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CLIMATE DIPLOMACY: CAN MEDIATING CLIMATE CONSIDERATIONS INTO PEACE AGREEMENTS CREATE A SUSTAINABLE FUTURE?

Kayla Fowler*

I. INTRODUCTION

The Earth's temperature has risen on average 0.14 degrees Fahrenheit per decade since 1880—a total of 2 degrees.¹ Since 1981, the rate of warming has been over twice as fast at 0.32 degrees Fahrenheit per decade.² 2022 was the sixth-warmest year on record,³ and the 10 warmest years have all occurred since 2010.⁴ These long-term shifts in temperature exemplify the changes to our climate due to the increasing accumulation of gases caused by human activity on Earth, more commonly referred to as climate change.⁵ While it is abundantly clear that climate change is negatively affecting our environment, it is also true that climate change is contributing to increased conflict between humans and exasperating already fraught relationships between groups of people.⁶ These conflicts can evolve into violent disputes that endanger both the individuals and resources involved.⁷

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1. Rebecca Lindsey & Luann Dahlman, *Climate Change: Global Temperature*, CLIMATE.GOV (Jan. 18, 2023), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature>.

2. *Id.*

3. *2022 Was World's 6th-Warmest Year on Record*, NOAA (Jan. 12, 2023), <https://www.noaa.gov/news/2022-was-worlds-6th-warmest-year-on-record>.

4. *Id.*

5. The “greenhouse effect” occurs when certain gases collect in the Earth’s atmosphere. These gases, which occur naturally in the atmosphere, have been accumulating at an increasing rate due to human activities; this in turn contributes to the rising temperatures and changes in climate. See Hilary Costa et al., *Greenhouse Effect*, NAT’L GEOGRAPHIC, <https://education.nationalgeographic.org/resource/greenhouse-effect/> (Dec. 13, 2022).

6. Nathan Rott, *Climate Change is Fueling More Conflict Between Humans and Wildlife*, NPR (Mar. 2, 2023, 5:00 AM), <https://www.npr.org/2023/03/02/1160471867/climate-change-is-fueling-more-conflict-between-humans-and-wildlife>.

7. Tegan Blaine, *Climate Change Risks New Violent Conflict: How to Respond?*, U.S. INST. OF PEACE (July 19, 2021), <https://www.usip.org/publications/2021/07/climate-change-risks-new-violent-conflict-how-respond>.

In September 2022, the United Nations Department of Political and Peacebuilding Affairs released a practice note detailing the implications of climate change for the mediation of peace agreements.⁸ The UN practice note describes the process mediators should follow when inserting climate-based issues into the peace agreement process.⁹ While mediating peace agreements is not a new practice,¹⁰ such agreements can be a tricky process to navigate. Numerous concerns regarding the stability of such agreements cast a dark shadow on the potential implementation of climate provisions.

This article will first explore the general mediation of peace agreements, identifying the potential pitfalls of the process. Then, Section III introduces and summarizes the UN Note, focusing on how the UN suggests mediators prepare and complete climate-informed mediations, as well as the challenges mediators will face. Finally, Section IV will analyze the feasibility of using peace mediation as a vessel for climate regulation, as well as the applicability of the UN Note in such conflicts.

II. MEDIATION AND PEACE CONFLICTS

The involvement of mediation in peace agreements has steadily increased since the Cold War.¹¹ Since then, mediation has been used in approximately 50% of all international crises.¹² The Good Friday Agreement of 1998 is a prominent example in which Senator George Mitchell, acting as mediator, brokered a peaceful compromise in Northern Ireland.¹³ As a commonly used resolution process, the suggestion of using mediation as a vessel for innovative climate provisions is a natural step towards finding solutions to climate related concerns. The Note explores the methodology and processes of implementing climate-related provisions in peace agreements during mediation.¹⁴ However, the capacity to include such provisions in peace agreement mediations rests upon the assumption that peace conflicts can be successfully mediated. Therefore, before involving climate provisions in such agreements, it is vital to identify the general hazards involved.

A. *Mediating Peace Agreements*

The success of mediating climate considerations into peace agreements rests firmly upon the ability to successfully mediate peace agreements at all.¹⁵ After the

8. U.N. Dep't of Pol. and Peacebuilding Affs., Pol. & Mediation Div. The Implications of Climate Change for Mediation and Peace Processes, U.N. Doc. (2022).

9. *Id.* at 4–5.

10. “Mediation, as a means to end armed conflicts, has gained prominence particularly in the past 25 years.” Peter Wallensteen & Isak Svensson, *Talking Peace: International Mediation in Armed Conflicts*, 51 J. PEACE RSCH. 315 (2014).

11. INT'L PEACE INST., MEDIATION AND PEACE PROCESSES: IPI BLUE PAPER NO. 8 (2009).

12. Swiss Confederation, Fed. Dep't of Foreign Affs., *Background*, PEACE MEDIATION, <https://peace-mediation.ch/about/background> (last visited Sept. 29, 2023).

