240.

The work of John Paul Lederach sheds insight on the nature and effects of conflict.² Social conflict is a phenomenon of human creation, lodged naturally in relationships. It is a phenomenon that transforms events, the relationships in which the conflict occurs, and the creators of the conflict. Under this view, conflict is a necessary element in meeting and transformative human construction and reconstruction of social organisations and realities.

Lederach holds that conflicts arise from and are based on a bank of social knowledge that societies have developed. Key factors in this process are:

1. that social conflict is a natural, common experience within which present in all relationships and cultures.
2. that conflicts do not "just happen" to people - people are active participants in creating the situations and interactions they experience as conflict.
3. that people act on the basis of the meanings they attach to events and issues, and the correspondingly appropriate responses and actions to be taken.
4. that conflict emerges through an interactive process based on humankind's search for meaning, and meaning is gained from shared and accumulated knowledge.

All knowledge or communication goes through phases (1) the idea to be communicated (2) the expression to another (3) the perception of that other of what was said (4) the interpretation of what was said (based on that other's bank of knowledge).

It is evident through this process of communication how easily conflict and misunderstanding can arise. This scheme effectively illustrates how different meanings can be attached to the same thing. From this viewpoint it is easy to see how conflict and its resolution can often end up becoming a war of words - because words give meaning to what people feel and are prescriptive of other's interpretations of what people mean

² John Paul Lederach *Preparing for Peace: Conflict Transformation Across Cultures* (Syracuse University Press, New York, 1995).

as well. This view holds that the construction of social meaning lies at the heart of the creation of human conflict.

This view is in accord with the view of R. J. Rummel who describes conflict as "the clash of power in the striving of all things to be manifest" and the "process of powers meeting and balancing".³ Rummel's theory is that conflict exists as a continuing spiral or helix of social change, revolving around *latent conflict* and *actual conflict* with three levels: (1) potentialities for conflict; (2) dispositions towards conflict; and (3) manifestations of conflict.

Rummel provides a framework for conflict to be viewed within which divides the life-cycle of a conflict into five phases: (1) the latent conflict; (2) the initiation of conflict; (3) the balancing of power (where negotiation and mediation fits in); (4) the balance of power (where a resolution is reached); (5) the disruption of equilibrium (where human needs and the construction of social meaning require change again). Rummel points out that the wish to eliminate all conflict is probably undesirable as it would result in freezing reality and preventing any change.

Folberg & Taylor describe conflict as a set of divergent aims and point out that it is not necessarily bad or wrong but is simply viewed negatively because it is equated with win/lose situations. However, they point out that conflict can function in positive ways; by reducing incipient tension through making issues manifest; by clarifying objectives; and as Jandt put it "It has been demonstrated that through conflict man is creative".⁴

³ R. J. Rummel *Understanding Conflict and War* Vols. 1 & 2 (Wiley Publishers, New York, 1976) as discussed in J. Folberg & A. Taylor "Nature of Conflict and Dispute Resolution Processes" in *Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation* (Jossey-Bass, USA, 1984) p. 21.

⁴ Folberg & Taylor "Nature of Conflict and Dispute Resolution Processes", above n 3, p. 19, also included reference to F. Jandt (ed.) *Conflict Resolution Through Communication* (Harper & Row, New York, 1973).

Paul Salem emphasises the capacity that conflict has for creating change, which is necessary for progression, and criticises the Western view that conflict is an evil to be prevented.⁵

The combination of all these conflict theories points to a conclusion that conflict is a natural phenomenon. Conflict is not to be prevented at all costs but requires management to create positive change rather than resulting in violence and stalemate.

B Conflict Resolution

Conflict is a dynamic process, not a contest between static interests, and moving conflict towards resolution is a broad continuing process rather than a one-off event such as a negotiated agreement.⁶ The clear recognition of this view of conflict as a reality results in an approach to conflict that focuses on relationships between the parties rather than specific issues in order to resolve conflicts.

Recently, theorists have recognised the *need for more complex conflict resolution strategies* to address the human as well as the state dimensions of conflict. It is important to deal not only with the concrete issues of military deployment or diplomatic recognition, but the *larger task of changing conflictual relationships between groups of people.*

Increasing inter-ethnic and intra-state conflict allows an interpretation that the bases for these conflicts are human oriented, concerned with identity, human rights and the recognition of culture and religion. This reflects a shifting agenda in global politics. These types of conflict should not be overruled by force, or by employing a "right/wrong"

⁵ Paul E. Salem "A Critique of Western Conflict Resolution from a Non-Western Perspective" (1993) 11 *Negotiation Journal* 361.

⁶ Harold H. Saunders "Possibilities and Challenges: Another Way to Consider Unofficial Third-Party Intervention" (1995) 11 *Negotiation Journal* 271, 272.

perspective on the behaviour of the parties involved, but should be resolved in light of the current global environment supporting human rights. These conflicts can only be resolved when there is acceptance and understanding of each other's needs, and relationships are transformed into communicative and co-operative interdependence rather than destructive antagonism.

Most conflict theorists uphold that conflict can result in either constructive or destructive processes.⁷ Morton Deutsch proposes that there are co-operative and competitive types of social relationships which tend to elicit similar characteristics. These social relationships result respectively in constructive or destructive processes of conflict resolution.⁸

Deutsch holds that co-operation induces and is induced by a perceived similarity in beliefs and attitudes; a readiness to be helpful; openness in communication; trusting and friendly attitudes; sensitivity to common interests and de-emphasis of opposed interests; an orientation towards enhancing mutual power rather than power differences, and so on. A co-operative orientation usually results in a constructive resolution process which attempts to perpetuate co-operation amongst the parties.

Similarly, competition induces and is induced by the use of tactics of coercion, threats, or deception; attempts to enhance the power differences between parties; poor communication; minimisation of the awareness of similarities in values and increased sensitivity to opposed interests; suspicious and hostile attitudes; and so on. A competitive orientation usually leads to a destructive conflict process where there is a lack of communication between the parties in conflict which results in mistrust. This attitude in turn reinforces pre-existing expectations under a competitive orientation and the ability of

⁷ Morton Deutsch, Dudley Weeks, Lederach.

⁸ Morton Deutsch "Constructive Conflict Management for the World Today" (1994) 5:2 *International Journal of Conflict Management* 111, 112.

one party to notice and respond to shifts away from a win/lose orientation by the other party becomes impaired. A competitive orientation to conflict maintains the view that the solution lies in superior force, deception or cleverness, and results in attempts by each party to create or enhance power differences favourable to its own side. This view tends to expand the scope of conflict from the issues in conflict to the entire relationship between the parties.

Most nations attempt to resolve conflict in unsustainable ways, focusing on the issues over which parties clash rather than the attitudes of the parties to each other and the relationship within which the conflict has arisen. The competitive "win/lose" orientation has usually expanded the conflict from opposition over issues to general opposition, and in order to resolve a conflict the parties must be re-oriented towards each other; made to recognise their similarities; and re-open the lines of communication in order to achieve a co-operative orientation towards each other. A co-operative orientation will result in a continuing process of dialogue and negotiation where co-operation and joint problem solving will result.

C The Changing Face of Global Conflict

A state-centred conception of international relations and conflict - which involves states amassing economic and military power to pursue objectively defined interests in zero-sum (where one party must lose when another gains) contests of material power with other states - has dominated the last three centuries. The traditional methods of dispute resolution under this model include diplomacy, force, and mediation and negotiation on an official level.

The nature of global conflict is shifting from traditional international (state to state) conflict to mainly intra-national (within a state) conflicts. Since 1989, only two out of 94 conflicts were of the traditional kind between states, the rest

⁹ Jacob Dercovecik "Understanding Mediation's Role in Preventive Diplomacy" (1999) 12 *Negotiation Journal* 241, 242.

have all occurred within a state.⁹ Conflicts within states are generally inter-ethnic and involve disputes about sovereignty or autonomy, identity, recognition and religion.

This increase of intra-national conflict has demonstrated that some conflicts are triggered by citizens outside government and often seem to be beyond the influence of institutions and instruments of the state. It is important in the current global climate to recognise that these kinds of conflicts are rooted not in objective state interests (such as territory, power and wealth) but in human needs (such as identity, security, recognition and participation which are needs relating to growth and development).

The recognition and acceptance of the right to self-determination as a fundamental principle in international affairs has created a situation which demands a difficult and exacting experiment of global co-operation.

The current trend of globalisation has involved a vast amount of international interaction, yet there has been a rise of ethnocentrism and religious fundamentalism as people seek a social identity, for reasons such as security, cognitive clarity, and self-esteem. Humans need to understand and categorise but this can lead to intolerance, exclusion and violence towards others. In contrast to this ethnocentrism, industry is drawing the world into a tighter web of interdependence in the sphere of economics which has a competitive zero-sum (win/lose) orientation and which may lead to destructive conflict resolution processes.

D Causes of Conflict

Paul Emond considers that conflict arises from four principal factors, namely: that individual need is insatiable and resources are limited; that conflict springs from the clash of different values; that different understanding of a situation

⁹ Jacob Bercovitch "Understanding Mediation's Role in Preventive Diplomacy" (1996) 12 *Negotiation Journal* 241, 242.

leads to cognitive conflict; that diverse ideas compete for recognition and legitimacy.¹⁰ These are some of the causes for conflict, but Emond places them in a less positive and somewhat irremediable context by determining that need is insatiable, where it is my opinion that greed is insatiable and need is more manageable.

