Cultural Issues in

International Mediation

by Kai LUCKE and Aloys RIGAUT

EXECUTIVE SUMMARY:

The following recommendations derive from this paper:

1. In cross-cultural conflicts, the mediator must consider the problem *and* the people, i.e. take into consideration cultural factors.

2. Not every cross-cultural conflict should be considered as based on culture.

3. A pre-mediation assessment of the conflicting parties' cultures is needed, but stereotypes should be avoided.

4. Mediators shall be trained in cultural awareness and be taught about communication styles of different cultures.

5. Cultural ignorance must not be replaced by excessive comprehension for all acts allegedly justified by culture.

6. An analysis of the interests and objectives of the conflicting parties, in cultural terms, shall be conducted.

7. The encounter of different cultures in a mediation process shall not be systematically seen as a threat for the mediation process.

8. Culturally determined differences in objectives shall be exploited in cross-cultural win-win strategies.

9. The European Union shall identify its own conflict resolution culture.

10. The EU should try to identify the potential cultural reasons for which it has been requested as a mediator.

11. The European mediator shall be aware of his or her own culture and its consequences for the mediation process.

12. While the mediator shall remain neutral with regard to the mediation process, this cannot be expected with regard to its outcome.

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Introduction

There has been an increasing interest in the cultural dimension of conflict prevention and resolution in recent years. This may be the result of a rising number of intense cultural/ethnic conflicts in the world. Rwanda and the Balkans are probably the most cited examples of violent intra-State conflicts with cultural dimensions, but one should not forget that even "state to state" disputes involve significant cultural elements, as is shown by the never-ending India-Pakistan conflict. As a matter of fact, the end of the Cold War and the demise of Communism have meant that attention of scholars has shifted away from ideological and great power opposition. Instead, focus has shifted to smaller conflicts, typically within states and often including a conflict between different ethnic and religious groups. While one should not conclude from this that culture has become more important, the failure of states such as the Soviet Union and the former Yugoslavia have simply allowed such conflicts to escalate into armed conflict. Formerly hidden conflicts have thus become visible or are not anymore seen in simple terms of East-West opposition. In any case, the sheer scale of the atrocities committed in Rwanda or the former Yugoslavia and Huntington's influential thesis of the "Clash of Civilisations" have brought culture to the forefront of conflict analysis. This is an even higher priority due to the subsequently increased efforts of the international community to pacify regions of ethnic conflict or prevent such conflict in the first place. This has included support for states and the strengthening of civil society across cultural divides, necessitating the interaction with concerned parties as well as their reconciliation. From this perspective, international mediation may be a seductive conflict resolution technique, as it does not involve the deployment of external forces and is more respectful of the sovereignty of national states: the conflicting parties voluntarily call for an international mediation, the solution is not imposed from outside and is thus more likely to be accepted, and the result is not obligatorily binding. But it demands specific techniques and skills on the mediator's side. Mediation requires in particular high negotiation skills, and, from this perspective, cultural sensitiveness should thus be a significant asset, because e.g. of the force of language.

However, not only techniques are important, but also consciousness of one's own culture and identity. If conflicting parties ask a specific third-party to mediate their conflict, it must be because of some expected "added value" of mediation by this third-

party compared to another, and maybe also because of some cultural affinity, embedded in a preconceived notion of what to expect from this given mediator. While the EU is redefining its strategy, one may however wonder: to what extent is the cultural approach relevant? Can the EU be a successful mediator without a solid definition of its own identity/culture? What could be the expectations of the rest of the world when asking the EU to mediate their conflict?

According to Chris MOORE, "*mediation is the intervention of an acceptable, impartial and neutral third-party who has no authoritative decision-making power to assist contending parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute*" (1986). Mediation is therefore a voluntary process where an impartial third-party (the mediator) facilitates communication between conflicting parties and engages them in a joint problem-solving process. The purpose is to creatively solve problems and reach a mutually agreeable written resolution. Culture is however a much more blurred concept. Defined as "*a learned system of values, beliefs and/or norms among a group of people*" (GREEY, 1994), it may thus be considered as "*a grammar for organizing reality, for imparting meaning to the world*" (COHEN, 1997, p. 12). Broadly defined, culture includes nationality, religion, ethnic background, etc. According to some authors, it may even include the 'political culture' dimension: e.g. is the country a well-established democracy or an authoritarian regime? Some tend however to minimise the divisive influence of culture, emphasizing the common belonging of all human beings to Mankind. But one cannot deny the decisive character of culture in provoking miscommunications and misunderstandings, and that these may even escalate to a conflict. From this perspective, mediation is often chosen after the dispute has escalated to the point where bilateral negotiations have become stalemated. And such a stalemate may precisely be caused by a 'cultural clash': the higher the discrepancy between different cultures, the higher may be the risk of misunderstanding and of conflict. The role of the mediator will then be to re-open the dialog between the conflicting parties, which will require specific techniques, possibly including a cultural dimension. Finally, one should not forget that the Mediator's own culture may also be a significant parameter in the effectiveness of the mediation, and, if not carefully assessed, such interference may even jeopardise the mediation efforts. Existing references about the potential role of the EU on the world stage as an international mediator are nevertheless very rare so far, especially compared to the US, where

mediation is a common and widespread conflict resolution technique. How should European mediators take into account cultural factors? While the US approach is still prevalent in the world, isn't there any 'conflict resolution culture' or, even better, a 'mediation culture' in Europe too?

This paper is organised as follows: Section 1 discusses whether a cultural approach to mediation is relevant or not. Section 2 briefly describes two categories of cultures, distinguishing in particular between individualist and collectivist cultures. Section 3 will present a simple model for mediation in order to examine the influence of culture on mediation. And finally, section 4 sifts through the 'conflict resolution culture' of the EU, and the flaws and assets of the EU as a mediator.

1. Is the cultural approach to conflict resolution and mediation relevant?

While there is no clear EU approach to mediation for the moment, the US approach remains ambiguous when it comes to the cultural dimension. Indeed, whereas FISHER and URY (1991) advocate negotiators should "*separate the people from the problem*", "*focus on the interests*" and not on the "*positions*", Samuel HUNTINGTON (1993) stresses the crucial significance of cultural discrepancies in fuelling conflicts throughout the world and underlines the rising risk of "*clashes of civilisations*" - two theories somehow very influential in the US. As he indeed writes, "*in the post-Cold War world the most important distinctions among peoples are not ideological, political or economic. They are cultural*" (HUNTINGTON, 1996, p. 11). However, in both cases, the cultural approach to mediation does not seem relevant: on the one hand, the mediator is asked to separate the people, i.e. cultural aspects, from the "problem", which is the very object of the mediation effort (trying to find common grounds with regard to this problem); on the other hand, cultural features are described as immutable and exclusive, and thus very difficult to put aside, so that conflicts are almost impossible to be mediated.

Both visions have their limits, however, from the perspective of the effectiveness of a mediation effort. On the one hand, indeed, in many cross-cultural conflicts, people and problems are deeply intertwined, and one cannot separate them,

e.g. when dealing with identity-based conflicts where each party sees the other through the prejudices, myths and biases of his/her cultural group (ROTHMAN, 1997). For some groups, harmony is for instance highly valued, and the parties may resist a mediation that does not take into account their "position" towards the "other". In fact, a dualism between the people and the problem is not necessarily accepted as a universal principle. (KOCHMAN, 1981) for instance found that Afro-Americans view the "White" idea that they should leave their emotions out of the negotiation as "devious", a product of a political rather that a reasoned requirement. More generally, collective cultural contexts may be resistant to such a division between identity and behaviour.

On the other hand, Huntington's theory is not satisfactory either. Defining civilisation as the largest possible cultural entity, a "*culture writ large*", he puts forward two main propositions:

1) Cultural differences represent the primary source of conflict in the inter-state system, religious identity being the main defining cultural characteristic.

2) Cultural differences are most likely to promote conflict when particular pairs of culture interact (e.g. Western and Islamic "cultures").

Several of his concepts, upon close examination, seem highly dubious, however. According to Huntington's view, for instance, cultural differences are exclusive, immutable, and not amenable to compromise, thus being more likely to lead to violent conflicts. But one may consider culture as much more fluid, dynamic and open. The typology of the different civilisations used by Huntington, as well as their 'borders', may furthermore be questioned. The tragic conflict in Bosnia-Herzegovina may serve as an example in this respect. Huntington refers repeatedly to it as a 'clash of civilizations' *par excellence*, since Bosnia-Herzegovina is located astride the borders of three of the civilizations he postulates (Islamic, Western, and Eastern Orthodox). However, when closely examining this conflict without cultural prejudices, one observes that religion normally plays a minor role in public life in this region, which is highly secularised. The people of Bosnia moreover share language, culture, and history; they could therefore be described as part of one, not several, cultures. But unscrupulous politicians may exploit some particular cultural features to the point of violence: e.g. a sense of different

identities despite close association over centuries, or a sense of historical wrong, part fact, part myth. Finally, what is therefore at stake is not a difference of cultures but interests, i.e. a struggle for power.