13. *George Mitchell: Building Peace in Northern Ireland*, U.S. INST. OF PEACE, <https://www.usip.org/public-education-new/george-mitchell-building-peace-northern-ireland> (last visited Oct. 15, 2023).

14. United Nations Department of Political and Peacebuilding Affairs, *supra* note 8.

15. Defining “success” in mediation is a difficult task and typically varies. Some scholars consider a successful mediation as one that does not leave the parties in a worse position. Few focus more on the process, citing party participation as the biggest sign of success. Others consider achieving settlement to

Cold War ended in 1991, the world witnessed a large increase in intrastate conflicts, as well as the continuation of long-standing interstate disputes.¹⁶ In response to this rise in disputes, new conflict resolution processes have emerged that specifically target the prevention and termination of conflicts.¹⁷ The term “peace-building,” coined by UN Secretary General Boutros Boutros-Ghali in 1991, is one of the central themes in conflict studies.¹⁸ Peace-building—generally defined as any dynamic process used in resolving conflict—refers to mechanisms and structures that can terminate or resolve disputes.¹⁹ Mediation is one of the most effective peace-building strategies; communities consisting of different cultural traditions have resorted to mediation in their efforts to build a bridge of peace.²⁰ The cross-cultural application of mediation adds to its strength as an effective mechanism to lay the foundation for peaceful relations between different cultural groups.²¹

While mediation can be an efficient tool for peace-building, it proves difficult to define the elements that affect the success of the process.²² Typically, there are two categories of factors that influence the successful outcome of a peace mediation.²³ The first category focuses on the subjective aspects of the mediation, such as motivation and behavior of the parties.²⁴ To secure a desirable outcome, parties must be willing, committed, and motivated to accept and engage in mediation; this requires consent, high levels of motivation, and active participation.²⁵ Parties that are unwilling to commit to these aspects of the process find themselves in a mediation where the likelihood of a successful outcome is very low.²⁶

The second category consists of structural considerations.²⁷ It is generally determined that the success or failure of mediation is largely determined by the nature

signify success. For the purposes of this article, a successful mediation is one that eventually (whether it be after multiple sessions or not) results in settled terms. In other terms, this article is looking at the success of the *outcome*, not the success of the process itself. See Allan J. Stitt, *A “Failed” Mediation*, ADR CHAMBERS, <https://adrchambers.com/news-articles/commentary/a-failed-mediation/> (last visited Sept. 23, 2023); see also Jacob Bercovitch, *Mediation Success of Failure: A Search for the Elusive Criteria*, 7 CARDOZO J. CONFLICT RESOL. 289 (2006).

16. Jacob Bercovitch & Ayse Kadayifci, *Exploring the Relevance and Contribution of Mediation to Peace-Building*, 9 PEACE & CONFLICT STUD. 21 (2002).

17. *Id.*

18. *Id.*; see also Boutros Boutros-Ghali (U.N. Secretary-General), *An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peace-keeping*, U.N. Doc. ST/DPI/1247 (Jan. 31, 1992).

19. Bercovitch & Kadayifci, *supra* note 16, at 22; see also *What is Strategic Peacebuilding?*, KROC INST. FOR INT’L PEACE STUD., <https://kroc.nd.edu/about-us/what-is-peace-studies/what-is-strategic-peacebuilding/> (last visited Sept. 23, 2023).

20. Bercovitch & Kadayifci, *supra* note 16, at 24–25.

21. *Id.* at 25.

22. Georg Stratemeyer, *Measuring Success in Mediation: An Outline*, MEDIATE.COM (Feb. 14, 2020), <https://mediate.com/measuring-success-in-mediation-an-outline/>.

23. Bercovitch & Kadayifci, *supra* note 16, at 26; see generally Marieke Kleiboer, *Understanding Success and Failure of International Mediation*, 40 J. CONFLICT RESOL. 360 (1996).

24. Bercovitch & Kadayifci, *supra* note 16, at 26.

25. *Id.* at 27; see also Catherine Conner, *Motivations to Mediate*, THE CTR. FOR UNDERSTANDING IN CONFLICT (Jun. 13, 2013), <https://understandinginconflict.org/motivations-to-mediate/>; see also Adrienne Krikorian & Jeffrey A. Tidus, *The Benefits of Active Party Participation in Mediation*, MEDIATE.COM (Feb. 11, 2002), <https://mediate.com/the-benefits-of-active-party-participation-in-mediation/> (“A more satisfactory resolution to the parties is likely to be reached if...clients...actively participate in the mediation.”).

