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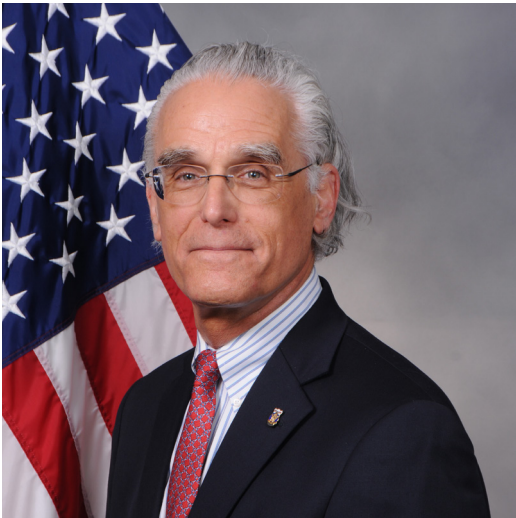
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## Note from the Director

Welcome to the inaugural issue of the *Journal of Military Conflict Transformation* (JMCT), official Journal of the Air Force Negotiation Center (AFNC). The goal of the JMCT is to provide scholars and practitioners with a space to share research and best practices regarding conflict transformation, negotiation, mediation, and facilitation in a military environment.

Traditionally, the teaching of negotiation and mediation skills in the military has relied upon business and legal approaches to conflict resolution. Conflict resolution terms such as Win-Win, Best Alternative to a Negotiated Agreement (BATNA), and Interest-Based Negotiation (IBN) have become part of the military vernacular; however, they can remain heavily weighted toward bargaining, using economic strategies. Though they can be much utility in mastering the 'tactics, techniques, and tricks' of negotiation as bargaining, there is room for more. The JMCT is a contribution to the development of Military Negotiation as a theory-informed practice of negotiation at interpersonal, organizational, and inter-organizational levels.

The AFNC in a leading research, education, and training activity that focuses exclusively on advancing Military Negotiation as an on-going, joint problem-solving, decision-making activity that uses critical and creative thinking as strategically-minded engaged-leadership. Experience teaching at Air University, coupled to desk and field research, strongly points to the need for military-centric approach to conflict transformation.

Know that your suggestions regarding the direction of the JMCT are more than welcome. Never hesitate to let us know what you think and what we can be doing better.

Thank you,

A handwritten signature in black ink, appearing to read 'Tom Matyók'. The signature is stylized with large, sweeping loops and a long horizontal tail.

Thomas G. Matyók, PhD  
Director



## Note from the Editor-in-Chief

It is with genuine delight we present to you the inaugural edition of *The Journal of Military Conflict Transformation*. It is hard to believe we began this journey less than a year ago. What an honor it has been to have had the opportunity to work with such an amazing and talented group of people, for which none of this would have been possible without. I want to take a moment to thank everyone involved in the production and publication of our first journal release. Thank you for the tremendous support you have shown us. A special thanks to the Air University for supporting scholars

and the advancement of intellectual development; for always pushing your faculty and staff to elevate their standards and level of education. Thank you to our peer-reviewers, copy-editors, authors, and contributors; you have inspired us to keep pushing the envelope and to open our pages to new and exciting research. It has truly been a team effort that will continue to grow and develop with each and every edition.

To our readers, we hope you will join us on our journey to become the leading journal in military conflict transformation, and that you will share with us your stories, research, commentary, and lessons learned. JMCT supports the advancement of all topics within conflict transformation, negotiation, mediation, and facilitation and encourages scholars, of all levels, to engage with us across our various platforms. We want to hear from you!

As we continue to build a more robust publications profile, we hope you will consider publishing your next article with us.

Thank you,

A handwritten signature in black ink, appearing to read 'Michelle A. Osborne'.

Michelle A. Osborne, PhD  
Director of Institutional Effectiveness  
Editor-in-Chief, JMCT

# The Use of Role-Playing Simulations in Negotiations Pedagogy, and the Search for a More Comprehensive Approach

MAJ Timothy J. McDonald

MAJ Marcus A. Millen

## Abstract

*This paper is a literary review of the use of role-play simulations within negotiations pedagogy. The paper describes the benefits and challenges of role-playing exercises—the most prominent learning vehicle in the field—and then details efforts by negotiation educators to supplement and improve these exercises. Finally, the paper comments on negotiation education at the United States Military Academy and the degree to which curricula there incorporate these best practices.*

## The Aim and Challenges of Teaching Negotiations

The aim of most negotiation courses is to teach students to be better negotiators. To the extent student motivation aids classroom learning, negotiation is an easy topic to teach. Students find the course instantly relevant; they believe effective negotiation skills will serve them well in many aspects of their lives. Students also thoroughly enjoy role-playing exercises and the lively discussions that typically ensue. Yet, this enthusiasm cannot be automatically taken as evidence that negotiation instruction is effective. The aim, after all, is to educate students to think and behave differently—not to present concepts

and opportunities to learn about negotiation.<sup>1</sup> Scholars in the field refer to this as the paradox of teaching negotiations.<sup>2</sup>

While courses on negotiation may vary in their espoused goals, they generally seek to develop a set of behavioral skills students can employ to resolve problems or conflict with others. Such skills include analyzing and preparing for a negotiation, eliciting counterpart interests, crafting mutually satisfactory options, and using persuasive standards to choose among these options, to name a few. Unfortunately, simply knowing about these behaviors is insufficient; research has shown a significant gap between knowing and doing.<sup>3</sup> Connecting the two requires hard work and practice. Thus, negotiation curricula

<sup>1</sup> Michael R. Fowler, *Mastering Negotiation* (Durham: Carolina Academic Press, 2017), 1-28.

<sup>2</sup> Michael Wheeler, "Is Teaching Negotiation Too Easy, Too Hard, or Both?," *Negotiation Journal* 22, no.2 (2006): 187-197.

<sup>3</sup> Chris Argyris, Robert Putnam and Diana McLain Smith, *Action Science* (San Francisco: Jossey-Bass, 1985).

must strive to both impart theory and provide opportunity for skill building. Accomplishing both to increase long-lasting student effectiveness can appear “deceptively simple”.<sup>4</sup>

Further complicating this challenge is the fact that students do not begin the course with a blank slate. Students enter negotiation courses with considerable experience and understanding of negotiation processes because they have negotiated all their lives. Regrettably, these entrenched belief systems often form the basis of “naïve theories” about how negotiation really works.<sup>5</sup> One such naïve theory is the “fixed pie model” of negotiations, in which one believes there is a fixed amount of value to be gained in a negotiation. Negotiators who subscribe to this theory enter a negotiation purely to determine how best to distribute the value; they mistakenly assume that one party can only gain at the expense of another. An overwhelming body of research concludes that individuals with this orientation to negotiation often fail to create value for themselves and their counterparts.<sup>6</sup> More simply, this research suggests that untrained negotiators have faulty theories about negotiation that lead to the creation of poor agreements.

If the goal of a negotiation course is truly to teach students how to be better negotiators, then the curriculum’s structure, methodology, and assessment mechanisms must reflect the aforementioned challenges. Educators must do more than present students with new ideas or frameworks. Rather, negotiation teachers must first dispel naïve theories and then supplant them with better

theories and behavioral skills that account more accurately for reality.<sup>7</sup> Furthermore, they must also create opportunities for long-lasting skill and conceptual development, while doing so in a way that is cognizant of students’ varying capacities to reason through difficult interpersonal challenges.<sup>8</sup>

### Typical Elements of Negotiation Pedagogy

Negotiation is broadly considered an interdisciplinary field. Researchers and educators draw upon insights from such disciplines as anthropology, psychology, sociology, law, business, economics, game theory, and the arts.<sup>9</sup> In addition to drawing upon multiple disciplines, negotiation is also taught to students of multiple disciplines. In an informal, though extensive, interview-based survey conducted in 2000, Ron Fortgang reviewed how negotiation is taught across four distinct fields—law, business, public policy and planning, and international relations.<sup>10</sup> He found that all four professional schools placed significant value on the presentation of intellectual frameworks, the use of simulations and debriefings, reflection exercises, and self-assessment and evaluation.<sup>11</sup>

Loewenstein and Thomas further synthesized these results and asserted professional school educators appear to take a three-step approach to teaching negotiation. The first is learn by doing, in which educators provide a real-world-like activity that engages students’ naïve theories of negotiation. The second is reveal expectation failures, in which

<sup>4</sup> Bruce Patton, “The Deceptive Simplicity of Teaching Negotiation: Reflections on Thirty Years of the Negotiation Workshop,” *Negotiation Journal* 25, no.4 (2009): 481-498.

<sup>5</sup> Jeffery Loewenstein and Leigh Thompson, “The Challenge of Learning,” *Negotiation Journal* 16, no.4 (2000): 399-408.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Bobbie McAdoo and Melissa Manwaring, “Teaching for Implementation: Designing Negotiation Curricula to Maximizing Long-Term Learning,” *Negotiation Journal* 25, no.2 (2009): 195-215; Melissa Manwaring, “The Cognitive Demands of a Negotiation Curriculum: What Does it Mean to “Get” Getting to Yes?,” *Negotiation Journal* 22, no.1 (2006): 67-88.

<sup>9</sup> Christopher Honeyman and Andrea K. Schneider, “Catching up with the Major General: The Need for a “Canon” of Negotiation,” *Marquette Law Review* 87, no.4 (2004): 637-648.

<sup>10</sup> Ron S. Fortgang, “Taking Stock: An Analysis of Negotiation Pedagogy across Four Professional Fields,” *Negotiation Journal* 16, no.4 (2000): 325-338.

<sup>11</sup> Ibid. According to Fortgang, these areas included the following. Intellectual frameworks: offering students a framework for negotiation analysis (e.g. the principled negotiation framework). Simulations & debriefings: hands-on, experiential forms of learning where students can experiment with possible negotiation strategies and exercises and then compare their results with classmates who often achieve dramatically different results. Reflection: creating opportunities for students to generalize from simulations and exercises. Self-assessment and evaluation: appraising individual negotiating strengths and weaknesses through the use of diagnostic instruments facilitated feedback exchange between negotiation partners; and written descriptive and analytic journals.

teachers provide feedback about how people performed, specifically to demonstrate the limits of their naïve theories. The third step is offer explanations, wherein educators provide insights into the expert models or theories and outline behavioral skills that students can exhibit to reach better outcomes.<sup>12</sup>

Regarding the first step, learning by doing, Fortgang's study found professional schools relied heavily on experiential learning. More specifically, these programs employed role-playing simulations as their primary experiential vehicle, and most also utilized reflective journals as a means of self-reflection and generalizing specific exercise insights.<sup>13</sup> These findings are consistent with leading theories about adult learning, or andragogy, which argues experience (including mistakes) provides the basis for learning activities.<sup>14</sup> Role-playing simulations create opportunities for students to try new behavioral skills, discover the relevance of underlying principles and themes, and immediately apply what they learn through knowledge transfer.<sup>15</sup> As previously alluded, students also typically enjoy conducting these simulations and are therefore motivated to perform the task.<sup>16</sup>

During the second step, reveal expectation failures, educators seek to dispel the naïve theories possessed by most novice negotiators. Supplanting these old models with new schemas requires the creation of student disequilibrium.<sup>17</sup> Indeed, conceptual change, or the development of new schema, occurs when interactions between existing mental models and new experiences creates confusion in the learner so that new ways of thinking become necessary.<sup>18</sup> For this reason, faculty often

deliberately design or introduce simulations they expect students to resolve with suboptimal agreements. By providing immediate feedback to demonstrate the nature of these poor outcomes, faculty create disequilibrium among the participants thereby revealing naïve theories of negotiation.<sup>19</sup>

Once students have reason to question why their theories failed to provide accurate predictions of reality, and consequently begin to openly examine their schema more closely, negotiation teachers can then offer explanations. These explanations take the form of emergent theories of negotiation. As Fortgang discovered in his informal study, faculty across, and even within, professional schools advance varying theoretical frameworks.<sup>20</sup> One prominent theory is an adversarial-distributive model which focuses on competitive moves to claim value for oneself. Typically, distributive tactics tightly restrict information disclosure by withholding or, at worst, misleading others; these tactics maximize short-term gains but can also sow distrust and harm relationships. In sharp contrast, the "value creation approach" advocates that parties discover underlying interests and invent options for joint gain.<sup>21</sup> Proponents of this approach assert that it increases the "size of the pie" and enhances relationships, while the alternative distributive model usually results in suboptimal outcomes and leads to needless impasses. A third hybrid approach seeks to employ an integrative model of negotiation that is also mindful of the tension between creating joint value and claiming that value for oneself. Overcoming this tension—often referred to as the

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<sup>12</sup>Loewenstein and Thomas, "The Challenge of Learning," 399-408.

<sup>13</sup>Fortgang, "Taking Stock," 325-337.

<sup>14</sup>Malcom S. Knowles, Elwood F. Holton and Richard A. Swanson, *The Adult Learner: The Definitive Classic in Adult Education and Human Resource Development*, 7th ed. (New York: Routledge, 2012).

<sup>15</sup>Noam Ebner and Kimberlee K. Kovach, "Simulation 2.0: The Resurrection," in *Venturing Beyond the Classroom*, 2nd vol. Christopher Honeymoon, James Coben and Giuseppe De Palo (Saint Paul: DRI Press, 2010), 245-267.

<sup>16</sup>Patton, "The Deceptive Simplicity of Teaching Negotiation," 481-498.

<sup>17</sup>McAadoo and Manning, "Teaching for Implementation," 195-215.

<sup>18</sup>John D. Bransford, Ann L. Brown and Rodney R. Cocking, eds., *How People Learn: Brain, Mind, Experience, and School* (Washington, D.C.: National Academy Press, 1999).

<sup>19</sup>Hal Movius, "The Effectiveness of Negotiation Training," *Negotiation Journal* 24, no.4 (2008): 509-531.

<sup>20</sup>Fortgang, "Taking Stock," 325-337.

<sup>21</sup>Movius, "The Effectiveness of Negotiation Training," 509-531.



negotiator's dilemma—requires strategic choices before and during negotiation, to include devising and deciding upon a process to develop options for mutual gains.

Regardless of the framework employed, prevalent negotiation pedagogy indicates theoretical understanding is not a precursor to improved student skills.<sup>22</sup> Students must first develop an openness to critically examining their existing assumptions and schemas. This may challenge many learners because it could demand a “higher order of self-reflection than that to which they are accustomed.”<sup>23</sup> This withstanding, educators' dominant pedagogical strategy remains primarily on creating engaging experiences, compelling students to reflect on those experiences, and finally incorporating the resulting insights with current negotiation research findings.

### **The Use of Simulations in Negotiations Pedagogy and an Argument for a More Comprehensive Approach**

As previously described, role-play simulations are the dominant experiential learning vehicle across negotiation education. In a well-cited piece on the topic, Nadja Alexander and Michelle LeBaron exclaimed the use of “role-plays in negotiation training has become as common as Santa at Christmas...or drinking beer at Oktoberfest.”<sup>24</sup> Educators have, for decades, extolled the virtues of this teaching tool. A leading writer on the subject, Cathy Greenblat, categorized the many positive claims about simulations into the following list:

1. Enhance student motivation and interest in the topic
2. Promote cognitive or conceptual learning
3. Improve meaningful participation and sophisticated inquiry
4. Stimulate new student perspectives, orientations, and overall empathy toward others
5. Enhance students' self-awareness and self-confidence
6. Promote better relations between the teachers and students, as well as among the students themselves.<sup>25</sup>

When coupled with benefits touted by the adult learning model, these claims propelled role-playing simulations and other games to the forefront of instructional vehicles employed by negotiation teachers. Given the prevalence of these tools, educators and researchers have, for the last decade, sought to confirm the degree to which simulations deliver on these claims through in-depth research. In a comprehensive review of the literature, Daniel Druckman and Noam Ebner found that only some of these hypotheses have consistently held true. Among these, studies conducted in social science classrooms indicated simulations do increase students' interest in the topic, their attitudes toward learning, and their material retention. But initial concept learning and critical thinking skills did not improve relative to other instructional vehicles, such as case studies and recitation.<sup>26</sup>

These findings strongly contradict teachers' intuitions about the use of simulations. Although student motivation and retention does improve over other methods,

<sup>22</sup> Fortgang, “Taking Stock,” 325-337. Importantly, as Fortgang's informal study finds, there remains a debate among faculty whether it is best to build practical skills (“implementation orientation”) or convey conceptual, more analytical frameworks (“theoretical orientation”). The overwhelming prevalence of simulation use as a teaching methodology implies negotiation faculty embrace the implementation orientation despite the potential prominence of one approach over another.

<sup>23</sup> Manwaring, “Demands of Negotiation Curriculum,” 67-88.

<sup>24</sup> Nadja Alexander and Michelle LeBaron, “Death of the Role-Play,” in *Rethinking Negotiation Teaching: Innovations for Context and Culture*, Christopher Honeymoon, James Coben and Giuseppe De Palo (Saint Paul: DRI Press, 2009), 179-197.

<sup>25</sup> Cathy S. Greenblat, “Teaching with Simulation Games: A Review of Claims and Evidence,” in *Principles and Practices of Gaming-Simulation*, 1st ed. Cathy S. Greenblat and Richard D. Duke (Beverly Hills: Sage, 1981).

