

# Chapter 8

## Problem-Solving Mediation in Israel

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*Israel is a vibrant society where people tend to argue a lot, but desire to mend things just as much.*

(Bekenstein and Syrquin 2007)

### Introduction

The practice of Alternative Dispute Resolution (ADR),<sup>1</sup> particularly problem-solving mediation in Israel started during the 1990s. A comprehensive study of the process introducing mediation, and the dynamics of its absorption into the Israeli conflict-ridden society, seems crucial to future coping with conflicts there.<sup>2</sup> It might foster endorsement of mediation and ADR as a philosophy of life based upon a

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<sup>1</sup>This chapter spotlights the introduction and practice of modern mediation in Israel. Other forms of ADR, particularly arbitration exist here as well. Arbitration was well known and widely practiced long before the introduction of mediation, and, by the beginning of 2012, parties still seem to trust and use it much more than mediation and other ADR processes.

<sup>2</sup>Unfortunately a comprehensive study of Israeli mediation has not been done and research on mediation in Israel is still scarce. I am a mediator and researcher and have worked in Israel for many years. Hence, the sources of much of the documentation are conversations with knowledgeable persons, conferences, workshops and seminars, as well as my own field experience and observations. This chapter might contribute towards further research.

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broad social vision, as was envisioned by those who introduced mediation.<sup>3</sup> Lessons from the Israeli experience are relevant for many nations worldwide.

Advocates of ADR approaches and tools portrayed them as educational means towards a way of life based upon mutual respect, openness and tolerance. Nevertheless, numerous controversies and clashes have developed in the course of introducing ADR. In addition to brief historical and comparative overviews, this chapter will focus on Israeli ADR-related processes and initiatives, particularly practices and debates linked to courts' referred mediation.<sup>4</sup>

Tens of thousands of Israelis have studied mediation and know about related skills and "language". Only several hundred actually practice mediation, and just few earn a living at it. Since the 1990s, several hundreds of thousands of young students also have been exposed to peer mediation concepts and practice in schools. In this chapter I try to assess the effects on young and mature students, their environment and Israeli society in general.<sup>5</sup>

## Israel and the Continuum of Mediation: The Background

Israel is a developed country that shares many cultural features with Western countries in Europe and North America and possesses features of a traditional society. It also is extremely small, yet well known internationally due both to its antique history and its turbulent current times. Since declaring independence from the British Colonial Protectorate in 1948 and the first Israeli – Arab war that followed,<sup>6</sup> Israel has absorbed millions of Jewish immigrants including Holocaust

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<sup>3</sup>Those who introduced mediation in Israel were: previous Supreme Court president, the Hon. Aaron Barak; Dr. Peretz Segal, the head of the Department of Legal Counsel and Legislation in the Ministry of Justice; psychologist Susan Zaidel; professor Mordechai Mironi; attorney Yoram Elroi and a few more prominent individuals (Israeli Ministry of Justice 2012).

<sup>4</sup>Evaluations included in this chapter rely on official publications and partial reports as well as interviews, discussions and observations conducted by my colleagues and students and myself over the past two decades.

<sup>5</sup>For example, did mediation skills and language have an impact on the 2011 Israeli social justice protest? The 2011 Israeli social justice protests, known also as "the tents protest" and "the middle class protest" are a series of demonstrations in [Israel](#) beginning in July 2011 involving hundreds of thousands of protesters from a variety of [socio-economic](#) and religious backgrounds. Demonstrations addressed the continuing rise in the [cost of living](#) (particularly housing) and the deterioration of public services and also issues relating to the social order and power structure in Israel. A common rallying cry at the demonstrations was the chant "The people demand social justice!" Prominent communication, collaboration and dialog skills; eminent order; and the use of [social networks](#) characterize this social movement. Following the large-scale protest, the government responded with attempts to negotiate, and a line of measures to meet expressed demands and underling needs.

<sup>6</sup>For some perspective on the Israel-Palestinian conflict, see Vraneski 2003.

survivors and refugees from Arab countries.<sup>7</sup> By 2011, Israel's permanent population was about 7.8 million citizens.<sup>8</sup> About 80 % of the citizens are Jewish, 16 % are Muslims, and 4 % are Christians. These numbers don't include a temporary population of about 200,000 work immigrants.

