

Penn State Journal of Law & International Affairs

Volume 2 | Issue 1

April 2013

When States Mediate

Molly M. Melin
Loyola University Chicago

Follow this and additional works at: <https://elibrary.law.psu.edu/jlia>



Part of the Diplomatic History Commons, History of Science, Technology, and Medicine Commons, International and Area Studies Commons, International Law Commons, International Trade Law Commons, Law and Politics Commons, Political Science Commons, Public Affairs, Public Policy and Public Administration Commons, Rule of Law Commons, Social History Commons, and the Transnational Law Commons

ISSN: 2168-7951

Custom Citation

2 Penn St. J.L. & Int'l Aff. 78 (2013).

The Penn State Journal of Law & International Affairs is a joint publication of Penn State's School of Law and School of International Affairs.

Penn State Journal of Law & International Affairs

2013

VOLUME 2 NO. 1

WHEN STATES MEDIATE

*Molly M. Melin**

INTRODUCTION

The use of mediation for conflict resolution is not a new process. The first recorded mediation efforts occurred in 209 B.C., when Greek city-states helped the Aetolian League and Macedonia produce a truce in the first Macedonian war. Since then, mediation has been increasingly employed as a tool for peacefully resolving conflict.¹ The International Conflict Management Dataset² reports 1334 mediation attempts by states in 333 interstate and civil conflicts since World War II, with more than half of the mediation efforts occurring since the end of the Cold War.³ States represent the most

* [Molly M. Melin](#), Assistant Professor of International Relations, Loyola University Chicago.

¹ The benefits of successful mediation are widespread. Consider the case of the Northern Irish “Troubles.” Beginning with the Good Friday Accords and continuing with the work of non-governmental organizations (NGOs) in mediating interpersonal disputes, the relative peace in Northern Ireland today is a testament to the power of a well-orchestrated and sustained mediation effort.

² JACOB BERCOVITCH, *THE INTERNATIONAL CONFLICT MANAGEMENT DATASET: OFFICIAL CODEBOOK FOR THE INTERNATIONAL CONFLICT MANAGEMENT DATASET* (1999); J. MICHAEL GREIG & PAUL F. DIEHL, *INTERNATIONAL MEDIATION* 31 (2012). The International Conflict Management dataset was compiled by Professor Jacob Bercovitch in the late 1990s and focuses on the mechanisms used in international conflict management. JACOB BERCOVITCH, VICTOR KREMENYUK & I. WILLIAM ZARTMAN, *THE SAGE HANDBOOK OF CONFLICT RESOLUTION* 570 (2008) (defining international conflict as “organised and continuous militarized conflict, or a demonstration of intention to use military force involving at least one state.”).

³ BERCOVITCH, *supra* note 2, at 31.

common type of political actor willing to serve as a mediator in international dispute resolution—a category often referred to as “state-led” mediation. Not all states, however, volunteer to serve as mediators and not all disputes receive mediator assistance. This essay examines the drivers of such choices and suggests factors that policymakers should consider when assessing whether to engage in state-led mediation.

An understanding of these factors will help policymakers generate expectations about which states are likely to have an interest in mediating conflicts (and can be successfully encouraged to do so), and which disputants are likely to accept state-led mediation offers (thereby avoiding the loss of face associated with rejection). The objective of this exercise is to assist the policymaker in identifying the circumstances where state-led mediation will have a positive and permanent influence on long-term peace. Section I of the paper describes the role states play in the mediation process, both in terms of the broader spectrum of mediators and in terms of involvement frequency. Section II discusses the conditions that facilitate state-led mediation efforts, and the conclusion offers recommendations for achieving more effective state-led mediation efforts.

I. THE STATE AS PEACEMAKER—A STRATEGIC CHOICE?

There are four main types of mediators: international organizations (*e.g.*, the United Nations), regional governmental organizations (*e.g.*, the Arab League), individuals (*e.g.*, former United States President Jimmy Carter), and states (*e.g.*, New Zealand). States are the most common mediator and the focus of this paper.⁴ Mediation works differently across mediator types. Of particular

⁴ For work on mediation involving regional organizations, see generally Scott Sigmund Gartner, *Signs of Trouble: Regional Organization Mediation and Civil War Agreement Durability*, 73 J. POL. 380 (2011). For work on international organizations, see generally Holley E. Hansen, Sara McLaughlin Mitchell & Stephen C. Nemeth, *IO Mediation of Interstate Conflicts: Moving Beyond the Global versus Regional Dichotomy*, 52 J. CONFLICT RESOL. 295 (2008); Megan Shannon, *Preventing War and Providing the Peace? International Organizations and the Management of Territorial Disputes*, 26 CONFLICT MGMT. & PEACE SCI. 144 (2009).