26. Bercovitch & Kadayifci, *supra* note 16, at 27.

27. Allison Houstori & Jacob Bercovitch, *Why Do They Do It Like This?: An Analysis of the Factors Influencing Mediation Behavior in International Conflicts*, 44 J. CONFLICT RESOL. 147, 177 (2000).

of the dispute.²⁸ For example, conflicts between parties divided across religious or ethnic lines are much harder to mediate.²⁹ Power capabilities, internal party characteristics, and available resources are other factors in this category that influence the success of the mediation.³⁰

It is important to acknowledge there are both advantages and disadvantages to this type of conflict resolution. Today, conflicts are more likely to end in mediated settlements than any other agreement.³¹ Overall, it is generally recognized that mediation has a positive effect on conflict termination, specifically when coupled with a transformative peacekeeping operation.³² There are multiple advantages to using mediation, such as improving the quality of dialogue between the parties.³³ The typical benefits of mediation continue to apply to peace settlements—preserving relationships, allowing for greater party control, and creating customized agreements.³⁴ Furthermore, mediation during noncrisis situations is likely to improve the overall ability for stabilized peace, with the opportunity to renegotiate or continue discussions.³⁵

There are multiple examples of successful peace mediation.³⁶ During the Nigerian Civil War of 1967-1970, mediators unable to conduct a meeting directly between the leaders of the two parties acted as message carriers to reduce tensions and pave the way to reconciliation.³⁷ The Acta de Brasilia negotiations between Peru and Ecuador involved third-party negotiations to end a lengthy territorial dispute.³⁸ Mediation between Burkina Faso and Mali resulted in the end of what is known as “The Christmas War” over the 100-mile long Agacher Strip.³⁹

However, despite any benefits, serious concerns exist when mediating peace agreements. Most importantly, the durability of the achieved peace is one of the core criteria for evaluating the effectiveness of conflict management.⁴⁰ In this

28. Marvin C. Ott, *Mediation as a Method of Conflict Resolution: Two Cases*, 26 INT’L ORG. 595, 597 (1972).

29. Houstori & Bercovitch, *supra* note 27.

30. Bercovitch & Kadayifci, *supra* note 16, at 26; *see also* Houstori & Bercovitch, *supra* note 27.

31. Wallensteen & Svensson, *supra* note 10.

32. “Peacekeeping” refers to the deployment of forces for the purpose of helping to control a current and/or potential violent conflict. Most peacekeeping operations are led by the United Nations, but other regional organizations may also provide peacekeeping assistance. Peacekeeping efforts regularly operate during mediation, as well as after negotiations have been finalized. Govinda Clayton, *The Effectiveness of Mediation and Peacekeeping for Ending Conflict*, 59 J. PEACE RSCH. 1, 3 (2022); *see also* Richard Caplan, *Peacekeeping/Peace Enforcement*, ENCYC. PRINCETONIENSIS, <https://pesd.princeton.edu/node/561> (last visited Sept. 30, 2023).

33. Govinda Clayton, *The Effectiveness of Mediation and Peacekeeping for Ending Conflict*, 59 J. PEACE RSCH. 1, 3 (2022).

34. *See Advantages of Mediation*, U.S. OFF. OF SPECIAL COUNS., <https://osc.gov/Services/Pages/ADR-Advantages.aspx> (last visited Oct. 15, 2023).

35. *See* Kyle Beardsley, *Agreement Without Peace? International Mediation and Time Inconsistency Problems*, 52 AM. J. POL. SCI. 723 (2008).

36. Barshee Madhukallya, *Role of mediation in international disputes*, IPLEADERS (Oct. 30, 2021), [https://blog.ipleaders.in/role-of-mediation-in-international-disputes/#Mediation by countries](https://blog.ipleaders.in/role-of-mediation-in-international-disputes/#Mediation%20by%20countries).

37. *Mediation During the Nigerian Civil War 1967-70*, QUAKERS IN THE WORLD, <https://www.quakersintheworld.org/quakers-in-action/226/Mediation-During-the-Nigerian-Civil-War-1967-70> (last visited Sept. 30, 2023).

38. Ayushi Mahajan, *Case studies on mediation*, IPLEADERS (Dec. 18, 2020), https://blog.ipleaders.in/case-studies-mediation/#Acta_de_Brasilia_negotiations_between_Peru_and_Ecuador.

39. Fahad Bashir Khan and Shamama Fatima, *Dispute Resolution through Mediation: Theory and Cases*, 3 INT’L J. LEGAL SCI. & INNOVATION 184, 188 (2021).