The surface of Israel is about 20,000 km<sup>2</sup> and so Israel is one of the smaller and most densely populated countries worldwide. It is also connected to the Palestinian territories – the West Bank and the Gaza Strip, which span 7,000 km<sup>2</sup>, have 4.2 million inhabitants, and among the highest birth rates worldwide (Government of Israel. The Central Bureau of Statistics 2012; UNSD 2012; United States CIA 2012). Israel has a very diverse society, and is tremendously conflict-ridden on several levels. It is indeed an excellent laboratory for the study of conflicts and conflict resolution.

The practice of mediation in Israel is distinctive due to the extensive interest and involvement, for a number of years, of a central agency – the Ministry of Justice (MOJ) – in the introduction and implementation of this tool. Since the 1990s, preeminent individuals in the MOJ and in the judicial system led a difficult initiative to introduce non-adversarial conflict resolution approaches and tools. They hoped for positive influences on local communities. Notably, former Supreme Court President, Aharon Barak, viewed the introduction of mediation as an opportunity to transform Israel from an adversarial, zero-sum oriented civic culture into a more consensus, “win-win” guided society. In 1997, MOJ created the National Center for Mediation and Conflict Resolution (NCMCR) (<http://www.justice.gov.il/MOJEng/The+National+Center+for+Mediation+and+Conflict+Resolution/>). Although it was located in the Ministry of Justice, NCMCR addressed a range of sectors and issues, including the endorsement of community mediation and peer mediation programs. The center encouraged people and organizations to view mediation as a way of leading a common life together based upon agreement.

While in the US and other western countries mediation practices originally occurred outside the legal systems and were only later incorporated into these, the Israeli mediation started “top down”<sup>9</sup> following legislative initiatives. Israel is characterized by extremely centralized governmental systems. Therefore, this kind of development was possible there, unlike in typical decentralized democracies.

The official start of mediation in Israel coincided with two processes of international significance. The first was the absorption of almost one million Jewish

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<sup>7</sup>Some 80 % of Israel's Jewish population are immigrants or sons/daughters of immigrants. About half originated in Africa (mostly North Africa); Asia (mostly the western parts of the continent); and about half in Europe and America (mostly Eastern and Central Europe). (<http://www.cbs.gov.il>).

<sup>8</sup>This compares to 1.2 million in 1949, 3 million in 1970, and 4.8 million in 1990. (<http://www.cbs.gov.il>).

<sup>9</sup>Some mediation processes were practiced in modern Israel for many years in planning and community settings, in some labor and business disputes, and, since the late 1980s, within the framework of the Israel Family Therapy Association (Vraneski 1994; Zaidel 2002; Sassoon–Buras 2000).

immigrants from Russia and other previously Soviet states to join Israel's five million citizens. This unexpected immigration was a catalyst for economic growth, environmental problems and social tension. Second, there was the start of the historic Israeli-Palestinian reconciliation process, accompanied by a local burst of renewed hope and optimism, and by much interest in conflict resolution processes.

An overwhelming number of new lawsuits plus awareness of alternative tools to address disputes and the vision of several prominent individuals allowed this exceptional movement to begin. Encouraging alternative dispute resolution programs is a major challenge for every enlightened society, even more so for Israeli society, which for ages has been involved in deep-rooted, intractable conflicts as well as many "regular" disputes such as workplace conflicts, neighbors' disputes, and family controversies.

Launching mediation in Israel induced hope and enthusiasm. Unfortunately, frustration soon emerged, and patterns that enabled a fast and massive introduction of mediation<sup>10</sup> turned into potential roots of failure. Bringing the communal, social, and mental readiness for mediation into the Israeli heterogeneous, zero-sum oriented society developed into an awkward and frustrating process. Additionally, mediation, particularly an interest-based style of this generic approach, has been "imported" into the Israeli society. Little has been done to apply methods to local cultures and needs, or to integrate them with local cultures, characteristics and traditions (Sassoon-Buras 2000). Creative, synergetic trends surrendered to the urge to obtain fast results. Once mediation training programs appeared, thousands studied mediation, but demand for mediation was still very low. Mediators had little opportunity to practice their new skills.

Due to limited training and procedural rigidity, many mediation processes failed to deliver expected outcomes. Potential clients didn't trust mediation suppliers or the process. The trust and reputation essential for adoption of conflict resolution concepts and tools were missing. Additionally, instead of collaborating to build a new profession, providers of mediation services became locked in competition for a limited market, and that was counterproductive, or even destructive.