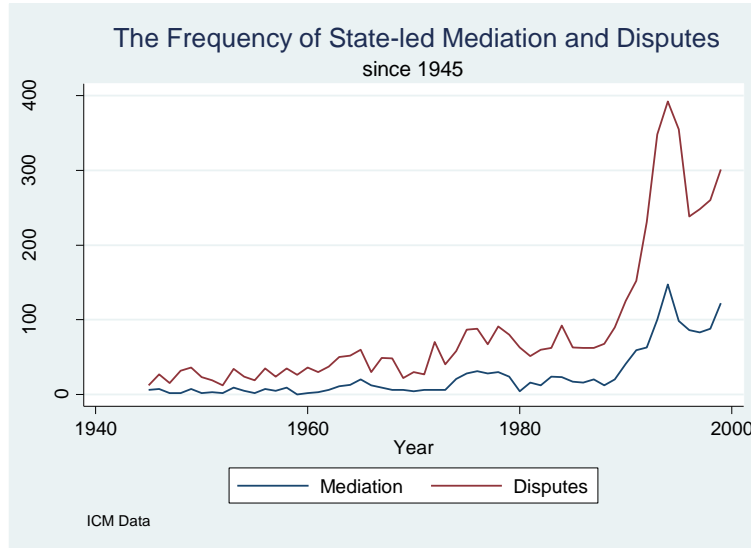
note, the motivations of states for offering mediation assistance differ from those of the other actors.⁵

States carefully consider when and where they mediate, and often consider the strategic benefits when deciding whether to take on the mediator role. Potential gains include establishing a reputation as a peacemaker (as have Norway and Sweden) and enhancing the state's influence in the dispute's outcome, either by changing an unfavorable situation or maintaining a favorable status quo. Understandably, states are more likely to take up the role of mediator if it will expand their influence, resources, and power. Figure 1 depicts the number of conflicts and state-led mediation efforts over time.⁶ While the number of mediation efforts per year closely follows the number of disputes per year, the two lines never intersect—a characteristic I explore further below.

⁵ For example, international organizations often include peacemaking as a part of their charter (*e.g.*, the African Union and Organization of American States), but frequently must overcome political struggles between members before mediation can occur. Conversely, state mediators often struggle to establish impartiality given their significant stake in the outcome of the mediation efforts. States also have more policy instruments at their disposal than international organizations, allowing for greater variation in reactions to external conflict—most notably, joining the conflict in support of one side, an unlikely occurrence when an international organization leads mediation.

⁶ BERCOVITCH, *supra* note 2, at 31.

Figure 1. The Occurrence of Disputes and State-Led Mediation Efforts, 1945-1999



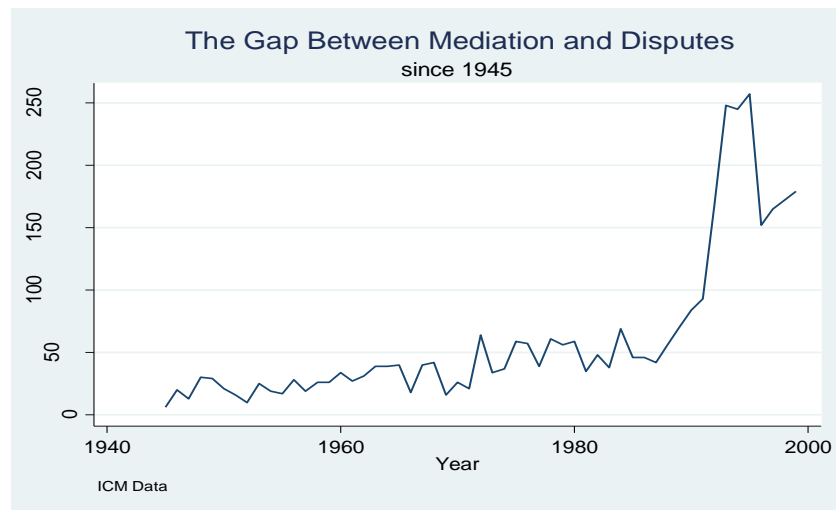
The figure also contains information about state-led mediation decisions. There are at least two possible ways to explain mediation occurrence. First, it is possible to think of states as a population of mediators that indiscriminately mediate any disputes that arise. Although this description may seem extreme, it is not far from popular beliefs about the obligations of the Great Powers. The global community often views states with large capabilities as being obligated to respond to instances of extreme violence. The second explanation sees mediation as resulting from strategic calculations. In this case, states do not indiscriminately mediate, but rather consider the costs and benefits before agreeing to do so.