<sup>26</sup> Daniel Druckman and Noam Ebner, “Games, Claims, and New Frames: Rethinking the Use of Simulation in Negotiation Education,” *Negotiation Journal* 29, no.1 (2013): 61-92.

empirical research shows simulations do not provide learning benefits. Students in these classrooms do not exhibit increased understanding, a better grasp of concepts, or any other measurable learning indicator.<sup>27</sup>

In addition to these efficacy concerns, other critiques of role-play exercises should be taken into account. Foremost, simulation exercises are resource-intensive efforts. They require time to set up, conduct, and debrief. Properly conducting simulations is also a difficult endeavor for teachers; they must not only be knowledgeable in their subject, but also skilled in performing a myriad of other tasks, including simulation administration, role assignment, and conducting debriefings.<sup>28</sup> These debriefings, at their best, rely upon student reactions that actually emerge—as opposed to those the teacher hopes will emerge. Invariably, this time-consuming discussion yields somewhat unpredictable insights and often creates the opportunity cost of covering additional material. Furthermore, student reactions are often unpredictable; one counterproductive student can derail a lively discussion.<sup>29</sup>

Another common critique relates to the role of context in role-play simulations. In seeking to maximize the likelihood of long-term learning through knowledge transfer, instructors debate whether simulations with case patterns similar to the students' real lives are best.<sup>30</sup> Research has shown contextually familiar settings increase student motivation and decrease objections about relevance. Furthermore, such simulations create opportunities to practice skills that can be put to use immediately. Contextually

relevant role-play exercises also assist with “low-road” transfer—that is, “the triggering of reflexive, semi-automatic responses in conditions sufficiently similar to the learning conditions without the need for mindful application of abstract principles.”<sup>31</sup> Examples of other low-road transfers include the use of flight simulators for pilots (intended to prepare participants for actual, future flights) or dummies for CPR training.

While contextually relevant simulations have certain advantages, they may also create barriers to students' schema adjustment. Students may reflexively employ their own naïve theories and miss the deeper learning points when presented with simulations that are highly similar to their own personal or professional lives.<sup>32</sup> Anecdotally, the author's efforts to train US military leaders with highly contextually relevant simulations have often resulted in participants sub-optimally resolving the central challenge in ways similar to their own previous professional experience. Separately, students who feel personally connected to simulation fact patterns may refrain from experimenting fully for fear of embarrassment should they fail to reach an optimal solution.<sup>33</sup> Studies also indicate familiar context may poorly facilitate “high-road” transfer, which is the ability to “abstract, understand, and apply general negotiation principles to a different context.”<sup>34</sup>

In their critique of role-play exercises, Alexander and LeBaron raise another interesting point about the cultural and contextual suitability of teaching with simulations. They argue that assuming others' identities may be disrespectful or nonsensical

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<sup>27</sup>Ebner and Kovach, “Simulation 2.0: The Resurrection,” 245-267.

<sup>28</sup>Druckman and Ebner, “Rethinking the Use of Simulation,” 61-92.

<sup>29</sup>Ibid.

<sup>30</sup>Alexandra Crampton and Melissa Manwaring, “Shaping the Context, Meaning, and Effectiveness of Negotiation Simulations: Teaching and Training Insights,” in *Teaching Negotiation: Understanding the Impact of Role-Playing Simulations, Program on Negotiation* (Cambridge: Harvard Law School, 2014), 2-15.

<sup>31</sup>Ibid.

<sup>32</sup>Lawrence Susskind and Jason Corburn, “Using Simulations to Teach Negotiation: Pedagogical Theory and Practice,” in *Teaching Negotiation: Ideas and Innovations*, ed. Michael Wheeler (Cambridge: PON Books, 2000), 285-310.

<sup>33</sup>Noam Ebner and Yael Efron, “Using Tomorrow's Headlines for Today's Training: Creating Pseudo-Reality in Conflict Resolution Simulation- Games,” *Negotiation Journal* 21, no. 3 (2008): 377-406.

<sup>34</sup>Crampton and Manwaring, “Effectiveness of Negotiation Simulations,” 2-15.

<sup>35</sup>Alexander and LaBaron, “Death of the Role-Play,” 179-197.

in some cultural settings.<sup>35</sup> This may result in further perpetuation of stereotypes, which are unhelpful in resolving future problems, or worse, it can result in creating new strife among and between students, between students and teachers, or between students and the material. Subject matter expert, Michael Wheeler, acknowledged that Harvard MBA candidates encountered so much difficulty when engaging in negotiations that incorporated challenging topics, such as race and gender dynamics, that the modules were eventually dropped from the course.<sup>36</sup>

These critiques withstanding, studies have not shown simulations to be an ineffective method. The findings merely demonstrate simulations do not deliver the full range of benefits initially espoused. Educators, then, need not throw the proverbial baby out with the bath water. Instead, negotiation teachers should consider a more deliberate approach to the use of simulations in the classroom. Recognizing that simulations cannot effectively serve as an all-purpose teaching instrument, teachers should be purposeful in their use by accounting for both the costs and benefits when deciding how much time to spend engaging in role-play simulations. As scholars now assert, teachers might also consider diversifying the types and methods of experiential learning vehicles, as well as their assessment mechanisms.<sup>37</sup>

### **Beyond Simulations—Efforts to Enhance Negotiations Pedagogy**

Research and scholars' critiques suggest role-play simulations are not suitable for all teaching contexts or settings. In their highly regarded article on rethinking the use of simulations, Daniel Druckman and Noam Ebner offer three broad ideas for improving negotiations pedagogy:

1. The use of simulations should be more limited
2. The use of simulations should be improved
3. Simulations should be employed in new or novel ways.<sup>38</sup>

Regarding the first idea, Druckman and Ebner argue teachers should consider decreasing their reliance on simulations. To adhere to elements of adult learning theory, educators should, instead, fill the slack with other experiential learning vehicles. However, these vehicles should also receive the same scrutiny as the role-play simulations whose place they have assumed. In addition, these vehicles should directly address student performance goals.<sup>39</sup> Specifically, negotiation teachers must purposefully select learning activities with clear learning goals in mind.

Analogical learning, for example, has seen empirically demonstrated success when investigating high-road transfer of conceptual or theoretical knowledge. This particular learning activity relies upon the use of analogies to help promote schema development by pushing learners to organize information in new ways. In a comprehensive review of this vehicle, the Director of curriculum development for the Program on Negotiation at Harvard Law School, Melissa Manwaring, found that analogical learning in a negotiation context helped students understand and transfer general principles to multiple contexts.<sup>40</sup> In much of the research she references, experimenters asked students to compare two case studies with dissimilar case facts but similar abstract theories—value creation techniques, such as logrolling or contingent contracts, for instance. Over other teaching methods, students in these studies improved their ability to apply these concepts in familiar contexts and even recognized when to use them in new contexts.<sup>41</sup> Other research has also

<sup>36</sup> Wheeler, "Is teaching negotiation too easy," 187-197.

<sup>37</sup> Ebner and Kovach, "Simulation 2.0: The Resurrection," 245-267.

<sup>38</sup> Druckman and Ebner, "Rethinking the Use of Simulation," 61-92.

<sup>39</sup> McAdoo and Manning, "Teaching for Implementation," 195-215.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

further demonstrated students require multiple iterations of analogical learning to apply structural or theoretical similarities across contexts.<sup>42</sup>

Another promising learning style for negotiation education is observational learning. In a negotiation setting, this vehicle might encourage the use of video review. Students could, for instance, watch a video recording featuring actors who reach a fully integrative and high quality agreement. In a review of the research on this technique, Hal Movius found students created higher quality agreements (using joint gains within a value creation approach as a measure of success) than other methods—to include analogical learning.<sup>43</sup> Interestingly, students in this condition displayed less understanding of why they performed better than those of the analogical learning group, which might imply implicit learning is at work. On this, Movius hypothesizes, “it may be that learning to negotiate requires more than the mere recognition of new frameworks or ideas. Rather, it may require seeing and undertaking complex sequences of interrelated behaviors.”<sup>44</sup>

Teaching the behaviors Movius describes may require an increased use of low-road transfer techniques over the use of protracted simulations. Negotiation scholars Gerald Williams and Larry Farmer argue that to improve effectiveness, students should engage in behavioral skills training through deliberate practice.<sup>45</sup> Improving these skills through deliberate practice entails the presentation or assignment of challenging and well-defined tasks that students must repeat until the skill becomes routine. In a negotiation course, the well-defined task might consist of “reframing

demands as options” or “demonstrating active listening”.<sup>46</sup> These tasks lend themselves more fully to short vignettes or the use of small portions of a negotiation simulation, rather than a fully protracted role-play exercise. However, simulations can assist with this effort if used deliberately.

Regarding their second idea to improve negotiations pedagogy, Druckman and Ebner argue teachers must improve the use of simulations. Continuing with the idea of deliberate practice, Williams and Farmer directed students to video record themselves conducting well-defined tasks related to the simulation case facts. They found these efforts resulted in measurable improvements in students’ skills and performance.<sup>47</sup> By grounding the exercise in an assigned role-play simulation, the researchers effectively amortized the cost of preparing for, conducting, and reviewing the simulation to themselves and the students. In short, they improved the simulation’s use by getting more from it. Other studies also support similar efforts to use simulations in conjunction with experiential methods, rather than as a stand-alone tool.<sup>48</sup>

To further improve the use of simulations, researchers also recommend negotiation teachers strive to create an authentic experience and heighten situational interest.<sup>49</sup> Specifically, educators can increase simulation authenticity by ensuring they mimic real-life contexts (whether relevant to the participants or not) and real-life goals or tasks. Poitras, Stimec, and Hill argue that increasing students’ situational interest requires higher stakes, greater salience, and increased certainty of outcomes. These efforts seek to build upon simulations’ proven ability to enhance student

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<sup>42</sup>. Movius, “The Effectiveness of Negotiation Training,” 509-531.

<sup>43</sup>. Ibid.

<sup>44</sup>. Ibid.

<sup>45</sup>. Gerald R. Williams, Larry C. Farmer and Melissa Manwaring, “New Technology Meets an Old Teaching Challenge: Using Digital Video Recordings, Annotation Software, and Deliberate Practice Techniques to Improve Student Negotiation Skills,” *Negotiation Journal* 24, no.1 (2008): 71-87.

<sup>46</sup>. Ibid.

<sup>47</sup>. Ibid.

<sup>48</sup>. Druckman and Ebner, “Rethinking the Use of Simulation,” 61-92.

<sup>49</sup>. Jean Poitras, Arnaud Stimec and Kevin Hill, “Fostering Student Engagement in Negotiation Role Plays,” *Negotiation Journal* 29, no.4 (2013): 439-462.

<sup>50</sup>. Ibid.

motivation and increase retention.<sup>50</sup>

An example of such an effort is detailed in Brooks Holtom and Amy Kenworthy-U'Ren's study on the use of email negotiations. From their own observations and scholarly research, Holtom and Kenworthy concluded that typically, in-class role-play simulations' effectiveness waned over the duration of a semester-long course.<sup>51</sup> To increase situational interest, the faculty devised an email negotiation exercise in which their students would negotiate with students at another university. They believed new, unknown counterparts would reinvigorate their own students, while the asynchronous nature of email would also result in greater salience. In addition, they sought to increase authenticity by matching the case facts to the simulation modality—they created a plausible reason for the negotiation to take place via email. When combined with the benefit of full negotiation transcripts, upon which students could reflect, the email negotiation exercise significantly improved the students' ability to identify how their behaviors led to suboptimal outcomes and where opportunities existed to employ more constructive behaviors.<sup>52</sup>

Improving the use of simulations also requires detailed consideration of how to assess students' learning. Scholars generally accept the efficacy of available theories—such as those embodied by Movius' "value creation approach" label—to assess students' negotiation effectiveness.<sup>53</sup> The mechanisms of assessment, however, vary much more wildly.<sup>54</sup> Because negotiation courses typically seek to reinforce skills, rather than impart information, negotiation teachers face considerable challenges in constructing suitable and appropriate methods of assessment. In a comprehensive review of the literature,

educator Michael Moffitt discovered six common evaluation methods, two of which are highly relevant to the use of simulations: negotiation outcomes (grading the substantive outcome of a simulation) and evaluated performance (evaluating role-play exercises using an established set of criteria).<sup>55</sup>

Moffitt describes how both methods of evaluating negotiation outcomes offer promising results. Assessing the substantive outcomes of students' role-play exercises serves the benefit of heightening motivation and preparation, while also theoretically aligning assessed performance with desired performance. Unfortunately, this method also creates perverse incentive to simply "close the deal."<sup>56</sup> Instead of building relationships and sharing information, for instance, students whose grade depends on the outcome of a single negotiation exercise may opt for adversarial-distributive tactics that few negotiation instructors actually desire. In contrast, the method of evaluating performance focuses less on the substantive outcome and more on the behaviors exhibited during the simulation. This method seeks to assess precisely what the instructor hopes to teach—the behavioral skills. In addition, performance evaluations rely upon the raw data provided by the exercises, rather than the students' potentially biased recall. All of these benefits withstanding, performance observation is also time-intensive, requires considerable teacher expertise, and relies upon criteria that may be ill-suited for certain contexts.<sup>57</sup>

Though less explored in negotiations pedagogy, peer assessments may also improve the use of simulation exercises. In a comprehensive review of peer assessment research, Keith Topping concludes that, when "organized, delivered, and monitored with

<sup>51</sup> Brooks C. Holtom and Amy L. Kenworthy-U'Ren, "Electronic Negotiation: A Teaching Tool for Encouraging Student Self-Reflection," *Negotiation Journal* 22, no.3 (2006): 303-324.

<sup>52</sup> Ibid.

<sup>53</sup> Patton, "The Deceptive Simplicity of Teaching Negotiation," 481-498.

<sup>54</sup> Michael Moffitt, "Lights, Camera, Begin Final Exam: Testing What we Teach in Negotiation Courses," *Journal of Legal Education* 54, no.1 (2004): 91-114.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

care, [peer assessments] can yield gains in the cognitive, social, affective, transferable skill, and systematic domains that are at least as good as those from staff assessment.”<sup>58</sup>

After conducting a simulation exercise, peer assessments increase time on task for the assessor. The student must review, summarize, clarify, and offer feedback on peers’ work. Additionally, the assessed student gains swift and thorough feedback. A majority of studies conclude peer assessments are significantly reliable and valid in certain assessment mechanisms when assessors receive training and employ appropriate criteria to assist with grading.<sup>59</sup> Learning gains are also frequently reported. Shortcomings included low student acceptance in certain contexts, as well as increased time requirements when educators used peer assessments as a supplement to their teacher evaluations, rather than a substitute.

About their third and final idea to improve negotiations pedagogy, Druckman and Ebner argue simulations should be employed in new or innovative ways. One of these ways, adventure learning, has gained increased popularity over the last decade. Though this method may take myriad forms, it ultimately espouses real experiences for students outside of class or role-play exercises set in real-world settings.<sup>60</sup> Adventure learning rests upon the same experiential learning theories as simulations and aims to accentuate the benefits ascribed to in simulations. Its proponents assert that adventure learning is much more authentic and dynamic, which increases the likelihood of knowledge transfer.<sup>61</sup>

## **Negotiation Education at the United States Military Academy**

West Point cadets currently receive negotiation education in one core course

and at least three elective courses. Of those courses, Negotiations for Leaders, within the Department of Behavioral Sciences and Leadership, is the only one which solely focuses on improving students’ ability to negotiate effectively. Unlike most other courses at the United States Military Academy, Negotiations for Leaders meets on 20 occasions for 125 minutes, as opposed to 40 sessions of 55 minutes, and the section size is much larger, at 24 cadets per course, as opposed to 16 (the Academy average).

This course employs a value creation approach—the principled negotiation framework first espoused by Roger Fisher and Bill Ury in *Getting to Yes*. We present the seven element framework as a system-agnostic analysis mechanism and then layer the principled negotiation framework on top. Our institutional mission and students’ common career paths allow us to select contextually relevant simulations and imbue them with some of the ethical challenges cadets are likely to face upon graduation. Unlike Michael Wheeler’s concern for discussing normative moral issues<sup>62</sup>, West Point’s common value set and commitment to character development insist we fully address the role of ethics in negotiation. Further, our focus on developing military leaders enables us to make tradeoffs in content to address issues the faculty deem highly relevant to cadets’ future career roles, such as multilateral negotiations and cross-cultural negotiations.

Similar to Fortgang’s discovery in his highly cited review of negotiations curricula, Negotiations for Leaders employs several role-play simulations, as well as case studies, fishbowl exercises, video recording reviews, an email negotiation simulation, and a final simulation exam set in a realistic military scenario. The course also features performance-

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<sup>58</sup>. Keith Topping, “Peer Assessment Between Students in Colleges and Universities,” *Review of Educational Research* 68, no.3 (1998): 249-276.

<sup>59</sup>. Ibid.

<sup>60</sup>. Lynn Cohn and Noam Ebner, “Bringing Negotiation Teaching to Life: From the Classroom to the Campus to the Community,” in *Venturing Beyond the Classroom*, 2nd vol. Christopher Honeymoon, James Coben and Giuseppe De Palo (Saint Paul: DRI Press, 2010), 153-168.

<sup>61</sup>. Druckman and Ebner, “Rethinking the Use of Simulation,” 61-92.

<sup>62</sup>. Wheeler, “Is teaching negotiation too easy,” 187-197.

based simulation evaluation as well as peer assessments of simulation preparation assignments and video recorded simulations. Many of these evaluation mechanisms were introduced in response to the aforementioned critiques of role-play simulations.

Regarding the performance-based simulation evaluation, the faculty observe and assess cadet performance in a bilateral negotiation that takes place over 30 minutes. We do not assess the substantive outcome, but rather cadets' performance on criteria that are closely aligned with the seven element framework. The specific skills faculty observe include eliciting counterpart interests, creating value through option generation, employing appropriate standards, and the explicit use of process-guiding techniques. Our teachers have enjoyed considerably greater cadet involvement during the preparation for and execution of these graded simulations. In addition to its role as a formative assessment, this graded event also provides excellent feedback to the instructors regarding collective skill development. This assessment requires a substantial investment in faculty time (which was offset by eliminating a final paper) and is difficult to fairly assess across cadets because cadets' grades depend in some measure on their counterpart as well as the nature of the exercise case facts. To date, we have assessed cadets once per semester, and they are evaluated on a rolling basis using four separate simulations. Each of these simulation exercises were designed to accentuate different negotiation dynamics, which makes an apples to apples comparison quite difficult. Faculty expressed concerns that an opposite approach (a single simulation conducted on a rolling basis) may compromise the integrity of the case facts.