40. Clayton, *supra* note 33.

respect, the impact of mediation is not directly positive.⁴¹ While mediators can help identify a satisfying outcome, the incentives provided by the process are likely to subside, and agreements become more fragile as time progresses.⁴² Incentives created during mediation may fuel a time consistency problem, as third-party mediator involvement may create fleeting dynamics that dissolve, ultimately leading to unstable peace after the mediator is removed from the situation.⁴³

The failure of a post-mediation environment only fuels the instability of peace agreements, resulting in the conflict reemerging after the end of mediation processes.⁴⁴ Other concerns arise from these types of conflict resolutions as well, such as consistency in mediator decisions, difficulty in implementing resolutions, and the injection of a third-party agenda.⁴⁵ The instability of such agreements persuades some scholars to argue against seeking mediated peace settlements, some even going so far as to suggest allowing wars to simply “burn themselves out” rather than intervening in ultimately counterproductive attempts to reach settlement.⁴⁶

The fragility of the process is a large concern as well.⁴⁷ Within the process, one of the most essential aspects is the *timing* of the mediation efforts.⁴⁸ Referred to in academia as “The Ripeness Theory”, this doctrine suggests that parties resolve their conflict only when they are ready to do so—when alternative means of achieving a mutually satisfactory result is foreclosed and the parties feel that the conflict is no longer worth spending money, time, and/or manpower on.⁴⁹ Ripeness can be signaled in many different ways, such as lack of military gains on both sides, loss in terms of manpower and money, remarks regarding parties are searching for a ‘way out’, etc.⁵⁰ Ripeness of a conflict is considered a necessary, albeit insufficient, condition for the initiation of negotiations, regardless of whether the discussions are bilateral or mediated.⁵¹ When a conflict is not ripe, it is unlikely any attempts at negotiation or mediation will be successful.⁵² The leading theory in ripeness suggests that late entry is most useful, claiming that mediation will be more successful when failure to reach an agreement “precipitat[es] an emergency.”⁵³ Only time can guarantee ripeness, and while mediators can work to create a sense of ripeness in a

41. *Id.*

42. *Id.*

43. Beardsley, *supra* note 35, at 737.

44. *Id.*

45. International Peace Institute, *supra* note 11.

46. Edward Luttwak, *Give War a Chance*, 78 FOREIGN AFFS. 36, 37 (1999).

47. See generally Carly Beckerman, *Political Fragility and the Timing of Conflict Mediation*, 11 SOC. SCI. 1 (2022).

48. Hon. Rebecca Westerfield, *When is the Right Timing for a Mediation*, JAMS, <https://www.jamsadr.com/files/uploads/documents/articles/westerfield-timing-mediation-abtl-2013.pdf> (last visited Sept. 30, 2023).

49. William Zartman, ‘Ripeness’: *the Importance of Timing in Negotiation and Conflict Resolution*, E-INT’L RELS. (Dec. 20, 2008), <https://www.e-ir.info/2008/12/20/ripeness-the-importance-of-timing-in-negotiation-and-conflict-resolution/>; see also Marieke Kleiboer, *Ripeness of conflict: A Fruitful Notion?*, 31 J. PEACE RSCH. 109, 110 (1994) (reflecting a more in-depth review of the elements of ripeness).

50. Christina Scheinflug, *Does Successful Diplomacy Rely on ‘Ripe Moments’?*, E-INT’L RELS. (Sept. 20, 2015), <https://www.e-ir.info/2015/09/20/does-successful-diplomacy-rely-on-ripe-moments/>.

51. WILLIAM ZARTMAN, INTERNATIONAL CONFLICT RESOLUTION AFTER THE COLD WAR 227 (National Academic Press, 2000).

52. *Id.*

53. Marieke Kleiboer, *Understanding Success and Failure of International Mediation*, 40 J. CONFLICT RESOL. 360, 362 (1996).

conflict, to achieve this successfully would require a significant amount of leverage in political, economic, or military punishments and rewards.⁵⁴

While there are a multitude of benefits to mediating peace agreements, there are also a multitude of concerns. The lack of durability, coupled with the vast number of factors that influence the success of the mediation, leaves us with a delicate process. With the risk of conflict relapse almost twice as likely when a conflict ends in a negotiated settlement rather than a military victory, and the concern of conflict lasting far longer when mediated, the mediation of peace agreements is a precarious process that may lie on a cracked foundation.⁵⁵

III. THE UN REPORT

The United Nations released the “Integrating Climate Considerations into Mediation Efforts” practice note (“the Note”) in September 2022.⁵⁶ At 22 pages long, the Note is broken down into the following subsections: Rationale, Challenges, and Entry Points.⁵⁷ Each of these sections are filled with suggestions and guidelines for mediators involved in conflicts that may be benefited by climate-related discussions.⁵⁸

A. *The Rationale*

The UN cites several benefits of implementing climate provisions into peace agreements.⁵⁹ Most importantly, the Note identifies how the effects of climate change can be the *source* of conflicts, and how climate issues are incredibly complex.⁶⁰ These issues can often be intertwined with socio-economic and political factors and lead to disputes at all societal levels.⁶¹ Changes in the availability in fresh water, for example, could have devastating effects on agricultural production, human health, population growth, and much more.⁶² Many climate change experts are now concerned that the world is heading toward a massive water crisis.⁶³ Conflicts regarding the distribution of fresh water will only increase because international fresh water is—and will continue to be—scarce and unequally divided.⁶⁴ Water is not the only natural resource causing disputes, and the implementation of climate provisions in agreements can create a successful solution to the peace conflict itself.⁶⁵

The Note identifies other benefits of including a climate lens in peace processes, including mitigating unpredictability; contributing to trust building;

54. *Id.* at 363.