If the former proposition is correct, the supply of mediators would remain relatively constant. And if the supply of mediators was constant, we would observe stability in the number of mediation efforts. Years with many conflicts would likely experience mediator supply problems with a large gap between the number of disputes and the number of mediation efforts. In years with fewer disputes, most disputes would be mediated. The data, however, does not seem to support the proposition that Great Powers feel any significant

obligations to mediate by virtue of their leadership role in the global community.

Indeed, a further unpacking of the data seems to endorse the latter view—that a state’s decision to serve as a mediator is the result of strategic calculations. Figure 2 graphs the gap between the two lines from Figure 1, showing the variation in the number of disputes that go without state-led mediation. There is no year for which all disputes are mediated by states (no matter how few disputes are observed), and there is variation in the percent mediated—both provide evidence that states make strategic mediation choices.

Figure 2. The Gap Between the Number of Conflicts and Mediation Occurrence, 1945-1999



II. IDENTIFYING THE OPTIMAL CONDITIONS FOR STATE-LED MEDIATION

Unlike sanctions or military intervention, a prerequisite to the occurrence of mediation is the acceptability of mediation to all involved parties. An often cited definition of mediation highlights this characteristic, describing 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 organization to change their behavior, settle their conflict, or resolve their problem without

resorting to physical force or invoking the authority of the law.⁷ Generally, political or economic ties between a potential mediator and the disputants increase the occurrence of mediation.⁸ These ties generate state interest in conflict resolution, and often translate into leverage at the negotiating table.⁹ The remainder of this essay explores the conditions that increase mediation occurrence (both in terms of state willingness to mediate and in terms of belligerents accepting state-led mediation) and success, as summarized in Table 1.

⁷ Jacob Bercovitch & Allison Houston, *The Study of International Mediation: Theoretical Issues and Empirical Evidence*, in *RESOLVING INTERNATIONAL CONFLICTS: THE THEORY AND PRACTICE OF MEDIATION* 11, 13 (Jacob Bercovitch ed., 1996).

⁸ Ties that affect mediation offers and acceptance include trading partnerships, alliances, physical proximity, and even former colonial ties. For an in-depth analysis of how ties affect mediation and conflict management behavior, see generally Molly M. Melin, *The Impact of State Relationship on If, When, and How Conflict Management Occurs*, 55 *INT'L STUD. Q.* 691 (2011).

⁹ For more on mediator leverage see Kyle Beardsley, [Using the Right Tool for the Job: Mediator Leverage and Conflict Resolution](#), 2 *PENN ST. J.L. & INT'L AFF.* 57 (2013).

Table 1. Summary of Factors that Affect Mediation

Explanatory Variable	Effect on Mediation Occurrence	Effect on Mediation Outcome
<i>Regime Type</i>	Democracy increases mediation occurrence	Democracy increases mediation success
<i>Third-Party Capabilities</i>	Capable mediators increase mediation occurrence	Capable mediators increase mediation success
<i>Conflict Costs</i>	Violence increases mediation occurrence	Violence increases mediation success
<i>Rivalries & Reoccurring Conflict</i>	Rivalries & reoccurrence increases mediation occurrence	<i>not observed</i>
<i>Mediation History</i>	Previous mediation increases mediation occurrence	<i>not observed</i>
<i>Conflict Stalemate</i>	Stalemate increases mediation occurrence	<i>not observed</i>
<i>Conflict Nature</i>	International conflicts increase mediation occurrence	<i>not observed</i>