Huntington's theories have caused much debate, and criticisms of his propositions are numerous. But, one must acknowledge that the reticence to cultural interpretations of conflicts is actually general and widespread. In particular, stereotypes about inscrutable Orientals or haggling Arabs, for instance, not only have no ground but also are counter-productive as a mediation tool. Even if the parties to a conflict are often defined by their ethnic identities, ethnic diversity alone is not a cause of armed conflict, political and economic reasons often being the prevalent ones, contrary to Huntington's thesis: e.g. poor economic conditions and repressive political systems are particularly war-prone. To put it in a nutshell, negotiations fail - in most cases - because of divergent interests, and not because of cultural misunderstandings.

Let us however come back on the different sources of conflict. One may distinguish between a disagreement or misunderstanding between two or more parties with each trying to assert their position over the other, on the one hand, and an opposition in interest between several parties (individuals, states, tribes…), on the other hand. From this perspective, cultural issues, prevalent in the first type of conflict, may also play a significant role in the second type: the definition of one's own interests may indeed depend on cultural characteristics. Mediation's effectiveness therefore depends crucially on the capacity of each party to *understand* and appreciate the interests of the other, and of the mediator to make this understanding possible (CARNEVALE and PRUITT, 1992). Thus, "*significant cultural differences between rivals may exacerbate conflict and complicate its resolution*" (COHEN, 1996, p. 108). Some empirical evidence indeed shows that as cultural issues become more salient, disputes become more intense, and they also become more difficult to resolve peacefully (HENDERSON, 1997), as has been epitomised by the recurrent rivalries in the Middle East, the Balkans and South Asia. On the contrary, when participants are from similar cultures, the chances of success of the mediation increase. With regard to political culture[1] for instance, a "*presumption of amity*" exists between democratic states, as

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[1] Cf. the distinction made by (LENG and REGAN, 2002) between "*social culture*", defined primarily in terms of religious identity, and "*political culture*", defined according to the state's political system.

evidenced by the relative infrequency of conflicts between democracies (BREMER, 1993). Democracies indeed share a common political culture, characterised by a system of checks and balances, the presence of opposition parties, and a constant debate over issues of general interest. Democratic countries are thus more used to negotiation, compromise and the peaceful resolution of conflicts, and are consequently more likely than non-democratic countries to accept a third-party intervention (DIXON, 1993). Thus, culture not only shapes the naming, interpretation, enactment and course of conflicts but also the possibilities for its resolution or transformation. This is why culture may be compared to a "*set of lenses through which all parties to a conflict necessarily see*" (LEBARON, 2002): culture, as an integral part of human existence, can be resorted to as a significant resource in transforming intercultural conflict.

Finally, not only the conflicting parties' cultures may be a serious caveat for mediation efforts, but also the mediators' culture may play a significant role in the evolution of the mediation, given that different cultures assign in reality different roles to mediation. For instance, Arab mediators see their main task as restoring a harmonious relationship between the conflicting parties and as preserving Arab unity (PATAI, 1987). Community harmony is also a prevalent motive for Chinese mediators (WALL and BLUM, 1991) and Indian mediators (SINGH and SINGH, 1992). One may finally mention the carefully non-assertive style of the Japanese mediators (CALLISTER and WALL, 1997). From this perspective, one may therefore wonder what could be the European "style" of mediation, and what are its particular motives when mediating conflicts – if it has some.

There are nevertheless some counter-arguments, and even if the importance of culture in negotiation and mediation is slowly being discovered, some continue to refuse its relevance for various reasons:

Firstly, there is a fundamental opposition against including factors such as culture in interstate relations based on the realist reading of international relations. According to the realist school, the state is a unitary actor rationally pursuing its national interest in an anarchic world through the use of power. As a consequence, realists assume that conflicts exclusively arise from opposing interests.

However, it should be clear that not only the definition of national interests can be influenced by cultural factors; as fundamentally, what is seen as a rational way of pursuing such interests may vary between cultures. Moreover, mediation situations are, of course, not limited to inter-state relations. Ethnic or cultural conflicts may arise within states.

Secondly, the existence of a universal culture of diplomats (ZARTMAN, 1993) is invoked in justification of the refusal to consider culture during mediation. According to this reasoning, cultural differences will not present a problem as trained diplomats act as a sort of screen: having received similar training – in fact, not only in their respective ministries but often already before, when studying at the same schools and universities – and speaking the "language of diplomacy", any problem of cultural misunderstandings is thus seen as unlikely to arise between diplomats.

Indeed, it is a well-known phenomenon that national experts meeting regularly may develop some form of professional ethos, possibly leading even to the partial loss of control of national governments over these experts. Some have proposed that this could be the case in the European Union comitology system, for example. Particularly in specialist fields to which outsiders may have little access, experts might well find it easier to agree with their counterpart than their own delegation.

However, possessing the same university degree or knowledge of similar techniques does not say anything about cultural convergence. Moreover, diplomats are certainly not the only actors in mediation. Particularly in sub-national and ethnic disputes or in the field of economics, other actors play important roles, including political leaders and managers without specialist training in intercultural awareness. In any case, even if one assumes that cultural miscommunication could be avoided between diplomats in a given situation, their respective cultural backgrounds and culturally determined expectations of the public may impose constraints that make the conclusion of an agreement difficult.

Thirdly, while agreeing that culture may have played a role in the past, others point to a perceived cultural homogenisation of the world and an increased interconnectedness of global elites. As a consequence, they argue that the relevance of culture is declining.

However, the fact that McDonald's spreads throughout the world and English is becoming the *lingua franca* of large parts of the planet must not to be confused with cultural homogenisation at a deeper level. If different parts of the world know more about each other today than in the past, this cannot be equated with increased understanding of the others' culture, and certainly it does not necessarily imply affinity for the other culture. In fact, a "*sursaut identitaire*" might be the consequence of a perceived homogenisation of life-styles, with cultural differences reaffirming themselves (BADIE, 1995).

All this is not to say that cultural issues are likely to dominate the mediation process. Many other factors, be they of political, economic or military nature, are more likely to be at the origin and central to the solution of a conflict. The human beings taking part in a mediation process, as representatives of their parties, might be separated by many other boundaries besides culture. Such personal divisions may be along lines of social status, ideology, generation, or gender, for example. Thus, personal animosity making the solution of a conflict more difficult does not necessarily derive from cultural differences, just as opposing values and interests need not be culturally determined. Even in those cases where culture does play a role, the importance of culture in interpersonal relations will not be the same between different pairs of interlocutors. However, cultural factors need to be considered, as negligence to do so may unnecessarily complicate the finding of a solution.

In a world in which longer term relationships and multicultural problem solving are becoming increasingly significant, negotiations involving intercultural exploration, a less presumptive and more emphatic approach to international negotiation, may therefore be better suited. It however requires an insight into one's own and other's subjective approach, and an ability to detach oneself from one's own cultural assumptions and values (TRIANDIS, 1972), including those elements stemming from the universal culture of diplomacy (cf. *supra*). Using this intercultural approach thus requires special training and experience to discover and get beyond one's own cultural blinders and to develop one's cultural awareness. While the key to success in any negotiation lies in the successful exchange of meanings among the negotiators, the risk is that a mediator minimises rather than takes into account cultural differences between the parties, interprets their motivations through the lens of his or her own culture rather

than empathises with the cultures of the parties, and ignores rather than explores their values and assumptions. Such an attitude would indeed essentially lead mediators to "*negotiate with themselves*", and thus to jeopardise the chances of success of the mediation, since the parties would not be prone to accept an agreement that has been somehow 'imposed' on them, irrespective of their positions and identities.

2. Categorising Cultures

While it is difficult to categorise cultures, one may nevertheless broadly distinguish between individualist and collectivist cultures. Before doing so, however, it must be stressed that such unrefined categorisation is problematic in many ways: the distinction made is not the only possible distinction, of course. Moreover, it is impossible to determine an exact border between individualist and collectivist cultures. Indeed, making fixed assumptions about individuals based on their cultural origin could lead to new misunderstandings, which these very assumptions were supposed to avoid. Participants in cross-cultural mediation must not make the mistake of perceiving actors from other cultures than their own and their opinions and actions as predetermined by culture. As importantly, the distinction presented here must not mask the fact that both individualist and collectivist cultures are far from homogenous. Miscommunication and misunderstanding based on culture can well take place between two cultures from one group.