Our course also heavily weights negotiation preparation. In past years, cadets submitted a 2-3 page preparation assignment prior to every simulation. This created an untenable grading load for instructors; pressed with almost 1,000 pages worth of material to grade, instructors often provided late and inadequate feedback. Recently, we transitioned

to peer assessments of these preparation assignments. Using the Blackboard learning management software—specifically, the “Self & Peer Assessments” tool—we collect the student preparation memos and then randomly and anonymously assign each memo to three students. After the simulation debrief, and before the following lesson, cadets must assess three of their peers' assignments against established criteria and provide a grade, as well as written feedback. Cadets' final grade is the average of their peers' assessments and can be adjusted afterward by their instructors to account for exceptionally high or low quality feedback provided to them by others. After an initial learning curve, the students' acceptance of this approach has improved but still meets resistance. Benefits of this system seem to be consistent with Topping's review of peer assessments. Samplings of the peer assessments indicate validity is high—implying concept understanding—with acceptable variation in reliability.

Students also conduct an evaluation of their peers' performance in a video recorded bilateral negotiation simulation. In this assignment, cadets analyze their peers' performance and then offer prescriptive advice, but they do not grade their peers. Instead, the teacher evaluates and grades the quality of the assessor's analysis. Finally, the paper is provided to the cadets who originally conducted the negotiation simulation. Since this feedback is robust and incorporates coaching feedback, rather than evaluative feedback, students' acceptance rate is high.

In our efforts to use simulations innovatively in our course, the faculty conduct a final simulation exam akin to what has been described as adventure learning. The course employs a realistic and cohesive counterinsurgency scenario that features role players from various organizations across the US Army, with relevant cultural and negotiation expertise. Cadets participate in the exam over two classroom sessions and are expected to negotiate in bilateral and multilateral settings. Role-players also wear garb associated with the culture in which

the war-like scenario is set. Accordingly, cadets “deploy” in a combat uniform to a training area which requires a 10-minute ferry ride across the Hudson River. Outside of a familiar classroom environment, cadets encounter several integrated scenarios that offer emotionally charged counterparts, as well as opportunities to create value and build (or destroy) relationships. Cadets are assessed on their ability to appropriately select and apply concepts from the course. In addition, students are required to submit a self-reflection, in which they may address the suitability and efficacy of the behaviors they exhibited. In the high-pressure scenarios presented by the final simulation exam, students sometimes fail to exhibit behavioral skills espoused by the course, but the reflection assignment provides cadets an opportunity to critically assess their performance and offer themselves prescriptive advice, should they encounter a similar situation after graduation.

Many cadets cite this exercise as the reason they enroll in the course. Despite its resource intensive nature, we are confident the final simulation exercise represents real-world challenges, similar to the ones young military leaders are likely to face. We hope its authenticity increases salience and improves the likelihood of knowledge transfer for Cadets.

### Conclusions

Moving forward, Negotiations for Leaders will seek to adopt a comprehensive approach to educating better negotiators. While the role of simulation exercises will remain prominent in the course, we have, and will, continue to augment them with assessment mechanisms and innovative experiences that help us not only motivate the students and increase retention but also improve concept learning and skill development. Current faculty may be missing opportunities to employ analogical and observational learning and should incorporate these learning activities into the course to support lasting and flexible learning.

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# A Force Multiplier: The Air Force Needs Military Negotiation Education

Col David O'Meara, USAF, Retired

## Abstract

*As the Air Force concentrates on the development and acquisition of new technologies, we continue to operate within the human domain of conflict. We cannot allow technology to distract us from our strategic missions, especially as we continue to support our national interest within the joint or coalition framework. Deliberately educating our active, guard, reserve, and civilian personnel in the value of applying negotiation theory can only enhance our ability to conduct war fighting by enabling us to work together to solve problems and come to mutually beneficial agreements. To meet this goal, the Air Force education system can implement a building block teaching approach, based on all aspects of negotiation theory, from distributive, through interest based, and ending in creative and critical thinking to tackle our future complex problems.*

The United States Air Force has historically embraced innovative technologies to enhance its war fighting mission, beginning with the incorporation of airpower into our modern war fighting toolkit. Current Air Force strategic planning supports this innovation ideal, specifically as it refers to the advancement of applications in cyber warfare, the testing of new hypersonic weapons, and the continued support of a multi-year purchase of low observable fighters and bombers. Furthermore, cyber and space operations have become a more normalized aspect of combat operations at all engagement levels. At the national strategy level, civilian and military leaders are currently engaged in negotiations over the most qualified organizations to develop and utilize the space domain in

conflict, especially as we expand the future battlefield into the developing concept of multi-domain operations. Clearly, the Air Force remains committed to sustaining a technological lead in planning for an industrial level of war as future peer competitors emerge. While it remains ever important that we keep pace with the evolving global strategic climate, what cannot be left behind is the continued need to sustain our ability to work within the enduring human context of conflict. Left unevaluated, our military's obsession with technology has the potential to endanger continuing investment in the human side of conflict among the people.<sup>1</sup> Understanding human engagement is a necessity in U.S. war fighting, especially when human engagement is merged with technology. Senior leaders

<sup>1</sup>Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (New York: Vintage Books, 2007).

continuously emphasize that future operations, of all types and purposes, will be composed of joint and combined forces, which often have diverse underlying goals and objectives. Warfighters will negotiate these goals into a common plan for success. Building teams will require a basic ability to address internal disagreements to fight external military, political, and civil conflicts.

While funding new technology appears to be an Air Force priority, senior leaders also remain committed to building a strategic bedrock of critical and creative thinkers with intellectual lethality. At its heart, organizations like the Air University are tackling the smartest and best ways to build leaders, at all levels, who can operate across the breath and heights of emerging conflict. Commanders throughout the military's chain-of-command value men and women who can solve problems and lead others in difficult missions. They search for, and endorse, people who can bring multi-dimensional skills to their ever more complex organizations. Organizations which will balance human engagement, often using negotiation skills as we continue to integrate new technologies.

Within the Air University, the Air Force Negotiation Center (AFNC) is evaluating and expanding its education activities to building leaders with human interaction skills that are vital to addressing emerging forms of conflict. This capability has the potential to improve one's ability to work cohesively in a joint problem solving environment—where some issues are complicated and where many more are highly complex. A bigger question might not deal with the utility of this effort, but what is the path we must take to better teach people how to negotiate with others and to transform conflict into a manageable military operation to meet our national interests?

At this point, one may still be wondering how negotiation skills and conflict transformation increase our mission success across the tactical, operational, and strategic domains of human engagement? One model often used in corporate negotiation is the distributive model, which is based on several

concepts, including the idea of a zero-sum environment, or a win-lose situation. Consider this as a military leader—do we want our best thinkers and problem solvers to be operating in a zero-sum world? Yes, perhaps if we are applying kinetic combat power, but no if we are arranging unit logistics, repairing unit equipment, or engaging in war among the people. Moving beyond zero-sum, the AFNC has committed to creating another building block of knowledge and ability by educating the force in interest based negotiations. This next step teaches our Airmen to consider options that move beyond the zero-sum to expand the outcome into value gaining, problem solving, opportunities. These skills offer leaders a more refined path, perhaps even the first or second steps, to successful engagement and positive relationships between people, groups, organizations, and nations that will build our future coalitions.

Given this example, and the knowledge of its impact on the force, the ethereal task then becomes how to economically teach these skills to an entire military body. Currently, military negotiation education and training is incorporated in many levels of formal Air Force learning, specifically within our Professional Military Education (PME) system and introductory courses within the lifelong continuum of learning structure. For example, Basic Military Training already teaches the concept of solving problems at the lowest level within a chain-of-command, which is the basic principle of negotiation. Officer accession courses also provide the same, if not more, expanded opportunities to introduce these concepts. A quick overview of distributive negotiation methods, simple problem solving ideas, baseline terms, and general concepts would be a great addition to these first steps; however, additional education opportunities exist. One example is the inclusion of application based technology incorporated into exercising courseware, which can increase negotiation education opportunities for distance learners within varying levels of PME and lifelong learning courses.

Building on the existing framework,

the next phase should enhance the Air Force's PME structure by increasing negotiation education opportunities and offering thoughtful courses within the continuum of learning. Once Airmen have a basic foundation in distributive negotiation theory, we can then move to broaden tactical applications as well as introducing additional concepts, such as the value of understanding positions versus interests. Our senior Airmen, junior noncommissioned officers, and captains who deploy will be responsible for handling tactical problems across a nearly unlimited battle space. Their human engagement will cross traditional intercultural boundaries and explore new cultures that may have yet to be defined. Interest based negotiation ideals can build both a structure for critical thinking and a structure for application of traditional and non-traditional power. AFNC is already building on these ideas with courses for Air Force First Sergeants to learn how to better address solving problems between people. Incorporated into this level, Airmen will learn the incredible value of the pre-negotiation process as it prepares them for tackling problems and working with people. This fits closely within the Air Force Chief of Staff's vision, which is to return our squadrons to the central position as our direct war fighting organizations. To fight and to prepare to fight, the squadrons must engage up and down the leadership chain with determination, expertise, and innovation. If we reflect on the value added to squadrons, we can see that negotiation education and training expands their ability to engage with, and get the mission accomplished.

The biggest challenge for future strategic leaders, however, goes beyond solving the complicated problems leading to mission success; it moves into the complex world of wicked problems. Complex, wicked, problems within the human domain will not be changed by advanced technologies.<sup>2</sup> Time sensitive

problems will not provide Air Force leaders a break in the action for further discussion, observation, study, or decision making. They will fly into situations where logic and theory does not respond in a scientific fashion. They will expand operations into all aspects of the global culture to build new alliances to meet multiple, and sometimes conflicting, interests. These challenges, and those unknowns, must take us to the next block for future education. We must evaluate and offer insight to students seeking skills to address a world of strategic problems that were unknown in the past. The AFNC is starting on this path to integrate conflict and negotiation theory based on the newest and most relevant studies in psychology and economics into the world of negotiation theory and application. At a minimum, hands-on exercises will stimulate thought patterns that can be applied to future thinking. These are now offered during in resident PME as part of core and elective programs, as well as the new Squadron Commander Leadership Course. These steps, when combined with continuing innovations in education, are targeted to enhance our Air Force's engagement in the internal and external human domain.

The Air Force continues to value education as a core process in developing and sustaining leaders to support its mission in expanding operational environments. These leaders will first lead people who will then apply the latest technology. The education process must innovate to support this sustainment. It cannot simply add more curriculum as time is an ever more valuable asset. Employing a building block approach to further integrate military negotiation education within the current professional education framework, and innovations in the continuum of learning, will provide Airmen these new skills. The building block approach taking us from distributive negotiation skills, interest based negotiation application, and advanced

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<sup>2</sup>Stanley McChrystal et al., *Team of Teams: New Rules of Engagement for a Complex World* (New York: Penguin Publishing Group, 2015).

complex problem solving will greatly add to our organizational effectiveness. We can not only continue to lead in the development of new warfighting technologies, but continue to lead in engagement within the human domain.

Negotiation skills, taught in an ordered manner across a lifetime of learning, will only enhance our intellectual lethality.

### Appendix 1- Military Negotiation Phased Approach Example

Education Phase	Suggested Concepts	Objectives	Exercise	Possible Forums	Benefits
1 – Initial	Define Negotiation Terms, Introduce Building Blocks	Knowledge, Comprehension	Personal Finance Negotiation	BMT, Officer Accessions	Negotiation Foundations, Lowest Level Problem Solving, Money Smart Airman
2 - Tactical	Distributive Theory, Interest Based Theory Introduction, Intercultural Introduction	Knowledge, Comprehension, Application	Distributive, One-On-One, Intercultural Communications	SOS, ALS, eSchool	Basic Application of Distributive Negotiations, Deployment Preparation, Squadron Resources, and Combat Readiness Management
3 – Operational	Interest Based Negotiation, Multiparty, Intro to Diplomatic and Contract Negotiations	Comprehension, Application, Analysis	Interest Based, Multiparty, Pre-Negotiation Planning	ACSC, NCOA, FSA, Sq CC Course	War Fighting Leadership, Combined and Joint Operations Effectiveness, Interest Identification, Solving Complicated Problems
4 – Strategic and Beyond	Wicked and Complex Problem Sets	Comprehension, Application, Analysis	Regional Conflict, Strategic Engagement	AWC, SNCOA, Chief's Course, Wing/Group CC	Integration of Value Negotiations, Leadership in a Complex Battle Space
<ul style="list-style-type: none"> <li>• Each phase has opportunity for distance learning or specialty courses within the continuum of learning. Specialty courses might include mediation education, acquisition, and contract negotiation, military support to diplomatic negotiation, end-state planning, pre-negotiation planning, etc.</li> <li>• Concepts developed from Air Force Negotiation Center strategic planning guidance.</li> </ul>					

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# Going Beyond the Norm: The Case for Incorporating Evaluative Mediation into Department of Defense Employment Discrimination Complaints

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## Abstract

*Alternative Dispute Resolution is a vital tool being used by the Department of Defense (DoD) as a means to resolve workplace disputes. The DoD uses the facilitative model of mediation to resolve these disputes and it is a proven, effective resource in satisfactorily resolving DoD workplace conflicts. Facilitative mediation relies solely on the individual parties coming up with solutions to resolve the dispute and does not evaluate the actual merits of a complaint. This can be problematic when an employee has filed a workplace complaint based on illegal discrimination with the Equal Opportunity Office. Evaluative mediation involves having a mediator with expertise in labor and employment law evaluate the complaint's strengths and weaknesses and help the parties reach resolution based on this evaluation. The Equal Employment Opportunity Commission provides settlement judges who use evaluative mediation techniques but this is only after a case has gone formal and is in the advanced stages of litigation. Sometimes this can be almost 1-2 years after the alleged discriminatory action took place due to the length of time it takes a case to get assigned a judge. This paper proposes that DoD policy and guidance be modified to allow for early stage evaluative mediation by a qualified mediator in select EO complaints either by contracted or internal mediators. This will provide the DoD a broader spectrum of dispute resolution options and potentially greater cost savings than those already provided by using the facilitative model.*

Alternative Dispute Resolution (ADR) is a vital tool used by the Department of Defense (DoD) as a means to resolve workplace disputes. Currently, almost all DoD agencies primarily use the facilitative model of mediation to resolve these disputes. The facilitative model has proven to be an effective resource in satisfactorily resolving workplace conflict for the DoD.<sup>1</sup>

Facilitative mediation relies solely on the individual parties coming up with solutions

to resolve the dispute and does not evaluate the actual merits of a complaint. This can be problematic when an employee has filed a complex workplace complaint based on illegal discrimination with the Equal Opportunity (EO) Office. The facilitative mediator's role is to protect the process, not evaluate the merits of a complaint. Alternatively, evaluative mediation involves having a mediator with expertise in labor and employment law to not only facilitate the process, but to also evaluate

<sup>1</sup> Department of Justice, Office of the Attorney General, 2016 Report on Significant Developments in *Federal Alternative Dispute Resolution*, Washington, DC.

the complaint's strengths and weaknesses and help the parties reach resolution based on this evaluation. Currently, DoD agencies do not internally use this style of mediation. With only the facilitative model of mediation available, the system has little flexibility. If the average EO complaint is not resolved at the early stages via ADR, there can be significant costs to the government in personnel as well as investigative and litigation expenses. Expanding the tools available in ADR may facilitate more resolutions in both number and quality.

Currently, for cases that are not solved early in the complaint process, The Equal Employment Opportunity Commission (EEOC) provides independent settlement judges who use evaluative mediation techniques. However, this occurs only after a case has gone formal and is in the advanced stages of litigation. Sometimes it may be almost 1-2 years after the alleged discriminatory action took place due to the time it takes for the agency to complete its internal investigation of the complaint compounded by the backlog of EEOC cases. At this point and time there may be a disincentive for the parties to settle because of the time and costs already invested in the process.

This paper proposes DoD ADR policy and guidance be modified to allow for early stage evaluative mediation in select EO complaints either by contracted or internal mediators. This will provide DoD a broader spectrum of dispute resolution options and potentially greater cost savings than those already provided by relying on only the facilitative model. In exploring this thesis, this paper first provides an overview of the EO complaint process. Next, it looks at DoD's use of ADR in EO complaints. Finally, it discusses the facilitative and evaluative models and suggests how DoD policy should be modified to allow for the use of evaluative mediation in

limited circumstances.

## **Overview of the Equal Opportunity Complaint Process**

If a DoD civilian employee feels they have been discriminated against based on a protected category in the workplace, they can contact their local Equal Employment Opportunity (EO) office to discuss their concerns. The EEOC enforces five federal laws that prohibit employment discrimination against applicants for federal employment, current federal employees, or former federal employees: Title VII of the Civil Rights Act of 1964, as amended (prohibiting discrimination on the basis of race, color, religion, sex, or national origin); the Equal Pay Act of 1963 (prohibiting agencies from paying different wages to men and women performing equal work in the same work place); the Age Discrimination in Employment Act of 1967, as amended (prohibiting discrimination against persons age 40 or older); Sections 501 and 505 of the Rehabilitation Act of 1973, as amended (prohibiting discrimination on the basis of disability); and Title II of the Genetic Information on discrimination Act of 2008 (prohibiting discrimination based on genetic information).<sup>2</sup>

Title 29, Part 1614 of the CFR contains regulatory guidance for the processing of EO complaints. The EEOC provides additional details to the complaint process in Management Directive 110 (MD-110). 29 CFR. § 1614.102(a) establishes the duty of federal agencies to maintain EEO programs in a manner consistent with the EEOC's mandatory directives.<sup>3</sup>

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<sup>2</sup>U.S. Equal Employment Opportunity Commission (EEOC), *Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614* (eoo-MD-110), 2015, Washington, DC.

<sup>3</sup>Ibid.