A. Regime Type

Regime type plays an important role in the frequency and likely success of mediation. Regime type, or form of government, can encourage mediation and its success at several levels. Mediation and accepting offers of mediation are more likely when democracies are involved, as these states are accustomed to third-party involvement in conflict and garner other states' trust, making them a more attractive option for conflict resolution.¹⁰ Democratic third parties are more

¹⁰ Mark J.C. Crescenzi, Kelly M. Kadera, Sara McLaughlin Mitchell & Clayton L. Thyne, *A Supply Side Theory of Mediation*, 55 INT'L STUD. Q. 1069, 1084-85 (2011).

likely to be accepted as mediators, democratic disputants are more likely to accept mediation, and a democratic international community increases mediation use. Democratic disputants are more accepting of mediation because their populace is accustomed to third-party involvement in domestic conflicts, thus lowering the political costs of mediation acceptance.¹¹ A strong democratic community globally encourages even non-democracies to adopt the behavior of democracies, such as employing third-party resolution, which increases the use of mediation.¹² A shared democratic culture between disputants and the mediator is more likely to generate an agreement, as democracies employ negotiation and compromise in disputes with other democracies but distrust the intentions of non-democratic states and are less willing to rely on techniques of peaceful conflict resolution in those conflicts.¹³ Mediation is therefore best encouraged when democracies are involved as disputants and mediators. An apt illustration of this principle in action was Turkey's willingness to work with British and American mediators following the 2010 Gaza-bound flotilla incident. As democratic norms continue to spread, state-led mediation will be increasingly employed to resolve disputes.

B. Third-Party Capabilities

States (or third parties) with material strength and diplomatic prowess are likely to be accepted and successful as mediators because these actors have access to resources and negotiating experience that makes them attractive as mediators and able to create and sustain peace. Before a state can act, however, it must have the capabilities necessary to be effective as a mediator.¹⁴ Mediation is therefore more likely when capable third parties have interests in involvement, as these actors have the ability to be involved. While capable third parties are certainly not always successful (consider Kofi Annan's

¹¹ James A. Wall Jr., John B. Stark & Rhett L. Standifer, *Mediation: A Current Review and Theory Development*, 45 J. CONFLICT RESOL. 370, 372-3 (2001).

¹² See generally Sara McLaughlin Mitchell, *A Kantian System? Democracy and Third-Party Conflict Resolution*, 46 AM. J. POL. SCI. 749 (2002).

¹³ Russell J. Leng & Patrick M. Regan, *Social and Political Cultural Effects on the Outcomes of Mediation in Militarized Interstate Disputes*, 47 INT'L STUD. Q. 431, 435 (2003).

¹⁴ Melin, *supra* note 8, at 706.

efforts in Syria), their capabilities and reputation mean they are likely to be deemed “acceptable” to the disputants.¹⁵ Mediators with material capabilities can incentivize agreements by using the proverbial carrot and stick to increase an agreement’s appeal or threaten failed compliance.¹⁶ For example, the Great Powers are often actively involved in conflict management, as was the case with European and Chinese involvement in Darfur. In selecting third parties with the assets necessary to create and enforce peace, policymakers can encourage mediation and its success.

C. Conflict Costs

The more costly a conflict is in terms of violence, the more likely it is to be “ripe” for state-led mediation.¹⁷ The increased international pressure and the disputants’ cost-benefit calculus create an appealing climate for state-led mediation efforts. Costly conflicts generally attract international interest. The international spotlight offers a state mediator the opportunity to gain in terms of reputation and influence. For example, New Zealand benefited from an enhanced regional role after successfully mediating the Bougainville conflict,¹⁸ as did Switzerland in bringing peace between the Algerian independence movement and the French government.¹⁹ Disputants also are more likely to accept mediation offers as the cost of conflict increases because increasing costs impact the disputants’ assessment

¹⁵ For work on the challenges of mediation in Syria, see J. Michael Greig, *Intractable Syria? Insights from the Scholarly Literature on the Failure of Mediation*, 2 PENN ST. J.L. & INT’L AFF. 48 (2013).

¹⁶ Kyle C. Beardsley et al., *Mediation Style and Crisis Outcomes*, 50 J. CONFLICT RES. 58, 83 (2006).

¹⁷ See generally I. WILLIAM ZARTMAN, *RIPE FOR RESOLUTION: CONFLICT AND INTERVENTION IN AFRICA* (1985).