An insightful theory which can be used as a basis for understanding conflict, and approaching conflict resolution, comes from the work of John Burton.¹¹ The crux of the human needs theory is that over time all societies experience conflicts between the institutional values and structures of society on the one hand and human needs at the level of the individual on the other hand. Human needs reflect universal motivations, and include biological needs such as food and shelter, as well as needs relating to growth and development. A human needs perspective when applied to international conflict resolution focuses attention on needs for identity, security, recognition, participation, dignity and justice.¹²

The role of human needs in the emergence of international conflicts and social change can be seen by focusing on the impact that human needs deprivation has on the long-term legitimacy and stability of political and social systems. Human needs theorists argue that social systems that fail to satisfy human needs will inevitably grow unstable and be forced to undergo some sort of change (through violence or conflict). This does not mean that human needs will be fulfilled but that individuals will strive to fulfil them.¹³ This approach also

¹⁰ D. Paul Emond "Alternative Dispute Resolution: A Conceptual Overview" in *Commercial Dispute Resolution* (Canada Law Book Co., Canada, 1989) as discussed in Folberg & Taylor, above n 3.

¹¹ John Burton *Conflict: Resolution and Prevention* (St. Martin's Press, New York, 1990), *Conflict: Human Needs Theory* (St. Martin's Press, New York, 1990).

¹² These are listed in Kelman's article "Applying Human Needs Perspective to the Practice of Conflict Resolution" in Burton's *Conflict: Human Needs Theory* (1990) at p. 284. The list is merely to give an idea of what the human needs theory identifies in international conflict, and is not meant to be prescriptive or exhaustive.

¹³ J. A. Rosati, D. Carroll and R. A. Coate "A Critical Assessment of the Power of Human Needs in World Society" in John Burton and Frank

recognises that human needs are constantly changing and evolving.

In an attempt to keep control of society with the increase of disputes, conflicts, crime, violence and ethnic wars, governments are led into practices which, performed by others, would be described as terrorism and murder. Burton points out that there is something self-defeating in traditional norms if they require for their defence just those behaviours they seek to control (that is violence and threats of violence) and that there is clearly a need for a paradigm shift from power-elite norms to human needs norms.¹⁴

A large body of theory has simply assumed that human nature is evil and aggressive, and the range of human needs is thus limited to the pursuit of power, security, and prestige. This theory has been applied to the international arena, assuming that these same characteristics account for state behaviour. However, focusing attention on the complex composition of human needs motivation, which leads individuals to join various groups in pursuit of needs and values satisfaction, should be recognised as a realistic and responsible approach to analyses of social and international relations, particularly in the current international political environment.¹⁵

The human needs model put forward by Burton and others indicates that some causes of conflict are rooted in fundamental values. When needs are not clarified, ignored or not met or where any group is denied rights and denied a method of redressing that denial by peaceful means, then that group's only recourse is to violence, in order to make their plight a priority to be remedied by the group in power.

Clearly human needs is only one way of focusing on a conflict. It is also important to look at the understanding of the parties

Dukes (eds.) *Conflict: Readings in Management and Resolution* (St. Martin's Press, New York, 1990) p. 157.

¹⁴ Above n 11.

¹⁵ Above n 11.

and the communication within their relationship. This is where both Deutsch and Lederach hold that co-operation and communication within relationships can lead to constructive conflict resolution, and so the focus of this type of resolution is on the actual relationship between the parties and how this can be improved.

A hybrid of intervention techniques appears to be useful at this stage as the task of changing conflictual relationships is a wide and difficult one, and an holistic approach to it would mean that all facets of conflict resolution become important. The premise is that a conflict should never be unsolvable - even if the only workable solution is a compromise - as long as the parties are satisfied and recognise that the compromise is better than the previous situation for either party.

Unfortunately or fortunately, standards have been set by the global community which denigrate and uphold different types of moral behaviour. There is no great higher power in the global community that can control the behaviour of parties - with force of will or arms or by intimidation - that has authority by any mandate. The United Nations exists with moral strength but has not the capacity to enforce its will, resulting in a situation where compromise and settlement is often a necessity in the face of military strength and dominance of one party to a conflict.

E Conflict Progression - A Framework for Peace

Our thinking about conflict may have changed slightly since Adam Curle was a Quaker conciliator who wrote *Making Peace* in 1971. He envisaged a model of conflict progression which Lederach builds upon in his "Framework for Peace".¹⁶ Lederach's framework for peace maintains that the development of a long-term view of conflict is necessary in constructing a broader understanding and approach to building peace. Lederach holds that such a framework must be inclusive - embracing multiple facets such as the interdependence of roles and activities (of peacemakers,

¹⁶ Curle's model taken from his book *Making Peace* (1971) is depicted in Lederach, above p 2.

diplomats, educators and others) and a clear vision of the broader agenda which the efforts of peacemaking and conflict resolution undertake.

Curle's conflict progression model suggests that the movement from unpeaceful to peaceful relationships can be charted in a graph comparing levels of awareness of conflicting interests and needs. (See Figure 1) The key steps identified by Curle in this diagram are 1. education 2. confrontation 3. negotiation 4. sustainable peace.

Figure 1¹⁷

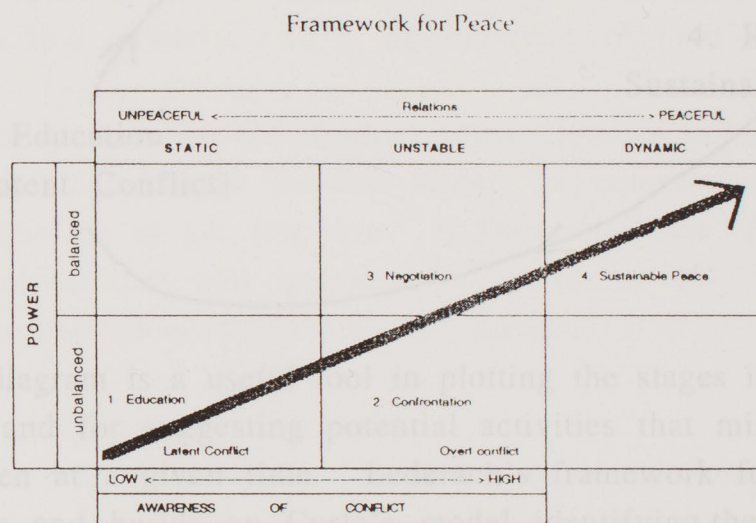


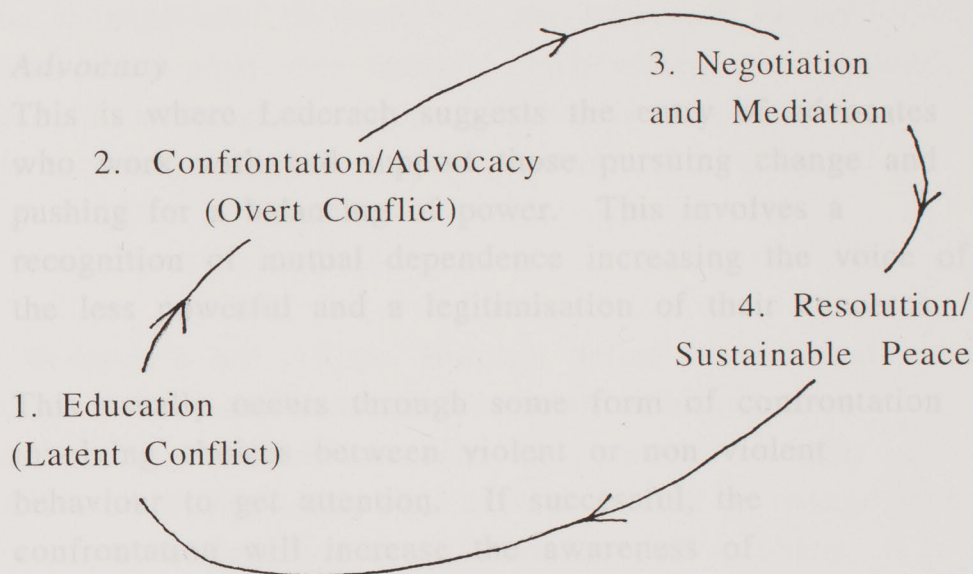
Figure 1
The Progression of Conflict

Our thinking about conflict may have changed slightly since Curle developed this model, and now the “sustainable peace” at the end of the progression can be considered not as an “end” of the conflict but a resolution of the issues where the parties' interests clashed. Now it would be said that conflict is a natural part of relationship which is constantly evolving and should not be prevented but merely channelled in a positive direction. Appropriately Curle's linear model could be adapted into a circular or elliptical model which returns back to the beginning point of the graph - where latent conflict exists. (See

¹⁷ Above n 16.

Figure 2) This simplified adaptation of Curle's model incorporates the idea of conflict being a continuous natural cyclical phenomena with the notion that it also progresses as in Curle's diagram.