55. Andrew Mack, Global Political Violence: Explaining the Post-Cold War Decline 5 (Mar. 2007) (unpublished working paper) (on file with author).

56. United Nations Department of Political and Peacebuilding Affairs, *supra* note 8.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 4.

61. *Id.*

62. Gabriel Eckstein, *Water Scarcity, Conflict, and Security in a climate Change World: Challenges and Opportunities for International Law and Policy*, 27 WIS. INT’L L. J. 409, 415 (2009).

63. *Id.*

64. *Id.* at 424; *see also* Blaine, *supra* note 7.

65. United Nations Department of Political and Peacebuilding Affairs, *supra* note 8, at 16.

attracting support; supporting environmental protection; and pre-empting unintended consequences.⁶⁶

B. Challenges

The Note continues to recognize the challenges mediators will face in integrating climate considerations into peace processes.⁶⁷ These challenges include the localized nature of the change; lack of will to engage; uneven or missing technical knowledge; a limited body of good practice; and different levels of engagement.⁶⁸ First, the long-term nature of climate change may overload peace processes that are focused on finding an immediate end to violence.⁶⁹ Mediators may find it difficult or unfeasible to prioritize climate issues in such agreements.⁷⁰ Furthermore, there may be a lack of willingness to engage if parties see the integration of climate change provisions as an external agenda.⁷¹

Uneven or missing technical knowledge can affect both the parties and the mediator because there is often a lack of access to context-specific information or climate stressors and their effects.⁷² Mediators are not typically familiar with the scientific inter-workings of climate change, which has led to a limited body of good practice in this field.⁷³ Finally, because the effects of climate change rarely occur on a national level, connecting different levels of governance could be a barrier to successful agreements.⁷⁴ These bureaucratic challenges may impede the rate of success in implementing climate provisions in peace agreements and will be discussed further in the analysis portion of this essay.⁷⁵

C. Entry Points

As the largest—and most crucial—part of the Note, the Entry Points section touches on how mediators should prepare for these specific discussions; the process design and negotiations; the peace agreement itself; and implementation of the climate provisions.⁷⁶ Before discussing each of these points, the Note places a strong emphasis on avoiding the perception that mediators are injecting an external agenda and encourages readers to consider this point throughout the negotiation.⁷⁷

In preparing for a peace agreement with potential climate entry points, the mediator should first look for indications that a climate lens is warranted within the process.⁷⁸ Some characteristics that indicate a dispute may be an appropriate setting for climate discussions are: contested laws and policies concerning access to natural resources; natural resource revenue is used to fund the conflict; significant conflict-

66. *Id.* at 6–7.

67. *Id.*

68. *Id.* at 7–8.

69. *Id.*

70. *Id.*

71. United Nations Department of Political and Peacebuilding Affairs, *supra* note 8, at 7.

72. *Id.* at 8.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 8–17.

77. United Nations Department of Political and Peacebuilding Affairs, *supra* note 8, at 8.

78. *Id.* at 9.

related damage to ecosystems; a high prevalence of food insecurity (especially for women); or rapid degradation or unsustainable use of critical resources.⁷⁹ Mediators should also consider how a climate lens will shape the conflict at hand, as well as research context-specific factors such as connections between the parties; climate adaptation strategies; and available local, national, and regional mitigation strategies.⁸⁰

After establishing that a conflict is suitable for climate considerations, the mediator should then establish climate expertise in a mediation team.⁸¹ Because mediators are not typically climate experts, their preparation work must include building and assessing team members' expertise with respect to the impacts of climate change.⁸² In team building, the Note suggests gathering individuals such as technical experts, local environmental defenders, and short-term support to increase the probability of a successful implementation of climate provisions.⁸³

The mediator must then design the process of negotiating climate-related issues.⁸⁴ Because parties may be reluctant to include climate change considerations in negotiations if they believe the mediator is forcing the topic, the process must be tactfully tailored to the specific conflict at hand.⁸⁵ The Note suggests numerous approaches to the process to mitigate party hesitancy.⁸⁶ One approach is to adjust the objectives of the climate provisions to what is realistic and conducive in the context of the negotiations taking place.⁸⁷ Another approach is to help parties develop a common language and reach a shared understanding of the effects of climate change.⁸⁸ Identifying alternative channels for addressing climate-related issues that are deprioritized during negotiations is also a suggested approach.⁸⁹

Within the peace agreement itself, mediators may choose to encourage drafting of climate-adaptive agreements that account for the future impacts of climate change.⁹⁰ Mediators may also suggest the establishment of a "climate subcommittee"; advocate for strengthening or developing governance processes to ensure compliance; and use international norms, frameworks, and good practice to advance agreement on climate-related issues.⁹¹

While the Note suggests some beneficial methods, the implementation of climate-driven provisions can be difficult to monitor.⁹² To mitigate these difficulties, mediators may facilitate contracts between the parties and support the establishment of dynamic climate risk monitoring mechanisms that track the evolution of climate change effects.⁹³ They can also explore how the UN systems can help reinforce

79. *Id.*

80. *Id.* at 10.