¹⁸ See Scott Sigmund Gartner, *Civil War Peacemaking*, in *PEACE AND CONFLICT 2012: A GLOBAL SURVEY OF ARMED CONFLICTS, SELF-DETERMINATION MOVEMENTS, AND DEMOCRACY* 71, 78 (J. Joseph Hewitt et al. eds., 2012). See generally REBECCA ADAMS, *PEACE ON BOUGAINVILLE: TRUCE MONITORING GROUP* (2001); *BOUGAINVILLE BEFORE THE CONFLICT* (Anthony J. Regan & Helga M. Griffin eds., 2005); MONICA WEHNER & DONALD DENOON, *WITHOUT A GUN: AUSTRALIANS’ EXPERIENCES MONITORING PEACE IN BOUGAINVILLE, 1997-2001*, 43-48 (2001).

¹⁹ See generally JOHN RUEDY, *MODERN ALGERIA: THE ORIGINS AND DEVELOPMENT OF A NATION* (2005).

of whether continued death, destruction and expenditures are worth achieving their initial objective. Furthermore, state mediators can expect fewer actions will be required to resolve costly conflicts, given the high cost of continued conflict.²⁰

Increased costs also increase mediation success rates, as state party mediators can provide domestic political cover and enable leaders to agree to otherwise unacceptable terms.²¹ This was the case in Sinai (1974), El Salvador (1988), and Mozambique (1992). In highlighting the low costs and potential benefits of state-led mediation, policymakers can encourage state actors to offer and accept mediation.

D. Rivalries and Reoccurring Conflict

States may be more likely to accept mediation offers when the disputants are strategic rivals or view each other as threatening competitors.²² Such conflicts tend to be recurring, and especially destabilizing and violent—not only to the disputants but to third-party state actors either located in the region or with other strong relationships to the disputants. These rivalries also tend to gain greater international attention. On first blush, these characteristics may make an offer to mediate unappealing to a state actor. Policymakers, however, should take care to note the considerable potential benefits of accepting the offer: the state party's interest in building its reputation and in avoiding the costs associated with a regionally destabilizing, violent and drawn-out conflict. Said another way, although there is some risk in taking on the mediator role in such circumstances, the risks of declining such an invitation may be even greater. The illustrations for this factor show both sides of the

²⁰ Lesley G. Terris & Zeev Maoz, *Rational Mediation: A Theory and a Test*, 42 J. PEACE RES. 563, 579-80 (2005) (arguing “the greater the versatility of the conflict, (1) the more likely are disputants to seek mediation, (2) the more likely are outside parties to mediate, and (3) the more intrusive the mediation strategies employed.”).

²¹ Kyle Beardsley, *Pain, Pressure and Political Cover: Explaining Mediation Incidence*, 47 J. PEACE RES. 395, 404 (2010).

²² Jacob Bercovitch & Paul F. Diehl, *Conflict Management of Enduring Rivalries: The Frequency, Timing, and Short-Term Impact of Mediation*, 22 INT'L INTERACTIONS 299, 316 (1997).

calculation. While President Jimmy Carter's efforts between Egypt and Israel produced the still-intact Camp David Accords, mediation efforts between India and Pakistan and on the Korean Peninsula have been less successful.

E. Mediation History

States are more likely to agree to serve as mediators, and the mediation is more likely to be successful, when the disputants and the state have previously engaged in mediation. These prior mediation experiences, or mediation history, establish rapport and signal a commitment to peaceful conflict management. Mediation efforts are not isolated events. Each instance creates a mediation history of the state's experience as a mediator and the disputants' experiences in working with mediators. In this broader process, previous mediation encourages future efforts and success.²³ Previous disputant experiences with mediation signals a disputant's willingness to work with an outsider and encourages mediation offers by states. For example, mediation was employed repeatedly in Yugoslavia, because the parties had signaled they were willing to meet and negotiate, and the mediator established trust and rapport with the belligerents. A state's mediation experience can signal to disputants the mediator's ability, preferred methods, resourcefulness, and objectives.²⁴ To be effective, the state mediator must be perceived as having access to suitable techniques for encouraging bargaining, and as having sufficient authority and experience to be able to utilize them. Consider Sweden and Norway's reputation as purveyors of peace based on their history of mediation successes. Policymakers can encourage mediation by involving experienced third-party state mediators, especially when the disputants have exhibited openness to mediation.