By the mid-2000s, more than a decade after its formal introduction in legislation, the number of actual mediated cases was very small in spite of the efforts of its promoters, the mediation centers, and the large numbers of trained mediators. The number of claims asking for Israeli court decisions was continually rising.<sup>11</sup>

Since the early 2000s, mediation and other conflict mitigation and resolution methods have been addressed in more inclusive ways when compared to the 1990s. Several institutes of higher education have added conflict resolution to their programs and related research. For example, the Interdisciplinary Program

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<sup>10</sup>For example, mediation could be easily introduced nationwide by an existing legal amendment, the centralized governmental system and the relatively small size of the country.

<sup>11</sup>The number is about 50 % higher than 14 years beforehand, and more than 10 times higher than in 1950 (Vacknin 1991, Israeli Judicial Authority 2007).

in Conflict Management and Negotiation at Bar-Ilan University, launched in 2001, focuses on graduate level (M.A. and Ph.D.) studies.<sup>12</sup> Moreover, the Evans Program at Tel Aviv University initiated its International MA Program in Conflict Resolution and Mediation in 2009 (Ferber 2011). Besides, most Israeli universities and colleges now include courses related to dispute resolution, in addition to the few offered previously (e.g. Planning and Environmental Dispute Resolution taught by the author since 1995 at the Architecture and Town Planning faculty at the Technion in Haifa). Gradually, *realistic perceptions and expectations about the promises and premises of mediation, with related professional responsibility and ethics, are penetrating and stabilizing this essential field.*

Dialogue initiatives and other programs aimed at conflicts have been conducted in Israel since the 1950s, due probably to the features of Israeli geo-political situation (Givat 2012; Maoz 2000; Suleiman 2004). These programs have dealt with intercultural, interreligious and interethnic cleavages. They have been attended by students of different ages through formal and non-formal studies and meetings. Although very important on the Israeli mediation continuum, I will not emphasize them here since they are not yet associated with the current Israeli Mediation Movement, the focus of this chapter.

Several cross-border mediation initiatives, including joint training and practice, also have occurred in the region – e.g., IPCRI, founded in Jerusalem in 1988, a joint Israeli-Palestinian public policy think-tank devoted to developing practical solutions for the Israeli-Palestinian conflict (IPCRI - Israel Palestine Center for Research and Information 2012). Although these could not transform the geo-political situation, they helped construct foundations for positive long-lasting social infrastructures, inter alia by general dispute resolution and environmental dispute resolution courses. These practices overlap with and strengthen the current Israeli Mediation Movement.

In my view, the endorsement of research and development programs to integrate ADR studies and practices and peace studies and initiatives in our region should be a high priority. These would serve to promote a culture of peace in the region, and provide precious related lessons for other nations worldwide.

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<sup>12</sup>Dissertations there include titles such as: *The Tradition of Aaron, Pursuer of Peace between Man and Man as a Rabbinic Model of Reconciliation* (Daniel Roth under the supervision of Professor Moshe Rosman 2009). *The Accomodational Society: The Civil Society Organizations – Reconciliation Attempts of the Religious-Secular Conflict* (Bat-Chen Weinheber under the supervision of Dr. Asher Cohen 2006) and *Perspectives on the Use of Power by Mediators and its Influence on Mediation Outcomes: A Legal, Philosophical and Psychological Analysis* (Omer Shapira under the guidance of Dr. Michal Alberstein 2003) (Program in Conflict Management and Negotiation at Bar-Ilan University 2012).

## Holy Land = Conflict Land? An Historical Overview

Israel is consistently featured in the conflict analysis and resolution literature (e.g., Kriesberg 2002; Bar-Tal 1998). Interconnected territorial, ethnic, cultural and political issues certainly are involved in conflict dynamics there. However, Israel also is a relevant case study regarding “regular” conflicts. This chapter focuses on the “regular conflicts” within the society.

In the modern state of Israel, police and the courts sustain the functions of maintaining law and order in the community. The mediation roles played previously by religious leaders and other respected members of the community have decreased in importance, although they are still influential (Zaidel 2002; Tarabeih et al. 2009).

Mediation is not a new concept for Israeli people in both Jewish and Arab cultures. Traditionally these cultures placed a high value on managing conflict and on agreement between parties as the basis for resolving disputes. Both had their own “alternative” methods of dispute resolution to maintain peace and harmony within the community<sup>13</sup> (Kasdan 1990; Abu-Nimer 1996; Melamed 2002).