Nevertheless, making a fundamental distinction between individualist and collectivist cultures may help in making visible the relevance of culture for mediation by highlighting certain essential differences. It is therefore useful to work out some traits of individualist and collectivist cultures. Broadly speaking, this distinction coincides with other ones classifying cultures as modern or traditional as well as low-context or high-context. However, due to the suggestion of successive development stages, the terms modern and traditional will be avoided. Higher emphasis on the low and high context aspects of cultures will be put in a subsequent part on culture and communication.

2.1. Individualist cultures

Individualist cultures value highly the development of the individual. Human beings are seen primarily as autonomous. As a consequence, personal freedom is regarded as important and emphasis is put on the rights of individuals and their freedom of choice. Self-expression and personal achievement are central to individualist societies, which consider individuals to be of equal value: "*all human beings are born free and equal in dignity and rights*". Individuals are therefore free to challenge authority and norms, and encouraged to derive their own conclusions and form their opinions independently from others. Competition is encouraged and conflicts, which arise frequently and naturally, will be settled with reference to legal rules, which equally bind those in positions of authority. This is a consequence of the fact that those in authority have acquired this status, as opposed to having received it by birth. Just as on legal rules, emphasis is put on rationality.

Only in a second step do individualist societies consider human beings' belonging to a group. The form of social organisation is therefore rather loose, with individuals choosing to which groups they belong and to which not. Relationships tend to be task-oriented as opposed to based on affection. Should a conflict arise in an individualist society between interests of the individual and those of the group, individuals are expected to give precedence to their own interests.

2.2. Collectivist cultures

Collectivist societies put emphasis on the well-being of the community as opposed to the individual, which plays a subordinated role. The social organisation is rigid and hierarchical, where membership in a group is often determined by birth. Such is the case, for example, with regard to the family, which often is of fundamental importance, but also other groups, such as the clan, caste, etc. Authority is likely to be acquired through birth rather than achievements. The rights and development of the individual thus tend to be secondary to the interests of the community. Norms, customs and obligations to the group prevail. Conflicts must be avoided as they threaten the harmony within the group. Should they arise, they will not be settled according to legalistic principles or with regard to formal documents such as contracts, but in respect of tradition and the group interest. Whereas individuals do not weigh much in society,

the relationship *between* individuals is crucial, however: how a person is seen in a group is of great importance, which is why persons may accept material loss to restore their honour or that of a group they belong to. Due to the disruptive consequences of the loss of face and in order to protect the harmony of the group, social norms have developed which aim at preventing internal conflict. These include a more indirect approach to discussions, including non-verbal communication, and a reluctance to contradict.

While the mediator should not necessarily categorise cultures according to these frameworks only, the distinction made nevertheless highlights some important differences which can serve as a tool for mediators, as a way to understand the cultural assumptions of the conflicting parties.

3. *The influence of culture on mediation*

Due to the fundamental differences between the cultures that have been presented, the encounter of different cultures in mediation can influence both the *process* as well as the *outcome* of mediation. It must be noted, however, that rather than only complicating the mediators' task, the coming together of different cultures can equally facilitate the finding of a solution. It is this last aspect that seems completely neglected in the literature.

3.1. Problems of Cross-Cultural Mediation

When analysing what problems the encounter of different cultures in a mediation process can result in, a fundamental distinction needs to be made between problems caused by culturally derived miscommunication on the one hand, and the clash of culturally determined interests on the other.

Culture and Communication

Successful communication is already difficult enough without the introduction of different cultures in the process. Insofar as models of verbal communication are concerned, they describe how a message is first encoded by the sender by putting it into words and then transmitted to the receiver who has to decode the words to interpret the

intended meaning. Regularly, information is lost or indeed added in this process of codifying and de-codifying, as individuals intending to communicate with each other attach different meanings to the code: for different individuals, words have different connotations.

The problems of communication are exacerbated when communication takes place across cultures. This is not only due to the basic problem of translation, or due to the difficulties for non-native speakers of catching nuances when discussing in a foreign language. Language as a social instrument reflects a culture. Thus, the absence of the distinction between Sie/Vous and Du/Tu in the English language, or the much finer nuances of respect in the Japanese language mirror societies' attitude to rank and hierarchy. Word association tests show clearly that the meaning of words is culturally determined: while for basic concepts, such as food, associations across cultures are still rather similar, associated words may differ widely for more elaborate concepts. In fact, some words trigger positive associations in some cultures and negative ones in others. This may be of crucial importance from the point of view of mediation since the outcome takes generally the form of a *written* agreement.

The more differences between sender and receiver, therefore, the more likely it is that the informational content of a message will be lost or altered during its transmission. If culture consists of shared concepts and attached values, then culture is the basis for successful communication, enabling the correct interpretation of the code. Thus, if the same word has different meanings for mediation participants, both parties are likely to project their own culturally bound assumptions into the code, leading to a false interpretation of the other group's position.

Different attitudes to verbal and non-verbal communication are likely to complicate the communication process further: the direct, frank and confrontational style prevalent in individualist, low-context societies can easily be understood as rudeness and lack of respect by those from collectivist societies. In fact, even European observers will sometimes interpret as arrogance the direct style shown in the US and other Anglo-Saxon countries. Possibly, the European reaction to US President George W. Bush's "Axis-of-evil-speech" is a suitable example.

The harmony requirements and emphasis on face-saving in collectivist, high-context societies have led to a different communication style, diametrically opposed to the frankness shown in particular in Anglo-Saxon countries: low-context societies value a straightforward approach to talks, where opinions are stated, direct questions are asked and alternatives laid out explicitly. An efficient, business-like attitude in which results are produced quickly is characteristic of such a culture, which is why a language with high informational and low social content is preferred. In a discussion style influenced by legal proceedings, participants will not hesitate to contradict others and refuse proposals made.

In high-context societies, however, communication follows radically different patterns: generally-speaking, the approach is less direct and less committal, as the face-saving constraint dictates that it must be avoided both to contradict as well as to be contradicted. As a consequence, rather than rebuffing a proposal, discussants from collectivist societies may attempt to avoid answering or give an evasive reply. Equally, rather than running the risk of being contradicted when making a proposal, reactions of the other side will be tested carefully until one can be confident that the proposal will be accepted. Low-context negotiators can easily be irritated by such behaviour. However, rather than constituting an attempt to procrastinate and delay, such conduct derives from the fact that contradictions result in embarrassment and can put the relationship between the negotiators at risk. For mediation participants from collectivist societies, however, relationships need to be constructed as the lines between social conversation and business negotiation are much less pronounced than in individualist societies. If talks are less direct, much emphasis is put on non-verbal forms of communication, such as body language. What is not said may be as important as what is said. Moreover, subtleties and hints are likely to convey much more information than participants from low-context cultures would expect.

Thus, even before the essence of mediation is tackled, culturally-determined assumptions about and styles of communication can prevent successful communication and, as a consequence, pose a risk to the successful conclusion of the mediation.

Culture and Interests

While the threat to a successful conclusion of a mediation attempt based on culturally-bound miscommunication can at least be minimised through the training of mediators, preparatory study of communication styles and a general increase in cultural awareness, a different obstacle to mediation may prove more fundamental: cultures shape interests, which may prove irreconcilable during a mediation.

A person's cultural background indeed shapes his perception of reality. What may be trivial for some can be unacceptable for others. As a consequence, aims of the mediation and the range of acceptable outcomes differ between participants. Of course, culture is not the only factor shaping a party's aims for and the acceptable outcomes of mediation. The family history of one of the parties' chief negotiator may have similar effects on what she considers acceptable, for example. However, a solution, say, to an ethnic conflict, can only be a lasting solution if accepted by the groups as a whole. As culture is one criterion common to all group members and thus shaping the values of the group as a whole, culture may play an important role in shaping aims and acceptable outcomes. This is particularly true as the acceptability of an outcome is likely to be influenced by values, i.e. notions of right or wrong. Naturally, values are shaped by history and culture, and what can be unacceptable for some may seem reasonable to an outsider mediator – even to the point that a refusal may seem irrational to the outsider. Therefore, it has to be recognised that parties from different cultures are likely to enter a mediation process with differing objective functions. Not only will the weights attached to different factors constituting the objective function differ, the factors themselves may equally vary.