Each military department has created additional service specific guidance addressing the EO complaint process and general EO topics consistent with MD-110.<sup>4</sup>

MD-110 Chapters 2 and 5 contain the regulatory guidelines for federal agency processing of informal and formal complaints.<sup>5</sup> For a civilian discrimination complaint to be appropriately processed by any DoD EO office, an employee must contact the local EO office within 45 days of the alleged action or date of action. The 45-day clock begins when the employee knows or should have known when the alleged discriminatory action took place.<sup>6</sup> Typically, each military installation will have an office on site. Once the employee contacts the office, a trained counselor conducts an intake informing the employee (also referred to as complainant) of their rights in writing, seek specific basic information about the complaint, and discuss potential ADR options.

Once the employee makes the initial complaint, they have the option to either participate in ADR or the informal complaint counseling process. If the employee chooses the informal complaint counseling process, the EO office has 30 days to conduct an informal, limited inquiry and explore possible resolutions to the complaint. Generally, the counselor seeks resolution at the lowest level possible. If the complaint is not resolved in the 30-day period, a final interview is conducted, closing out the informal complaint. If the employee agrees, the counseling process can be voluntarily extended by up to 60 days while the parties continue to attempt resolution. During the final interview, the employee is informed they have 15 days to formally file a

complaint. Additionally, the counselor does not make any indication as to whether or not they believe the complaint has merit. Once the final interview occurs, no further counseling takes place.

If the employee chooses to file a formal complaint within the 15-day period, the EO office where they filed the original complaint will send the employee an acknowledgment letter. The letter provides the date on which the employee contacted the office to file the formal complaint. After the acknowledgment letter is sent to the employee, the Agency sends the employee an additional “acceptance” letter informing them what claims have been accepted for investigation and if any claims have been dismissed along with the basis for dismissal. If the Agency accepts the claim for investigation, they have 180 days from the date the employee files the formal complaint to complete the investigation of the claims. Within the DoD, formal EO complaints are investigated by the Investigations and Resolution Division (IRD).<sup>7</sup>

Once the IRD receives the complaint file, they conduct an intake where they collect documentation and then conduct an investigation. The investigation includes witness interviews, document collection, and report writing. At the end of the process, a Report of Investigation (ROI) is compiled and sent to the originating EO office who then removes privacy protected information. The EO office subsequently provides the ROI to the employee. In certain circumstances, the 180-day requirement may be extended, but not beyond 360 days from the date the initial complaint was filed.

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<sup>4</sup>U.S. Department of the Air Force, Office of the Secretary of the Air Force, *Air Force Instruction 36-2706, Equal Opportunity Program Military and Civilian*, 2010, Washington, DC; U.S. Department of the Army, Headquarters, *Army Regulation 690-600: Civilian Personnel: Equal Employment Opportunity Discrimination Complaints*, 2004, Washington, DC; U.S. Department of the Navy, Office of the Secretary of the Navy, *SecNav Instruction 12713.14 Equal Opportunity Employment*, 2003, Washington, DC.

<sup>5</sup>EEOC, *Equal Employment Opportunity Management*, chap. 2 and 5.

<sup>6</sup>EEOC, *Equal Employment Opportunity Management*.

<sup>7</sup>U.S. Department of Defense, *Instruction 1400.25, DoD Civilian Personnel Management System: Investigation of Equal Employment Opportunity Complaints*, 2015, Washington, DC.



## Overview of ADR in DoD EO Complaints

After the employee receives the ROI, they may elect either an EEOC hearing with an administrative judge or a Final Agency Decision (FAD), written by the Agency, based on the record. This election must be made within 30 days of receiving the ROI. FADs must be issued 60 days after the initial 30-day receipt period. If the employee requests a hearing with the EEOC, the judge has 180 days to conduct a hearing and issue a decision regarding the complaint. This period may be extended if the judge determines good cause exists for an extension. Upon receipt of the judge's order, the Agency has 40 days to respond. The employee has the option to appeal the final decision and then the EEOC will issue a decision on the appeal. If the employee is dissatisfied with this decision, they may then file a civil action in US district court. Recent analysis of formal complaint processing in the DoD through the entire administrative process (from time of complaint filing to final decision) places the average time for final conclusion at 529 days.<sup>8</sup> Appendix 1 and 2 are visual depictions from the Air Force and the Navy of the entire administrative EEOC process.

Although the average length of time a complaint takes for resolution through the entire EEOC administrative process is 529 days,<sup>9</sup> that number is greatly reduced if resolved through early ADR. Cases resolved through ADR procedures at the informal stage average 44 days to resolution,<sup>10</sup> a significant difference of 485 days. The following section will look at ADR in EO complaints.

As stated previously, when an employee initially contacts the EO office, the counselor will inquire whether or not the employee is interested in attempting to resolve the complaint through ADR. The EEOC encourages agencies to resolve complaints of employment discrimination as early in the process as possible.<sup>11</sup> If the employee is interested, a decision is made by the Agency whether or not to offer ADR. If ADR is offered, it takes place as soon as possible.

Although there are several forms of ADR, including arbitration, settlement conferences, as well as mediation, the DoD primarily uses mediation to resolve employment discrimination complaints handled by the EO office.<sup>12</sup> Mediation generally requires at least two parties in conflict. Each party may or may not have representation with them at the table (including union reps for bargaining unit employees). In facilitative mediation, the mediator, a neutral third party, presides over the mediation. The mediator is the impartial catalyst that helps the parties in conflict constructively address and potentially resolve their dispute.<sup>13</sup> The Administrative Dispute Resolution Act of 1996 states a mediator is a “permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.”<sup>14</sup> Although there are three primary models of mediation:

<sup>8</sup>U.S. Department of the Air Force, Office of the Secretary of the Air Force, *Air Force Instruction 51-1201: Negotiation and Dispute Resolution Program*, 2014, Washington, DC.

<sup>9</sup>Joe Yanik “New EO Process Cuts Complaint Resolution Time,” December 14, 2016, <https://www.jba.af.mil/News/Article-Display/Article/1029528/new-eo-process-cuts-complaint-resolution-time/>

<sup>10</sup>Air Force, *ADR Instruction 51-1201 Report*, 25.

<sup>11</sup>EEOC, *Equal Employment Opportunity Management*.

<sup>12</sup>Department of Justice, *Report on Significant Developments*, 3.

<sup>13</sup>Carrie J. Menkel-Meadow, Lela Porter Love, and Andrea Kupfrew Schneider, *Mediation: Practice, Policy, and Ethics*, 1st ed. (New York: Aspen Publishers, 2006), 91.

<sup>14</sup>*Administrative Dispute Resolution Act of 1996*, Public Law 104-320, 104th Congress (1996).

facilitative, transformative, and evaluative; the DoD currently only uses the facilitative model of mediation.<sup>15</sup> Although an effective model of mediation, transformative mediation will not be discussed as it does not necessarily seek to address the complaint that brought on the dispute.<sup>16</sup> Therefore, the focus of this paper will be on the facilitative and evaluative models of mediation. However, prior to discussing those two models of mediation, it is important to overview the DoD's general mediation process.

### **General Overview of the Mediation Process in DoD EO Mediations**

Once the parties agree to a date and time for the mediation, the military installation's ADR program manager sends them an agreement to mediate.<sup>17</sup> The agreement to mediate covers such things as confidentiality, rights of the parties, and what the parties can expect, including location, start time, and duration. Most mediators will require the parties sign the agreement before beginning the actual mediation. Generally, in an employment discrimination complaint, the parties at the table include the individual who filed the complaint and the responsible management official who is responding to the complaint.<sup>18</sup> Each side should have someone at the table, or immediately reachable, with the authority to settle the complaint should they reach an agreement.

To begin the mediation, the mediator usually makes an opening statement. At this time, the mediator covers ground rules for the mediation, the process they will follow, confidentiality, and settlement agreements. The

mediation itself will generally continue with each party's opening statement, joint discussion and caucus as required, and finally, closure.<sup>19</sup>

During each party's opening statement, each side has an uninterrupted opportunity to lay out their position and history of what got them there. The complainant, as the party who raised the issue, will make his or her opening statement first. Management (also referred to as the respondent) then has the opportunity to respond or make their own opening statement. The opening statement is an opportunity for the mediator to identify each party's potential underlying interests that may help them subsequently generate options for resolution. Upon conclusion of each opening statement, the mediator may also summarize each party's statements, giving them the opportunity to make any clarifications.

After each side has made an opening statement, the mediator may lead the parties into a joint discussion. This is the first opportunity during the mediation for the parties to directly interact with each other. During these joint discussions, the mediator may help the parties clarify issues and interests, but it is really a time for the parties to work through the issues together and generate options for resolution. This is a chance for each side to help shape a potential future working relationship. Since conflict may arise during this time or the parties may reach an impasse, the mediator may need to caucus with each party.

There is no set time, or even requirement, for a caucus to occur. Rather, a mediator may caucus with either side as the need arises. Anything discussed during caucus

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<sup>15</sup>Department of Justice, *Report on Significant Developments*, 3

<sup>16</sup>Department of the Army Office of the General Counsel ADR Program Office, *Army Mediation Handbook: A Practical Guide for Using Mediation to Resolve Workplace Disputes* (District of Columbia: Army Office of the General Counsel, 2015), <https://ogc.altess.army.mil/ADR/Documents/Army%20Mediation%20Handbook%202015%20FINAL.pdf> 35.

<sup>17</sup>Department of the Air Force, Office of the General Counsel, *How to Manage and Mediate Workplace Disputes: Air Force Mediation Compendium*, 4th ed. (District of Columbia: Office of the General Counsel, 2012), <https://www.adr.af.mil/Portals/82/documents/Resources/AF%20Compendium--4th%20Edition.pdf?ver=2019-05-14-144417-237&timestamp=1557859457466> 21.

<sup>18</sup>Note the employee can be represented by an attorney, or non-attorney if they so choose. Additionally, management may choose to have an attorney present along with any technical experts needed, such as human resources, on standby.

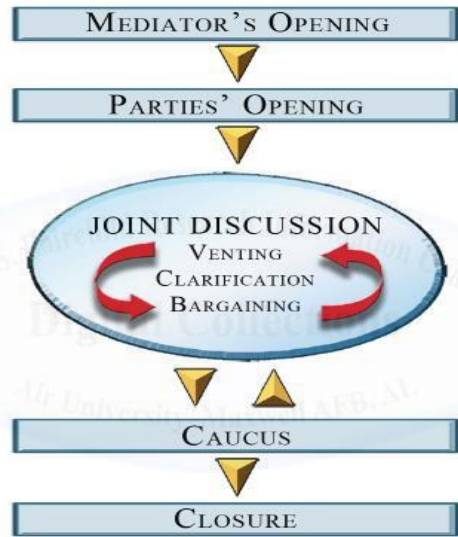
<sup>19</sup>Office of the General Counsel, *Mediation Compendium*, 27.

is confidential, unless the party agrees to its disclosure.<sup>20</sup> During a caucus, the party and the mediator may discuss settlement options or the mediator may help the party think through their legitimate options. There should be no inference made, either positive or negative, by either party regarding the number or length of each caucus. A caucus will be as long as the mediator or the parties feels necessary to fully explore the issues. After a caucus, the mediator will often bring the parties back together for further joint discussion, which can lead to closure of the mediation.

Once the parties reach either a settlement agreement or an unsolvable impasse, the mediator will close the mediation by, respectively, having the parties sign a settlement agreement or, in the case of an impasse, the mediator signs a declaration of impasse. If the parties reach resolution, the mediator will help them memorialize the agreement in writing. The mediator will likely encourage the parties to be as specific as possible when drafting the settlement to avoid future confusion regarding the agreement.<sup>21</sup> When reviewed and signed by all required parties, the settlement agreement becomes a legally binding document.

Parties should expect a mediation to last up to 8 hours and need to plan accordingly. Additionally, a settlement agreement may need to undergo a legal review to become final, which may take an additional day or two. Taking all things into consideration, mediation is a relatively short process to resolve a complaint. Figure 3 depicts the typical flow of an EO complaint mediation.<sup>22</sup>

Figure 1: Mediation Process



### Facilitative v. Evaluative Models of Mediation

#### *The Facilitative Model*

As stated previously, the DoD uses the facilitative model of mediation to help resolve EO complaints.<sup>23</sup> The facilitative model of mediation helps break through the walls of workplace disputes through active listening and sharing emotions.<sup>24</sup> Using this model, the mediator helps guide the conversation between the parties, and assists them in understanding the underlying basis for the dispute, encouraging them to explore the reasons that led to the conflict.<sup>25</sup>

<sup>20</sup>Confidentiality, U.S. Code § 574 (1996); Air Force, *Instruction 51-1201*, 25. Note there are limits on confidentiality. AFI 51-1201 paragraph 4.8.5.3 states "Information indicating fraud, waste and abuse, criminal misconduct, or threats of violence may be subject to disclosure, notwithstanding confidentiality." The parties are usually told this during mediator's opening statement.

<sup>21</sup> Settlement agreements should use SMART principles (Specific, Measurable, Attainable, Realistic, and Timely).

<sup>22</sup>Office of the General Counsel, *Mediation Compendium*, 9.

<sup>23</sup>Army Office of the General Counsel, *Army Mediation Handbook*, 5.

<sup>24</sup>Carole J. Brown, "Facilitative Mediation: The Classic Approach Retains Its Appeal," *Pepperdine Dispute Resolution Law Journal* 4, no. 2 (2004): 279, 283.

<sup>25</sup>Rebecca J. Weinstein, *Mediation in the Workplace: A guide for Training, Practice, and Administration* (Westport: Praeger, 2001) 24.

As a true facilitator, the mediator is primarily responsible to guide the discussion so that the parties can break through the walls created by the conflict and enhance their communication to work towards possible solutions.<sup>26</sup> The mediator creates a bridge of trust between the parties until the parties do not need to rely on the mediator and can rely on each other for the future relationship.

To help the parties work through their conflict, mediators using the facilitative model of mediation primarily use interest-based problem solving techniques, often referred to as interest-based negotiation (IBN).<sup>27</sup> Interest-based problem solving is often preferred in mediation because, in most instances, there will be a continuing relationship between the parties and IBN aims to preserve or improve such a relationship.<sup>28</sup> Using IBN techniques, the mediator helps the parties: 1) separate the people from the problem, 2) focus on interests not positions, and 3) help the parties invent options for mutual gain.<sup>29</sup>

When a broader range of interests are considered, a broader array of possible outcomes can be created, with the potential for finding an outcome that is more satisfactory to both parties than any solution imposed by a third party based only on the parties' legal rights. By focusing on their underlying needs and interests, the parties may create a unique solution which is most appropriate for their situation.<sup>30</sup>

The EEOC recognizes the value of the interest-based approach to dispute resolution in reducing the number of formal discrimination complaints. A 1996 EEOC study found: “. . . there may be a sizable number of

disputes in the 1614 [the section that covers the complaint process] process which may not involve discrimination issues at all. They reflect, rather, basic communications problems in the workplace. Such issues may be brought into the EEO process as a result of a perception that there is no other forum available to air general workplace concerns. There is little question that these types of issues would be especially conducive to resolution through an interest-based approach.”<sup>31</sup>

Additionally, EEOC Studies have consistently shown remarkably positive feedback from participants in the mediation process.<sup>32</sup>

### *Evaluative Mediation*

Professor Leonard Riskin states, “the mediator who evaluates assumes that the participants want and need her to provide some guidance as to the appropriate grounds for settlement - based on law, industry practice or technology - and that she is qualified to give such guidance by virtue of her training, experience, and objectivity.” The evaluative mediator focuses on helping the parties understand the strengths and weaknesses of their case by providing assessment, prediction, and direction.<sup>33</sup> In the case of an EO complaint, the mediator should be someone with expertise in the laws involving workplace discrimination, knowledge of DoD civilian personnel laws, policies, and directives as well as experience before the EEOC or similar administrative forums.

Evaluative mediators will usually ask the parties to make more formal opening

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<sup>26</sup> Ibid

<sup>27</sup>Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes* (New York: Penguin, 1991).

<sup>28</sup>Office of the General Counsel, *Mediation Compendium*, 33.

<sup>29</sup>Fisher, Ury & Patton, *Getting to Yes*, 15.

<sup>30</sup>Brown, “Facilitative Mediation,” 290.

<sup>31</sup>U.S. Equal Employment Opportunity Commission, Office of Federal Operations, *Alternative Dispute Resolution Study and Report, 1996*, Washington, DC.

<sup>32</sup>E. Patrick McDemott et al., U.S. Equal Employment Opportunity Commission, *An Evaluation of the Equal Employment Opportunity Commission Mediation Program: EEOC Order No. 9/0900/762/2*, 2000, Washington, DC.

<sup>33</sup>Leonard R. Riskin, “Understanding Mediators’ Orientations, Strategies, and Techniques: A Grid for the Perplexed,” *Harvard Negotiation Law Review* 1, no. 7 (1996): 24.

statements when presenting their case, in contrast to facilitative mediators, and then conduct one or more caucuses to meet privately with the parties to the complaint. The mediator focuses on collecting facts, identifying issues, and analyzing the parties' legal arguments to develop a sense of the complaint's likely outcome. To move the parties towards resolution, the mediator will judiciously share this evaluation with each side at strategic moments, usually during a caucus.<sup>35</sup> The mediator might also make formal or informal recommendations on resolution based on their evaluation of the likely outcome. This will often include a cost-benefit analysis of settling the case via mediation versus pursuing resolution through other legal proceedings. This often may include an explanation that once the parties leave the mediation, control of the outcome may be taken out of their hands and left to a third party.