Mediation is actually the preferred method of conflict resolution used by Jewish courts in a process called *psharah* (compromised settlement). The Torah mandates “to do that which is right and good in the sight of the Lord.” The Talmud states that only *pshara* constitutes the ideal justice of judgment of peace and judgment of righteousness. It expressed the unique nature of mediation to provide an integrated justice balancing the values of fairness, peacefulness and compassion. It seems the first and foremost mediator was Aharon HaCohen, the brother of Moses. The Talmud extols Aharon as one who “loved peace and pursued peace and made peace between man and man . . . ” (Sanhedrin 6:72). For many centuries among Jews, the local rabbi was the mediator and often acted as an arbitrator if “reason” did not prevail (Kasdan 1990).

Among Arabs, an elaborate peace-making method called “sulcha” was used for all kinds of conflict. In Islamic law, sulh is a form of contract (’akd), legally binding on both individual and community levels. Similar to the private sulh between two believers, the purpose of public sulh is to suspend fighting between two parties and establish peace, called *muwada’a* (peace or gentle relationship), for a specific period of time (Khadduri 1997; Al-Krenawi and Graham 2003). Notably, the extensive Israeli Mediation Portal <http://www.sulcha.co.il/>, launched in 2000, is named “Sulcha”. It publishes, for instance, news and articles about mediation and lists of mediators. The founder and chief editor is Dr. David Silvera – mediator, journalist and former head of the Israeli Mediator’s Organization.

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<sup>13</sup>This, as other traditional dispute resolution mechanisms, may include negative impacts besides the positive ones (e.g., with regard to discrimination between males and females). This is particularly true when transferring conservative tools into modern societies without proper adaptation.

## Modern Mediation in Israel

### *From Rule-Making to Actual Mediation*

In the late 1980s, the capacity and efficiency of the Israeli courts was challenged by an unexpectedly high number of civil disputes looking for resolution.<sup>14</sup> The initial introduction of modern mediation in 1992 was a result of experience gathered throughout the world in court-related implementation of ADR methods (Gaddot 1998, 1999). This experience, according to Gaddot, indicated that among various methods being applied, mediation was the most effective for quality of solutions and efficiency of procedure in terms of cost and time.

Mediation was formally institutionalized in Israel in February 1992, when the Knesset, Israel's parliament, passed amendment 15 to the 1984 Courts Act (Consolidated Version) authorizing courts to refer civil disputes to mediation or arbitration. Before then, there was only limited experience with arbitration and conciliation, mostly in organized labor settings. This amendment, Sub-section 79C of the Courts Act, conferred legal status on mediation defining it as "a procedure in which the mediator consults with the parties involved in order to bring them to an agreement to resolve the conflict without having the power to decide in the matter." (Israeli Judicial Authority 2012). In 1996, attorneys and judges who favored conventional court-ruled decisions over mediation advocated annulment of Sub-section 79C because it was being virtually unused. In response, the Manager of the Courts, the Hon. Pres. Revivo nominated Tel-Aviv municipal courts judge Sarah Gaddot to head an Advisory Committee for Mediation in Courts (the "Gaddot Committee") to generate guidelines for court-connected programs (Gaddot 1998, 1999).

At first, mediation in the Israeli court system was a voluntary option for judges to suggest to litigants in any civil lawsuit. Soon thereafter, regulations were enacted that determined the scope of confidentiality, the training requirements for mediators, and mediator duties and responsibilities. However, more than three years after mediation had been put in place, judges were not making use of the new regulations although these had been designated to assist their overburdened courts. For one thing, most judges did not trust mediation. Their education contrasted with mediation's basic concepts. Moreover, it took several years to provide instructions aimed at integrating mediation concepts with the more conventional dispute resolution system. In addition, trained mediators to whom courts could refer cases were almost nonexistent in Israel in these early years. (Zaidel 2002; Vraneski 2006b).

In recent years the field of mediation and conflict resolution has begun to gain momentum within the courts. A much more impressive jump has been seen in the number of practitioners offering their services in the field. I will expand on this issue later in this chapter.

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<sup>14</sup>In 1990, 122 out of 1,000 Israeli citizens were involved in civil lawsuits as compared to about 17 per 1,000 in 1950 (Vacknin 1991).

## *Parties and Processes*

The aim of the initial introduction of mediation into Israel was to release the pressure that impacted negatively the activity of the courts system. Therefore, since the very beginning Israeli modern mediation focused mostly on issues related to court-refereed mediation.<sup>15</sup> Yet, as stated before, leaders in the judicial system viewed bringing mediation into Israeli society through a values-driven, transformative prism, and as an opportunity for deliberate, immense improvement.