Let *ObjFctA* and *ObjFctB* describe the objective functions of groups A and B. It is assumed that both parties only consider two substantive issues, *Issue1* and *Issue2* as relevant for the mediation process. The objective functions for group A and group B are therefore:

$$ObjFctA = a1\ Issue1 + a2\ Issue2$$
$$ObjFctB = b1\ Issue1 + b2\ Issue2$$

The coefficients (a1, a2) and (b1, b2) describe the weights attached to the two issues. A weight attached to an issue may indicate how much time a party wants to

devote to an issue and with how much detail it wants to resolve the question. More importantly, however, the weight specifies how important a group considers an issue when judging if the mediation has satisfactorily furthered its interests, i.e. if the result is acceptable.

If both issues are of equal weight, b1 equals b2 equals 0.5. However, for historic and cultural reasons, assume that group A puts higher emphasis on the first and group B more weight on the second issue. Thus, two possible objective functions are:

$$ObjFctA = 0.6\ Issue1 + 0.4\ Issue2$$
$$ObjFctB = 0.4\ Issue1 + 0.6\ Issue2$$

Different problems may now arise. For example, group A may not understand why group B refuses to devote more time and detail to the first and (for that group) more important issue. This can make group A believe that group B is not interested in finding a solution. Of course, frequently, weights attached to certain issues will differ without introducing cultural differences altogether. However, what matters here is that the potential for misreading the other's intentions is higher in cross-substantive settings.

As should be obvious, the more the weights attached to certain factors differ, the more likely this will cause difficulty in both agreeing on a process and in obtaining an acceptable outcome. Not only can the weights attached to substantive issues be expected to vary more strongly the larger cultural differences between the parties; in particular for "non-substantive outcomes", of which honour would be one example[2], the weighing is likely to be very different. Honour is called non-substantive as it can be achieved for example by a gesture of respect, or a statement of esteem, and thus can be decoupled from the substantive outcome[3].

$$ObjFctA = 0.5\ Issue1 + 0.35\ Issue2 + 0.15\ Honour$$
$$ObjFctB = 0.2\ Issue1 + 0.3\ Issue2 + 0.5\ Honour$$

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[2] PATAI (1973) e.g. argues that every dispute, whether interpersonal or between states, becomes a matter of honour for Arab parties, so that "*even to take the first step toward ending a conflict would be regarded as a sign of weakness which, in turn, would greatly damage one's honor*" (p. 228).
[3] This is true to at least some extent, as statements of respect cannot compensate a very negative substantive outcome. Such statements become less credible the more asymmetric the substantive solution.

Even more problems can arise if the factors themselves (and not only the weights attached to them) differ between the groups' objective functions. For example, assume that one party is exclusively task-oriented and therefore only cares about finding a solution to the two issues discussed, *Issue1* and *Issue2*. If the other party, however, is also relationship oriented, i.e. sees the establishment of a personal and stable relationship as a necessary condition for finding an agreement, the objective functions will differ in even more fundamental ways. To give an example:

$$ObjFctA = 0.6 \; Issue1 + 0.4 \; Issue2$$
$$ObjFctB = 0.3 \; Issue1 + 0.5 \; Issue2 + 0.2 \; Relship$$

While in the previous case of differing weights it was the degree of insistence on an issue that varied, the lack of understanding for the other party's preferences is likely to be even more fundamental with differing factors in the objective function.

Further refining the model will show another important way in which culture can complicate a mediation process: assume that for each factor, 10 "utility points" can be allocated for any mediation outcome. Both parties receiving 5 indicates a compromise solution, whereas, say, 8 utility points for group A and 2 for group B point to a better outcome for group A than for group B. It is thus assumed that for each single issue discussed, the loss of one party presents the gain for the other. Looking at each factor individually, therefore, the model seems to assume a zero-sum game. As will be shown later, this is not necessarily the case. Moreover, the assumption does not mean in any way that the negotiation as a whole is modelled as zero-sum.

In most negotiations, parties will have certain minimum expectations from a possible solution. Of course, "give and take" solutions are often feasible, where a party will accept a less favourable outcome than expected concerning one aim as long as some form of compensation exists, i.e. the result concerning a different aim is more favourable. But let us nevertheless assume that both parties will specify a certain minimum outcome for each issue. Thus, for *Issue1*, for example, while both parties' optimal outcome would of course be 10 points (with zero for the other), group A might not accept any outcome below 3 points and group B none below 4. Insistence of one

group on a result violating these "minimum constraints" will make the conclusion of an agreement impossible. As has been discussed, minimum constraints are likely to be determined by value judgements on the acceptability of an outcome.

It should be easy to guess the relevance of culture with regard to these minimum constraints. If minimum constraints are determined by values and notions of what is right or wrong, and if these differ between cultures, then one party may easily underestimate the minimum constraint of one party. As has been stated, continuous insistence on pushing the other party below their minimum constraint will make them abandon the mediation. Moreover, in the case of strong divergence of value judgments, minimum constraints can be mutually exclusive. Thus, if both parties' minimum constraint for *Issue2* is 0.6, a mediated outcome is of course not possible.

However, while cultural differences can lead to opposing interests, as has been shown, a successful mediator must be aware that cultural differences may equally be abused and invoked for reasons of political opportunism:

In some cases, a party will justify some behaviour by cultural factors out of pure political opportunism. Thus, disrespect for the rights of individuals, including the imprisonment of political opponents and even their torture, can be justified by pointing to the needs of the community. Criticism of and action against such acts can be attacked as interference in internal affairs and as cultural imperialism.

Again, it should be stressed that the mediator must not fall prey to his own stereotypes. While a mediator will have to show cultural awareness and sensitivities, this must not be confused with accepting all positions and acts as culturally determined. Cultural ignorance must not be replaced by excessive comprehension for all acts allegedly justified with regard to culture. Seeing politicians from other cultures as more determined by culture than European politicians would indeed not only be racist; it would be easily exploited. An analysis focusing exclusively on cultural factors and leaving out political interests would lead the mediator to wrong conclusions about the aims of parties and possible solutions to a conflict. In terms of the model presented, political opportunism of invoking culture could consist of pretending that the minimum constraint based on cultural acceptability is higher than actually the case.

Naturally, it will be difficult for the mediator to determine when culture is used as an excuse and if political interests are in reality served in the name of cultural sovereignty. Aware of the problem, it is up to the mediator to strike a balance and decide if cultural diversity is a legitimate justification for certain demands.

3.2. Benefits of Cross-Cultural Mediation

While it is true that cultural differences can make the finding of a solution more difficult, this need not always to be the case. Indeed, the opposite may be true as well: both culturally based miscommunication and diverging priorities due to cultural differences can facilitate the emergence of a solution to a conflict.

Theoretically, miscommunication can diffuse a tense situation just as it can make it escalate. However, it seems reasonable to assume that such a case will be the rare exception. In any case, it is difficult to see how a mediator could systematically try using real or alleged cultural miscommunications to diffuse a situation.

What seems possible, however, is the systematic exploitation of culturally diverging priorities in settling an issue. Before showing this, however, a further condition for the acceptance of a solution by both parties is introduced. It has been shown earlier that certain minimum constraints have to be met regarding every single factor. In addition, an "overall minimum constraint" is now introduced. For the latter it does not play a role how many utility points a party receives for an *individual* item but how satisfied a party is with an outcome based on the *overall* utility determined by the objective function. Here, it is not the simple number of utility points that is decisive, but their *weighed* value. Thus, taking the example of a random objective function,

$$ObjFctA = 0.5 \; Issue1 + 0.35 \; Issue2 + 0.15 \; Honour$$

One utility point for Issue1 will increase the objective function by 0.5, while one utility point for Honour will only lead to an increase of 0.15.

Assume that both parties have an overall minimum constraint of at least 5. This is what any utility function will yield if the party received 5 points for any individual

item. Thus, it is assumed that both parties will accept the outcome if a compromise (5 points each) on all issues is found. If the objective function yields less than 5, however, a party will reject an outcome.

Let us first analyse the situation where the objective functions of both parties are identical. This could be seen as the case where both parties come from the same culture, for example, in this case a low-context culture where substantive issues are valued higher than honour:

$$ObjFctA = 0.6\ Issue1 + 0.3\ Issue2 + 0.2\ Honour$$
$$ObjFctB = 0.6\ Issue1 + 0.3\ Issue2 + 0.2\ Honour$$

In such a case, given the overall utility constraint of 5, the range of possible outcomes is limited. One possibility is the allocation of 5 utility points for each party for every factor. Similarly, an outcome could still be acceptable one utility point less for *Issue1* was compensated by three additional points for Honour. Generally speaking, an outcome is only accepted by both parties if the gains of one party on one factor are exactly compensated by the other party's gain on a different factor. All other outcomes will be unacceptable to one of the parties. Thus, in the case of two low-context parties opposing each other just as in the case of two high-context parties, accommodation is difficult. This is because an equal weight placed on a certain factor by both parties makes any outcome a zero-sum game for that factor: any increase in utility points for one party will change its objective function by the same amount as the other party's objective function, although with opposite signs.