The evaluative model also tends to involve a more directive mediator, one who may not hesitate to push the parties to achieve settlement. Attorneys representing employees in EO complaints may appreciate this approach because it helps them influence clients with unrealistic expectations and bridge final gaps to reach a realistic resolution.<sup>36</sup>

### *Disadvantages of Evaluative Mediation*

Disadvantages to the evaluative mediation model include the limited ability for an evaluator to accurately predict the outcome of a case. Additionally, the tendency for the parties to take a more positional approach in an evaluative mediation may

tend to deter compromise and settlement. Another disadvantage may be the inability of an evaluative mediator to find alternative principled basis for settlement when the traditional "legal" basis for a proposed settlement is rejected by the parties.<sup>37</sup> Furthermore, there is a view expressed among a number of lawyers that while senior mediators and former judges could offer expertise and authority in an evaluative mediation, they were often ineffective at facilitating dialogue and compromise among parties.<sup>38</sup>

In addition to the procedural differences between facilitative and evaluative mediation, there are structural issues to consider. The majority of mediators within the DoD are collateral duty mediators trained exclusively on the facilitative model.<sup>39</sup> Structurally, the DoD would likely need to provide training for a group of internal attorneys with experience and expertise in EEOC litigation and labor and employment laws or utilize a pool of contracted mediators with the requisite expertise. The agencies within the DoD would also need to change existing policies to allow for the use of the evaluation model in limited circumstances on a case-by-case basis. This would also require allocation of funds for either contract mediators or the travel of internally qualified mediators.

### *Circumstances for Evaluative Mediation*

From a policy perspective, not every case will be appropriate for evaluative mediation. Cases where it may be appropriate include, but aren't limited to, complex cases

<sup>35</sup>Lisa Blomgre Bingham et al., "Dispute System Design and Justice in Employment Dispute Resolution: Mediation in the Workplace," *Harvard Negotiation Law Review* 14 (2009): 12.

<sup>36</sup> Ibid.

<sup>37</sup> Julie Macfarlane, "Culture Change? A Tale of Two Cities and Mandatory Court-Connected Mediation," *Journal of Dispute Resolution* 2002, no. 2 (2002): 286-287.

<sup>38</sup> Ibid.

<sup>39</sup> Air Force, *ADR Instruction 51-1201 Report*, 11.

where an employee was non-selected for promotion, some hostile work environment claims, or cases involving disability accommodations. For example, I mediated a complaint for an agency several years ago where the employee had applied for an internal promotion for a professional position. The employee had solid credentials and was one of three employees chosen to interview. The interview was conducted by a three-person panel and each panelist rated the employee as the number two candidate. The employee was convinced they should have been selected and the only reason they could not have been was because of a discriminatory basis. Management was convinced the process was sound but was willing to listen to the employee and explore some resolution. However, the employee was convinced they should have been promoted and would not settle for anything less than the promotion.

As a facilitative mediator, I was prevented from evaluating the basis for non-selection. The case was not resolved through mediation and continued through the administrative process. Two years later the EEOC upheld the agency's non-selection. Had the evaluative mediation been available, I may have been able to provide a reality check for the employee and help the parties craft a reasonable resolution that met each side's needs. However, prior to using evaluative mediation, the agency should make an appropriate determination that the circumstances warrant its use. The most appropriate office to make the determination is each Agency's general counsel office. Upon referral from an installation's EO office, the Agency's general counsel office should evaluate the complexity of the case, mediator availability, and appropriateness of evaluative mediation before making the final recommendation to use it in the given case.

## **Conclusion: The Potential Value of Adding Evaluative Mediation**

The value of mediation is instantly recognizable when comparing the costs, time, and money of traditional dispute resolution through legal proceedings to ADR. Recent analysis shows the average number of days to close an EO formal complaint without the benefit of ADR (e.g., settlements, final agency decisions, decisions after administrative hearings, etc.) is 529 days.<sup>40</sup> However, the average number of days for an EO office to close a case through ADR settlements is 44, a difference of 485 days! Although the case processing time is greatly reduced through ADR, only about 50% of cases appropriate for ADR actually get mediated due to party reluctance or case complexities.<sup>41</sup> Supplementing the facilitative model with evaluative mediation may be a way to catch some of the other 50% of cases that aren't being mediated at the early stages. Even if only 20% of the cases that are not using the facilitative model ended up using the evaluative model as an alternative, significant savings could result. For example, the Air Force estimates cost of litigation through the full federal administrative process is \$24,088.<sup>42</sup> If an Agency were to resolve an additional 15 cases per year through evaluative mediation it would save \$361,320 in litigation costs. Therefore, if each of the four branches of the military resolve an additional 15 complaints per year, the DoD could save over \$1.4 million in litigation costs. It should also be noted that during extended litigation periods, the parties are most likely still interacting in the workplace, which may have a detrimental impact on morale. Therefore, there is both a significant cost benefit to early resolution through mediation as well as potential morale

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<sup>40</sup> Ibid.

<sup>41</sup>Ibid. For example, in 2015 the Air Force identified 593 cases as being appropriate for ADR with mediation being actually attempted in 302 of those cases. See 2015 Secretary of the Air Force ADR Program Report, (22 February 2016).

<sup>42</sup>Ibid. Note that this cost does not factor in the additional cost of the actual investigation, which can be between \$4 and \$10,000. Additionally, if the Complainant prevails at a hearing they may be entitled to damages and attorney fees, which significantly increases the cost to the Air Force.

and productivity benefits. Because of the potential costs savings, DoD agencies should consider a 2-3 year trial period for evaluative mediation. This would require making at least three trained mediators available to mediate cases determined appropriate by the respective general counsel offices. If successful, at the end of the trial period, Agency decision makers would have the option to make the policy change a permanent option available in EO complaints.

The facilitative model of mediation is an effective tool for the DoD in resolving EO complaints early in the process. Although not a perfect solution, supplementing the facilitative model with evaluation in limited circumstances may be a way to resolve some complex complaints that are not being mediated early in the process that can result in significant time and cost savings.

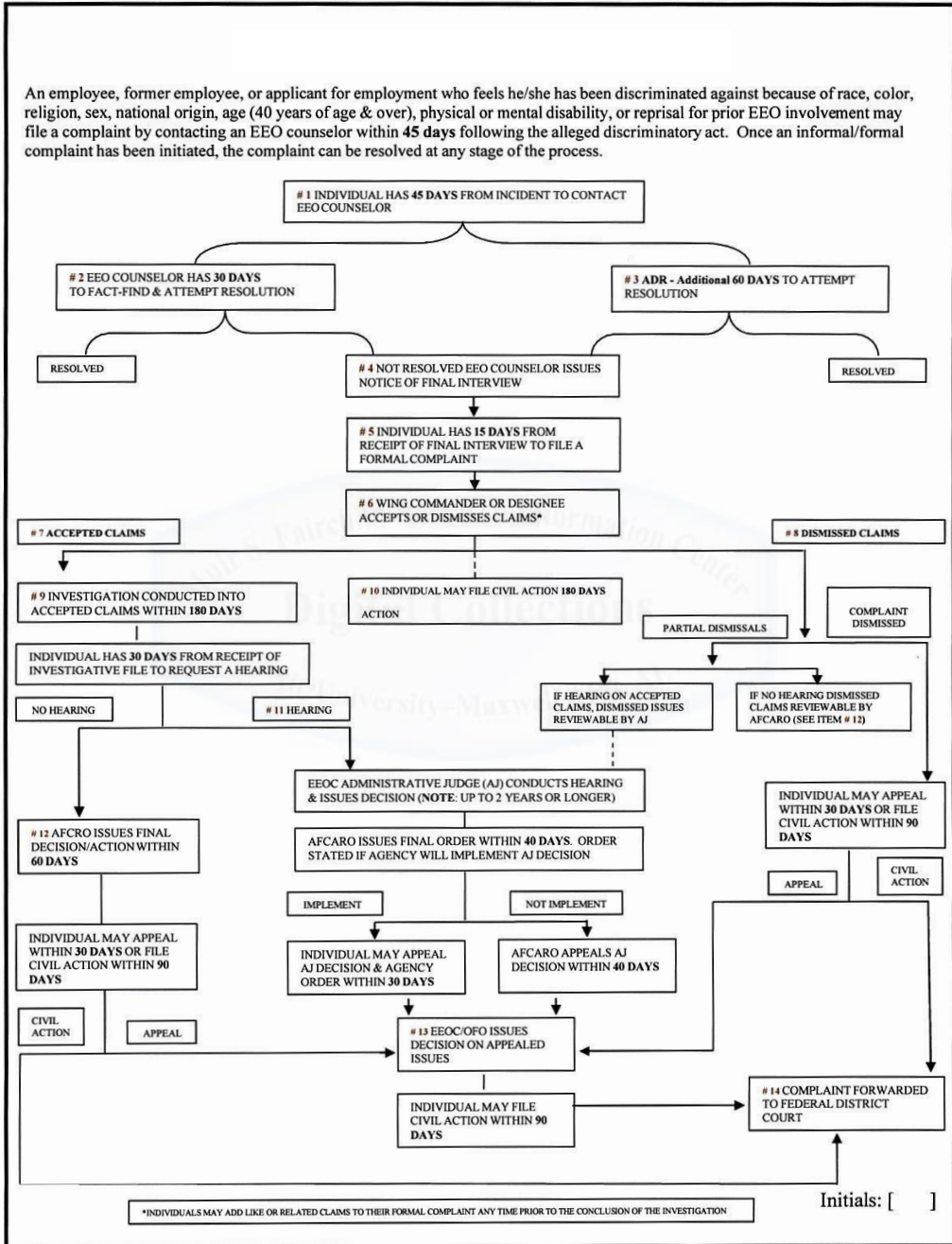
Thomas McNab serves as a Lieutenant Colonel in the United States Air Force Judge Advocate General's Corps and is currently assigned as the Staff Judge Advocate at Geilenkirchen NATO Air Base, Germany. He received a Master's degree in Military Operational Art and Science from Air University in 2017, his Juris Doctor from the University of Idaho College of Law in 2005, and his Bachelor of Arts in English from the University of Idaho in 2002.



Biennial Training Equal Opportunity and Alternative Dispute Resolution Conference  
Photo by Senior Airman Stuart Bright  
Barksdale Air Force Base, LA, United States

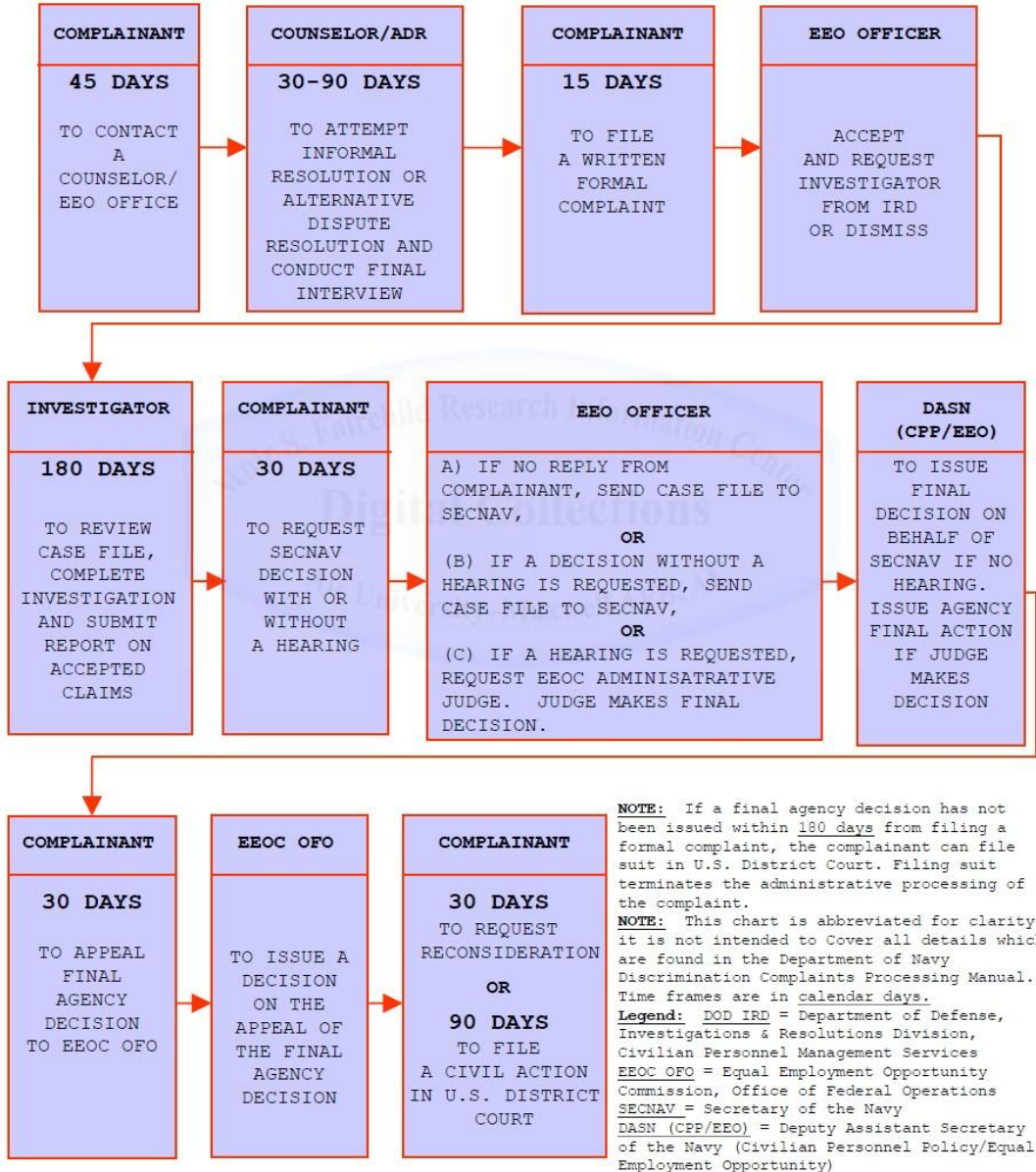
## Appendix 1 - EEO Discrimination Complaint Process

An employee, former employee, or applicant for employment who feels he/she has been discriminated against because of race, color, religion, sex, national origin, age (40 years of age & over), physical or mental disability, or reprisal for prior EEO involvement may file a complaint by contacting an EEO counselor within 45 days following the alleged discriminatory act. Once an informal/formal complaint has been initiated, the complaint can be resolved at any stage of the process.





**Appendix 2 - EEO Complaint Process**



**NOTE:** If a final agency decision has not been issued within 180 days from filing a formal complaint, the complainant can file suit in U.S. District Court. Filing suit terminates the administrative processing of the complaint.

**NOTE:** This chart is abbreviated for clarity, it is not intended to cover all details which are found in the Department of Navy Discrimination Complaints Processing Manual. Time frames are in calendar days.

**Legend:** DOD IRD = Department of Defense, Investigations & Resolutions Division, Civilian Personnel Management Services  
 EEOC OFO = Equal Employment Opportunity Commission, Office of Federal Operations  
 SECNAV = Secretary of the Navy  
 DASN (CPP/EEO) = Deputy Assistant Secretary of the Navy (Civilian Personnel Policy/Equal Employment Opportunity)

**TO CONTACT THE APPROPRIATE EEO OFFICE, SEE "POINTS OF CONTACT".**

**6 June 2008**

## Devastation to Tourist Destination

Judith Tepperman, MSS  
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### Abstract

*The post-conflict recovery process in war ravaged nations can take many years to accomplish. Newly established governments must become stable and provide security to its citizens. The state's physical infrastructure must be repaired to provide basic needs such as potable water, electricity, and transportation access. Rebuilding the economy is a priority to fund and facilitate recovery. Salvaging the cultural heritage of the population underpins the political, physical, and economic components of a nation's resurgence.*

*This paper aims to show that culture is a critical component of post conflict recovery. In particular, the focus is on how nations use their cultural heritage to encourage tourism, which in turn, boosts the economy to facilitate and expedite recovery. When tangible or intangible cultural heritage is damaged or destroyed during conflict, the effect on the population can be devastating because it erases people's ties to their identities and communities. Restoring cultural heritage provides the confidence and legitimacy for populations to proudly display their culture to local and international guests. Iraq has culturally rich archaeological sites such as Babylon and the ancient city of Ur. They also have significant ancient museum and library collections that contribute to the collective identity of people from all over the world. Though it does not seem probable that Iraq could ever become a world class tourist destination, it is certainly possible that this country could rise from rubble to attract visitors as other countries have done. The Socialist Republic of Vietnam and the city of Dubrovnik, Croatia are two of the case studies presented. Both of these sites recovered from political, physical and economic devastation post-war and subsequently transformed into globally popular tourist destinations. The research shows that including cultural values of local populations will facilitate post-conflict recovery.*

“Culture should be placed at the heart of post-disaster and post-conflict city reconstruction and recovery strategies”

Ede Ijjasz-Vasquez  
Senior Director, Social, Urban, Rural and  
Resilience Global Practice, World Bank<sup>1</sup>

In the 1970's, Baghdad, Iraq was a regional center for highly urbanized, secular, well educated citizens. Sadly, the current unstable government and economic hardships brought on by years of economic sanctions, wars, civil unrest, and willful destruction by terrorists have caused devastation to the entire country on many fronts.<sup>2</sup> Iraq must carefully

<sup>1</sup> Ede Ijjasz-Vasquez, “Culture – the “X Factor” for Building Back Better after Conflict and Disasters,” *The World Bank*, November 16, 2018, <https://www.worldbank.org/en/news/feature/2018/11/16/culture-the-x-factor-for-building-back-better-after-conflict-and-disasters>.

<sup>2</sup> Jonathan E. Sanford, “Iraq's Economy: Past, Present, Future,” *Global Security*, June 03, 2003, [www.globalsecurity.org/military/library/report/crs/crs\\_iraq\\_economy.pdf](http://www.globalsecurity.org/military/library/report/crs/crs_iraq_economy.pdf). (accessed September 16, 2018).

strengthen the fragile government currently in place, while simultaneously building the economy, in order for cities like Baghdad to rebuild their infrastructure. When that happens, citizens will feel secure and choose to stay and participate in revitalization efforts. A major part of the revitalization effort will be to protect, restore, and manage cultural heritage sites that reflect the cultural history, values, beliefs, and skills of the people who created them.<sup>3</sup> When a cultural heritage site is damaged or destroyed, it can also damage or destroy the dignity of the people for whom it has meaning. The United Nations Educational, Scientific and Cultural Organization (UNESCO) seeks to “encourage the identification, protection, and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity.”<sup>4</sup> Iraq has hundreds of such sites that span over 7,000 years of civilization. The ancient sites that compose the “Cradle of Civilization” are treasured by everyone, and have drawn tourists from all over the world.<sup>5</sup> Since many of the important cultural sites and artifacts have been damaged or destroyed, UNESCO is assisting the government of Iraq with technical expertise for heritage conservation, and preservation and rehabilitation of the major sites.