As a result of the influence of Aharon Barak, the Supreme Court President, the Ministry of Justice (MOJ) created in February 1998, the National Center for Mediation and Conflict Resolution (NCMCR), an internal sub-division chaired by Dr. Peretz Segal, the head of the Department of Legal Counsel and Legislation in the MOJ, perhaps the most influential and enthusiast promoter of ADR. NCMCR was designated to regulate matters concerning mediation and conflict resolution and to promote the ADR practice, both in the court system and within the community. Notably, although located in the Ministry of Justice, NCMCR addressed an extensive number of sectors and issues. The Center encouraged people and organizations to view mediation as a way of life, a way of leading a common life together based upon agreement.

NCMCR had several key objectives:

*Heighten awareness* of the concept of mediation and alternative dispute resolution, and the advantages of their use within a community framework, the business sector, academia and the general public.

*Development of professional knowledge* and appropriate tools for resolving different types of disputes such as civil and business disputes, workplace disputes, public disputes, disputes within the family and the community, and disputes in the criminal field (Restorative Justice).

*Promotion of initiatives* and provision of professional assistance to frameworks developing mediation and ADR services both in the public and private sectors.

*Initiation of pilot programs* to imbue the use of mediation and ADR in government offices, district attorney departments, and amongst litigants and lawyers.

*Development of professional standards* and rules of ethics for those involved in the field of mediation and ADR.

*Development of mediation training programs* in various fields, including practical experience programs in mediation (practicum), in cooperation with the Court's administration and mediation trainers.

It is easy to see NCMCR fingerprints on most Israeli ADR initiatives. NCMCR has written guidelines and directives on how to establish and operate municipal

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<sup>15</sup>Although the initiative to introduce mediation into Israeli court system is definitely credited to the Ministry of Justice, many in the legal community were against it and still prefer the traditional processes. In the Bar leaders' view, mediation of court cases should only be conducted by mediators who are lawyers.



mediation centers. With NCMCR's professional guidance, community mediation centers have been developing throughout the country, using trained volunteers to mediate disputes. In 2003, following NCMCR's initiative, a business mediation treaty was signed by major relevant stakeholders in Israel. NCMCR also collaborated with the Ministry of Environment and others to introduce environmental dispute resolution and with scholars in Israel and other countries to promote research and conflict resolution curricula. NCMCR initiated conferences, training programs, and research projects (<http://www.justice.gov.il/MOJeng/default.htm>).

In 1997, only 5 years after mediation received legal status, there were mediation courses, mediators, and mediation centers appearing gradually and then followed by a rapid increase in the number of mediators and private and community organizations providing mediation services. Similarly, there was expansion in the number of private organizations offering mediation training courses and advanced courses in specialized fields such as family mediation.

By 1998, the expectations of most individuals who attended mediation courses focused on making a living in this new and promising profession. Less than 10 years later, the number of "trained mediators" was assessed at about 28,000 and roughly 6,500 of them were included in court rosters. Many began to attend mediation courses for general knowledge and personal development. The courses are recognized by employers and taxation authorities as "further education," are well structured, and include play-like simulations (Vraneski 2006b).

But demand for mediation among private and public entities and the general public was slow to rise. By 2000 only a handful of people earned a living as full-time mediators. It was common to earn more by conducting mediation courses and "producing" additional mediators than through mediation practice. More recently, many mediators claimed that they did work, but it was mostly on a voluntary basis and courts tend to refer well rewarded cases to retired judges and a small number of lawyers.

Within the courts, case management pilot programs were developed in 1998, spearheaded by Edna Bekenstein, a Tel Aviv District Judge and Head of the Tel Aviv Courts (<http://www.justice.gov.il/MOJeng/default.htm>), with the support of Judge Dan Arbel, then Chief Administrator of the Courts. Case Management Departments (MANAT) also were established.

Yet, in 2003, about one decade after mediation had been formally introduced in Israel, parties seldom sought mediators to assist in solving their controversies unless told by courts to proceed in this manner. Moreover, the rate of refusal to mediate among court referrals was high. There were claims of superficial and even unjust agreements due to mediators' lack of substantive knowledge and/or limited experience.

As criticism mounted, the Minister of Justice, Joseph Lapid, nominated a Commission on Mediation in Courts, headed by Judge Michal Rubinstein. The commission was asked to investigate the feasibility of turning court-referred, voluntary mediation into a mandatory process, and to explore other means of promoting mediation in courts.