Figure 2



Curle's diagram is a useful tool in plotting the stages in a given conflict and for suggesting potential activities that might be undertaken at a given time. Lederach's framework for peace interprets and builds on Curle's model identifying the stages which typically occur in a conflict by pointing out three key peacemaking functions - education, advocacy and mediation - which can be applied through this progression to assist in resolution. The interrelation of Lederach's framework for peace and Curle's conflict progression model is outlined below:¹⁸

1. *Education*

Education or conscientisation is needed when the conflict is hidden and people are unaware of imbalances or injustices. The function of education is aimed at erasing ignorance and raising awareness of injustice and the nature of unequal relationships and the need for

¹⁸ Above n 2.

addressing and restoring equity, as seen, of course, from the view of those experiencing the injustices.

Increased awareness rarely leads to immediate change and often demands for change are not even heard or taken seriously by those who are benefiting from the status quo.

2. *Advocacy*

This is where Lederach suggests the entry of advocates who work with and support those pursuing change and pushing for a balancing of power. This involves a recognition of mutual dependence increasing the voice of the less powerful and a legitimisation of their concerns.

This usually occurs through some form of confrontation involving choices between violent or non violent behaviour to get attention. If successful, the confrontation will increase the awareness of interdependence and balance power.

3. *Negotiation and mediation*

It is here that negotiation becomes possible and the role of mediation emerges. Essentially negotiation means that the groups involved recognise that they cannot simply impose their will or eliminate the other side, but rather must work together to achieve their goals.

4. *Resolution/sustainable peace*

Successful negotiation and mediation lead to a restructuring of the relationship towards increased justice and equality. Mediation can and should facilitate the articulation of legitimate needs and interests of all concerned, which should lead to fair, practical, and mutually acceptable solutions.

This framework for peace (progression of conflict) lays out a paradigm which contemplates the direction of mediation and envisages a multiplicity of approaches to achieve it.

III APPROACHES TO CONFLICT RESOLUTION

For the purposes of this paper this discussion of approaches to international conflict resolution will be limited to the area of mediation, which is the most common form of international conflict resolution, and which attempts to bring the parties together to negotiate. In particular, the focus will be on unofficial third party intervention which attempts to answer the need for a change in approach to conflict resolution to include the deep-rooted human dimensions of conflict.

A Mediation

Jacob Bercovitch and Allison Houston define international mediation as "a reactive process of conflict management whereby parties seek the assistance of, or accept an offer of help from, an individual, group, or organisation to change their behaviour, settle their conflict, or resolve their problem without resorting to physical force or invoking the authority of the law."¹⁹

The scope of mediation activities in the international arena is truly immense - third party intervention can occur on both official and unofficial levels, and mediator behaviour can be classified along a continuum ranging from low to high level intervention.²⁰

At the low end are communication-facilitation strategies where a mediator takes a fairly passive role, largely as a channel of communication between the parties, and exhibits little control over the process or substance. The most active mediation strategies involve directive mediator behaviour where the mediator sets out to affect the content and substance of the

¹⁹ Jacob Bercovitch and Allison Houston "The Study of International Mediation: Theoretical Issues and Empirical Evidence" in Jacob Bercovitch (ed.) *Resolving International Conflicts: The Theory and Practice of Mediation* (Lynne Rienner Publishers Ltd., Colorado, 1996) p. 13.

²⁰ Bercovitch and Houston, above n 19, p. 29-30.

mediation as well as the process. A mediator might achieve this by providing incentives, offering rewards and punishments, issuing ultimatums, and introducing proposals.

Adam Curle says mediation is "a *psychological* effort to change perceptions both of the conflict and of the "enemy" to the extent that both protagonists gain some hope of a reasonable resolution and so are more prepared to negotiate seriously."²¹ Although simplistic, this description of mediation gives a very clear view of the actual goal of mediation, because in the final analysis, no resolution can be achieved without the direct input of the parties concerned. Mediation is more than resolution however; it involves the re-orientation of parties towards each other and the issues in conflict.

Mediation at an international level can involve official representatives of the parties to the conflict, or it can be an unofficial intervention including citizen diplomacy, pre-negotiation, problem-solving workshops, and back-channel second tier ("track two") diplomacy.

A lot of unofficial third party intervention occurs at the same time as official mediation or negotiation, working on changing attitudes and political atmosphere. This type of intervention seems to address the complex layers of conflict, aiming at the motivation behind conflicts and the relationships between states rather than treating conflicts as relating to static interests or one-off events.

B Conflict "Facilitation" and Problem Solving

The ideas discussed above about the nature of conflict lead current theorists and practitioners towards a holistic approach to conflict resolution. The reality is that conflicts cannot be suppressed, they are necessary to produce change and react to the changing environment of human needs. Conflicts can be turned towards constructive or destructive paths, and

²¹ Adam Curle *Tools for Transformation: A Personal View* (Hawthorn Press, UK, 1990) p. 25.

practitioners need to focus on the relationships between the parties; identifying the human needs that are sought to be fulfilled; and bringing the parties together in facilitated joint problem solving endeavours in order to direct conflicts away from destruction.

Saunders points out that "deep-rooted human conflicts are not ready for formal mediation and negotiation because people do not negotiate about their identities, fears, and historic grievances."²²

Human needs theory leads directly to a role for problem solving as an approach to conflict resolution. Human needs explains the existence of the conflict and problem solving proposes to delve into the causal circumstances of the conflict, thus creating a resolution that satisfies human needs rather than punishing groups for the results of an unjust society. A human needs framework for conflict resolution shifts definitions of justice to a basic principle that inherent human needs must be satisfied if law and order is to be sustained and societies are to be stable and non-violent.

Problem solving as envisaged by Burton and Groom has the third party playing a facilitative role, to assist in dialogue between the parties only. The primary activity engaged in by the parties is analysis of the problems, the goal of which is to reveal positions, frustrations, constraints and perceptions. This occurs through face-to-face interaction between non-official representatives of two parties (at any one time) to a conflict.²³

An example of this type of approach can be seen in Herbert Kelman's interactive problem-solving model, which was

²² Above n 6, 272.

²³ A. J. R. Groom "Facilitating Problem Solving in Internationalised Conflicts" in Edward A. Azar and J. W. Burton (eds.) *International Conflict Resolution* (Wheatsheaf, USA, 1986) and Burton *Conflict: Resolution and Prevention* (1990), *Conflict: Human Needs Theory* (1990).

derived from the work of Burton, and was used during the Israeli-Palestinian conflict.²⁴

The workshops run by Kelman and others used an academic setting with its expectation of a free exchange of views and the consideration of creative solutions in a non-committal environment to bring influential Israelis and Palestinians together. In this approach the third party usually consists of a panel of social scientists with expertise in group process and international conflict, and at least some familiarity with the conflict region. The task of the third party is to facilitate rather than mediate, they provide the setting, create the atmosphere conducive to discussion, establish the norms and offer occasional interventions.

This process encourages solutions to emerge out of the interaction between the parties themselves, and uses academic norms because they favour open discussion, attentive listening to opposing views, and an analytical approach, in contrast to the polemical, accusatory, and legalistic approach that conflict and political norms tend to promote.

The approach described here is an application of a human needs perspective to the practice of international conflict resolution. The whole enterprise is designed as an effort to find, through joint creative problem-solving, *solutions* to the conflict that would *satisfy the needs* of both parties. The workshops are structured so that the focus of the conflict analysis is on the parties whose *needs* are at the *core* of the conflict.

This process of conflict "facilitation" takes a far more extensive view of conflict emphasising the need for recognition that conflict resolution involves more than merely trying to "resolve" some opponent conflict. The process is geared at

²⁴ Herbert C. Kelman "Interactive problem-solving" discussed in Burton (ed.) *Conflict: Human Needs Theory* (1990) p. 285, and Kelman "Contributions of an Unofficial Conflict Resolution Effort to the Israeli-Palestinian Breakthrough" (1995) 11 *Negotiation Journal* 19.

enabling the parties to *identify and understand each other's needs* and take them into account simultaneously in working on overall solutions.

The aim was that these types of workshops would be a second or third tier of peacemaking efforts which could assist with the first tier negotiations - the ideas which surfaced in the workshops could be put onto the international stage to be tossed around by the actual decision makers.

IV CASE STUDY - THE ISRAELI-PALESTINIAN CONFLICT

This case study intends to analyse the different conflict resolution processes, particularly the successful secret Norway Channel, that were involved in establishing an interim self-government agreement between Israel and the PLO in September 1993. The main focus is on the dispute resolution processes occurring around the time of the agreement to determine how effective the processes were, and some possible reasons for any differences in effectiveness. The case study then follows the progress of the peace process after 1993 and reflects on the implementation of the agreement and the ongoing process of negotiations.

A Pre 1993 Conflict Resolution

At the heart of the hostility between Israel and its Arab neighbours was the question of a Palestinian homeland, which hung on the fate of the territories occupied by Israel since the Six Day War in 1967. The Occupied Territories had remained in Israel's hands for nearly a quarter of a century, despite United Nations resolutions calling for withdrawal, violent Palestinian insurrection, and in defiance of international opposition.

1. The Madrid peace process - active mediation

The aim of the Madrid peace process, which began in 1991 in Madrid and quickly shifted to Washington, was to work

towards an agreement on the shape and functions of interim self-government for the Palestinians, and ultimately on the permanent status of the Occupied Territories in the old area of Palestine.