81. *Id.* at 9.

82. *Id.*

83. United Nations Department of Political and Peacebuilding Affairs, *supra* note 8, at 9.

84. *Id.* at 11.

85. *Id.* at 13.

86. *Id.*

87. *Id.*

88. *Id.*

89. United Nations Department of Political and Peacebuilding Affairs, *supra* note 8, at 14.

90. *Id.* at 7.

91. *Id.* at 15.

92. *Id.* at 16.

93. *Id.* at 17.

these climate-related provisions.⁹⁴ Finally, mediators can facilitate the integration of climate change considerations into subsequent or parallel processes.⁹⁵

IV. ANALYSIS

The principal question now is whether implementing climate provisions into agreements during peace mediation is a feasible, effective process. The answer is still unclear, and heavily depends on the nature of the conflict at hand. Climate provisions could be extremely useful in mediation and may even be considered leverage in some conflicts. In conflicts driven by climate change-based problems, these discussions may even contain a solution to both the peace aspect and the climate issues. However, numerous concerns appear when considering the intricacies of the idea.

Primarily, peace agreements may prove to be the wrong vessel for these climate considerations. Peace mediations have been proven to struggle when it comes to the durability of the resolution.⁹⁶ If the basis of success is the durability of outcome, then peace mediations are not overwhelmingly successful. This would mean tying climate provisions to a rapidly sinking ship. The fragility of the mediation process in these situations is far too great, and the issue of time only deepens the concern. As time passes, parties begin to lose sight of the mediated agreement. Incentives that existed during the mediation processes will no longer be in play, leaving parties unwilling to comply with the negotiated settlement. With peace mediations being so delicate and somewhat unlikely to encourage compliance, is it truly believable that climate provisions implemented in these agreements would be effective?

The fragility of the process is perfectly demonstrated by the Ripeness Theory.⁹⁷ As previously discussed, the success of peace mediation largely relies on timing; to be successful, there is only a short window of time where the conflict is ripe enough to consider negotiations at all.⁹⁸ If the mediation does not occur within the specific window of time, the chances of success drop. With the mediation process itself so fragile, how can mediators justify adding even more precarious considerations into discussions?

The Note can be used to mitigate the concerns of the instability of peace mediation processes by giving mediators specific scenarios in which to consider the possibility of these climate discussions. The conflict at hand should fit into the narrowly tailored entry points given by the UN to even consider injecting climate provisions into the agreement. Using the UN suggested entry points—the existence of contested laws and policies concerning access to natural resources; natural resource revenue being used to fund the conflict; significant conflict-related damage to ecosystems is present; a high prevalence of food insecurity (especially for women); and rapid degradation or unsustainable use of critical resources; etc.⁹⁹—can allow mediators to identify conflicts that could foster successful peace *and* climate regulations.

94. *Id.*

95. United Nations Department of Political and Peacebuilding Affairs, *supra* note 8, at 17.

96. *See supra* SECTION II(A).

97. *See id.*

98. *See id.*

99. United Nations Department of Political and Peacebuilding Affairs, *supra* note 8, at 9.

In this respect, the Note is an extremely useful tool and should heavily influence the mediation process. However, conflicts will likely not fall directly into the scenarios given by the Note, therefore leaving mediators to use their discretion. If conflicts do not fit neatly into the Note's suggestions, mediators may struggle to determine whether it is an appropriate setting for climate talks and may, if implemented at the wrong time or place, negate any potential benefits the Note may provide.

Even if peace mediations are deemed an appropriate time and place for climate talks, the concern of undermining the conflict rises above all else. If parties perceive the mediator as implementing a third-party agenda, the entire peace mediation is put at risk yet again. If the outcome of the mediation relies entirely upon the parties' willingness to resolve their conflict and abide by the mediator's terms,¹⁰⁰ the trustworthiness of a mediator is crucial. Injecting what seems to be a third-party agenda into the peace discussions can completely undermine the credibility of the mediator and derail the entire process. Parties may distrust the mediator, feel they are an uninterested outsider, and boycott the idea of a negotiated settlement.

This concern of injecting issues into discussions is something that has been largely considered in mediation practices, and mediators are advised to avoid discussing any aspects of the conflict that the parties themselves are not interested in discussing. Standard I of the ABA Model Standards of Conduct for Mediators addresses this very issue.¹⁰¹ Titled "Self-Determination," this standard strives to ensure parties come to a "voluntary, uncoerced decision" by making "free and informed choices as to the process and outcome."¹⁰² Mediators attempting to inject climate considerations into conflict talks without the consent of the parties do not only put the prospect of success in danger, but undermines the self-determination aspect mediation so clearly rests upon. By neglecting to consider the self-determination aspect of the process, mediators further diminish party trust and party willingness to continue.