Destruction of cultural property in Iraq took many forms. During the invasion of Iraq in 2003, “arsonists burned the Iraqi National Library and Archive (INLA) and looters pillaged the National Museum in Baghdad. Looters also damaged or destroyed many historic buildings and artifacts in the city. The US constructed a military base on the site of ancient Babylon that damaged cultural features of the site. Coalition forces destroyed or badly damaged many historic urban areas and buildings, while thieves have ruined thousands

of incomparable, unprotected archaeological sites.”<sup>6</sup> In 2015, the “Islamic State destroyed Hatra, a 2,000-year-old fortified city southwest of Mosul. The Islamic State is believed to have bulldozed the site and looted the cultural artifacts housed inside, including gold and silver objects, likely to leaving no trace of any previous culture.”<sup>7</sup> The destruction of the cultural sites also represents the obliteration of societies, a way of life, and memories of previous generations of families.

UNESCO identified four major cultural sites [Ashur (Qal’at Sherqat), Erbil Citadel, Hatra, and Samarra Archaeological City] on its Iraqi World Heritage list because they have special physical or cultural significance. UNESCO is also identifying and mapping cultural heritage sites and museum collections in preparation for the tourism industry to emerge. All of these efforts involve provision of technical assistance to Iraqi counterparts, including working to stop the illicit traffic of Iraqi artifacts. There are numerous additional sites and cultural areas that the Iraqi government, local governments, the private sector, and other Non-Government Organizations (NGOs) are working to restore and preserve, including cultural sites, artifacts, and other non tangible culture.

Tourism may not be sustainable without a strong culture component. In her article, “Personal and Cultural Memories in War Tourism”, Anita Horvat asserts that “history and turbulent events are frequently used as important tools for establishing a sense of national identity and the feeling of national selfhood.”<sup>8</sup> With so much destruction and instability in Iraq, it seems unthinkable that the country could build a tourism industry to boost the economy and put Iraq on someone’s bucket list of places to visit. If recovery of heritage/

<sup>3</sup> World Heritage Centre, “Special Issue on Iraq,” *UNESCO World Heritage Centre*, June, 2015, <https://whc.unesco.org/en/review/special-iraq/>.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> James Paul and Céline Nahory, “War and Occupation in Iraq,” *Global Policy*, June, 2017, <https://www.globalpolicy.org/images/pdfs/full.pdf>.

<sup>7</sup> Ibid.

<sup>8</sup> Anita S. Horvat, “Personal and Cultural Memories in War Tourism,” *Sic Journal* 3, no. 2 (2013): 1-17, <https://doi.org/10.15291/SIC/2.3.LC.5>.

religious sites becomes a reality, then Baghdad could again become a tourist destination like so many other conflict-torn locations.

Iraq, other assisting governments, and NGOs could learn lessons from other war-torn states that rebuilt and became world class tourist destinations. Both Vietnam and Croatia suffered severe damage to their political, cultural, and built infrastructures during armed conflict. Though it took many years to rebuild or recreate and recover their heritage sites, both countries have become popular tourist attractions with rich cultural heritage to which people travel from all over the world. Case studies will be presented to demonstrate how these countries with vastly different cultures, in different parts of the world, went from devastation to tourist destination.

### Case Study 1: Vietnam Road to Recovery

According to the United Nations International Strategy for Disaster Reduction (UNISDR), reconstruction is defined as the “medium and long-term rebuilding and sustainable restoration of resilient infrastructure, services, housing, facilities, and livelihoods required for the full functioning of a community or a society affected by a disaster.”<sup>9</sup> UNESCO has introduced a framework to integrate culture as the core element for post-conflict reconstruction of urban areas. The Culture in City Reconstruction and Recovery (CURE) framework puts people and local governments at the center of this process.<sup>10</sup> Not all post-conflict states have benefitted from the CURE framework or similar programs. Vietnam struggled to re-build its economy after the post World War II wars with France and America, without much assistance from the UNESCO

sponsored CURE program or other NGO’s.

In 1945, Indochina (representing present day Vietnam, Cambodia, and Laos) was a French Colony. Resistance to French rule was inevitable because after World War II, colonization was no longer acceptable to the new order of liberal internationalists, and Indochina wanted independence. France was weak, and the Chinese communists began equipping and training the Viet Minh to fight an insurgent war. France was defeated in 1954, but in the aftermath, “Geneva divided Vietnam at the 17th parallel, making way for the subsequent Americanization of the war.”<sup>11</sup> The American war in Vietnam, lasted for 20 years, from 1955-1975. Massive aerial bombardment was used at targets that the US believed were centers of gravity. The targets included airfields, key military headquarters, barracks and strategically important supply facilities and lines of communications. Most of these targets were in the countryside, where culturally significant sites are located. According to Michael Clodfelter, “the United States Air Force dropped a total of 6,162,000 tons of bombs and other ordnance” in Indochina.<sup>12</sup> It was the most intense bombing campaign ever executed by the US. It far exceeded the total of 2,604,000 tons of ordnance expended in World War II and in the Korean War.<sup>13</sup> Notwithstanding the constant bombardment campaigns, destructive land battles, and weather events, some of the cultural sites were damaged but not destroyed. For example, in the city of Hué, many of the walls and gatehouses surrounding its citadel were reduced to rubble, but the Imperial Palace mostly survived a 25 day air and ground assault.

If a cultural property or nontangible cultural asset is deemed significant, and meets specific codified criteria, UNESCO may

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<sup>9</sup> United Nations Educational, Scientific and Cultural Organization, *Culture in City Reconstruction and Recovery* (Paris: UNESCO, 2018), <http://hdl.handle.net/10986/30733> 12.

<sup>10</sup> *Ibid.*, 23.

<sup>11</sup> Douglas Porch, “French Imperial Warfare, 1945-1962,” in *Counterinsurgency in Modern Warfare*, eds. Daniel Marston and Carter Malkasian (New York: Osprey, 2008), 100.

<sup>12</sup> Michael Clodfelter, *Vietnam in Military Statistics: A History of the Indochina Wars, 1772-1991* (Jefferson: McFarland, 1995), 225.

<sup>13</sup> *Ibid.*, 225.

declare it as a World Heritage Site and seek to protect it from the effects of conflict that may destroy or damage it. UNESCO will also provide support to preserve and conserve the tangible sites and/or non-tangible cultural properties. There are only five UNESCO World Heritage tangible cultural sites in Vietnam, the first of which, the Complex of Huế Monuments, was designated in 1993 amidst the country's global economic transition. Huế was the political, cultural, and religious center of a united Vietnam from 1802 until 1945. The community of Huế sponsors cultural events to celebrate and commemorate their heritage, and to educate tourists who are encouraged to attend. The other World Heritage sites and their inscription dates are Central Sector of the Imperial Citadel of Thang Long (2010), Citadel of the Ho Dynasty (2011), the ancient city of Hoi (1999), and My Son Sanctuary (1999). All of the World Heritage sites are popular tourist attractions and uplift the economy in their communities. For example, in 1999 when Hoi became a World Heritage site, its tourist revenue was \$2,961M. By 2007, tourist revenue in Hoi steeply climbed to \$38,463M.<sup>14</sup>

Another cultural site that is a trendy tourist attraction, but not one of the five World Heritage sites, is the Great Holy Cao Dai Temple just north of Saigon. An indigenous Vietnamese religion, Cao Daoism was suppressed by the communist government just after the war and through the 1980's. However, the religion survived, and now the temple is one of the most popular tourist attractions in the country. The Sapa valley, north of Hanoi, is another non-World Heritage designated cultural region in which ethnic tribes show and sell tourists their ethnic textiles and handicrafts. The lure for tourists to come to the region is the beautiful countryside and iconic rice

paddies. There are several other ethnically diverse people with rich cultures throughout the Vietnam countryside that receive tourists in their typically agrarian societies. Their practices, representations, expressions, skills, and traditional knowledge are part of their cultural heritage and transmitted from generation to generation.<sup>15</sup> Festivals exhibiting the unique cultures of the inhabitants are another reason for tourists to visit these communities. Phillip Kotler, in his book, *Marketing for Hospitality and Tourism*, emphasizes that "generating events that appeal to a target market and are harmoniously appropriate with a community's culture can provide immensely beneficial results, especially if the events are organized regularly over a period of years."<sup>16</sup> According to the UNESCO Culture report, practicing cultures are considered an intangible cultural heritage which is vital in recovery and reconstruction processes for their power in rebuilding the social fabric as well as for effectively 'maintaining and managing cultural diversity, fostering intercultural dialogue, and enabling the effective monitoring of cultural change in post-conflict situations.'<sup>17</sup>

Environmental features could be considered natural heritage if UNESCO designates them as such - currently, there are only two UNESCO designated Natural Cultural Heritage properties in Vietnam.<sup>18</sup> Ha Long Bay, in the Gulf of Tonkin, includes 1,600 mostly uninhabited islands. Popular tourist activities are tour cruises, scuba diving, rock climbing, and hiking. The Phong Nha-Ke Bang National Park is known for its ecological and wildlife diversity, as well as hundreds of caves and underground rivers. Both of these designated natural sites are protected as World Heritage sites. UNESCO provides

<sup>14</sup> Hoi An Centre for Monuments Managements and Preservation, *IMPACT: The Effects of Tourism on Culture and the Environment in Asia and the Pacific: Cultural Tourism and Heritage Management in the World Heritage Site of the Ancient Town of Hoi An*, Viet Nam (Bangkok: UNESCO, 2008), <https://unesdoc.unesco.org/ark:/48223/pf0000182646> 50.

<sup>15</sup> UNESCO, *Culture in Reconstruction*, 12.

<sup>16</sup> Philip Kotler, John T. Bowen and James C. Makens, *Marketing for Hospitality and Tourism*, 3rd ed. (Upper Saddle River: Prentice Hall, 2003).

<sup>17</sup> UNESCO, *Culture in Reconstruction*, 12.

<sup>18</sup> Ibid.

training to governments, tourism officials, and site managers to protect and manage World Heritage designated sites so the sites can be preserved and conserved for future generations to enjoy. Tourism is an important management issue at both natural and cultural World Heritage sites because uncontrolled tourism development can have major negative impacts on our world's natural and cultural heritage.<sup>19</sup>

UNESCO also argues that a sense of belonging is critical to rebuild people's identities, particularly in the aftermath of violence and conflicts that have divided a society.<sup>20</sup> However, sometimes, instead of rebuilding identities, the societies create new identities and culture that unites them. For example, in urban Vietnam today, the French and American wars and the aftermath of both are part of the collective memory of the Vietnamese and embedded in their culture. A significant part of the Vietnamese "cultural heritage" to which tourist flock, are restaurants that serve French/Vietnam fusion cuisine reflecting the French colonization period. Yet, much of the tourist economy is derived from Americans, and the tourist sites in the urban areas, especially Ho Chi Mein City (HCMC), formerly Saigon, depict the horrors of the War. Even more popular, are the exhibits in and around the former US Embassy and Reunification Hall that highlight the American War. There is even a small portion of the 125-mile network of hand-dug tunnels the Viet Cong used throughout the war to evade the Americans through which tourists can crawl.<sup>21</sup> The War Remnants Museum depicts Vietnam before, during, and after the war to show how the current one-party government "uses a

site like a museum to elevate its legitimacy to tourists."<sup>22</sup> Also dubbed the "Museum of American Atrocities", The War Remnants Museum has evolved over the years to become what is likely "Vietnam's most visited tourist site by foreign visitors."<sup>23</sup> Many veterans of the Vietnam War tour here for the purpose of connecting personal thoughts, memories, and emotions with the site.<sup>24</sup>

Still, it wasn't until the restoration of diplomatic relations with the U.S. in 1993, and Vietnam's entry into the Association of Southeast Asian Nations (ASEAN) in 1995 that the tourist industry was able to launch.<sup>25</sup> There was no CURE framework to help rebuild the cultural infrastructure at that time, and UNESCO was only marginally present to integrate culture and tourism. The Vietnamese government had to build the tourism industry from scratch after they instituted a new economic reform policy called the doi moi in 1986. Subsequently, foreign investors and visitors were able to travel to the country for business opportunities.<sup>26</sup> Mok and Lam in their article "Hotel and Tourism Development in Vietnam" argue that initially, there was a lack of strategic planning for and control of hotel development by the Vietnamese government.<sup>27</sup> Coupled with poor transportation infrastructure, it took a few years to determine how to accommodate the increasing number of tourists. Additionally, the Vietnamese government was nearly bankrupt, and they had to rely on foreign investment to finance the reconstruction of hotels, transportation infrastructure and flood control in HCMC.

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<sup>19</sup> Arthur Pederson, *Managing Tourism at World Heritage Sites: A Practical Manual for World Heritage Site Managers* (Paris: UNESCO, 2002), <http://whc.unesco.org/uploads/activities/documents/activity-113-2.pdf> 3, 5.

<sup>20</sup> UNESCO, *Culture in Reconstruction*, 25.

<sup>21</sup> James Popkin, "A Vacation in Vietnam," *U.S. News and World Report*, August 1992, 59.

<sup>22</sup> Jamie Gillen, "Tourism and Nation Building at the War Remnants Museum in Ho Chi Minh City," *Annals of the Association of American Geographers* 104, no. 6 (2014): 1307-1321.

<sup>23</sup> *Ibid.*, 1310.

<sup>24</sup> Horvat, "Personal and Cultural Memories in War Tourism," 2.

<sup>25</sup> Connie Mok and Terry Lam, "Hotel and Tourism Development in Vietnam," *Journal of Travel & Tourism* 7, no. 1 (1997): 85-91, [https://doi.org/10.1300/J073v07n01\\_06](https://doi.org/10.1300/J073v07n01_06).

<sup>26</sup> *Ibid.*, 85.

<sup>27</sup> *Ibid.*, 86.

There were also issues with crime and lack of lighting in the urban tourist areas. Graft was part of the day to day Vietnamese government departments. Officials had to be bribed in order to expedite the application process, which added to operating expenses and caused construction costs to escalate.<sup>28</sup> It wasn't until the late 1990's that there was a shift in thinking in the international development community towards recognizing the importance of culture and cultural heritage in development in Vietnam. The Ministry of Culture led a broad inventory to identify Vietnam's heritage throughout the country.<sup>29</sup> This was about the time when UNESCO inscribed two more properties on the World Heritage list: Hoi; and My Son Sanctuary, where a unique Indian Hindu culture thrived from the 4th to the 13th centuries CE.<sup>30</sup> Hoi is a popular tourist attraction in North Vietnam that exhibits the original architecture and city plan from 17th and 18th centuries. A special cultural attraction to tourists in Hoi is the "fusion of indigenous and foreign cultures (principally Chinese and Japanese with later European influences) that combined to produce this unique survival."<sup>31</sup> The town continues to be occupied and function as a trading port and center of commerce.<sup>32</sup> The excellent ratings in Trip Advisor and Fodor's travel guides describe a highly desirable tourist destination. Learning the hard way, Vietnam government finally recognized "that cultural heritage protection and tourism must go hand in hand to bring about more effective programs to raise standards of living in developing countries

and lead cities towards a more sustainable economy."<sup>33</sup>

In 2001, Vietnam adopted the first law regarding cultural heritage to protect monuments, notably in Hanoi and HCMC.<sup>34</sup> Eventually, the tourism industry in Vietnam became tenable with many lessons learned due to trial and error. For example, the government bureaucracy and red tape procedures were simplified to expedite hotel development. Also, training centers for tourism industry staff were established to upgrade service standards. Conservation of heritage and cultural remains was planned and executed, so that they could be exhibited to locals and tourists alike.

By 2011, with the two more World Heritage sites inscribed, the Vietnam travel sector was ranked 14th in the region and 80th worldwide.<sup>35</sup> The number of visitors to Vietnam more than doubled in the past four years from ~7 million tourists in 2014 to 15.5 million visitors in 2018.<sup>36</sup> The specific attributes of the country, such as rich cultural resources with the five World Heritage cultural sites, and the two World Heritage natural sites, combined with international fairs and exhibitions, contributed to this high position in tourism destinations.<sup>37</sup> Vietnam's reconstruction and the development of their tourism industry have come a long way since the Americans left Vietnam in 1975. Though UNESCO provides assistance to promote tourism in Vietnam, the government discovered that Americans would tour the country because perhaps a bit of their own culture and history was left behind in Vietnam.

<sup>28</sup>. Ibid., 87.

<sup>29</sup>. Clement Musil, "Drafting and Implementing Urban Heritage Preservation Policies: a 'Trial and Error' Approach for Ho Chi Minh City," *The Newsletter*, Spring 2016, <https://www.ias.asia/the-newsletter/article/heritage-policies>.

<sup>30</sup>. "Vietnam," *World Heritage Centre*, United Nations Educational, Scientific and Cultural Organization, accessed September 9, 2018, <https://whc.unesco.org/en/statesparties/vn>.

<sup>31</sup>. Ibid.

<sup>32</sup>. Ibid.

<sup>33</sup>. William S. Logan, "The Cultural Role of Capital Cities: Hanoi and Hue, Vietnam," *Pacific Affairs* 78, no. 4 (2005): 559-579.

<sup>34</sup>. Musil, "Drafting and Implementing Urban Heritage Preservation Policies," 40.

<sup>35</sup>. Pham Kim Anh, "Identifying and Improving the Images of Vietnam as a Tourism Destination for Finnish Tourists" (Bachelor's Thesis, Håme University of Applied Sciences, 2012), 1-58.