The process was launched after the defeat of Iraq in the Gulf War; George Bush had proclaimed that the region's problems would be resolved by America and its new partner Russia. Bush's concept of a "new world order" meant that great things were expected of the Middle East, and Israel in particular was expected to play its part. The hope was that the Palestinian problem could be solved, and that Syria, Lebanon and Jordan would then be able to resolve their differences with Israel, creating a situation of sustainable peace in the Middle East.

To reach an interim agreement two complex sets of talks were convened simultaneously. The main ones were centred at the State Department in Washington and were bi-lateral talks between three Israeli teams and three Arab delegations - one from Syria, one from Lebanon and a joint Jordan/Palestinian delegation. Under the new Clinton Administration however, the USA determined that it would become "full partners" to the negotiations and be fully involved in trying to get the dispute resolved. The subsidiary, multilateral talks took place at various locations around the world and involved thirty countries acting as sponsors and advisers. The multilateral talks concentrated on more practical problems in the region such as water-sharing, arms control, the economy, the environment and the fate of refugees.

The peace talks in Washington were in difficulty. The Israeli government refused to negotiate directly with the Palestine Liberation Organisation (PLO) government-in-exile headed by Yasser Arafat whom they considered to be untrustworthy renegade terrorists. Also the talks had degenerated into public posturing for the press, and no progress of any substance had come about after two years of negotiations.

2. *The Norway Channel*

The Norway Channel was envisaged by the Norwegians as a "back channel" to the public Washington negotiations. An influential Norwegian researcher and social scientist, Terje Larsen, was working on a survey of living conditions in the Occupied Territories and became involved in the peace process when he suggested to a top Israeli politician that Norway could use its "good offices" to establish secret contacts with the Palestinians to assist the peace talks. Larsen's academic institute was independent yet it had close links with the Norwegian Foreign Ministry, and Larsen felt it would be useful for Israel and the PLO to exchange and develop ideas and establish behind-the-scenes relations.

The intention was for the meetings to be an academic exercise, and a recent paper written by a leading PLO official, Abu Ala, advocating economic co-operation on a regional basis in the Middle East had provided a basis from which the two groups could work together. An Israeli academic, Yair Hirschfeld, headed a research unit called the Economic Co-operation Foundation, which was dedicated to advance the cause of peace through establishing direct links with the Palestinians and was patronised by the Israeli Deputy Foreign Minister.

The two men were brought together by Larsen while the multilateral talks on economic issues were convened in Britain, and both felt that continuing talks under secrecy in Oslo might be useful.

The approach of the Norwegians to this exercise was crucial in determining why it succeeded in reaching agreement where the peace talks in Washington had failed. It was evident that the Washington talks were in trouble largely due to the intense publicity surrounding them. The aim of the Norwegians was to build confidence and respect amongst the parties in private, and for the secret talks in Oslo to produce some solutions that could be implemented through the public channel.

The Norwegians recognised from the start that the number one requirement for the kind of discussions they were trying to set up was secrecy. Shielding the participants from the media was the only way that any behind-the-scenes meetings could bear fruit instead of being blown apart by the press and extremist groups. An important precondition for Norway establishing the Channel was the willingness of the parties to approach the talks in good faith.

Another essential difference from the American approach that Norway wanted to pursue was that their third party involvement would be facilitative rather than mediative. They wanted to bring the parties together to promote trust, and to interpret and clarify positions, and to explain difficulties each side faced to the other side. They would not be involved in the substance or merits of the talks even if they evolved into negotiations, but would help to smooth the way (i.e. Larsen became the intermediary for phone calls between the parties who were unable to communicate directly outside the Oslo forum). Norway wished to be impartial, and had already established the background for this with their even-handedness in diplomatic relations with each party in the past.

Norway's role mainly consisted of getting the parties together and providing the setting for direct communication between the parties, since at that stage Israel and America were refusing to acknowledge the PLO or deal with them directly in Washington, and it was illegal for Israelis to communicate with any PLO members.

Another factor that was important in the development of the Norway Channel was the intensity of the talks in marked contrast to the many breaks and internal discussions in Washington. The process was little more than brainstorming at the beginning, yet opposite sides were living, eating and working together, and this proved a strong relationship base for progression towards agreement.

From the first meeting, goals were set and guidelines created by the two parties. The PLO representatives led by Abu Ala were taking the opportunity very seriously because they had not been able to participate directly in any discussions at an official level. They outlined their intentions that the talks must avoid any historical approach to the problems and move forward. Ala stated that they were here to find solutions not to compete, and that the parties should go to the substance, to points can and can't agree on, and that the talks were not just an academic meeting of the minds, but should have an aim. The Israeli representatives, led by Yair Hirschfeld were academics, and stressed that the meeting could in no way be seen as an exercise in negotiations, but welcomed the talks as a chance to identify the common ground and sensitive issues that were the "mobiles" and "immobiles" of negotiations.²⁵ Hirschfeld's intention was that the group could determine which issues could be resolved and identify those where flexibility was possible.

The group resolved to work towards a Declaration of Principles, which would be an interim accord to build trust, co-operation and mutual interests in order to help both sides agree on the final status of the Occupied Territories. Step by step progress was the only answer, and out of the limelight the parties could be more flexible in creating solutions rather than taking positions and defending them staunchly in the public arena before the eyes of the world.

The draft Declaration of Principles created by the Channel was communicated to the top forums of government in each state. The progress and sharing of ideas in Norway was seen by the two governments as a possibility for agreement, and eventually the results of the communication between the parties in Norway led to a mutual recognition agreement between Israel and the PLO, and to a Declaration of Principles for establishing interim self-government by the PLO of Gaza and Jericho.

²⁵ Jane Corbin *Gaza First: The Secret Norway Channel to Peace between Israel and the PLO* (Bloomsbury, London, 1994) p. 46.

3. *Unofficial Third Party Intervention*

A lot of other unofficial third party intervention was, and had been, going on at this time, resulting in a change of attitudes and political atmosphere. The workshops run by Herbert Kelman and others discussed previously using an academic setting to bring influential Israelis and Palestinians together were very similar to the process run in Norway. These workshops were being conducted in order to provide a setting and create an atmosphere conducive to interaction and creative problem solving between the parties themselves.

Kelman points out that these unofficial contacts and interactions between the parties helped to lay groundwork for the developments that occurred in the Norway Channel.²⁶ However, Hirschfeld holds that these workshops are only of any use if they are connected to some official process or dialogue - otherwise they remain merely academic. This could be an elitist view, however, because Hirschfeld's group managed to create an official peace agreement. Kelman's workshops are not rendered academic simply because they are not linked to any official process. It delineates the workshops as informal but they offer assistance to the peace process through changing perceptions and relationship building because they allow for the existence of *possibilities* - of peaceful, non violent co-operative experiences with the "enemy".

The evolving social climate certainly created an atmosphere ripe for agreement, and changing political conditions also played a large part in steering the parties towards an accord.

B The Norway Channel And Facilitated Problem Solving

The current conceptual thinking suggests that a needs based facilitated problem solving approach to international conflict

²⁶ Above n 24.

resolution is what will be successful in norm changing and providing sustainable resolutions to international conflicts.

The Norway Channel did provide this type of resolution to some degree, although it is difficult to tell whether the approach was based on the current theory, or others relating to behavioural psychology and social sciences, which were Larsen's particular fields. Whatever the intention of Larsen, he provided nearly all the factors that the theorists and practitioners in the field propose for a problem-solving approach to a conflict, and the conflict was successfully resolved in this situation.

The main link to resolution seemed to be that the parties could communicate in a reasonable manner, that they were willing to listen to each other, and to delve behind the "monster" image that they each had of the other. It seemed that the breaking down of the barriers, and seeing that the "enemy" were real people too, resulted in a personal commitment that was a main factor in keeping the negotiations going when things got difficult.

The resolution was assisted by the approach of the parties who determined to get to the issues that needed to be resolved to meet both parties needs in the first place, rather than blaming and bickering and posturing over who had the moral high-ground. The negotiators came into the situation with the goal of seeking resolutions or at least possibilities for the future, and this goal transformed the parties from an antagonistic relationship to one of co-operation and creativity.

The approach taken in the successful Norway Channel was facilitation rather than mediation, and the parties established, intentionally or not, a problem-solving approach to the negotiations with the ground rules that they laid out about looking at the issues and not delving into the past. The participants attempted to accommodate the human needs of each group, and worked together in doing so. They also managed to transform the relationship in the sense proposed

by Lederach when they established the Declaration of Principles which created a forum for further resolution of disputes that might arise. They turned the conflict from a destructive process (of not recognising each other and not communicating) to a constructive process of co-operation and active participation in creating solutions for their own problem.

*C Post 1993 Events Under The Peace Accord - Progress Towards Peace?*²⁷

The peace process following the 1993 agreement has had ups and downs with snags at regular intervals as the parties had differences of opinion. The process was no longer a secret one as the Norway Channel had been because a foundation for peace talks and negotiation had been established. The talks had now moved to an official platform where national leaders and politicians from both nations were publicly discussing their stances and policies.