However, assume now that the parties' objective functions differ, for example because party B is a higher context party than party A, i.e. places a higher value on honour:

$$ObjFctA = 0.5\ Issue1 + 0.35\ Issue2 + 0.15\ Honour$$
$$ObjFctB = 0.3\ Issue1 + 0.25\ Issue2 + 0.45\ Honour$$

The range of outcomes acceptable to both is now much greater. Party B, for example, will be happy to "trade" one utility point for *Issue1* for one additional point

for *Honour*. Party A will equally benefit from such an exchange. The exchange can continue as long as the minimum constraint for a factor is not violated.

Thus, taking the extreme case where one low-context party is primarily aiming at substantive improvements without wanting to publicly exploit them, while the high-context party is above all interested in a symbolic act of deference, a proposal presenting a win-win situation for both parties is much easier to find than in the case of both parties coming from the same (similar) culture and having the same (similar) objective functions.

In fact, even the case of one party's objective function including a factor not included in the other party's function can facilitate an outcome under certain circumstances. Assume that party B considers the mending of a relationship (*Relship*) to be important, while party A is completely indifferent about this issue:

$$ObjFctA = 0.5 \; Issue1 + 0.35 \; Issue2 + 0.15 \; Honour$$
$$ObjFctB = 0.2 \; Issue1 + 0.25 \; Issue2 + 0.3 \; Honour + 0.25 \; Relship$$

While problems can of course arise due to misunderstandings, as has been shown, the inclusion of such an issue could be beneficial to both parties: if included, party A can grant B all 10 utility points on such an issue without incurring any costs whatsoever. At the same time, party A can bargain harder on other issues, knowing that B's costs of a refusal to sign are increased by the value it places on the additional issue.

Therefore, mediators, rather than seeing cultural differences exclusively as a threat to mediation, should be aware of potential chances offered by different culturally determined priorities. Cross-cultural win-win strategies should be exploited.

For this to be possible, however, mediators should understand the culturally-determined objectives of the parties. This underlines again the need for mediators in cross-cultural disputes to know about the cultures present in the mediation.

4. Is there a European 'conflict resolution culture'?

Some 'techniques' therefore exist so as to effectively settle cross-cultural conflicts, as has just been shown, which underlines the benefits of a pre-mediation cultural assessment of the conflict aiming at preparing the work of the mediation. One may however doubt that such an approach would be sufficient, from the perspective of the cultural issues imbedded in international mediation processes. Indeed, if the parties ask the EU to mediate their conflict, it must be because of an expected 'added value' of the EU approach compared to other 'conflict resolution cultures' (that of the US e.g.). Understanding this 'added value' nevertheless requires defining EU's identity, i.e. as much how the EU views its role on the world stage as how the rest of the world perceives it. This may indeed be very useful for the effectiveness of the mediation, given that "*if the assumptions of disputants regarding the role of the mediator are different from the mediator's own views, the latter may employ tactics that are ineffective, or even offensive*" (LENG and REGAN, 2002, p. 12). Knowing oneself is therefore a precious prerequisite for a good mediation. But, while the US conflict resolution culture and "negotiating style" is quite well defined so far[4], the definition of Europe's identity and culture may be more problematic, all the more that European diplomacy has long been undermined by its lack of structure and unity.

According to the standard frameworks of analysis aiming at categorising cultures (cf. *supra*), the EU may be described as characterised by a low-context and individualist culture, typical of Western societies. But does this entails that the EU would be expected to be prone to using 'win-win' techniques, so characteristic of the US approach? In other words: would one expect the EU and the US to have a similar conflict resolution culture? Win-win approaches requires the definition of a 'triangular' configuration, where the 'people' is separated from the 'problem' and the underlying 'interests' differentiated from the 'positions', so that the goal of the mediation can be defined accordingly and reflect the (exogenous) common interest of both parties (which is to be found out by the mediator). However, as one may notice, the definition of the head of the triangle by the mediator is very likely to be very much influenced by his or her own cultural references: the fight against the '*axis of evil*'' is for instance said to be

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[4] Cf. (COHEN, 1997).

very typical of the US approach to international affairs, and may be linked to the "manifest destiny" theme[5] that as so much influenced American politicians and diplomats:

> *The American people having derived their origin from many other nations, and the Declaration of National Independence being entirely based on the great principle of human equality, these facts demonstrate at once our disconnected position as regards any other nation; that we have, in reality, but little connection with the past history of any of them, and still less with all antiquity, its glories, or its crimes. On the contrary, our national birth was the beginning of a new history, the formation and progress of an untried political system, which separates us from the past and connects us with the future only; and so far as regards the entire development of the natural rights of man, in moral, political, and national life, we may confidently assume that our country is destined to be the great nation of futurity.*
>
> *(…)*
>
> *America is destined for better deeds. It is our unparalleled glory that we have no reminiscences of battle fields, but in defence of humanity, of the oppressed of all nations, of the rights of conscience, the rights of personal enfranchisement. Our annals describe no scenes of horrid carnage, where men were led on by hundreds of thousands to slay one another, dupes and victims to emperors, kings, nobles, demons in the human form called heroes. We have had patriots to defend our homes, our liberties, but no aspirants to crowns or thrones; nor have the American people ever suffered themselves to be led on by wicked ambition to depopulate the land, to spread desolation far and wide, that a human being might be placed on a seat of supremacy.*

<div align="right">

John L. O'Sullivan on *Manifest Destiny*, 1839

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One may also recall the significance of such shared values as the "*American Dream*" or the myth of the "*Frontier*" (F. J. Turner), and the openness to the world that it entails, as also illustrated, for instance, by Emma Lazarus' verses enshrined on the Statue of Liberty: "*Give me your poor, you huddled masses yearning to breath free…*" The USA therefore believes they, as a 'chosen' country and people, have a "*mission*" in the world, to fight for "*the right to life, liberty and the pursuit of happiness*" (as quoted from the US Constitution).

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[5] One of the best illustrations of this very influential myth is the famous quotation from the Puritan John Winthrop: "*We shall be as a City upon a Hill, the eyes of all people are upon us…*" The Puritans who disembarked in Massachusetts in 1620 indeed believed that America was a "*Promised Land*" and that they were establishing the "*New Israel*".

From this perspective, what could be the features of a 'European conflict resolution culture'? Let's try to define a few features of Europe's identity/culture (including both social and political elements), and see if they can be of any help in developing a European capacity to mediate conflicts.

4.1. Mediation or arbitration: two contrasted conflict settlement techniques

For mainly historical reasons (continuing wars between European states about the drawing of frontiers), Europe may be more used to win-lose conflicts, hence arbitrage, given that, as in court-based adjudications, arbitration outcomes are typically of the 'win-lose' type and not of the 'win-win' type. Indeed, the arbitrator usually decides that one side was right and the other wrong, and generally does not try to develop new approaches for meeting the interests of both sides simultaneously, whereas a mediator would do so. This European win-lose 'conflict resolution culture' may be illustrated by the traditional win-lose type settlements of conflicts between European States about their respective frontiers, as for instance in the case of the Congress of Versailles of 1919, which put an end to World War I. In this paradigmatic case indeed, Woodrow WILSON, that had tried to advocate a win-win type of conflict settlement (though his famous "*Fourteen Points*"), was not listened to, and a win-lose settlement was finally opted for by the conflicting parties, which – as a result - paved the way for the emergence of World War II, because – notably - of Germany's frustration.

Now, though prevalently legalistic and used for commercial/economic matters, arbitrage still seems part of a European conflict resolution culture, when one looks how often this tool is resorted to. One may indeed, for instance, refer – among many other arbitration courts – to the 'Permanent Court of Arbitrage' of The Hague[6], the European Court of Arbitrage, the French "Centres for arbitration and mediation" (that later originated a corresponding European network), the Euro-Arab Council of Arbitrage, etc. The establishment of the WTO, wanted by the EU, with some resistance from the US, is also quite telling, as the WTO provides a conflict settlement procedure that is closer

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[6] Even if completely distinct from the EU, the fact that the PCA is based in The Hague, hence in Europe, is symbolically important, given that it is Europe as a whole that benefits from its successes in conflict settlements.

from arbitration than mediation techniques[7]. As for the Permanent Court of Arbitrage (PCA), it was established by the Convention for the Pacific Settlement of International Disputes, concluded at The Hague in 1899, during the first Hague Peace Conference - which was convened at the initiative of Czar Nicolas II of Russia *with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace, and above all, of limiting the progressive development of existing armaments.*" The establishment of the PCA was the first global mechanism for the settlement of inter-state disputes, and, since 1899, this court, consisting of a panel of judges appointed for six-year terms by each member state, has become the principal instrument of international arbitration.