The commission studied mandatory mediation experience worldwide (particularly in northern California and Canada). Following the commission's recommendations, in 2007, Israeli Justice Minister Daniel Friedman gave the green light for an experimental mediation program, called MAHUT to address claims exceeding NIS 50,000 – about \$12,000 (Bekenstein and Syrquin 2007). It required all sides in civil cases to hold one free mediation session before a trial could begin so that they could decide if they wished to solve their dispute through mediation. Since September, 2008, MAHUT has been carried out in a few magistrate courts as a pilot program. MAHUT only employs exceptionally skilled mediators, is accompanied by built-in research and evaluation, and provides ongoing feedback and further training to the mediators. The MAHUT program started with less than 100 mediators; by mid-2011, another 30 joined this elite group. Notably, MAHUT mediators are chosen through a competitive process.

Development of this new, fragile enterprise has been hampered by disagreements within and between Institutes concerned with the promotion of mediation and disputes within the mediation community. In 2008, responding to criticism of some mediators' performance, the Ministry of Justice canceled the regulations regarding criteria for listing mediators on court rosters. In 2009, MOJ decided to close NCMCR – the National Center for Mediation and Conflict Resolution, despite harsh protests from the mediation community (Israeli Mediation Portal 2012). The closing of NCMCR coincided with the nomination of MOJ highly-ranked officials who did not support mediation.

NCMCR was providing guidance and coordination, which still seemed vital for the development of mediation in Israel. Yet these events sparked the start of a mature, serious and responsible Israeli Mediation Movement. Dozens of private “centers” and hundreds of individuals of varying professional backgrounds now offer their services as mediators. The Chamber of Israeli Mediators, the mediation division of the Israeli Bar Association, University departments, dozens of Community Mediation Centers countrywide, and many others are working harder than ever to back-up, promote and improve mediation in numerous ways and in many fields (Chamber of Israeli Mediators 2012; Israeli Mediation Portal 2012).

By 2012, most Israelis know much more about mediation, but in most matters the parties still do not try mediation until they have appealed to the Courts' rule. An exception is in the area of divorce, where people do seek out mediators as an alternative to court proceedings and often arrive in courts with divorce contracts agreed upon through mediation processes.

I now often meet students who have been familiar with mediation and its “language” since their childhood. Courts are no longer the main opportunity to get acquainted with mediation. People hear about it from their children, who are trained as young mediators in schools. The Ministry of Public Security has embraced mediation as part of its efforts to prevent violence. Activities of many community mediation centers now are sponsored by the Ministry of Social Affairs and Social Services, municipalities, national and local NGOs and more.

Several coalitions have been created to sustain dispute resolution programs. For example “Gishurim” aims to help solve disputes and increase dialogue and

understanding, and to instill values of multi-cultural mediation. Its facilities and programs are tailored to fit the needs of minority communities, including Arabs and new immigrants. <http://www.gishurim.org/>, <http://www.jicc.org.il/>. Entities collaborate formally and ad-hoc to conduct mediation and other ADR processes. New mediation practices are much more flexible, aware of cultural differences, and applied to the characteristics of cases and parties. These practices contrast with court-refereed mediation, which still dominates the Israeli arena.

## Critical Insights

The contemporary Mediation Movement presents some favorable as well as troubling features as it is being integrated into Israel's diverse and dynamic society. Should the problems that accompany this process, as portrayed above, be viewed as "infant's maladies" or as a "chronic incurable sickness"? Notably two interconnected issues feature these problems: (1) Destructive rivalry between prospective mediators, in particular between lawyers and non-lawyers and (2) Non-appropriate training processes.

- Rivalry between prospective mediators, particularly between lawyers and non-lawyers. The Israeli Bar currently has more than 30,000 members which boils down to one lawyer for every 200 people. By comparison, in the United States, long said to lead the world in litigation, there is one lawyer per approximately 360 capita. Israeli lawyers opposed mediation from the beginning, perhaps because many viewed it as a threat to their financial interests. Later they claimed that attorneys do not need mediation training or practice as preconditions for practicing mediation in court-referred cases.