Since 1 July 1994 Yasser Arafat has been administrator of the Gaza Strip and the West Bank town of Jericho under the first stage of the peace agreement. The second phase of the accord involving a redeployment of Israeli troops from the remaining West Bank towns has been delayed by several years because of Israel's insistence on strict security arrangements after a series of deadly bombings by Moslem militants. Israeli citizens in the currently occupied West Bank towns were concerned that a withdrawal of Israeli troops would leave them exposed to guerilla attacks. The chronic delays implementing the accord have fuelled bitterness and unrest among Palestinians, who are demanding that Israel uphold the peace accord.

A constant assault of terror by Arab militants causing the death of hundreds in an attempt to prevent progress in the peace negotiations has in fact been fairly successful. The

²⁷ All data detailing these events comes from articles from Reuters Limited via Reuters News Service.

Islamic militant group Hamas issued a statement that it would continue its "jihad" or "holy struggle" against Israel until "occupation is removed and dignity and rights are achieved".²⁸ Prime Minister Yitzhak Rabin of the Labour party refused to bow to pressure to stop negotiations under the peace process and vowed to step up the war against Islamic terror while continuing to seek peace with the Palestine Liberation Organisation who had condemned the bombings and other terrorism. This stance of Mr Rabin was very positive for the Palestine Liberation Organisation and the peace process but unfortunately on 4 November 1995 he was assassinated by a right wing Jew.

In early May 1996 Israel and the PLO concluded inaugural talks on a final peace settlement, still far apart on issues but united in a commitment to end decades of conflict, awaiting the Israeli elections on 29 May that would put the peace policy to the test. The vote went against the Labour party and the new Likud government's program which calls for letting the Palestinians run their own affairs while leaving all foreign policy and especially defence in the hands of Israel alone.

Israeli Prime Minister Benjamin Netanyahu came to power on a promise to restore security while pursuing peace. He was, and remains, surrounded by political hardliners and retired army generals. The right-wing Likud government has envisaged a final peace settlement which would give Israel overall control of the West Bank and Gaza Strip and are opposed to a Palestinian state or any form of division of Jerusalem, its "eternal united capital".²⁹ Netanyahu has indicated his vision of limited self-rule for the Palestinians whereby they would "be able to choose their own institutions, elect their leaders, legislate their laws levy their taxes be independent in all the ways that are necessary for the conduct

²⁸ "Israel: Rabin says bus atrocity will not halt peace talks", by Eric Silver, *Reuters Limited.*, Jerusalem, 22 August 1995.

²⁹ Norway Channel negotiator Uri Savir, now chief Israeli negotiator quoted in "Egypt: Israel and PLO pledge to achieve final peace" by Sami Aboudi, *Reuters Limited.*, Taba, Egypt, 6 May 1996.

of their lives but certain powers would be shared and certain powers would be held by Israel, especially those powers that are necessary for the defence of our security."³⁰

The goal of the Palestinian Authority (and the PLO) is to have an independent Palestinian state which encompasses the Gaza Strip, all of the West Bank and East Jerusalem. The PLO has indicated it would demand talks be based upon UN Resolution 242 which calls for Israeli army withdrawal from the West Bank and Gaza Strip.³¹

Now with the fate of these difficult issues to be decided there is less agreement and common ground between the parties over what sort of outcome could be sustained is difficult to define.

The Israeli government has had a policy since the end of the Six Day War of establishing Jewish settlements in occupied land, and since 1967 more than 130,000 Israelis have settled amidst nearly 2 million Palestinians in the West Bank and Gaza Strip. Netanyahu started work in March 1997 on a 6,500-unit Jewish settlement on a hilltop in Arab East Jerusalem which was occupied in 1967. Both sides claim East Jerusalem, and Palestinians see Jewish settlement as pre-empting the outcome of the final peace negotiations that have yet to take place. Talks are also stuck over Israel's demand for a PLO crackdown on "terrorism" following an attack on a Tel Aviv cafe in March that killed an Arab bomber and three Israelis.

At present, Netanyahu is acting in a inflammatory manner exemplified by his gift to the head of the Greek Catholic church in Israel, of a silver model of Jerusalem which showed a reconstructed Jewish temple atop Temple Mount, in place of

³⁰ "Israel: No quick fix to Israel-PLO crisis - Netanyahu" by Wafa Amr, *Reuters Limited*, Jerusalem, Israel, 11 May 1997.

³¹ 1996 "Israel: PLO sees tough bargaining at final-status talks", *Reuters Limited*, Jerusalem, Israel, 3 May 1996.

the two mosques which actually stand there.³² Netanyahu is continuing with the negotiations but is taking such a hard line that there seems to be no room for compromise or agreement between the parties. It would be very difficult for any negotiators involved in the Oslo talks to have any influence over Netanyahu because those negotiators were affiliated with the Labour party who are now out of power.

More recently the US mediator Dennis Ross has been actively involved in shuttle diplomacy attempts to get the Israelis and Palestinians back on track with the peace accord timetable. In January 1997 Ross invited King Hussein of Jordan to intervene after a serious breakdown in talks. Hussein managed to salvage an accord between the two parties over Israeli military withdrawal from 80% of Hebron, redeploying Israeli troops into the one-fifth of the city which is also home to the 500 Jews who live amid 100,000 Palestinians.

Palestinian President Yasser Arafat was reluctant to sign such a deal without simultaneous commitment from Mr Netanyahu to withdraw from other areas of the West Bank by September, as outlined in the Oslo Accords. Mr Netanyahu wanted to complete these further withdrawals much later, in early 1999, which is about the same time the two sides are supposed to be introducing their permanent peace treaty. King Hussein succeeded in persuading the parties to accept a compromise formulation where Israeli redeployments would be completed by "mid 1998", with the US giving both sides a letter guaranteeing this timetable.

This US and Jordanian public involvement in the negotiations indicates the marked difference between the current approach to the peace process from the initial process which established the peace agreement. That situation involved mainly lower level representatives of the parties and was secret, rather than

³² "Israel: Israel due to agree today to Hebron withdrawal" *Irish Times*, Ireland, 13 January 1997, 13, by David Horovitz, Jerusalem, Israel, Reuters Limited.

having to contend with public opinion and intense interest from the international press.

Currently difficulties have arisen because final status matters like the fate of Jerusalem, the nature of the permanent Palestinian political entity, and the fate of Palestinian refugees were up next for negotiation. These were the difficult "ideological" issues that were avoided initially in order to establish a platform for the parties to work together from and in order to enable discussions to take place without the parties becoming instantly at odds.

Mr Netanyahu has said he is proud of his decision to authorise work on the settlement in East Jerusalem that has plunged the peace talks into deep crisis. He has said the Israelis will not stop the natural growth of Jewish settlements and has denied that the construction has halted the peace process. An Israeli spokesperson has said "In principle Israel did not break off the talks, and we will raise issues that are of concern to us such as fighting terror and Palestinian violations to the agreement."³³

This type of grandstanding and political manipulation seems inescapable now that the negotiation of such intractable issues is impending. Israel is clearly at an advantage with the status quo as the land that the Palestinians want is currently under Israel's control. This factor has motivated Israel to use delaying tactics and demand concessions from the PLO, while claiming security as the issue. However, if Israel attempted to facilitate the transition rather than hinder it the security issues may not be so great because groups like Hamas may not feel such antipathy towards the Israelis or be incited to react with violence.

Negotiations or any kind of meetings are at a standstill as Netanyahu has said peace talks will not resume till Mr Arafat arrests militants following a 30 July 1997 suicide bomb attack on a Jewish market in Jerusalem.

³³ Above n 30.

The developments in the peace process raise the issue of the necessity of secrecy for the talks to progress. There seems to be links with the stalemate that occurred during the Madrid Process in Washington when public posturing led to a breakdown in talks since parties had dug themselves into positions from which they could not back down. It seems there is a need for this political airing of issues and grandstanding to occur during negotiations - possibly in order to satisfy the public. Whatever the reasons, the phenomena raises the question of whether sham official talks are necessary in order for serious negotiations to go on in secrecy behind closed doors. The Norway Channel created a peace agreement while there was an official stalemate in Washington, resulting in the official talks looking like no more than a sham.

According to press reports, all the participants in the Norway Channel secret talks have been actively involved in the peace process, and this involvement indicates a likelihood that these individuals are continuing their facilitative roles in negotiations between the states. The patterns emerging through the breakdown in talks, however, suggest that the participants in Norway Channel have only limited influence in assisting the continuation of the peace process now that the negotiations have entered the political arena, particularly with the introduction of a new political regime in Israel.

D Hirschfeld On The Peace Process

Yair Hirschfeld, in a lecture at Victoria University of Wellington, outlined his belief that there were two main policies that greatly assisted in the peace process between Israel and Palestine: the "promise of a state" formula and the "principle of graduality".³⁴

³⁴ Dr. Yair Hirschfeld "The Oslo Channel", public lecture at Victoria University of Wellington, New Zealand, 7 August 1997.

The promise of a state formula gave the negotiations a foundation of reality made the parties feel that there really was something to negotiate about.

The "graduality" principle was important because it made a resolution seem possible - so that those involved could deal with problems more effectively one by one. One example of where gradual progress was important was in dealing with the security risk for Israel in giving up territorial control to the PLO. The negotiators created a "sliding scale" for the transfer of control whereby control was handed over in four main steps, as outlined below:

1. implementation of the agreement begins - a Palestinian Authority for government to be established by 4 May 1994;
2. early empowerment - Palestine takes over tourism, social welfare, health, tax and education - August and November 1994;
3. the interim agreement - Israel to withdraw from Palestinian towns by 28 September 1995;
4. the final status negotiations - to begin by 4 May 1996 and be concluded by 4 May 1999.