This may explain that the EU feels ill at ease with mediation techniques, Europe being perhaps more used to arbitration. The disadvantages of arbitration nevertheless stem from its very characteristics: arbitration is adversarial, takes decision-making power away from the parties and generally does nothing to create win-win solutions or improve relationships; it thus often risk to escalate a conflict. There are nevertheless some successful cases of conflict settlement through arbitrage, as illustrated by the recent decision about the boundary between Ethiopia and Eritrea, delivered on April 13th 2002 by the 'Eritrea-Ethiopia Boundary Commission' (EEBC, Permanent Court of Arbitrage). The decision was accepted by both conflicting parties and considered as a balanced decision.

4.2. Peace through integration processes and Community methods

In old times, in a Europe used to intense win-lose wars, peace was often kept thanks to marriages between European royal families that prevented conflicts from happening between the countries in question. Today, in the same manner - to some extent -, the EU may see 'integration processes' between countries as the best tool to peace building. Two mediation strategies are indeed at the disposal of the EU acting as mediator: whether inviting the conflicting parties to a process of regional integration, whether opening the door to the accession of one or both conflicting parties to the EU.

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[7] There is a precise legal difference between mediation and arbitration, but which badly catches the essence of a successful mediation. It is therefore not unusual for people to confuse mediation with arbitration. The basic difference is however that in mediation the parties decide themselves the solution to the problem, whereas in arbitration, a third party makes the binding decision.

In both cases, however, some prerequisites must be observed: in the second case e.g., which is the most straightforward, the parties can be recalled that must respect the three 'Copenhagen criteria'. But even when EU accession is not at stake, a well-functioning democratic system and market economy appears as a necessary condition to regional integration, as is shown in the case of the MERCOSUR or of the Organisation of African Unity (OAU), and may be put forward by the EU acting as mediator. By this way, these criteria may indeed become the common goal, the 'common interest' of the parties, i.e. the potential "head" of the triangular/win-win configuration: a functioning democracy with stable institutions, a functioning market economy and an effective protection of human rights and minorities. This has for example facilitated the recent successful mediation of Javier Solana (High Representative for the Common Foreign and Security Policy (CFSP) of the European Union) in Macedonia[8], where there was intense inter-ethnic conflicts with Albanians, and is still a constant issue in the case of the Cypriot never-ending conflict, or in the case of Turkey (with regard to the Kurdistan conflict). Let's take the example of the Stability Pact for South Eastern Europe (SPSEE), adopted at the initiative of the EU on 10 June 1999, in Cologne. In the founding document, it is indeed indicated that the partner countries and organisations (more than 40 in total) undertook to strengthen the countries of South Eastern Europe "*in their efforts to foster peace, democracy, respect for human rights and economic prosperity in order to achieve stability in the whole region*", and Euro-Atlantic integration was promised to all the countries in the region. More interestingly, it is also detailed, in the founding document, that the EU, which has assumed a leading role in the Stability Pact, undertakes to draw South Eastern Europe "*closer to the perspective of full integration (…) into its structures*", including eventual full membership. Finally, one must point out that the European Union and its Member States are collectively the most important donors in the region[9]. This illustrates perfectly the whole strategy of the EU in its region and this influence of this "integration process" powerful tool at the disposal of EU mediators.

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[8] With the signing on 9 April 2001 of the 'stabilization and association agreement' with Macedonia, the EU deliberately issued a signal during the conflict, making clear its willingness to open up to Macedonia a concrete prospect of integration into the European structures.

[9] The financial tool is also very powerful, given the large amounts of project financing that the EU has over its control, thanks to multilateral banks such as the EIB and the EBRD, and PHARE and TACIS programmes. On 7 February 2000, for instance, a European mediation by the Special Co-ordinator of the SESEE succeeded in settling a dispute that had lasted for over a decade between Romania and Bulgaria over the location of a second bridge between the two countries over the Danube at Vidin-Calafat. A loan contract with the EIB was at stake and has been finally signed on 8 December 2000.

Even when the conflicting parties are not at all likely to become member of the EU in the future, the EU can also propose a Community model/method inspired from the EU itself. The EU was for instance at the origin of the idea of a '*South Caucasus Community*", aimed at settling the long-lasting Nagorno-Karabakh conflict. Confronted to the US resistance to the idea of a "*South Caucasus Pact*" (CSP), as proposed originally by the by the Centre for European Policy Studies (CEPS)[10], the Europeans began tale-tellingly to talk about a '*process*" instead of a '*pact*"[11], and, as a result, the US seemed to welcome the possibility of a contribution to peacemaking by actors outside the Minsk Group[12]. On the contrary, disintegration is strongly resisted by the European Union, when mediating a conflict, arguing that this would necessarily lead to further conflicts and rivalries. For instance, the EU has always been clear about Montenegro and Kosovo, taking position against their secession from the Federal Republic of Yugoslavia. Such secession would indeed give the worst example possible to neighbouring countries/regions and pave the way to further conflicts in the whole region (cf. Albanian minority in Macedonia and the Serb community in Bosnia-Herzegovina). In April 2001, Javier SOLANA e.g. said that the EU fully supports a democratic Montenegro within a democratic Yugoslavia but would "*oppose any unilateral steps which could run contrary to the stability of the region*" (i.e. independence). In the same manner, European Commission spokesman, Gunnar WIEGAND, said that European "*political, economic and financial aid*" would be continued, "*if the constructive dialogue is continued* ".

4.3. Peace through the protection of individual rights and freedoms

The protection of individuals in the face of the States and the right to interfere in national States when humanitarian situation is becoming unbearable may also be a significant feature of European conflict resolution culture. From this perspective, the

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[10] An independent but influential Brussels think tank. This ambitious proposal advocated the eventual creation of a 'South Caucasus Community' among the three states of the region, i.e. Armenia, Azerbaijan, and Georgia. This proposal was (perhaps too mu ch) based on the model of the European Union itself.

[11] The term was anyway very confusing too, because it has not much in common with the Stability 'Pact' for South Eastern Europe. As a matter of fact, the usage of the term "pact" may be a remnant from his EU member states' past win-lose culture, and the term "process" may better reflect EU's intentions and genuine conflict resolution culture.

[12] Composed of the USA, France and Russia.

EU often tries to play the role of a mediator between national states and individuals, on the model of the Scandinavian "Ombudsman". While Scandinavian states may seem better equipped on this field, as illustrated of a long tradition of mediation in these countries (especially Norway[13]), it should be noted that this model has been rapidly expanding in the EU, with the establishment of the "*Mediator of the EU*"[14] by the Maastricht Treaty (1992).

The first Ombudsperson institution in the world was indeed established in Sweden in 1809. In Swedish the "ombudsman" is an independent person overseeing whether the authorities observe the law. But many countries adapted similar models, though using different names, such as "People's Advocate", "Public Mediator" etc. More recently, Ombudsperson institutions have been set up all over the world, including in Hungary, in Ireland, in Poland, in Slovenia, in Spain and in Latin American countries. More interestingly, the Ombudsperson institution has been used as a tool for conflict settlement, as in the ex-Yugoslavia: in Bosnia-Herzegovina, and in Kosovo[15], for instance. The role of the Ombudsman in Kosovo e.g. is to address disputes concerning alleged human rights violations or abuse of authority between the individual/group of individuals/legal entities and the Interim Civil Administration or any emerging central or local institution in Kosovo. Through its work, the institution thus helps to promote human rights and good governance in the region. If successful, such a tool could thus be used more systematically by the EU for conflict settlements and peacekeeping techniques.

But the protection of human rights in the face of states is of course not limited to the institution of an Ombudsman. One may for instance quote the example of the "Cotonou Agreement" between the EU and ACP countries: it indeed perfectly illustrates

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[13] A telltale example is indeed that of Norway, which has been always very successful in proposing itself as a mediator for settling international conflicts. Norway has a tradition of active participation in international affairs and has chaired a number of international organizations such as the UN or the OSCE, and continues to play a high profile role in various peacekeeping missions to the Balkans. One may e.g. notably quote the example of the "*Oslo Agreement*" between PLO and Israel that was finally signed in Washington on 13 September 1993: the name indeed came from secret negotiations that had been conducted through 1993 outside Oslo in Norway.

