UNIVERSITY OF OXFORD  FACULTY OF LAW

INTERNATIONAL DISPUTE SETTLEMENT  2003-2004

(3) ALTERNATIVE DISPUTE RESOLUTION (ADR);
GOOD OFFICES

Reading:
  R. R. Probst, 'Good offices' in the light of Swiss international practice and experience (Dordrecht; 1989)

1. The offering of Good Offices is not a hostile act: **Hague Convention for the Pacific Settlement of International Disputes, 1899 (arts. 2, 3), 91 BFSP 970, (1901) UKTS No. 9 (Cd. 798), (1971) UKTS No. 6 (Cmdn. 4575). For the 1899 text, see <http://www.yale.edu/lawweb/avalon/lawofwar/hague01.htm>. For the revised 1907 text, see <http://www.fletcher.tufts.edu/multi/texts/BH033.txt>.**

2. Good Offices are a common feature of UN practice: UN Charter -GA recommendations under arts. 10, 14; SC recommendations under art. 36. There is increasing use of the Secretary-General in this context: *T.A. Franck, "The Good Offices Function of the UN Secretary General", in A. Roberts and B. Kingsbury (eds.), *United Nations, Divided World*, 2nd ed., (Oxford, Clarendon Press, 1993).*


MEDIATION

See:- , [http://www.internationaladr.com/int1.htm](http://www.internationaladr.com/int1.htm)
[http://www.pon.harvard.edu/main/home/index.php3](http://www.pon.harvard.edu/main/home/index.php3) [the Project on Negotiation]

Reading:
*Darwin, supra.*

4. In ‘municipal’ systems, mediation has a very long history. It is common to distinguish ‘traditional’, ‘judicial’, and ‘modern’ approaches to arbitration.

5. Mediators are more ‘active’ than providers of Good Offices. The purpose of mediation is the ‘reconciliation of opposing claims and appeasing feelings of resentment’; **Hague Convention for the Pacific Settlement of International Disputes, 1899 (arts. 2-8), 91 BFSP 970, (1901) UKTS No. 9 (Cd. 798), (1971) UKTS No. 6 (Cmd. 4575) <http://www.yale.edu/lawweb/avalon/lawofwar/ Hague01.htm>.


7. Mediation passes through distinct phases: consent; the ‘diagnostic’ phase; the attempt to find consensus; the post-mediation phase.


CONCILIATION

**Reading:**

* H. Fox, in David Davies Memorial Institute, *International Disputes: The Legal Aspects*, (London, 1972), pp. 93-100
F.M. Van Asbeck, "La tâche et l'action d'une Commission de Conciliation", 3 Nederlands Tijdschrift voor International Recht 1, 208 (1955)

10. Proposals for the adoption of a system of conciliation in the League of Nations Covenant were not successful, but in a resolution of 22 September 1922 the League Assembly recommended that States conclude conciliation agreements: *Records of the Third Assembly*: text of debates, p. 199.

11. Many bilateral conciliation agreements were concluded: see, e.g., Chile-Sweden Agreement, 26 March 1920: 4 LNTS 273; Germany-Switzerland Agreement, 3 December 1921: 12 LNTS 281. See the France-Switzerland Agreement, 6 April 1925 Bar-Yaacov, p. 125 - “The duty of the Permanent Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all useful information by inquiry or otherwise, and to endeavour to bring the Parties to an agreement. It may, after examining the case, intimate to the parties the terms of settlement which seem to it suitable, and lay down a time-limit within which they are to reach a conclusion.” This was used as model for the **Locarno Treaties**, 1925. [Cf., the 1925 Locarno Pact: <http://www.yale.edu/lawweb/avalon/intdip/formulti/locarno_001.htm>].


15. Conciliation is not widely practised as a formal approach to dispute settlement; but the UN has sought to facilitate resort to conciliation for disputes other than purely legal disputes: UN Model Rules for the Conciliation of Disputes Between States, 1990, 30 ILM 229 (1991); adopted as UNGA Res 50/50 (1996) <
FACT-FINDING AND COMMISSIONS OF INQUIRY

Reading:

* H.G. Darwin, in David Davies Memorial Institute, International Disputes: The Legal Aspects, (London, 1972), pp. 159-177 
** J.G. Merrills, International Dispute Settlement, (1998), ch. 3

16. Fact-finding commissions were a major element in the Hague Convention for the Pacific Settlement of International Disputes, 1899 (arts. 9-14), 91 BFSP 970, (1901) UKTS No. 9 (Cd. 798) <http://www.yale.edu/lawweb/avalon/lawofwar/hague01.htm>

17. For a classic instance of the use of fact-finding commissions, see the *Dogger Bank Incident (1905). [Anglo-Russian Declaration of St Petersburg, 25 November 1904, 97 BFSP 77; Finding of Commission, J.B. Scott, Hague Court Reports, p. 404, and 2 AJIL 929 (1907), and Cd. 2352; see further Bar-Yaacov, supra, ch. 3.]


19. For an instance of the use of the 1907 procedures, see the Tavignano incident (France/Italy, 1912): J.B. Scott, Hague Court Reports, pp. 413, 616; 16 AJIL (Documents) 484 (1922).

20. Provision for fact-finding commissions was made in the Taft (Knox) Treaties in 1911 - (Joint High Commission of Inquiry as alternative to arbitration), and in the Bryan Treaties, 1913-1940. In the case of Letelier and Moffitt (1989), the US invoked the US-Chile Treaty, 1914 [83 AJIL 352 (1989); 31 ILM 1 (1993)] to investigate and report on the facts, and then to fix compensation. See also the provisions in. e.g., the ABC Treaty, 1915 (Argentina, Brazil, Chile), 22 RGDP 475 (1915), and the Gondra Treaty, 1923, IV Treaties, conventions international acts...between the United States of America and other powers 4691.

21. Ad hoc arrangements for fact-finding have been more often utilised: see, e.g., the Red Crusader Inquiry, (UK/Denmark, 1962), (1961) UKTS No. 118 (Cmd. 1575); 35 ILR 485; Bar-Yaacov, supra, pp. 179-197.

23. For a recent example, see the Mitchell Committee in the Middle East <http://www.al-bab.com/arab/docs/pal/mitchell1.htm>


Questions for consideration:-

1) What kinds of disputes are best suited to settlement by non-judicial means? What are their common characteristics?

2) In what circumstances may the chances of settlement be improved by the involvement of third parties, or by the institutionalisation of the settlement process?

3) What is the role of law in non-judicial settlement? How is the community interest safeguarded? Does the stipulation of non-judicial means mark a retreat from attempts to adjust disputes under the Rule of Law? Should we be encouraging or discouraging non-judicial means?

4) What procedural safeguards, and what sanctions, are appropriate to underpin obligations to have recourse to non-judicial means of dispute settlement?