Injection of external agendas could be significantly felt by parties if they feel they are not affected by the climate crisis or do not feel that they have the resources to contribute meaningful climate action. Countries like the United States, China, and Russia are not only the leading gas emitters, but are also the richest countries in the world.¹⁰³ While these countries have both reason and money to implement climate regulations, other countries do not.

Consider the conflict in Yemen. Beginning in 2014, Yemen has been involved in a violent civil war that has been deemed one of the world's worst humanitarian crises.¹⁰⁴ With a population of about 32 million people,¹⁰⁵ and with an estimated 24.1 million people at risk of hunger and disease,¹⁰⁶ Yemen is faced with a

100. Jacob Bercovitch & Su-Mi Lee, *Mediating International Conflicts: Examining the Effectiveness of Directive Strategies*, 8 INT'L PEACE RSCH. ASS'N 1, 6 (2003).

101. MODEL STANDARDS OF CONDUCT FOR MEDIATORS r. 1 (AM. BAR ASS'N 2005).

102. *Id.*

103. *Global Emissions*, CTR. FOR CLIMATE & ENERGY SOLS., <https://www.c2es.org/content/international-emissions/> (last visited Oct. 15, 2023).

104. Center for Preventative Action, *War in Yemen*, COUNCIL ON FOREIGN RELS. (Apr. 25, 2023), <https://www.cfr.org/global-conflict-tracker/conflict/war-yemen>.

105. *Yemen Population*, WORLDOMETER, <https://www.worldometers.info/world-population/yemen-population/> (July 16, 2023).

106. *The World Bank in Yemen*, WORLD BANK, <https://www.worldbank.org/en/country/yemen/overview#> (March 31, 2023).

humanitarian conflict growing increasingly dire by the minute. Nearly 74 percent of Yemenis need assistance, five million are at risk of famine, and all sides of the conflict are reported to have violated human rights at some level.¹⁰⁷ The parties have engaged in mediated peace talks, bringing Yemen closer to peace but still leaving the conflict with no clear end in sight.¹⁰⁸

How would Yemen respond if the mediator raised climate concerns in these discussions? Yemen released a total of 0.38 tons of CO₂ per capita compared to the United States' 14.90, barely making a dent in global carbon emissions.¹⁰⁹ Additionally, Yemen is seen as one of the poorest countries in the Middle East, with 55 percent of the population living below the poverty line.¹¹⁰ Countries like Yemen, in violent conflicts with more pressing matters, have not the means nor the desire to address climate considerations at this time, and it would be foolish for a mediator to consider injecting them into peace discussions. Why would they, a nation emitting so comparatively little, implement climate provisions to attempt to fix what other countries have done? Why would they, amid a bloody conflict, focus on anything other than peace?

On the opposite end of the spectrum is Bhutan. As one of the lowest gas emitters in the world, Bhutan has made strides far beyond any other country by becoming carbon negative.¹¹¹ This means Bhutan, as a country, actively removes more CO₂ from the atmosphere than it emits.¹¹² This leaves no incentive for Bhutan to engage in climate provisions during peace agreements. Here lies another wrinkle in the method—lack of incentive to engage coupled with the belief that these agreements won't result in real change.

So, with these issues raised, is the Note a feasible method of practice? The answer is still truly unknown. Climate provisions should be implemented in an extremely delicate manner, if at all. Active, violent conflicts should not be considered a good candidate for climate considerations, and it may be advisable to only consider these provisions when the conflict is based around climate-related disputes themselves. Perhaps focusing on injecting climate considerations in industrial countries would create the best result, with climate considerations becoming a large part of every agreement involving the United States, China, India, Russia, etc.¹¹³ Engaging these countries in discussions could prove more successful than any others. Other countries in the middle of dire conflicts could see the injection of climate

107. Center for Preventative Action, *supra* note 104.

108. Vivian Nereim & Shuaib Almosawa, *What Do Peace Talks in Yemen Mean for Its 8-Year War?*, N.Y. TIMES (Apr. 10, 2023), <https://www.nytimes.com/2023/04/10/world/middleeast/yemen-peace-talks.html>.

109. Hannah Ritchie & Max Roser, *Yemen: Co2 Country Profile*, OUR WORLD IN DATA (2020), <https://ourworldindata.org/co2/country/yemen>; Hannah Ritchie & Max Roser, *United States: Co2 Country Profile*, OUR WORLD IN DATA (2020), <https://ourworldindata.org/co2/country/united-states?country=~USA>.

110. *How Long Has Yemen Been in Poverty*, BONYAN ORG. (July 6, 2023), <https://bonyan.ngo/yemen/poverty-in-yemen/>.