This strategy of handing over control step-by-step resulted in a win-win solution for both parties because it allowed Israel to maintain military control over the territory to be transferred for as long as possible, while also giving the Palestine Authority an opportunity to establish social and economic authority which would lay the foundation for ultimate Palestinian control.

Also considered important by Hirschfeld was the emphasis on the parties looking to common ground through joint economic development goals in order to make progress rather than allowing ideological differences to prevail in the talks. Hirschfeld designates the essence of the talks in Norway as the "Oslo spirit", maintaining that there were three important

principles in the code of conduct which was established that made it so successful.³⁵

1) Win-win thinking

The parties determined to look at every problem with win-win thinking, aiming for benefits to both parties while allowing minimal loss. In real terms this meant ignoring the issue of Jerusalem because it is fraught with difficulty. The parties had to postpone the difficult issues until a positive foundation to work from had been established by resolving some less difficult issues.

2) Consultation principle

The parties determined that each party could act unilaterally in its political capacity, but that each party should consult with other side in order to prove to that other side that the ramifications of any actions taken had been considered.

3) Non-violent dispute resolution principles

There were three rules of conduct termed "the three NO's" which related to the non-violent approach to resolution:

1. NO violence or terror: There would be no concessions to terror, and any violence would incur strong reprisals from the other side;
2. NO violent non-resolution: Any attempts to disrupt talks and prevent resolution by violent attacks were not to be allowed to have any effect;
3. NO non-violent non-resolution: Any attempts to interfere with the peace process by speeches or statements insulting the other side or taking a position in public which would make subsequent concessions difficult were not allowed.

These principles embraced in the "Oslo spirit" were obviously effective during the Norway Channel, but once the talks

³⁵ Above n 34.

became public after the agreement was made in 1993, they appear not to have been observed. These principles, if followed, would assist the process which is currently foundering by allowing flexibility and a period of co-operation between the parties, which could lead to some constructive solutions. The obvious problem for both parties is the militant Hamas terrorists who are Palestinian, yet do not follow the direction of the Palestinian Authority or the PLO. They are causing difficulty because the Palestinians have not been able to control the militants' violent actions towards the Israelis, and the Israelis blame the Palestinians for failing to prevent these attacks. The result is a breakdown in talks because of the inflexibility of the Israelis to the Palestinians over this issue of security, holding that the Palestinians must be responsible for the actions of its citizens.

Important to the overall process is the breaking down of myths about the "other side" and the sort of people of which they are composed. The "eat children for breakfast" type of image, which is created and perpetuated by parties in conflict in describing the other side, helps to maintain hostility. This imagery also allows for a justification of any aggressive or violent behaviour which is encouraged against people of the "other side" but would not be acceptable towards people belonging to the "same side".

This "de-demonisation" process is a continuing process, and involved first both nations removing laws against contact with citizens of the other nation. The nations are attempting to address this issue through education programmes for youth and by assisting with joint Israeli-Palestinian projects, which included one major success in resolving water-sharing issues.

The overcoming of created prejudices is vital in the peace process so that the prejudices do not hinder this very real attempt to address a conflict which has existed between the two peoples for over half a century.

Attitude changes remain necessary to convince the public to accept peace rather than oppose it. The most important beliefs which must change relate to territorial and sovereignty issues. Israel must break the myth that a Palestinian state is a thing of the past, and that Jerusalem is a Jewish only city. The city has very important sacred meaning to Palestinians as well and can only be a "city of peace" if the Jews include the Palestinians. Hirschfeld indicated that there is a need to develop a joint image of the city to assist this inclusion, and that Israel has town planners working on it.

On an individual and personal level, people were wary of the effects peace would have on their homes and communities, and clarification of the intentions and objectives of the process was necessary. The Palestinian belief that there was a right of return to homes which had been confiscated or abandoned during the conflict had to be broken, and Israelis living in settlements set up by government during the conflict were assured that they would not be forced to give up their homes.

The process remains to be finalised, and there is still uncertainty and difficulty in determining what the final outcome may entail. The difference that has been caused by the Likud government to the peace process has meant that it is behind schedule and facing constant difficulties. Hirschfeld has pointed out that those involved in the peace movement were heading a process which was leading to a Palestinian state and the separation of the two nations. The peace agreement may not produce an end to the conflict but will attempt to create the means for effective dialogue to maintain peace.

V DEFINITIONS OF SUCCESSFUL INTERVENTION

There is a difficulty in defining "success" in any one mediation attempt, even more so when several mediation efforts are going on at once. There is little or no agreement over which point in a relationship there is a resolution of a conflict. A point of outcome in a dynamic and ever-changing process is

difficult to determine, particularly when a "resolution" may be considered successful by some and not by others, or successful at one point only to be deemed unsuccessful a few years later.

An intervention can be successful depending on the criteria used to evaluate it. The zero-sum approach is a "win/lose" measurement where any gain by one party represents a loss to the other party is a traditional measure of success and is clearly applicable to territorial disputes. The positive sum approach is a "win-win" measurement where gains are made by both parties while minimising any losses that may occur to either party.

Jacob Bercovitch and Allison Houston attempted to analyse the success and failure of international mediation by an empirical study which attempted to explore mediation outcomes and relate them to a range of contextual factors, focusing on the behavioural consequences of mediation rather than factors such as efficiency, satisfaction, or short- or long- term success.³⁶

They defined a mediation as *successful* when it had made a considerable and positive difference to the management of a conflict and the subsequent interaction between the parties; *partially successful* when it had initiated negotiations and a dialogue between the parties, and *of limited success* when it had achieved a cease-fire or reduction of violence only. These factors were chosen mainly because the mediations they studied were all official ones and their behavioural impact was easily assessable.

They defined a mediation as a failure when there is no discernible or reported impact on the dispute or the parties' behaviour. Many unofficial interventions, however, would never be capable of this type of assessment, because any effects they may have would be towards changing behaviour

³⁶ Above n 9.

and attitudes of individuals - the effect of which would not be behind the scenes and not public knowledge.

Another measure of the success of an intervention is relationship-based, which looks at factors such as whether views were shared, perceptions were altered, or conflict participants were directed towards a constructive solution. Lederach's framework for peace discusses the possible consequences of conflict where it can tend towards constructive or destructive actions. Lederach holds that successful negotiations and mediation lead to a restructuring of the relationship and deal with fundamental substantive and procedural concerns. Transformation does not suggest the simple elimination or control of conflict, but points towards an understanding that conflict can move in destructive or constructive directions. This attempts to maximise constructive mutually beneficial processes and outcomes.³⁷

Curle's approach to mediation is a combination of psychology with diplomacy, because it aims to "alter the way in which the protagonists view themselves, each other and the conflict".³⁸ His experience with war is that combatants have a distorted perception which makes a non-military resolution seem impossible. The attempt to bring about a change in understanding will include continual interpretations of what the other side is saying, explanations of their attitudes, exposure of false rumours, therapeutic listening, and the development of a personal relationship of trust and friendship with decision makers on both sides.³⁹

Dudley Weeks, an active peace-builder in international conflicts, insists that "resolution" is an unnatural term to be used in association with conflict because it implies an ending, whereas a successful resolution of a conflict in Week's mind is

³⁷ Above n 2, p. 19.

³⁸ Above n 21, p. 27.

³⁹ Above n 38.

merely a marking point, as conflict occurs as part of an ongoing relationship.⁴⁰

Hirschfeld holds that an intervention can only be successful if it is linked to an official process or has some effect in the political arena. In his view, any unofficial intervention, if not linked to actors with political influence, is too academic. Hirschfeld indicates that a successful intervention involves a great deal of attitude changing and myth-breaking in order to create co-operative relations and channels for dialogue. It is through dialogue that resolution can occur, as parties realise that they must co-exist, and that they are not so different from each other.⁴¹

VI A CONCEPTUAL FRAMEWORK

The implications of the Israeli-Palestinian peace process are that what is involved in international conflict resolution is not just intervention and facilitation, but an attempt to change perceptions and to effect a cultural shift.

Conflict is not "bad" as discussed earlier under the nature of conflict as it results in creativity. The goal of conflict resolution is to turn the consequences of conflict away from violence. There is a challenge to minimise any stagnation which may occur when there is no conflict, and to minimise any violent behaviour when there is conflict. A balance must be found from constructively managing a conflict which maximises non-violent and creative behaviour in order to provide conditions for sustainable peace.

An holistic approach to conflict and its resolution involves incorporating the different layers of intervention operating in a cohesive way. The strategies employed at all levels should

⁴⁰ Dudley Weeks "Resolving Conflicts in the Global Community" public lecture at Victoria University of Wellington, New Zealand, 21 August 1997.

⁴¹ Above n 34.

work together to respond to conflict on a broader, perception-changing and relationship-altering scale.