<sup>36</sup>. "International visitors to Viet Nam in December and 12 Months of 2017," Vietnam National Administration of Tourism, revised January 02, 2018, <http://vietnamtourism.gov.vn/english/index.php/items/12453>.

<sup>37</sup>. Anh, "Improving the Images of Vietnam," 35.

## Case Study 2: Dubrovnik, Croatia becomes Kings Landing

Croatia, like Vietnam, also suffered from the effects of 20th century warfare. Poetically nicknamed the “Pearl of the Adriatic” by Lord Byron, Dubrovnik is one of the southernmost cities of Croatia and is located on the Dalmatian Coast.<sup>38</sup> Over the centuries, many different maritime and sovereign powers such as the Byzantines, Saracens, Venetians, and Hungarians, as well as the Roman, Ottoman, Hapsburg, and Napoleonic Empires influenced the culture of the inhabitants.<sup>39</sup> The city evolved as a “medieval aristocratic republic from the 12th to 19th centuries and it bears the mark of several architectural styles, including Italian Renaissance, Gothic, and Baroque.”<sup>40</sup> Devastating earthquakes in 1667 and 1979 damaged and/or destroyed much of the cultural properties in the city, and both times, the city was restored to its original splendor. Though Dubrovnik’s old city was designated as a World Heritage site and supposedly protected, the war in 1991 brought additional destruction to the city.

A monumental stone city, Dubrovnik is surrounded by a double fortification wall approximately 6,360 feet in length, 82 feet in height at its highest point, and thicknesses of 5-15 feet depending on the location. Dubrovnik was a significant Mediterranean Sea power beginning in the 13th century and it prospered from the fifteenth to the eighteenth centuries. Throughout its history the city was a major port of call on the Adriatic Sea for merchants and politicians, as well as travelers, artists, and tourists. It was a flourishing sea

resort with many hotels and restaurants along the coast. The coast served as a “mass-market tourist destination, popular with Yugoslav and European tourists seeking an inexpensive beach holiday.”<sup>41</sup> Its rich cultural heritage attracted the interest of many.<sup>42</sup>

In 1667, Dubrovnik was devastated by an earthquake, which severely damaged many of the medieval buildings. The city was rebuilt incorporating the Italian Gothic, Renaissance, and Baroque styles of architecture, and emerging modern urban planning protocols. For centuries, city planners regulated the footprint of the city, and rules regarding proportions of the streets and how they related to space were implemented, enforced, and documented. In 1979, another catastrophic earthquake destroyed many of the historic buildings. Mostly, roofs were damaged and the structural integrity of many of the buildings was compromised. According to the Institute for Restoration of Dubrovnik website, “among over a thousand damaged buildings the most damaged ones were the highest value monuments within the historic center.”<sup>43</sup> The city was rebuilt again, with the plan to recreate the same architectural style of each building using the same building materials which were based upon the documents recorded three centuries earlier. According to Bette Hammel, in her article, “After the War: The Ancient City of Dubrovnik Comes Back,” “following the 1979 earthquake, modern surveys were taken to collect measurements and technical documentation of structural conditions of each building.”<sup>44</sup> Conservation guidelines for the historical buildings were also established, specifying requirements to adequately preserve the historical buildings and urban footprint.

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<sup>38</sup> “Old City of Dubrovnik,” World Heritage Centre, United Nations Educational, Scientific and Cultural Organization, accessed September 9, 2018, <https://whc.unesco.org/en/list/95>.

<sup>39</sup> Bette Hammel, “After the war: The ancient city of Dubrovnik comes back,” *Archival Record* 188, no. 8 (2000): 49-51.

<sup>40</sup> *Ibid.*

<sup>41</sup> Lauren A. Rivera, “Managing “Spoiled” National Identity: War, Tourism, and Memory in Croatia,” *American Sociological Review* 73, no. 4 (2008): 613-634.

<sup>42</sup> Srđa Pavlović, “The Siege of Dubrovnik and the Consequences of the “War for Peace,” *Space of Identity*, April 07, 2009, <https://pescanik.net/the-siege-of-dubrovnik-and-the-consequences-of-the-war-for-peace/>

<sup>43</sup> “Institute for Restoration of Dubrovnik,” Institute for Restoration of Dubrovnik, accessed September 9, 2018, <https://zod.hr/lang/en/>.

<sup>44</sup> Hammel, “After the war,” 49-51.



The renovations were systematic with a long-term planning strategy. The effort was financed mostly by the Republic of Croatia. Newly placed on the World Heritage list, UNESCO became involved with the restoration of the old city of Dubrovnik by providing computer equipment for documentation of the restoration. UNESCO also provided consulting services to assist with the Dubrovnik Cathedral excavation.

Though Croatia's tourism infrastructure is built primarily around the sun and the sea, the old city of Dubrovnik was a cultural oasis. Several buildings of note contribute to the cultural mosaic of the city. The Revelin Fortress, built between 1539 and 1551 was an impressive fortification built into the city's wall system. In the 19th century, renovation projects turned the fortress into a salt storage facility. Damaged in the 1979 earthquake, it was restored to its original design. It became utilized as a multipurpose hall to be used for tourist visits and to hold museum collections and cultural displays.<sup>45</sup> Another important fortress was St. Margaret's Fortress located in the southern city wall. Originally built in 1426, this noteworthy tower defended the sea channel between the city and the island of Lokrum. Beneath the ground floor of the tower was the courtyard of the Church of St. Margaret. Another landmark, the Dubrovnik Cathedral, is a baroque structure built between 1672 and 1713 on the remains of the Romanesque cathedral that was destroyed in the 1667 earthquake. With a purple marble alter, and a polyptych painted by the famous Venetian painter Titian, the cathedral is aesthetically awe inspiring. Severely damaged in the 1979 earthquake, the cathedral was restored and back in use

as a place of worship by November 1986. UNESCO has assisted with the excavation of the original Romanesque cathedral. Because of its long-established status as a tourist center, Dubrovnik was one of the few places in the former Yugoslavia that was demilitarized.

Following restoration of many of the buildings and infrastructure, Dubrovnik was again under siege, this time by war. Wanting to secede from Yugoslavia and declare independence as a sovereign nation, Croatia was attacked by the Yugoslav Army (JNA) in 1991. The JNA was assisted by a revolt of the Croatian Serbs, in effect, creating a civil war component to the conflict.<sup>46</sup> Dubrovnik and other cities were brutally attacked for months.<sup>47</sup> Hotels along the sea were deliberately shelled and ruined, and the old city of Dubrovnik including cultural heritage sites, was bombed even though it was on the UNESCO World Heritage List.<sup>48</sup> According to Srđa Pavlović, it was estimated that in the Dubrovnik area, including the old city, 11,425 buildings were damaged by artillery fire and bombardment and the city was without electricity for two months from October to December 1991.<sup>49</sup> Pavlović further attests that in the old city, "among notable monuments hit were the Sponza Palace, the Jesuit Church, the Franciscan Bell Tower, and the Town Clock Tower. A home for the elderly south of the St. Claire Monastery and the city wall behind it were also hit by mortar fire."<sup>50</sup> In addition, "nine 17th-century palaces were gutted, 60 percent of the tiled roofs were destroyed, and the city was left in flames."<sup>51</sup> The city wall was directly hit by artillery an estimated 314 times, but received only minor damage.

Destroying cultural property during conflict can be considered a war crime, but

<sup>45</sup> "Institute for Restoration of Dubrovnik."

<sup>46</sup> Dragutin Pavličević, "A Review of the Historical Development of the Republic of Croatia," *GeoJournal* 38, no. 4 (1996): 381-91, <http://www.jstor.org.au/fric.idm.oclc.org/stable/41146857>.

<sup>47</sup> Ibid.

<sup>48</sup> "Old City of Dubrovnik."

<sup>49</sup> Srđa Pavlović, "Annex XI. A The Battle of Dubrovnik and the Law of Armed Conflict," *United Nations Security Council*, December, 28, 1994, 34.

<sup>50</sup> Pavlović, "The Siege of Dubrovnik and the Consequences of the "War for Peace," 11.

<sup>51</sup> Hammel, "After the war," 49-51

prosecution is generally unlikely. As part of this Yugoslavian conflict, the Old Mostar Bridge in Bosnia and Herzegovina was intentionally destroyed. The Ottoman style bridge that was completed in 1566 connected Muslim and Christian communities that were separated by the Neretva River. Besides its historic architectural properties, the bridge was considered cultural heritage because it symbolized the synergy of the diverse ethnic, cultural, and religious communities in the city. The intentional destruction of the bridge was a means to expunge citizens' relationships to their identities and communities, and cause grave psychological harm. Those accused of destroying the symbolic bridge were found guilty of war crimes and crimes against humanity. The case was overturned in an appeals court because the appellate judge ruled that the bridge was a military target and the destruction of it provided a military advantage to the opposition. However, the case set a precedent for prosecuting those responsible for destruction of cultural property during conflict.

When Dubrovnik was rebuilt after the war, it was fortunate that the existing city plans and building records were electronically documented after the last earthquake. It was discovered, however, that the structural integrity of the buildings was compromised in the last major earthquake and was not adequately addressed and fixed during the previous restoration. Therefore, the war damaged buildings required more structural repairs than expected. UNESCO and the World Heritage Fund provided funding to purchase roof tiles, the training of artisans and craftsmen, the carrying out of a real property survey of the Old City of Dubrovnik and the preparation of an inventory of damaged monuments.<sup>52</sup> Mostly, however, other local institutions and the Croatian government financed the restoration. According to the Institute for Restoration in Dubrovnik, "within

the city culture is enhanced by the presence of countless works of art, principally in churches and museums, but also out of doors. Its religious treasures, manuscripts, archives, pictorial heritage, and books from all over the globe all attest to the activities of the Mediterranean world that have been carried on down the centuries in a cosmopolitan environment."<sup>53</sup> There is also intangible cultural heritage in Croatia to drive tourism. This includes lacemaking, two-part singing and playing in the Istrian scale, the Festival of St. Blaise, patron saint of Dubrovnik, gingerbread craft and many different types of cultural singing. Such cultural wealth places Dubrovnik today "among the world's major cultural and tourist centers."<sup>54</sup> Though Croatian cultural events are a draw for tourists, after the conflict, the government presented Croatia as a Western or European destination because it would be more attractive to foreign tourists; basically, it was disassociated from its "Slavic roots" because of the negative images of war and instability in the minds of foreign travelers and investors."<sup>55</sup> Lauren Rivera asserts that the Croatian government wanted to manage the impression of Croatia by re-framing its history by erasing the war from the consciousness of potential visitors. Croatian culture plays a large role in attracting tourists, but the government markets Croatia as a European destination. There are no references in travel brochures of Croatia's Slavic history and events. This could negatively impact the Slavic population by marginalizing them. However, Croatia's marketing strategy appears to be working to attract tourists by creating a positive spin to its image as an inviting place to visit.<sup>56</sup>

During the conflict, tourism in Croatia approached a standstill, but it completely recovered by 2005, fourteen years later. This is considered a quick and exceptional rebound within the tourism industry. Of course, all of the plans for the

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<sup>52</sup> "Old City of Dubrovnik."

<sup>53</sup> "Institute for the Restoration of Dubrovnik."

<sup>54</sup> Ibid.

<sup>55</sup> Rivera, "Managing "Spoiled" National Identity: War, Tourism, and Memory in Croatia," 625.

<sup>56</sup> Ibid., 623, 624.

city and its buildings were preserved so new plans did not have to be developed. It often takes decades for tourists to return to a country following war, and some countries never fully recover from perceptions of violence or instability.<sup>57</sup> Tourism in Dubrovnik may have been expedited after the war because the government made a concerted effort to demonstrate that it was a safe place to visit. Most recently, a popular television show has been filmed in Dubrovnik. The city is fictionally named Kings Landing in the show, *Game of Thrones*. Filming utilizes all of the period scenery of the city including the architecture, fortified walls, and narrow streets. Fans from all over the world flock to Dubrovnik to take tours to see locations in which important fictional events took place in the show. The filming of the show popularizes the city, brings in a new type of tourist, and consequently brings in money to further fund the city's restoration of the city's built and cultural infrastructures.

Dubrovnik's tourism industry made a remarkable recovery after natural disasters and armed conflict. Though the city has a splendid location on the Adriatic Sea that would be a draw for any tourist, the new government worked diligently to provide safety and security in order to reassure visitors that they would not be harmed. The government also rebuilt the damaged infrastructure of roads so visitors would be able to more easily access the city. Most importantly, the government worked with UNESCO, other governments, and NGOs to rebuild the cultural infrastructure so tourists would experience the rich and unique historical essence of the city.

### **Recommendation/Conclusion: Let's Go to Iraq Next Year!**

Following the conflict in Vietnam, tourism was slow to develop, or re-develop for many reasons, mostly because of security and safety concerns. Vietnam had to rebuild

almost from scratch. Dubrovnik was quicker to re-develop, because they had systems in place to plan and program their reconstruction, but it still did not happen "overnight". Following war, the governments of both nations were unstable or unfriendly, outsiders were unsure about safety and security, and the nations' infrastructures were damaged or destroyed. For these reasons, tourism development was not a priority. Iraq has much to offer tourists in terms of history, arts, and culture. At the present time, the situation is not favorable for tourism in Iraq, but it could take the lessons from Vietnam and Croatia to build the industry when the country becomes stable and secure.

Since 2003, when the US-led coalition invaded Iraq, billions of dollars have poured into the country, but there has been little improvement in the economy. The infrastructure is still in shambles. Living conditions are well below standards.<sup>58</sup> Religious and ethnic divisions stand in the way of establishing a stable environment. Iraq faces innumerable obstacles. However, Iraq has the second largest oil reserves in the world. If they could get effective leadership to provide a strong government, deliver robust security, and bring the various ethnic/religious groups to work together, they could turn the dire situation around as so many other war-torn countries have done before. The government of Iraq is an Islamic, democratic, federal parliamentary republic with an elected Prime Minister and a President. If they do not win the people's trust by curbing corruption in the government, they are doomed to fail. They also must have transparency in the government to remove perceptions of corruption. Security must be maintained or people will not feel safe and will leave the country as so many others have done in recent times. Water and electrical systems need to be repaired and brought up to required capacity. Kirdar in his book, *Saving Iraq* suggests that oil profits be used to diversify the economy and to invest in the infrastructure. This would not only fix the current problem;

<sup>57</sup>. Ibid., 619.

<sup>58</sup>. Nemir Kirdar, *Saving Iraq* (Great Britain: Weidenfeld and Nicholson, 2009).

investors would be encouraged to develop a financial services community that would help reconstruct the banking system.<sup>59</sup> Though this seems like a quick and easy solution to fund reconstruction, it is actually a complex situation managing how to achieve objectives of competing actors with diverse agendas regarding resource allocation.

When Vietnam instituted economic reform in 1986, eleven years after the war ended, it created investment opportunities in which people were required to travel to the area to conduct business. It also created sources of funding to build an infrastructure in which the visitors could travel around the country. At first, the government did not have the expertise to plan for tourism development but eventually received help from foreign investors and numerous international organizations, such as Japanese and French bilateral cooperatives. For example, the city of Toulouse and the Île-de-France Region conducted joint projects with the Hanoi government to identify and preserve architecture and specific neighborhoods.<sup>60</sup> Dubrovnik relied on mostly local institutions to create plans for restoring their economy and cultural infrastructure to boost tourism. As such, Sultan Barakat argues convincingly that “postwar reconstruction is a set of interconnecting social, cultural, political and economic components which is located at the local, provincial, national and international levels.”<sup>61</sup>

Iraq is relying on foreign investment and local institutions as well. For example, the United Arab Emirates is financing a \$50M project to rebuild the destroyed Al Nuri mosque complex in Mosul. Saudi Arabia has

a project to build one of the world’s largest stadiums in Iraq, with the design based on Babylon.<sup>62</sup> The United Kingdom, through a four-year government funded University College London project, is “working to create greater local intellectual ownership of cultural heritage through support to Iraqi universities and researchers.”<sup>63</sup> These efforts can create hope and jobs for Iraq’s heritage sector as well as act as a bridge between Iraq and its neighbors.<sup>64</sup> UNESCO launched the “Response Plan for the Safeguarding of Cultural Heritage in Liberated Areas of Iraq” in 2017 and is providing “training, monitoring, and documentation of cultural heritage sites, and emergency activities at sites at risk.”<sup>65</sup> Networks of local NGOs are also contributing to restore cultural heritage sites in preparation for future tourism. Obviously, culture and history can bring people together at both the local (country/regional) level and the international level. Local NGO’s may also help to resolve some of the ethnic/religious division in Iraq by focusing on shared history within the community. Promoting dialogue within Iraq’s diverse communities may help people reconnect with traditions of acceptance that had been in place for hundreds of years. A reconstructive process that starts with the local population to focus on what unites them rather than separates them can lead to a successful reconstructive process.<sup>66</sup> By helping each other rebuild, it is less likely that they will destroy something to which they contributed. Some of the cultural sites in Iraq are starting to attract domestic tourists, but security conditions are a major impediment in the entry of foreigners inside the country.<sup>67</sup> Though terrorism also

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<sup>59</sup> Ibid., 186

<sup>60</sup> Musil, “Drafting and Implementing Urban Heritage Preservation Policies,” 40.

<sup>61</sup> Sultan Barakat, “Postwar Reconstruction and the Recovery of Cultural Heritage: Critical Lessons from the Last Fifteen Years, Cultural Heritage in Postwar Recovery,” (papers presented at the ICCROM FORUM, October 2005).

<sup>62</sup> Mehiyar Kathem, “Heritage Peacebuilding in Iraq,” *openDemocracy*: North Africa, West Asia, May 18, 2018, <https://www.opendemocracy.net/en/north-africa-west-asia/heritage-peacebuilding-in-iraq/>.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> World Heritage Centre, “Special Issue on Iraq.”

