International Negotiation within Regional and Supranational Organizations

INTRODUCTION

As we wrap up the term, looking back on the first few weeks, we explored the various formal avenues of international negotiation. They have led us to this week in which we look at the largest negotiators of all, the United Nations and various regional organizations. But within this context, we also are reviewing one of the most intractable of all conflicts between the Palestinians and the Israelis. We mention it in that way as a conflict among peoples, not states. If the Northern Ireland peace process demonstrated a model for the way forward, then its focus on negotiating with key leaders of political parties (and there were many) contributed to its success but it was the hands-on approach to solving the civil injustices that individuals expressed in many different ways.

Lesson topics

* Third-party Intervention
* Norm of Humanitarian Intervention
* Israeli-Palestinian Conflict
* Partitioning
* Responsibility to Protect (R2P)

## Third-party Intervention

Third-party intervention, when invited, is a powerful force in international negotiation. In 2013, with Secretary of State John Kerry looking to jumpstart the negotiating process in the Middle East, the US entered a joint process with the European Union. What the European Union has going for it is that the US does not have a record of championing human rights. Its European Court of Human Rights and the European Court of Justice have been fundamental in establishing 21st-century principles that have become the basis of negotiating across cultures. Thinking about the William Ury and his "Getting To Yes" work, he emphasizes the importance of a "third side." How could the US and the EU charter a "third side"?

Regional and supranational organizations play a specific role in international negotiation. By their nature, they are third-party negotiators. Not only do these organizations support initiatives to regulate the use of force and protect individual rights but they also focus on the environment and the global commons. In each of these areas, state action remains primary with few exceptions. But the actions of these organizations ultimately set the tone for emerging norms in international negotiation principles and techniques. The initiatives of individuals are often instrumental in this process.

## Norm of Humanitarian Intervention

Ralph Zacklin, in writing about humanitarian intervention by the United Nations, observed in 2001 "a deadly century has ended. It was, in the words of historian Eric Hobsbawm, 'without doubt the most murderous century of which we have record, both the scale, frequency, and length of the warfare while filled it.'" (Zacklin 2003, 367). With irony Zacklin points out "if the century has seen unimaginable and unparalleled progress in science, technology and medicine, this very progress seems paradoxically to have created more, rather than less, conflict. The laws of human nature appear to be infinitely more difficult to tame than the laws of science" (Zacklin 2003, 367).

Imagine. Zacklin's journal article came out in 2001 (reprinted in an international law text in 2003, from which we are quoting). Before 9/11; before Afghanistan; before Iraq, the Arab Spring, Libya, and Syria, the crux of Zacklin's argument is that NATO's intervention in Kosovo (1999) created a "catalyst for change" in protecting human rights in spite of state sovereignty. He focused on several steps that the United Nations must undertake in order to move toward a "norm of humanitarian intervention." With incremental principles of intervention, Zacklin's article laid the foundation for the UN's measuring stick on "when" and "why" and "how" to intervene. This was before [*Responsibility to Protect (R2P)*](http://www.responsibilitytoprotect.org/) gained attention at the World Summit in 2005, becoming the latest in United Nations doctrine.

## Israeli-Palestinian Conflict

In other international relations courses in this program, we spend considerable time on conflict resolution in the Middle East. What Zacklin couldn't have predicted (when he wrote the article in 2001) was that in the next fifteen years, state sovereignty would re-emerge as primary in international relations for no other reason than a wholesale failure of the UN to address growing instability in some of the most troubled regions in the world.

With the passage of time, we forget how long some of these conflicts have been intractable. "Between 1920 and 1936 almost 165,000 Jews were admitted into the British-controlled Mandate of Palestine. Many of these new settlers took up residence in a vicinity outside the walled city of Jerusalem" where their presence was a "persistent threat to the Arab-controlled Old City (East Jerusalem) and riots often erupted between Arabs and Jews" (Wylie 2000, 139).

By 1937, the Peel Commission in Britain determined that the conflict was intractable and the "practicable" solution was a partitioned state. We know the history from there. The British pulled out of the mandate system in May 1948, allowing the declaration of the state of Israel. Before leaving, though, the British did what they had done in the past: they set up a plan to partition Palestine into two states. (They actually got the Canadians to propose the plan at the UN - which resulted in [*Resolution 181 (II) in November 1947*](http://www.un.org/Depts/dpi/palestine/ch2.pdf). (Both sides immediately ignored the plan.)

**Partitioning**

Thinking back on Week 6 and the Northern Ireland Peace Process, it's easy to see how the British could come up with the partition idea - given its use in Ireland and India in the early part of the 20th century. The British know first-hand what it's like to share a small geographic space with competing nations. "Just mark the boundaries and all will be well."

Partition is a last resort. What the British (and the UN - and most everyone else who supported it) failed to realize is that partition doesn't work. The partitioning of Iraq after the US intervention in 2003 never occurred as some suggested was necessary (like Peter Galbraith in 2007). In 2016, consideration for the [*partitioning of Syria as "Plan B"*](http://www.presstv.com/Detail/2016/02/25/452236/Syria-US-Kerry-ceasefire-Russia-UN-Middle-East/) is in the news headlines. Even though it's a policy that ultimately fails, partitioning is where international negotiation, its principles, and techniques are best put to use.

**London: A historical example**

It's interesting how firmly populations are rooted to territory once private ownership of it takes hold. We said at the beginning that the Arab-Israeli conflict is about peoples, not states. But where the people live - on what bit of territory - is critical. To use a historical example, in 1666, during the Great Fire of London, most of the "city" and financial district were burned beyond recognition. Virtually all of London burned in some fashion, but not like the area near St. Paul's and Fleet Street which was utterly decimated.

It was the age of Louis XIV and grand designs in city planning (17th-century style) - wide boulevards leading to public spaces - were in vogue. Wouldn't London benefit from such a design? That's what Charles II thought. But if you visit London today, its winding streets near Pudding Lane still inch around the River Thames in the same haphazard way as in medieval times. Taking good advice, King Charles II directed that private property lines should not be disturbed. A modern plan would have created too much resistance from the population.

Yet just like today and the tribunals we've studied - from the Srebrenica in Week 2 to last week's "trade court" at the World Trade Organization, the solution in 1667 was to set up a special arbitration tribunal - a "Fire Court" to settle all the disputes initiated by the fire and rebuilding process. "In the seventeenth century, as in the twenty-first, litigation was the Devil's work. Claims heard under civil law routinely involved lots of money, lengthy delays, complications of Dickensonian proportions; then, as now, the only sure winners were the lawyers" (Tinniswood 2003, 238). Property owners in London wanted to settle their disputes authoritatively but quickly and inexpensively, too.

## Conclusion

The readings this week focus on three chapters in Merrills on the United Nations, regional organizations, and "trends and prospects" in international dispute resolution. The journal articles on breakthroughs in the tortuous Arab-Israeli negotiations. Is a third-party solution feasible? With time, the Northern Ireland process may be a model for the Arabs and Israelis - but who is the third side that William Ury alludes to? Who would broker the deal?

In the end, everything we do in international negotiation is alternative dispute resolution vacillates between two extremes, conditioned on resources available (mostly time and money). On one end, we have national and international courts in the litigation process. On the other, violent conflict - which in spite of over 100 years in trying to outlaw, we've not made much progress. Yet it all starts with the individual in theory and in practice - and that means it all begins with us. While some of the principles and techniques you've learned this term you will never use as a practitioner in your chosen occupation - you will be able to recognize them when you seem them. Write about them; talk about them with your friends and co-workers; and use them when you get an opportunity.

## References

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