A Hybrid approach to conflict resolution

The development of a broad conceptual framework is necessary to embrace the full range of causes of conflict. Practitioners agree that no one method of conflict resolution will be able to achieve peace single-handedly.⁴² Saunders points out that there are some things that governments can do, such as negotiating to commit large groups, and some things that are better achieved by citizens outside government, such as probing the human dimensions of conflict and changing perceptions among groups.⁴³

It can be argued, but not proved, that there would not have been an Israeli-Palestinian peace agreement in 1993 if there had not been a change in perceptions of Israelis and Palestinians outside government. This was mainly the result of countless dialogues among citizens of the two parties, through which there was a re-perception of "the enemy", and a willingness to try living together peacefully.

A framework for a multi-disciplinary approach is needed and must be coherent, so that all peace efforts can be tied together and co-ordinated so as to be effective. Currently there is only an ad hoc unofficial "movement" which attempts to intervene in international conflicts with a preventive goal in mind.

This framework should consist of a combination of complementary approaches to international conflict resolution and included in this would be the requirement that one would need to know which instruments or methods of intervention are more successful in which areas.

⁴² Nadim N. Rouhana "Unofficial Third-Party Intervention in International Conflict: Between Legitimacy and Disarray" (1995) 11 *Negotiation Journal* 255.

⁴³ Above n 6, 274.

Models of conflict resolution based on a broader view of conflict which incorporates the human needs dimension are intended to provide sustainable resolution to a conflict. They provide a framework for resolving future problems through communication as well as encouraging future relations between the parties because their perceptions have been changed. Groom refers to the problem solving approach as "re-perception of the situation, so that the conflict becomes a problem to solve rather than a fight to be won."⁴⁴

Other tools such as mediation and negotiation are appropriate when conflicts are ripe for agreement, but the tools for relationship building and constructive conflict management are ongoing processes which need to be implemented and continued throughout any relationship, maintaining communication and problem-solving constantly.

Emond contends that the successful use of hybrid dispute resolution techniques suggests that creativity and imagination will often produce better results than a rigid adherence to a prescribed method of dispute resolution.⁴⁵ There is a need for a tiered conflict resolution process at an international level, incorporating many different strands of diplomacy, unofficial interventions, mediation and negotiations to create the "whole" - which will enable the conditions for true conflict resolution to take place.

Clearly there is a need to extend and improve the practice of international mediation and intervention to effect this combined co-operative approach to conflict resolution. A selection of suggestions and proposals by practitioners and theorists in the field of international conflict resolution on how to implement changes towards a paradigm shift are discussed below.

⁴⁴ Groom, above n 23, p. 6.

⁴⁵ Above n 10.

B *Deutsch's Constructive Conflict Management*⁴⁶

Deutsch presents a comprehensive multi-disciplinary approach which he calls an "utopian and ambitious program for the prevention of destructive conflict".⁴⁷ The constructive and destructive orientations towards conflict that Deutsch espouses have been discussed earlier in this paper.

Deutsch puts forward an institutional model for change where different institutions (government, the media, education system, religion and industry) are required to become involved in preventing destructive conflicts. He catalogues a variety of actions these institutions and their leaders can take - particularly through leading by example - to establishing normative frameworks for encouraging constructive rather than destructive conflict resolution. They must make constructive conflict management procedures widely known; they can develop incentives to use them; they can provide opportunities to learn constructive conflict resolution skills; and they can provide facilities for dispute resolution such as conciliation, mediation and arbitration.

Deutsch points out that on the international level the United Nations has a well-articulated normative framework for preventing war and for promoting human rights and a sustainable environment.⁴⁸ Deutsch says that only a tiny minority of people, even in the major powers, know about this United Nations framework. The United Nations needs to disseminate this information, to raise public consciousness, and to develop popular and political support for implementing it for it to achieve the purpose for which it was designed.

Deutsch also suggests that a United Nations Institute for conflict resolution and mediation oriented internally towards

⁴⁶ Above n 8.

⁴⁷ Above n 8, 113.

⁴⁸ Deutsch cites the work of A. Brenes-Castro *Seeking the True Meaning of Peace* (San Jose, C.A.: University for Peace Press, 1991) detailing this framework at Deutsch, above n 8, 114.

its own functioning as an organisation would be an excellent way for the UN to lead by example. It would have three main functions (1) *educating* administrators and staff of United Nations in knowledge and skills of constructive conflict resolution (2) *mediation* of conflicts which parties cannot resolve by themselves and (3) providing an *early warning* of potentially destructive conflicts which should be addressed.

He also points out that the United Nations could do more than just serve as a model for constructive conflict resolution but could help to establish regional Institutes for Conflict Resolution and Mediation which would also perform the same three main roles, thus implementing a type of formal preventive diplomacy under the United Nations banner.

Deutsch also discusses the need for a paradigm change on the international level - particularly for dealing with intractable conflicts. He holds that there has been too much emphasis on deterrence as a means of preventing destructive behaviour. Deterrence is often perceived as a retaliatory "threat" and therefore an "offensive" action by parties involved in conflict and so perpetuates the destructive conflict resolution pattern. Also the effect of deterrence is merely to "freeze" a situation and it will not change or redirect the motivations of the aggressor towards co-operation.

Destructive management of conflict is prevalent throughout Western society - within police systems, court systems, and state economies. It is a competitive "win-lose" cultural approach to life which has caused this destructive conflict management and perpetuates it.

The introduction of MMP in New Zealand was a small step towards changing to inclusion and co-operation but it is currently being thwarted by competitive opponents.

Conflict resolution is all about attitude changing and culture changing which are fundamental changes that are very difficult to effect. In order to foster "win-win" relations and

constructive conflict management there are several values that Deutsch suggests must be advocated. These include the use of non violent non-coercive techniques of persuasion when faced with opposing views; the moral inclusion rather than exclusion of others who are different; fairness and care for others. The advocacy of these values would involve supporting practices which enhance mutual power rather than inequality; reducing of the availability of weapons; and indicating respect for others and their interests rather than seeking to devalue, disrespect, or humiliate them.

In order for these constructive conflict management practices to become part of the fabric of social relationships, Deutsch suggests that supporters must advocate for the development of institutions in all areas of social life that would foster the values and practices of constructive conflict resolution.

C A Public Peace Process - Chufrin & Saunders⁴⁹

Gennady Chufrin and Harold Saunders propose a public peace process which contrasts with government, even where government is representative. They impress the need for "sustained action by citizens outside government to change the fundamental relationship between groups in conflict."⁵⁰

This "public peace process" involves bringing together individuals from conflicting groups and getting them involved in dialogue in order to probe the dynamics of their conflictual relationship; think together about the obstacles to changing the relationship; and to design a sequence of interactive steps that might remove the obstacles to changing it. The aim of the process is to transform conflictual relationships so that parties can both end violence and build peaceful relationships necessary for tackling post-conflict problems.

⁴⁹ Gennady I. Chufrin and Harold H. Saunders "A Public Peace Process" (1993) 9 *Negotiation Journal* 155.

⁵⁰ Above n 49, 156.

Chufrin and Saunders call the process the "political resolution of conflict" - where citizens outside government can strengthen civil society by creating relationships between and within political bodies over a long timeframe to deal peacefully with problems no one party can deal with alone. The process assumes that public and government can work in complementary ways.

Chufrin and Saunders hold that it is in the public political arena (not only at the negotiating table) through dialogue over issues, that issues are reframed, comparable interests recognised, perceptions changed, fears allayed, and steps for changing relationships imagined. They hold that this political aspect of relationships in conflict should be included in any approach to international conflict resolution because it is here that issues over identity, fear, dehumanisation and historical hurts must be dealt with.

In order to incorporate this political dimension into conflict resolution, creative ways to tap into the public as a resource are needed. Communication between public and government important as citizens often pursue interests across borders in common with government and sometimes have power to initiate change. There is a need to link the resource of the public with official processes by meetings or forums in order to share ideas and come up with new and creative insights and solutions.

Chufrin and Saunders indicate that the most pressing challenge to the public peace process is to find ways to make the process used by a wide range of groups living across the lines of conflict. They see no reason why new partnerships between official and non-official groups are not possible, holding that officials could form small groups from inside and outside government to monitor relationships with key countries. These groups could meet regularly with counterparts from the other country to share assessments and design scenarios for strengthening the relationship.

*D Ury's Informal Model of International Conflict Resolution*⁵¹

Currently there is no institution or group which has been set up to systematically improve and extend the practice of international mediation. International mediation mostly takes place on an ad hoc basis, but W. L. Ury offers several practices which would strengthen international mediation in order to make it more effective.

Ury suggests that mediators should offer to mediate without being asked, and lay the groundwork for communication by developing trust and shared perceptions of the problem in order to catch conflicts before they heat up. He emphasises the necessity for a follow up of any intervention after the mediator has left, maintaining ongoing relationship building rather than "resolving" one-off situations.

Ury also suggests that there needs to be a co-ordination of third party efforts (both official and unofficial) in order to build on each others strengths and weaknesses. He also suggests that existing efforts need to be connected with funds, staff, and experts.

He holds that international conflict resolution should remain informal as official or institutionalised conflict resolution processes are ineffective. Ury considers that experience has shown that formal mechanisms are not often used once they have been established. Dudley Weeks also says that it is better not to have official processes because of the possible implications of political motivation for intervention. An official intervention of this kind is likely to be seen by conflicting states as interfering, bullying, and having its own agenda, which would not assist conflict resolution at all.