[14] The Mediator of the EU is an expert nominated by the European Parliament to respond to complaints and protests made by European citizens. It also presents an annual report to the European Parliament. Internet: http://www.euro-ombudsman.eu.int

[15] Instituted by UN Special Representative for Kosovo Bernard KOUCHNER, by his Decree 2000/38 of 30 June 2000, this Ombudsman is nominated by the European Court of Human Rights. Internet: http://www.ombudspersonkosovo.org

the concern of the EU for the respect of the individual fundamental rights and freedoms. Article 96 of the Cotonou agreement e.g. integrates human rights and good governance criteria into EU-ACP relations by asserting that, if there is no progress on human rights issues (political violence, media freedom, independence of the judiciary, illegal occupation of properties…) within seventy-five days after formal consultations are opened, "*appropriate measures*", i.e. sanctions, may be undertaken. The conditionality of European aid to the respect of human rights and freedoms is also more and more resorted to as a fundamental principle of EU's foreign policy.

4.4. Peace through multiculturalism

Europe is made of an extreme cultural diversity, and even in some EU member states, deep cultural/ethnic heterogeneity may be pointed out, as for instance in Spain, with the large autonomy of the Basque country and Catalonia, or also in the United Kingdom (England, Scotland, Wales and Northern Ireland), and even in an unitary state such as France (regional autonomist movements in Corsica or Britain). In several countries, the presence of large minorities must also be acknowledged, as for instance the Swedish minority in Finland. And, contrary to the USA, where cultural diversity is melted into a common "pot" and not geographically perceivable, European cultural diversity is synonymous of more culturally distinct regions, though overlapping over each other. From this perspective, the coexistence of culturally different regions in one Nation-State is therefore not a valid reason for separatism, from the point of view of the EU, despite the internationally recognised '*sovereign right of every nation to dispose of itself*' – i.e. there are no rationale for a region to make secession from a State, if other solutions may be possible (i.e. federalism, with substantial regional autonomy). Hence some resistance of the EU to accept the '*right to independence*' of some regional minorities, even if gathered in a rather homogenous writ, and its preference for federalism compared to separatism: following e.g. the example of Belgium, that managed to monitored a well-functioning federation between Wallonia and Flanders, multiculturalism is not an obstacle to an effective administration and governance, and some solutions based on the federalism principle may indeed be proposed as a way to settle conflicts and strengthen democracy. In Bosnia-Herzegovina for instance, where the Dayton agreement created a joint multi-ethnic and democratic government and a second tier of government comprising two entities roughly equal in size (the

Bosniak/Croat Federation of Bosnia and Herzegovina, and the Bosnian Serb-led 'Republika Srpska'), the OSCE[16], in its financial and technical assistance to local political parties, openly gave its preference to multi-ethnic parties, committed to the Dayton process. In the same manner, as for instance thus stated in a UN Security Council open briefing on the situation in Bosnia and Herzegovina (22 March 2001)[17]:

> "The EU wishes to recall that the citizens and peoples of Bosnia and Herzegovina can only move towards Europe in the framework of the state of Bosnia and Herzegovina. In this context the EU condemns recent unilateral moves by the so-called Croat National Congress of Bosnia and Herzegovina to place themselves outside the provisions of the Dayton/Paris accords. The EU calls on the Croats of Bosnia and Herzegovina to work within the legal institutions of their country at all levels to promote their interests. (…) At the same time, the EU welcomes the High Representative's express desire to maintain a dialogue with Bosnian Croats and to encourage their participation in improving economic, social and cultural conditions in Bosnia and Herzegovina. The EU underlines the crucial role of neighbouring countries in promoting a stable and multi-ethnic Bosnia and Herzegovina."

Related to this notion of multiculturalism is that of the protection of the rights and freedoms of cultural minorities, based on the fundamental principle that *'all human beings are born free and equal in dignity and rights, whatever their race, colour, sex, language, religion, opinion, national or social origin, property, birth or other status'* (Article 1 of the *Universal Declaration of Human Rights*, 1948). With such a principle, if effective, conflicts should indeed be always prevented from happening, hence the constant focus of the EU on the right of minorities, one of the three Copenhagen criteria, as illustrated by the current negotiations between the EU and the accession countries. As far as cultural issues in international mediation are more precisely concerned, one may take the example of the peace process in Northern Ireland, where the rights of the Catholic/Irish minority, notably, are at stake. Though the inter-group/ethnic conflict in Northern Ireland has also economic, social, political, and historic aspects, one must indeed acknowledge that Northern Ireland is one of the most segregated societies in the world: Protestants and Catholics rarely mix, living in distinct boroughs, attending separate churches, and socialising in different places (pubs,

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[16] Note that the OSCE and the EU are often overlapping each other in terms of international mediation efforts. Their respective roles and relations should be clarified in the future.

[17] Statement by Ambassador Pierre SCHORI, Permanent Representative of Sweden, on behalf of the European Union.

schools, clubs…). Now, as interestingly stated in the section 6 of the Good Friday agreement[18] (1998):

> "The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in particular:
>   - The right of free political thought;
>   - The right to freedom and expression of religion;
>   - The right to pursue democratically national and political aspirations;
>   - The right to seek constitutional change by peaceful and legitimate means;
>   - The right to freely choose one's place of residence;
>   - The right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;
>   - The right to freedom from sectarian harassment; and
>   - The right of women to full and equal political participation."

In the same manner, no fewer than sixteen international human rights agreements[19] were integrated into the "Dayton Agreements" and now have the standing of national law in Bosnia. The persistence of discrimination on the basis of ethnicity, especially by the Serbs and Croats, and the acceleration of return of formerly displaced locals however required a close international monitoring, hence e.g. the deployment by the OSCE of 30 human rights officers, scattered across Bosnia, the largest presence in the field. Anyhow, this illustrates the extent to which the promotion of multiculturalism through the protection of minorities and individuals' rights and freedoms may be adequate as a mediation tool.

The EU could use this powerful mediation technique more often, given the legitimacy it would have to do so. Some unexplored paths, could also be used, from this point of view, as the separation of the Churches and the State: in a way, it could indeed favour the emergence of a multi-ethnic and neutral administration/democracy, following the French model of "laïcité" (that is still difficultly understood at EU level), or favouring a multicultural education as a way to avoid segregation via a separate socialisation system. What is finally at stake is the whole system of 'social integration': is it efficient? Are the two ethnic groups socialised differently? Do they have the same

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[18] Note however that the mediator was American: Senator Mitchell.
[19] Including the European Convention on Human Rights.

rights and opportunities? Undoubtedly, the mediator has to take these dimensions into account.

4.5. Peace through democratisation

The organisation of free elections and the establishment of a functioning self-administration are also very obvious goals that the EU should put forward when acting as mediator, in order to settle ethnic conflicts. While being the very consequence of the EU's political culture of democracy, it is also the natural consequence of asserting that individuals should be equal in social and political rights (cf. *supra*), and of the statement that conflicts between democracies are finally extremely infrequent. Even if this may be accused by some parties of being 'biased', because characteristic of a Western-type of thinking, one should be careful not to attribute everything to culture. When Chinese leaders reject human rights by invoking 'cultural' reasons e.g., it shall be noted that this is a logical position to take in an interest-based negotiation, given that, for a dictatorial regime – by definition not interested in opposition and free elections -, invoking culture may be a convenient excuse for not respecting the fundamental principles of democracy (cf. *supra*). It shall also be noted that the EU must be firm about its values and principles, and that, if the conflicting parties appeal to the EU to mediate their conflict, it may precisely be because of this image of protector of human rights and democracy the EU has worldwide. In ex-Yugoslavia, for instance, and in Kosovo in particular, these goals were very clear, and it was among the main tasks of the UN Special Representative Bernard KOUCHNER to achieve the organisation of free elections and the development of a well-functioning local administration: free municipal elections were successfully held on 28 October 2000, which was considered as a first major step towards development of democracy in Kosovo, and an Interim Administrative Council (IAC) and a Kosovo Transitional Council (KTC) were established, where the Serb Minority finally participated, under the leadership of Bishop ARTEMIJE[20]. Equal rights between men and women may also be asked by the EU as a step towards even more democratisation – a symbolic measure that can be asked being the presence of a minimum number of women in the Government (as for instance achieved recently in Afghanistan, following the demand of the international mediation).