²³ J. Michael Greig, *Stepping into the Fray: When Do Mediators Mediate?*, 49 AM. J. POL. SCI. 249, 255 (2005).

²⁴ Oliver Richmond, *Devious Objectives and the Disputants' View of International Mediation: A Theoretical Framework*, 35 J. PEACE RES. 707, 713 (1998).

F. Conflict Stalemate

Disputants sensing a conflict stalemate or seeing the improbability of winning are likely to accept state-led mediation as it offers a viable alternative to continued conflict. “When parties find themselves locked in a conflict from which they cannot escalate to victory and this deadlock is painful to both of them (although not necessarily in equal degrees or for the same reasons), they seek a way out.”²⁵ Disputants that have reached a hurting stalemate are “ripe” for mediation, since they cannot envision a successful outcome or an end to unbearable costs if they continue current strategies. Mediation offers a “way out” of an increasingly costly conflict. Henry Kissinger (under U.S. President Nixon) highlighted the notion of a stalemate in the Sinai withdrawal negotiations,²⁶ as did Chester Crocker (under U.S. President Reagan) in Angola.²⁷ Similarly, policymakers can encourage disputants to accept mediation by highlighting the presence of a stalemate and the futility of further escalation.

G. Nature of the Conflict

The international or domestic nature of the conflict has important implications for the effectiveness of the mediation effort as the cost of involving mediators varies between civil and international wars. Mediation is less likely in civil wars as it transfers legitimacy to the non-state actor and can hinder state sovereignty. In effect this means the political costs associated with accepting international mediation will be substantially higher in civil wars.²⁸ States therefore only accept mediation in the most serious civil

²⁵ I. William Zartman, *Ripeness: The Hurting Stalemate and Beyond*, in *INTERNATIONAL CONFLICT RESOLUTION AFTER THE COLD WAR* 225, 228 (Daniel Druckman & Paul C. Stern eds., 2000).

²⁶ See *Briefing by Secretary of State Dr. Henry Kissinger on Sinai Agreement: Hearing Before the H. Comm. on Armed Services*, 94th Cong. 5 (1975).

²⁷ See *Angola: Options for American Foreign Policy: Hearing Before the Committee on Foreign Relations*, 99th Cong. 3-6 (1986).

²⁸ Molly M. Melin & Isak Svensson, *Incentives for Talking: Accepting Mediation in International and Civil Wars*, 35 *INT’L INTERACTIONS* 249, 254 (2009). For work on civil wars and the role of veto players, see David E. Cunningham, [Who Should Be at the Table?: Veto Players and Peace Processes in Civil War](#), 2 *PENN ST. J.L. & INT’L AFF.* 38 (2013).

disputes, or when the benefits of peace outweigh the costs of legitimizing an opponent. For example, Swedish opposition leader Olof Palme was immediately recognized as a mediator in the war between Iran and Iraq, but the Sri Lankan government took 17 years to allow outside involvement with the Liberation Tigers of Tamil Eelam (LTTE). Given this fear of legitimizing opponents, third-party mediation offers are more likely to be accepted in international conflicts. States seeking to mediate civil conflicts will need to highlight other incentives, such as potential costs, before mediation is accepted.

CONCLUSION

State mediators can have a significant impact on the creation of a stable and sustainable peace. However, states should be selective in deciding when and where to mediate—as such, the policymakers tasked with this portfolio should be cognizant of the optimal circumstances for state-led mediation. Threshold considerations include the characteristics of the state, the nature and characteristics of the conflict, and the characteristics of the disputants. The ideal state mediator will have prior mediation experience, democratic governance structures and access to the resources necessary to enforce agreements. Democratic third parties and disputants are more likely to agree to mediation and to generate an agreement. Experienced mediators are more likely to be accepted, as are those with greater capabilities and resources. Mediators that lack resources and diplomatic experience and those from non-democracies are less likely to be accepted or generate lasting peace. While policymakers have less ability to influence the conflict characteristics, they can encourage mediation by highlighting the presence of a stalemate, the potential for escalation, and the costly nature of the conflict. By carefully considering the appropriateness of mediation and highlighting its benefits, states and disputants are more likely to employ mediation as a conflict management tool for crafting a lasting peace.