After mediation was actually being endorsed by the courts, the Israel Bar Association (IBA) started running its own training courses. In the leaders' view, mediation of court cases should only be conducted by mediators who are lawyers. Many attorneys refused to take their cases to mediation unless the mediator was an attorney. Judges tend to prefer mediators who are attorneys, due to similar background and common language. On the other side, many non-attorney mediators claim that lawyer skills and experience differ from the skills needed to mediate. Since most rewarded mediation cases in Israel are still related to courts, this struggle persists. Yet we also witness much mutual respect and collaboration between individual mediators – lawyers and non lawyers alike.

- Training processes. For several years after mediation legislation was introduced in 1992, there were virtually no mediators in Israel, courts did not refer parties to mediation, mediation was not practiced and no curricula for studying it were created. Once the first mediation courses were launched in 1997 at the Israeli Center of Mediation (ICM) of the Neaman Institute for National Policy Research at the Technion, Harvard's Program on Negotiation (PON) mediation syllabus

was translated into Hebrew. The first trainers here had been previously trained in the 1980s in Harvard's PON. By 1998, about a dozen public and private organizations joined the new trend of teaching mediation. The 1980s PON model, became the Israeli mediation training "bible." Not much was done to update the curriculum, not even with the changes introduced in the PON syllabi themselves, for example, with regard to cultural competency. The need to translate and adopt training materials from English to Hebrew, matched with a small audience within Israel's small population and high competition among many actual and potential training providers, resulted in stagnation. Moreover, lawyers with limited mediation skills and experience kept leading most of the mediation processes. Adaptations of different models according to the background and wishes of the parties, as well as the context and the conflict's issues have scarcely been considered.

The way mediation was introduced implied a structural transformation of Israeli dispute resolution approaches and styles. Structural transformations are rare in all systems. Israel is customarily engaged in geo-political and development tensions and constraints rather than in deliberate structural transformation. However, by the late 2000s, as the Mediation Movement matured, further learning and accumulated experience changed practice. Well-trained mediators and mediation success stories are now finally building trust in ADR processes and changing related public attitudes (JPOST Editorial 2011).

A few interconnected factors are responsible for the tough adaptation of Modern Mediation to Israel. First, many in Israel's diverse society – including Jewish immigrants from Eastern Europe and from Moslem countries, Orthodox religious Jews, as well as Arab Israelis and Palestinians – have cultural and traditional ties within communal, non-individualistic backgrounds. Accordingly, the North-American contractual, interest-based mediation style introduced into this society through a top-down process does not make much sense to most of Israel's inhabitants.

Emergent or hybrid styles of mediation could better meet their needs. Scholars and practitioners tend to distinguish between contractual-mediation, which is practiced mainly in individualistic cultures where an impartial outsider is favored, and emergent-mediation, which prefers inside mediators, and is inclined to resolve conflicts in group settings, and/or by highly respected members of a relevant family, community or tribe (Kressel et al. 1989; Folberg and Taylor 1986; Jandt and Pedersen 1996; Shook 1985; Vraneski 1994, 2006b; Fritz 2008; Bercovich et al. 2009).

When comparing the state of mediation in Israel and in the United States, one should take heed of the fact that U.S. mediation developed organically, culminating in general federal laws after 70 years of experience, whereas mediation in Israel covered the distance between non-existence and significant institutionalization in roughly 10 years (Vraneski 2006b).

A basic criticism of the adopted Western conflict resolution techniques is that they are either too mechanistic or based on therapy-oriented formulas. Although

the selected Western techniques and skills are relevant and useful, they ought to be better adapted to indigenous realities (Irani 1999). For instance, cultural competency and sensitivity to variances is crucial for mediation in general and in non-western and heterogeneous communities in particular. Commonly having local/indigenous members as mediators or part of a mediation team might be an advantage. A colleague of mine, Arch. Dr. Mohamad Shibeli, serves in court referred mediation cases of land disputes in Israeli Arab villages. Due to his multifaceted knowledge and understanding of middle-eastern and western mediation dispute resolution approaches and tools; Israel land legislation and local Arab traditions; and about planning needs and constraints, he often mediates successfully and helps bring forth quick and creative resolutions to harsh disputes that were trapped in courts for ages and divided communities and even families.

Ironically, the introduction of classic contracted, problem-solving mediation in Israel coincides with the strengthening of more relationship-oriented and emergent-like mediation styles in the US and other individualistic societies. Notably, these developments create appropriate options for diverse needs, and may expand the mediation “market” itself.