111. Mark Tutton & Katy Scott, *What tiny Bhutan can teach the world about being carbon negative*, CNN TRAVEL (Oct. 18, 2018, 4:14 AM), <https://www.cnn.com/2018/10/11/asia/bhutan-carbon-negative/index.html>.

112. Sara Budinis, *Going Carbon Negative: What are the Technology Options?*, INT'L ENERGY AGENCY (Jan. 31, 2020), <https://www.iea.org/commentaries/going-carbon-negative-what-are-the-technology-options>.

113. *Which countries are the world's biggest carbon polluters?*, CLIMATE TRADE (May 17, 2021), <https://climatetrade.com/which-countries-are-the-worlds-biggest-carbon-polluters/>.

considerations as an external agenda. Therefore, these mediations must focus on the conflict at hand rather than the climate issues.

For some mediations, it may be beneficial for parties to agree to revisit the idea of climate considerations. When climate issues are present, but the conflict is far too contentious and peace must be the focus, mediators can and should make the parties aware of the climate concern but suggest returning to the topic at a later point in time, after peace has been achieved and the conflict stabilized. These provisions could also be beneficial in less contentious conflicts, where climate issues are not related to the dispute at hand but *do* exist, again with the mediator suggesting a return to the topic in different discussions.

Despite the numerous concerns raised, the Note could be an extremely useful tool in guiding mediators in the correct conflict. The UN makes incredibly compelling solutions to other challenges faced in these mediations. Specifically, one good mitigation tool suggested is that of team building.¹¹⁴ By creating a team of local and technical experts, mediators can have tangible support in their ability to offer feasible suggestions.¹¹⁵ Additionally, by assembling teams with local climate experts, parties may feel that the process is sufficiently tailored to their needs and be more willing to engage in these types of discussions, lessening the concern of the mediator injecting third-party agendas.¹¹⁶ If the problems regarding the feasibility of climate provisions in peace mediations themselves could be negated, the Note could create more significant guidelines for third-party facilitators to implement climate provisions.

V. CONCLUSION

Mediating peace agreements is not an innovative idea; there has been a rise in settled peace agreements ever since the Cold War.¹¹⁷ More conflicts end in settlements than ever before.¹¹⁸ Implementing climate provisions into them, however, is a new and novel attempt to mitigate climate change. While innovation is needed, and new ideas are valued more highly than ever, using mediation as a vessel for climate considerations is an extremely delicate operation.¹¹⁹ The mediation process is too fragile; it rests too heavily upon a weak foundation prone to crack under the weight of a peace conflict.¹²⁰ These conflicts are difficult to mediate to begin with, and injecting an externally driven provision may not be justified. People are dying because of these conflicts, and mediation sessions need to be as efficient and as effective as possible. Furthermore, without the wealthiest, highest contributing countries at play, what are these climate provisions going to do? Unless countries like the United States, China, France, etc. are in these mediations, no climate provision is going to change the fate of the world. Most peace mediations need to focus on just that: peace. However, in certain scenarios in which climate discussions can be started, the UN Note may be extremely useful in guiding mediators.

114. United Nations Department of Political and Peacebuilding Affairs, *supra* note 8, at 9–10.

115. *Id.*

116. *Id.* at 7.

117. *See supra* SECTION II.

118. Lise Morje Howard & Alexandra Stark, *How Civil Wars End: The International System, Norms, and the Role of External Actors*, 42 INT'L SECURITY 127, 170–71 (2018).

119. *See supra* SECTION II(A).

120. *See id.*

With all that in mind, the climate crisis cannot sit on the backburner. We are sitting on a ticking time bomb, almost at the point of no return.¹²¹ If we continue to accept the 67% likelihood of remaining below the 2-degree warming threshold, the “Point of No Return” will be here by 2035.¹²² If that threshold is lowered to 1.5 degrees, the “Point of No Return” has already passed.¹²³ Something more drastic than potentially successful provisions in peace agreements must be done. We must make a change, much bigger than anything we have been doing. While the integration of climate provisions into peace agreements poses significant challenges, it is crucial that we continue to explore and develop innovative solutions to address the intersection of climate change and conflict. It is truly up to us; “[w]hen it comes to the environment, the invisible hand never picks up the check.”¹²⁴

121. *Is it too late to prevent climate change?*, NASA, <https://climate.nasa.gov/faq/16/is-it-too-late-to-prevent-climate-change/> (last visited Sept. 26, 2023).

122. Vivan Sorab, *Too Little, Too Late? Carbon Emissions and the Point of No Return*, YALE ENV'T REV. (Mar. 26, 2019), <https://environment-review.yale.edu/too-little-too-late-carbon-emissions-and-point-no-return>.

123. *Id.*

124. KIM STANLEY ROBINSON, THE MINISTRY FOR THE FUTURE 411 (Orbit, 2020).