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[20] A success for UNMIK in its outreach for inclusion of minority communities in democracy building in Kosovo.

4.6. <u>The mediator's neutrality issue</u>

One may finally observe a "cluster" between some of the cultural features evoked *supra*: e.g. the protection of human rights, the promotion of multiculturalism, and the defence of democracy. These are however mainly political cultural features, and one may thus also highlight some more social cultural elements: e.g. individualism, a generally low-context culture, integration concerns, and the preference for processes compared to pacts. With regard to the political cultural aspect, one may moreover acknowledge that the drafting of a European Constitution would make EU's identity more explicit, thus facilitating the mediator's awareness of his or her own culture. This could even lead to a "European constitutional patriotism", to use J. HABERMAS' expression.

While this may help to shape a European "conflict resolution culture", one should however remain cautious and avoid imposing one's own vision/culture on the conflicting parties, which could be said typical of a dominant culture approach and not very constructive as a mediation technique. As indeed pointed out by Michelle LeBaron (2002), *"to truly respond to a multicultural community, we must move away from assuming there is only one viable conflict resolution system"* (p. 9). It is therefore not possible, nor even always desirable, to reconstruct culture-specific models in new settings. In the case of the Middle-East conflict between Israel and Palestinians, for instance, there is obviously no 'one formula' that would solve the conflict (e.g. the creation of a Palestinian State, or a more federal solution), given the complex intertwining of multidimensional issues, hence the necessity to remain cautious and humble when trying to mediate this conflict. This leads us, however, to question the traditional mediation issue: should the EU remain "neutral"? Isn't this contrary to being solidly attached to its values (as highlighted *supra*)?

Before the EU proposes itself as a mediator or accepts an invitation to mediating a conflict, it must be considered that it may sometimes be better to have a mediator coming from the same culture as involved parties. His or her proposal may be more acceptable, not only as he or she will be more aware what the parties can accept. As

importantly, such a mediator is less likely to be refused as interfering from the outside and imposing a foreign will. At the same time, a mediator involved in the conflict can more easily be accused of being biased and could lack the necessary openness and distance to find new imaginative solutions. No general answer can thus be provided to decide when the EU, or indeed anyone else, is a suitable mediator.

If a mediator from a different culture than one or all the parties involved is chosen, the question arises to what extent the mediator has to be – and indeed can be – culturally "neutral". This fundamental issue arises with regard to the mediator's own assumption and values as well as to the process of the mediation foreseen by the mediator.

On the one hand, with regard to the mediator's *assumptions and values*, it must be noted that certain practices that are accepted and indeed sometimes the norm in a certain culture may seem cruel and unacceptable to a European mediator. The example of female circumcision is only one obvious example in this respect. More generally, due to the fact that human rights are seen as universally applicable in Western culture, such cultural incompatibility could easily arise with regard to human rights and the rights of individuals in collectivist societies. In exceptional cases, the insistence of a European mediator could endanger the successful conclusion of a mediation effort as the possible agreement between the parties cannot be reconciled the mediator's culturally determined value system. Should the mediator nevertheless defend his/her own values, conscious that this might risk the finding of a solution? The answer to this dilemma would have to come from a definition of the aim of mediation. If the exclusive aim is to facilitate the end of a conflict, the mediator's values should not be considered as relevant. In the most extreme cases, i.e. if Europe's fundamental values are at stake, this would obviously be unacceptable for a European public. While there can therefore be no absolute normative neutrality of European mediators, in most cases, the solution acceptable to the parties and ending a conflict should be endorsed by the EU.

On the other hand, with regard to the *process* proposed by the mediator, it seems clear that neutrality is essential. The right degree of formality or informality and the right time frame, amongst other things, must be chosen with the preferences and customs of all involved parties in mind. Neglecting such issues would favour one party over the other and unnecessarily complicate the finding of a solution. In intercultural

mediation processes, specific enquiries about the parties' preferences should therefore be carried out before the process-design.

Mediation is indeed a precious tool of conflict resolution, but requires that the mediator have a good knowledge not only of the conflicting parties but also of himself/herself, of his/her culture, and on how the parties view his/her identity, his/her *external* intervention. The conflicting parties may indeed try to use this knowledge of the mediator as an instrument aimed at gaining influence over the mediation's process/outcome. In other words, the neutrality of the mediator should be the safeguard that ensures that mediation is not turning to a form of arbitration, but this requires an extreme cultural awareness of the mediator.

Conclusion

The end of the Cold War and the demise of Communism have meant that focus has shifted to smaller conflicts, typically within states and often including a conflict between different ethnic and religious groups. Formerly hidden conflicts have become visible or are not anymore seen in simple terms of East-West opposition.

In many cross-cultural conflicts, people and problems are deeply intertwined and are therefore inseparable. This does not mean, however, that every cross-cultural conflicts is based on culture. Indeed, political or economic interests are likely to be prevalent, and culture at times only serves as a pretext for furthering such interests. In most cases, negotiations fail because of divergent interests, and not because of culture. Nevertheless, cultural factors need to be considered, as negligence to do so may unnecessarily complicate the finding of a solution.

Recommendation n°1

In cross-cultural conflicts, the mediator must consider the problem *and* the people, i.e. take into consideration cultural factors.

Recommendation n°2

Not every cross-cultural conflict should be considered as based on culture.

Culture not only shapes the naming, interpretation, enactment and course of conflicts but also the possibilities for its resolution or transformation. Broadly speaking, one can distinguish individualist and collectivist cultures. While the mediator should not necessarily stereotype cultures according to this framework only, the distinction made nevertheless highlights some important differences which can serve as a tool for mediators, as a way to understand the cultural assumptions of the conflicting parties.

Recommendation n°3

A pre-mediation assessment of the conflicting parties' cultures is needed, but stereotypes should be avoided.

When analysing what problems the encounter of different cultures in a mediation process can result in, a fundamental distinction needs to be made between problems caused by culturally derived miscommunication on the one hand, and the clash of culturally determined interests on the other. From this perspective, mediation's effectiveness depends crucially on the capacity of each party to understand and appreciate the culturally shaped interests of the other, and of the mediator to make this understanding possible. Because of different values, parties from different cultures are likely to enter a mediation process with different objectives, which further complicates this exercise. This calls for the training of mediators, preparatory study of communication styles and a general increase in cultural awareness. However, cultural ignorance must not be replaced by excessive comprehension for all acts allegedly justified with regard to culture.

Recommendation n°4

Mediators shall be trained in cultural awareness and be taught about communication styles of different cultures.

Recommendation n°5

Cultural ignorance must not be replaced by excessive comprehension for all acts allegedly justified by culture.

Rather than only complicating the mediators' task, the coming together of different cultures can equally facilitate the finding of a solution. both culturally based

miscommunication and diverging priorities due to cultural differences can facilitate the emergence of a solution to a conflict. Differing interests may provide the opportunity for cross-cultural win-win strategies. However, for this to be possible, mediators should assess the objectives of the parties, which again requires cultural understanding.

Recommendation n°6

An analysis of the interests and objectives of the conflicting parties, in cultural terms, shall be conducted.

Recommendation n°7

The encounter of different cultures in a mediation process shall not be systematically seen as a threat for the mediation process.

Recommendation n°8

Culturally determined differences in objectives shall be exploited in cross-cultural win-win strategies.

Even the mediators' culture may play a significant role in the evolution of the mediation. If the parties ask the EU to mediate their conflict, it must be because of an expected 'added value' of the EU approach compared to other 'conflict resolution cultures', which requires defining EU's identity. Usually characterised as a low-context and individualist culture, the EU may however also be defined thanks to other features: on the one hand, one may observe a "cluster" of political cultural features (e.g. the protection of human rights, the promotion of multiculturalism, and the defence of democracy), but on the other hand, one may also highlight some more social cultural elements (e.g. individualism, integration process method). With regard to the political cultural aspect, the drafting of a European Constitution would make EU's identity more explicit.

Recommendation n°9

The European Union shall identify its own conflict resolution culture.

Recommendation n°10

> The EU should try to identify the potential cultural reasons for which it has been requested as a mediator.

Recommendation n°11

The European mediator shall be aware of his or her own culture and its consequences for the mediation process.

The EU shall not try to impose its values, i.e. a pre-determined mediation outcome, on the conflicting parties. At the same time, it cannot (and should not) be indifferent towards the outcome of the mediation, if its fundamental values are at stake. With regard to the *process*, however, it seems clear that the mediator's neutrality is essential.

Recommendation n°12

While the mediator shall remain neutral with regard to the mediation process, this cannot be expected with regard to its outcome.

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