⁵¹ William L. Ury "Strengthening International Mediation" (1987) 3 *Negotiation Journal* 225.

VII IMPEDIMENTS IN THE GLOBAL ARENA

A *The International Legal System*

From a legal philosophical perspective the field of international conflict resolution is fraught with difficulties. Legal philosophers hold that there are many sources of law and similarly there are many spheres of legal systems. International law is a very different sphere than domestic law stemming purely from the basic fact that there is no single controlling power structure to create and enforce international law such as there is domestically in the form of the modern state.

Law has been portrayed appropriately by some jurists as a combination of reason and power, a balance of *ratio* and *voluntas*, rational order and imposed will.⁵² Roger Cotterrell emphasises that power in modern law means the exercise of coercion or the ability to call on others to exercise coercion on one's behalf. It is precisely here that the structure of the international legal system falls down.

The situation in the global community is that there is no higher power that can control the behaviour of the parties by force or intimidation. The United Nations exists with moral strength but has no mandate to interfere with the territorial integrity of any state or enforce its will over any state. Nor does the UN have any ability to impose that will, except by moral assertion or force through individual states on an ad hoc basis without any true mandate or legal authority. The Israeli-PLO example is proof of that because for 50 years the Israelis held the occupied territories against global disapproval and against resolutions by the UN that what they had done and continued to do was immoral.

The idea of law as an overriding standard for behaviour works well on a domestic level but falls down in the international

⁵² Roger Cotterrell "Law's Community: Legal Theory and the Image of Legality" (1992) 19:4 *Journal of Law and Society* 405, 407.

sphere where equality and community are the ideals, and no one group has power over the others. The UN attempts to set a standard for global co-operation but entrenched in the modern world and perhaps humanity overall is the belief that law equals imposed will, and this philosophy is reflected in the Charter, and within the structure, of the United Nations.

The result of this lack of an overriding power in the international sphere means that in order for some conflicts to be resolved there has had to be a resort to mediation and negotiation rather than an appeal to some impartial law applying body when there has been conflict.⁵³ This has meant that peace has been substituted for justice.⁵⁴ The importance of an adjudicatory body within a legal system is to "explicate and give force to the values embodied in authoritative texts ... and to bring reality into accord with them."⁵⁵ When parties are involved in settlement via mediation and negotiation there is no impartial standard of justice enforced over the outcome of the settlement. This consequence of settlement in the international sphere raises the question of whether there is room for abstract notions such as justice or fairness in the resolution of international conflicts under the current system.

The balance of *ratio* and *voluntas* which make up our perception of the law must be altered in the international arena as states attempt to live together on a consensus basis - where the consent of all to any rules for behaviour is required and where there is no ability or mandate of any entity to exercise coercion over another entity to enforce the law. A possibility exists for reading *ratio* and *consensus* rather than *ratio* and *voluntas* as the basis for our perception of law at an international level, where there is a balance of rational order and consensual observance which makes up the law.

⁵³ This is because the International Court of Justice has no binding authority on any state unless that state chooses to be bound by its ruling, and also because of the same problem the UN General Assembly and Security Council face of a lack of any powers of enforcement.

⁵⁴ Owen Fiss "Against Settlement" (1984) 93 *Yale LJ* 1073, 1085.

⁵⁵ Above n 54, 1085.

B The Need for a Paradigm Shift

The idea of consensus based law is certainly not without its difficulties. There are problems regarding the making of the rules, especially where cultural practices and beliefs are different and incompatible, and also as consensus would involve bringing together parties with major disparities in power, particularly in relation to economic strength and population size. Difficulties would also arise when the behaviour required under the law was not followed in the consensus system. There would be problems attempting to bring entities into line and right wrongs, but these difficulties exist already under the current system.

There is a tension between a state based perspective and a human orientation to conflict and conflict management. The Utopian dream of co-operation and consensus on a global level is difficult to envisage and would also be incredibly difficult to attempt to put into place because the Western world has built up around economics and the orientation towards individualism and competitiveness.

A transition is necessary to facilitate this paradigm shift. It involves moving away from an emphasis on individual gain, antagonism, competitiveness and degrees of power towards an emphasis on relationships and the importance of mutual gain, co-operation and interdependence, which results in benefit for individuals and for the global community.

The localised level of international conflict resolution may be a good precedent for the world to follow in order to foster communication and therefore co-operation, but it is evident that more work needs to be done to assist in this process of shifting perceptions to effect a global cultural shift towards co-operation and constructive conflict resolution processes.

VIII CONCLUSION

Due to the changing face of global conflict, from international (state-to-state) to intra-national (within states) conflict, a reorientation of international conflict resolution aims is necessary. This reorientation involves shifting the focus of conflict away from individual events or issues such as military deployment or border issues towards the fundamentals of the relationship between the parties in conflict.

Theorists suggest addressing the human dimensions of conflict and thereby tackling the larger task of changing conflictual relationships by improving methods of communication; changing attitudes; implementing consultation between parties; emphasising the need to recognise the goals and requirements each party has.

This sort of communication goes *beyond* each party defining what the other party's needs are but actually extends to the parties actively listening to each other explain needs and then taking them into account in decision-making.

The ultimate goal of any intervention is communication, as it is through dialogue that any form of sustainable and non-violent resolution can occur. Where there is no dialogue, parties in conflict become suspicious of each other and this suspicion leads to hostility and away from communication in a "vicious" cycle. Where there is no dialogue there can be no understanding or acceptance of others, so no process of conflict resolution is attainable.

The goal of interventions in conflict is to transform relationships by communication and make parties realise that to live in peace they must recognise that they are interdependent and need to co-operate in order to co-exist peacefully and without violence.

Conflict is a dynamic process because it involves interaction between people and so is subject to constant change. Conflict

comes from relationship and is not a static circumstance. Conflict is created from human attempts to construct social meaning and the differences that arise because of human diversity.

In the international arena, the human needs model has been put forward as a basis for discerning underlying reasons for conflict. Interpreting conflict in this way can result in a different method of approaching conflict and thereby altering the way resolution can be achieved.

A problem solving approach to conflict resolution through the human needs model looks at the causal circumstances of the conflict and addresses these, rather than merely concentrating on the effects of conflict, which may vary from hunger and disease to religious or ethnic intolerance. The basis for this theory is that human needs must be satisfied for law and order to be sustained and for societies to be stable and non-violent.

A framework for peace which has a long-term view of conflict is necessary to construct a broader understanding of any approach to building peace. Such a framework must embrace multiple facets of conflict resolution with a clear vision of the broad agenda of peacemaking efforts.

The Israeli-Palestinian case study has shown that factors which result in successful resolution include full communication; an intensity to talks; secrecy; non-positional negotiation; and ignoring past grievances.

The method of informal conflict facilitation by unofficial third parties results in a successful intervention. Secret, back-channel discussions among highly influential people with open minds who have a strong desire to achieve peace was very effective in establishing agreement between the parties. The continued involvement of these participants in the ongoing communication between the parties would also seem to be desirable to the smooth implementation of that process. Also

effective in constructive conflict resolution and problem-solving are the methods of using "win-win" thinking, and implementing resolution in a gradual step-by-step process.

The case study has also shown that intense publicity and the resulting position-taking in front of the media result in the breakdown of negotiations. Non-consultation and inflammatory political actions are purely delaying tactics which hinder conflict resolution and are destructive of positive progress that has been made between the parties.

A framework for a multi-disciplinary approach is needed to tie all peace efforts together and co-ordinate them so as to increase their effectiveness. This framework should consist of a combination of complementary approaches to international conflict resolution and included in this would be the requirement that one would need to know which instruments or methods of intervention are more successful in which areas.

On a global level several options to improve the methods of international conflict resolution so that it is more effective and less piecemeal have been put forward by practitioners and theorists in the area. These options have several things in common, including a general approach, outlined by Ury, which extends beyond the traditional crisis management of conflict to a focus on changing and building relationships between peoples.

Chufrin and Saunders hold that this work is for the political arena - not just for government offices and the negotiating table, and that vehicles such as the public peace process must be added to the array of tools for dealing with conflict and building relationships.

Deutsch's model is an institutional one which advocates a cultural shift from destructive conflict management to constructive conflict management. The idea of an institutional model may have merit since our society has so many institutions, however, it has been pointed out by Ury that

institutionalisation often fails to perpetuate new models, and that these changes are more effectively spread outside formalisation.

In the international sphere, a change in perception would be required to make the transition from the orientation of individualisation to co-operation. There is a tension between these orientations which is reflected in the tension between a state based perspective and a human orientation to conflict and conflict management, and in the tension between identity and interdependence under globalisation.

Cotterrell points out that in modern legal systems power is concentrated through structures of government, but is also delegated to subordinate agencies and individuals. It rests in some indeterminate measure on the consent or acquiescence of the governed, so it is also a matter of negotiation and compromise.⁵⁶

A transition needs to be made towards a human based view of conflict - forgetting about states and power structures and international legal systems and focusing on co-operation between individuals.

A culture shift to co-operation and constructive conflict resolution at a localised "grass-roots" level may filter through to the international legal system and effect a change in the state dimension of conflict resolution once "the governed" alter their perceptions and orientations to conflict.

⁵⁶ Above n 52, 408.

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