<sup>66</sup> Barakat, “Postwar Reconstruction and the Recovery of Cultural Heritage,” 36-37.

<sup>67</sup> Al-Saadi Nawar, “Insights into the Main Difficulties of Achieving Sustainable Development of Tourism in Iraq,” *Annals of the University of Oradea*, Geography Series / Analele Universitatii Din Oradea, Seria Geografie 24, no. 1 (2014): 32-43, <http://search.ebscohost.com.aufric.idm.oclc.org/login.aspx?direct=true&db=aph&AN=97312463&site=ehost-live&scope=site>.

created a negative image of Iraq as a country of “wars, killing, destruction, and terrorism,” this impression will last until the government can provide workable and sustainable solutions to provide security for its own population.<sup>68</sup>

If all of these improvements come to fruition, then tourism in Iraq could be re-born. With all of the archeological, historical, and religious sites in the country, tourism could provide a big boost to the economy. Kirdar, in his book *Saving Iraq*, proposes that at first, the tourist industry should begin with religious sites, for example, the holy Islamic cities of Najaf, Karbala, and Samarra.<sup>69</sup> Mosul and Baghdad also have religious sites important to other religions. Further, there are other significant historical sites that the tourism industry could focus on for the long term, such as Uruk, Ur, Hatra, and Najaf. However, if the once magnificent city of Baghdad could be revitalized and modernized to make the best planned use of its natural features and built environment, tourists would flock to its world class museums, libraries, historical sites, hotels and restaurants, some of which would need be rebuilt. Tourism can further benefit Iraq by

creating cultural awareness of all of the diverse local populations.

Money is available to fix most of the problems that require money, but it will take very strong leadership to make Iraq more livable and peaceful. Since 1968, the Iraqi people have been oppressed by a brutal dictator, and devastated by war, sanctions, corruption, occupation, violent protests and terrorism. If Iraq has the right leadership to contain violence, provide security, and improve the infrastructure by revamping the economic system, people will likely stay and become part of the efforts to re-build the country to make it a place in which they choose to live. Restoring culture property has a significant impact to societies because it can create a shared vision of recovery.<sup>70</sup> Re-establishing damaged or destroyed cultural property also revitalizes confidence, legitimacy, humanity, pride, meaning and purpose while bouncing back from war devastation. With such a rich history and diverse culture to share, Iraq could also become a world class tourist destination like Socialist Republic of Vietnam and the city of Dubrovnik, Croatia.

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Ms. Tepperman earned a Bachelor of Architecture Degree from the University of Maryland before beginning her career as an Architect for several DoD agencies and private design and architecture firms. When she resumed her career after a five year hiatus, she worked as a facility designer for architecture firms and then began employment as a construction contract administrator with the US Army Corps of Engineers. Subsequently, Ms. Tepperman became a Program/Portfolio Manager for the Military Housing Privatization Initiative (MHPI) program, and led efforts to execute \$1.5B of privatized housing projects on 7 military installations. Prior to becoming the Asset Accountability Flight Chief at Joint Base San Antonio (JBSA), Ms. Tepperman managed a \$140 M design and construction program at JBSA Randolph. She then became a Branch Chief for the MHPI Program where she planned, directed, developed and executed policies, programs, and procedures for the AF’s \$8.5B Privatized Housing Portfolio at the Air Force Civil Engineer Center (AFCEC). Currently, Ms. Tepperman is the Branch Chief for Strategic SRM Execution and leads a team that executes a \$1.5B Portfolio of ~100 design and construction projects that include runways, complex SCIF renovations, and high interest projects such as the repair of the US Air Force Academy Chapel. Ms. Tepperman has a Master’s degree in Military Operational Arts and Sciences and a Masters of Military Strategy.

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<sup>68</sup>. Ibid., 38.

<sup>69</sup>. Kirdar, *Saving Iraq*, 186

<sup>70</sup>. Barakat, “Postwar Reconstruction and the Recovery of Cultural Heritage,” 29.

# *Among Cultures: The Challenge of Communication 3<sup>rd</sup> Edition*

by Bradford J. Hall, Patricia O. Covarrubias, and Kristin A. Kirschbaum

*reviewed by Clayton Carver, BS Ira C. Eaker Center for Leadership Development*

Intercultural interactions are an inevitable reality in today's military negotiation environment. Educators must be ready to instruct our warrior diplomats on how to navigate the vast negotiation landscape. In support of this ideal is Bradford Hall's, *Among Cultures*, which has the potential to fill gaps within cross-cultural education across the Air Force. In this book, Hall provides a comprehensive look at the key components of culture, with a concentrated focus on communication, both verbal and nonverbal. His "ground up" approach to examining cultural differences, through communication, provides a comprehensive examination of this vital negotiation element.

Hall defines culture as a, "historically shared system of symbolic resources through which we make our world meaningful." From the military perspective, if this system provides meaning within negotiation, efforts should be made to explore culture within pre-negotiation planning. When analyzing Hall's book through the lens of the military environment, he mentions several key points of interest.

The first point Hall references is the three hazards of studying intercultural communication:

1. Oversimplification – sometimes we fail to recognize the subtleties of every culture. Culture is dynamic.

2. Overgeneralization – No one person is a perfect representation of a culture.
3. Exaggeration – There are differences between cultures, but there are also

similarities. At the negotiation table, we should seek out those similarities.

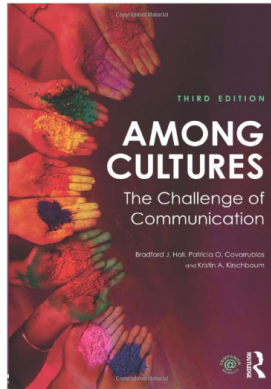
Another point is Hall's claim that culture produces three major manifestations: Worldviews - notions about how the world is; values - how the world should be; and norms - social rules for what people should and shouldn't do. By making individuals aware of

them, and how they may influence our choices in negotiation, these manifestations may allow the student to make sense of intercultural interactions.

Levels of identity is another key point that Hall references. In his book, he offers a way to frame the various different levels:

1. Personal – our understanding of ourselves as unique individuals.
2. Relational – student/teacher, boss/employee, parent/child, etc.
3. Communal – nationality, ethnicity, gender, religious, and political affiliations.

Hall mentions these levels of identity are also associated with different levels of power and influence. Again, these three levels of identity provide a framing reference for how negotiation partners might identify.





International Air Command and Staff Seminar 2019  
 Photographer Unknown  
 Japan Air Self Defense Force

Hall also explores Group Membership and finds it will naturally produce biases within any given group. This concept is something military organizations should pay particular attention to. Much like the psychological effect specialization can have on an Airman, group affiliation, within the bigger Air Force, might blind the negotiator to the overall strategic picture.

The last point that Hall discusses is stereotyping, ethnocentrism, and prejudice. Although we all naturally categorize and attempt to frame the world around us, we must make sure our tendency to do so doesn't ultimately distort our reality of the situation. As Airmen we can be prone to ethnocentrism, especially as it relates to getting the mission done, which can lead to ignoring the needs of others in intercultural negotiations. This approach doesn't help in relationship building.

Overall, this book provides a large amount of reference material for those developing and teaching curriculum with cross-cultural connections. To its detriment, the book requires a substantial amount of time to review. Moreover, it has the potential to overwhelm

the reader with the multitude of concepts covered, but Hall does have a very unique way of conveying his thoughts through storytelling, which provides vivid examples of the concepts he teaches.

Perhaps more cultural education could be provided for students in the future or course offerings as the subject relates to negotiations. However, the Air Force should still continue to partner with organizations across the Department of Defense to avoid the reproduction of similar material, or materials that are conflicting in their messaging. Although this book is classified as a college textbook, the information found in *Among Cultures* could help improve one's understanding of culture and communication issues with the negotiation setting.

**Among Cultures: The Challenge  
 of Communication 3rd Ed.**

New York, NY. Routledge Publishing 2018  
 428 pages. \$55.37

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Clayton Carver is an Instructional Systems Developer at Maxwell AFB, AL with 3+ years of experience in the field. He has helped develop multiple CCAF approved courses supporting over 70,000 students annually for the NCO and SNCO resident PME programs. Clayton has also led the SNCO PME program team in the operations and maintenance of 23 senior leader distance learning course modules and summative testing process, serving 16,000 enrollees annually.

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# *Exactly What to Say: The Magic Words for Influence and Impact*

by Phil M. Jones

*reviewed by SSgt George Skon, Knowledge Management Center*

The power of words, for me, began with Robert Cialdini’s body of work on influence and pre-suasion, and has continued with this book. My journey with words, for influence, started when I desperately needed some small coins while visiting the small city of Trier in Germany. I was looking for 50 cents, not much, but I had no cash and desperately needed the change. As I wandered around trying to work up the courage to ask someone for a small favor, a quote from a friend about Cialdini’s work echoed through my mind, “If you give someone an identity, they will fulfill it.”

Then, a kind-looking couple walked past and I made my approach. “Hey there, I’m so sorry to bother you, but you looked like kind people [magic phrase] and I’m in a bit of a situation.” As I explained my problem to them, they began to reach into their purses to help me out. Fifty-cents later, I was convinced of the power of making small changes to the words I use.

When I stumbled on *Exactly What to Say: The Magic Words of Influence*, by Phil Jones, I was ecstatic; this was it, my guidebook to small, but effective word swaps. In practice, it turned out to be more nuanced than I first assumed. Jones lists about 23 different “magic words”— which are more akin to phrases and will be referred to as such—to deal with tough situations I run into daily. He structured

the book with care to ensure the phrases stood out and added little extraneous detail. Each magic phrase is followed by a concise background, more context, and several examples. I was able to confidently begin using the first magic phrase as soon as I had finished the first chapter. This book can be finished in an afternoon, but I took several weeks, using it as a reference guide while practicing.

Before I mention my impression of his work, I’ll start by asking the reader for a favor; can you try one of the tactics I’m writing about within the next 2 hours?

I’m not sure if it’s for you, but I think giving one of these a shot may prove their worth. The one word I would describe this body of phrases with is subtle. The two sentences above are obvious examples of subtlety I’ve seen used in conversation. Unfortunately, without this book as your guide, it’s hard to perceive these subtleties in daily life. Some of Jones’ examples, such as using the word “enough” more often, or saying “don’t worry,” are part of my vernacular already. However, other examples like “Just one more thing…” or “Would you be open-minded to…”, were foreign to me.

I finished the book with several impressions. The most important of which is, “Don’t follow these suggestions blindly.” After using each phrase, I worked to take





notes of the reactions to ensure I wasn't falling prey to my confirmation bias. For example, I used one of the magic phrases with such poor results I plan to never utter those words again. The conversation went something along the lines of, "So George, what are your recommendations?", to which I responded with: "Well, there are two types of people in this world (magic phrase), those who would choose option one and those who would choose option three." As you may have guessed, this withered quickly. Taking this interaction as an example, I believe once these phrases have made their way into the cultural lexicon, they lose their efficacy.

My second impression was, "Power dynamics may be key, but they can be negated occasionally by using these phrases." One of the most impactful examples of this was when I had to ask something that typically wouldn't be approved from my supervisor. I decided to use a safe magic phrase: "Could you do me a small favor (magic phrase) and allow my team to attend this event?" It was so effective, I often find myself using this method more than anything else in the toolkit.

The last impression I took from Phil's work was, "These phrases are dangerous in two ways;" the first is their power—I can't deny the results I gained from using some of the forcing functions, such as the word swaps. Just changing, "Do you need our team to assist with anything else?" to "What else can our team assist with?" increased results by an anecdotal, but noticeable, amount. The frightening aspect of word swapping was how often I see advertisers use this tactic. I remember seeing a sign that said, "Which new widget do you want?", instead of the real question: "Do you want a new widget?" The second danger I noticed is the use of the phrases can backfire if you haven't tested them in several settings. It goes without saying home and work environments are different, but these phrases emphasized that bifurcation. The phrases I had success with at work rarely carried over as well to my personal life. For example, try asking your significant other or friend a question that starts with "You have two options."

Allow me to recommend several magic phrases you could interweave into your next conversation. My personal favorite is, "Could you do me a small favor?" My close seconds are, "Just out of curiosity...", which I use innocuously to ask about the status of a project, and "What happens next?", which I use near the end of a meeting. I enjoy leaving meetings with clear action items, and this is a great way to ask for discussion without seeming to push for action. My last recommendation is the phrase, "Would you be open-minded...", I use this to get people to come into meetings or ideas with a somewhat less combative attitude. I have seen it successfully used to turn a definitive answer into a possibility.

Overall, this review is just a glimpse of some of the highlights, and lowlights, of my personal use with these magic words, which is just a small sampling of the full list. This book is readable in an afternoon, but I recommend keeping it on hand as a quick reference before a meeting. It's a quick, yet worthwhile, collection of potentially game-changing words and phrases. In conclusion, my only minor complaint is that some of the phrases were difficult to get comfortable with, or possibly outdated, but that was a small price to pay for the resounding results from the words that worked. As a final note, and magic phrase, before you make up your mind about this book, pick it up and give it a try.

**Exactly What to Say: The Magic Words for Influence and Impact**

Vancouver, Canada. Box of Tricks Publishing 2018  
148 pages. \$13.89

SSgt George James Skon works as the Non-Commissioned Officer in Charge (NCOIC) for the Knowledge Management Center in the 747th Communications Squadron, Hickam AFB, Hawaii.

# *Turn Enemies into Allies: The Art of Peace in the Workplace (Conflict Resolution for Leaders, Managers, and Anyone Stuck in the Middle)*

by Judy Ringer

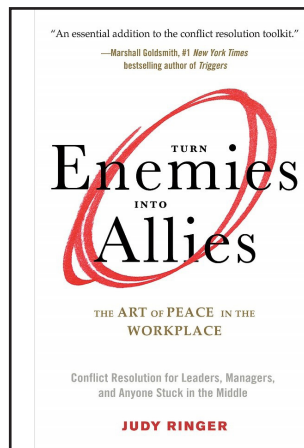
*reviewed by Jason W. Womack, MEd, MA, Ira C. Eaker Center for Leadership Development*

When two or more people work together, there is always an opportunity to build something bigger and better. At work, it might be called collaboration, but it often happens best when different people come together to work on an agreed-upon goal. And, when it works, teams can achieve their outcomes and overcome problems. However, there is always the chance people will miscommunicate and misunderstand each other.

On the other side of cooperation is conflict. In "*Turn Enemies into Allies*" you will learn strategies to be more effective, and thereby be more productive at work and even in life.

Along with experiences and sample practice scripts, the book is filled with checklists one can utilize at all stages of a conversation, negotiation, or conflict. As the reader progresses along, it is helpful to keep a notebook on hand to capture the tips one would personally use, as well as those that they think could assist others they work, or live, with.

The author organizes her methodology into four phases—each section providing managers with tools they can use to help



people who work together, do so more collaboratively. In her book, Ringer likens conflict resolution to the martial art of Aikido. "The word aikido is often translated as 'the way of blending or harmonizing with energy,'" where each phase of the process is specifically designed to help the reader realize that they are the most important person in the process—not that they can control the outcome, but that they are completely responsible for how they respond to each situation.

Ringer starts all of her suggestions by putting the reader squarely at the center of the mat. Her analogies compare negotiation and conflict management to the art of Aikido; specifically, that it is important to practice, to focus on the art of communication, and to maximize each opportunity presented.

As long-time martial artist and seminar facilitator, the author turns all she has learned through her professional coaching practice into both a checklist for negotiation, as well as a manifesto for peace in the workplace. Through her experience and personal stories, she provides specific tactics one can use to engage in and move through difficult conversations. Of significance is her deliberate repetition of the basics; over and over again, we are reminded to

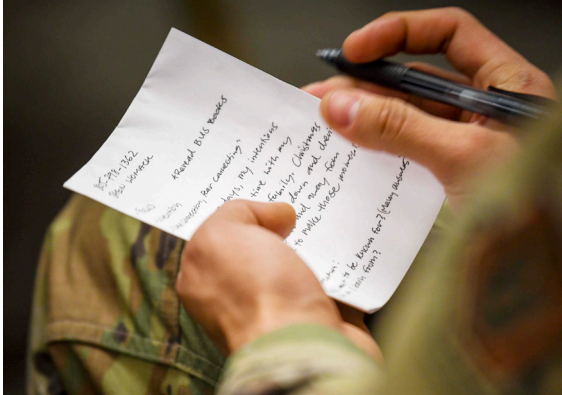


process of clearing up misunderstandings and working with your “enemies”. Phase 1: bow in; Phase 2: enter and blend; Phase 3: redirect; and Phase 4: bow out. During stages 1, 2, and 4, it is really about you and your mindset; focus on how you address the situation—and the person—that you find conflicting, so that you can put yourself in a centered state of calm. In the third stage, the author guides you to maintain and build that awareness as you work through a conversation with someone else. Of significant note, the author suggests that if two people do have a conflict, that they begin the process by each meeting individually with a trained coach before coming together to work on their differences.

To get the most value from this book, one should bring forward the intention to work better with the individual(s) they are having a challenge working with. Read, highlight, and practice the techniques offered in this text by yourself, before attempting to use them with others. Whether you do any of the techniques in concert with someone else, or you just imagine doing them, I believe the author would be proud of the effort you put forward. Overall, this text is more than just a how-to book; it is a what-if book that you can actually do. Imagine if you gained a few skills that made it easier to work collaboratively and to manage the conflicts of ideas with those different people you work and live with. You will wind up saving time, and working more productively, with Ringer as your coach and your guide.

**Turn Enemies into Allies: The Art of Peace in the Workplace**

Newburyport, MA. Career Press Publisher 2019  
224 pages. \$16.95



Leadership Techniques to Team Travis  
Photo by Tech. Sgt. David W. Carbajal  
Travis Air Force Base, CA, United States

maximize our presence and clarify our purpose in communication.

Several of the case studies included in the text provide the reader with unique examples of real-life situations. Leaders at all levels of the organization should see themselves in some aspect of the scenarios she describes. There are distinct stages to the

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