My insights with regard to the pros and cons of the applicability of mediation to the Israeli communities partly rely on interaction with highly-ranked, mid-career Israeli graduate students who were in classes that I taught in the 1990s and 2000s. “How can I separate the problem from the parties, when the parties **are** the problem” was the typical response to “rules” my students were reading in *Getting to Yes*.<sup>16</sup> They simply didn’t buy into this kind of rule; their experience was contraindicative. When I invited a young mediator to simulate mediation in class, several students secretly informed me that they would not rely on such a young woman to deal with a real case. Age correlated in their view with experience, and they were sure a mediator needs life experience, not just process skills, to assist others in solving their problems. Notably, in Israel, retired judges mediate many court-referred cases, although their styles are often poles apart from most basic definitions of mediation. It seems that parties often look for patriarchal/matriarchal-style knowledgeable resolutions, and rely on these far more than on the outcomes of a facilitated collaboration with their combatants, the way contemporary mediation preaches.

Besides the early 1980s problem-solving mediation model used in the United States, other approaches to mediation and additional processes of dispute resolution have scarcely been considered within the Israeli practice, although advanced training includes mentioning the existence of more than one approach to address disputes. Among those to be considered are transformative mediation, which aims to better address future relationships and empower the parties (Bush and Folger 1994, 2005); narrative mediation, which seeks to de-construct the parties’

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<sup>16</sup>Fisher and William (1981) in their famous book *Getting to Yes* suggested several outstanding rules and a sequence of rational steps aimed at solving conflicts and creating sustainable agreements.

conflict-saturated stories and co-construct alternative stories (Monk and Winslade 2000); or applied integrations of patterns and futures from several mediation models, such as the interactive mediation model (Vraneski 2006a) Additionally, several conflict prevention/mitigation/resolution approaches, applied in conjunction with or instead of mediation, might better address particular arenas and/or kinds of disputes. For example, “Consensus Building” for public policy disputes (Susskind et al. 1999) or Dispute Resolution Boards (DRB) for construction project disputes <http://www.drb.org> (Hunt and Reich 2002).

Finally, some malfunctions of the initial attempts to introduce mediation to Israel are connected to mediators’ superficial training and to limited process and general experience. The initial standards set in Israel for court lists of mediators played a role in the induction of faulty mediation. In the rush to get things moving, these standards were rather minimalist: a 40-hour training course, a college degree in any field, and five years’ work experience of any kind for non-family civil disputes; or 60 hours of training, a law degree or a master’s degree in one of the helping professions, and five years’ work experience in the person’s specialized field as qualifications for the family court rosters. As options for internships or supervised practice were virtually non-existent, the initial standards didn’t require mediation experience.

As a result of the limited requirements, the situation moved quickly from one of not having mediators at all to having up to 10,000 so-called qualified mediators. Most had no practical experience in mediating beyond the simulations provided in their training courses. Many new trainers have little more knowledge of mediation than the course materials that were disseminated, and very little practical experience. It is not surprising that in the first period the average outcomes of court-referred cases were not successful. Yet, not only the related cases and parties were damaged, but also the fragile reputation of the newly introduced dispute resolution tool.

Fortunately, since the mid-2000s, mediation and other conflict mitigation and resolution methods have been addressed in Israel in more comprehensive and serious ways, particularly when compared to the early days. Several institutes of higher education have included conflict resolution within their studies, at graduate and undergraduate levels, as diploma studies and as further education for practicing mediators. Related research and curriculum building are underway.

Gradually, realistic perceptions and expectations with regard to the promises and premises of mediation and with related professional responsibility and ethics penetrate and stabilize this most essential field. However, many resources and much creativity have yet to be invested to build a mediation practice in Israel that is both appropriate and reliable.

## Conclusion

Tens of thousands of Israeli citizens now possess mediators’ diplomas. Only several dozen of these work as full-time mediators. Hundreds work as part-time mediators, combining their professional careers (such as psychologists, social

workers, attorneys, and engineers) and dispute resolution. Hundreds practice their mediation skills voluntarily – in community mediation centers and other NGOs. Yet, the study of conflict resolution has had an impact on the lives of tens of thousands of graduates of mediation training programs as well as their relatives, friends and coworkers.

Mediation concepts such as win-win/all-gain situations, vis-a-vis the zero-sum games we were used to since early childhood, and mediation skills such as active listening and reframing, have penetrated the lives of hundreds of thousands. The new practices bear possibilities to help make better connections between people, respect differences, cheer tolerance, and, finally, promote and sustain a culture of peace. I believe they had an impact on the Israeli social justice protest that started in the summer of 2011 and its outcomes.

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