

Mediation and Climate Change: Working through Conflicts and Disputes -- Local to Global

(Part Three)

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Language and Action (part three)

- What “conflict resolution” language should be in a climate change agreement?
- Why does language matter? What is the language-action connection?



Conflict Resolution Language in UN Conventions/Agreements

- Research project with OSU/MBB graduate students
- Focus on environmental agreements
- Review of past agreements
- Select examples



UN Climate Change “conflict resolution” language

In the UNFCCC Convention – Article 14

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. [Parties may agree to]:
 - (a) [the] Submission of the dispute to the International Court of Justice, and/or
 - (b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

In the Kyoto Protocol

Article 19

The provisions of Article 14 of the Convention on settlement of disputes shall apply mutatis mutandis to this Protocol.



Other Conventions/Treaties: Similar General Language

- **The United Nations Convention to Combat Desertification**
- **The Convention on International Trade in Endangered Species in Wild Flora and Fauna (CITES)**
- **The Convention on Biological Diversity**
(to be fair, the CBD does state: *“If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.”*)



“Generic” or “conventional” language?

- **The UN Climate Change Convention AND Kyoto Protocol language is general and features only the “parties.”**
- **The UNFCCC and KP, as well as similar treaties/conventions, do not much go beyond negotiated (semi-formal) and judicial (Court of Justice, arbitration) decision-making.**
- **Let’s consider three other – and more innovative – treaties.**



CR/DR Language in other UN Agreements

The 1976 Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) - Article 25

- 1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of this Convention, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.*
- 2. Any dispute of this character not so resolved shall, with the consent in each case of all Parties to the dispute, be referred for settlement to the International Court of Justice or to arbitration; but failure to reach agreement on reference to the International Court or to arbitration shall not absolve Parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 above.*



CR/DR Language in other UN Agreements

The 1985 Vienna Convention for the Protection of the Ozone Layer – Article 11

- 1. In the event of a dispute between Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.*
- 2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.*



CR/DR Language in other UN Agreements

The Third United Nations Convention on the Law of the Sea (UNCLOS III)

- The dispute resolution language in the UN Convention on the Law of the Sea is encompassing and found throughout the document.
- Featuring dispute settlement language throughout the convention responds to the complex and delicate nature of the issues that the treaty encompasses.



The Law of the Sea

The overarching dispute settlement language can be found in Part 15, Section 1.

- **Article 279 refers back to Article 2, paragraph 3 of the UN Charter and Article 280 leaves resolution procedure open to "any peaceful means chosen by the parties."**
- **Article 283 encourages the sharing of viewpoints whenever a conflict arises over the interpretation of the treaty, and negotiation or "other peaceful means" of resolution are encouraged.**
- **Other sections note arbitration procedures, and the creation of dispute settling bodies such as the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea.**



The Law of the Sea – Dispute Settlement Innovations

- Article 186 established the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea. This create a conflict resolution infrastructure specific to ocean disputes.
- Article 283 encouraged dialogue; constructive communication: *“When a dispute arises... the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.”*



MBB language in an ADP submission

Reflecting on the Establishment of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP)...

Recognizing the United Nations General Assembly adoption of A/RES/65/283, on 28 July 2011, for “strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution,” and which, “invites Member States, as appropriate, to optimize the use of mediation...”



MBB's Submission to the ADP

MBB proposes the inclusion of the term “mediation” to be included as an appropriate term for the peaceful settlement of climate change conflict and disputes to be addressed and used by the Ad Hoc Working Group on the Durban Platform, as a mechanism to settle (manage and resolve) in a balanced, neutral, integrated, and comprehensive manner, conflicts and disputes stemming from the implementation, interpretation, and consequences of the policies implemented by UNFCCC for an agreed outcome and legal instrument to address climate change.



MBB's Proposed Text

“Recognizing that conflicts and disputes are an inevitable and adverse effect of climate change, the Parties are encouraged to use mediation, conciliation, arbitration, and actions before the International Court of Justice to settle their climate change conflicts and disputes.”



Beyond Language to Action

- Mediation/conflict resolution language in the Climate Treaty give the issue “standing” and “legitimacy.”
- This is a key step for getting resources for building “conflict resolution capacity” at the local level (and all scales).
- Let’s consider an example – MBB’s Haiti workshop...welcome Tom Fiutak via Skype.



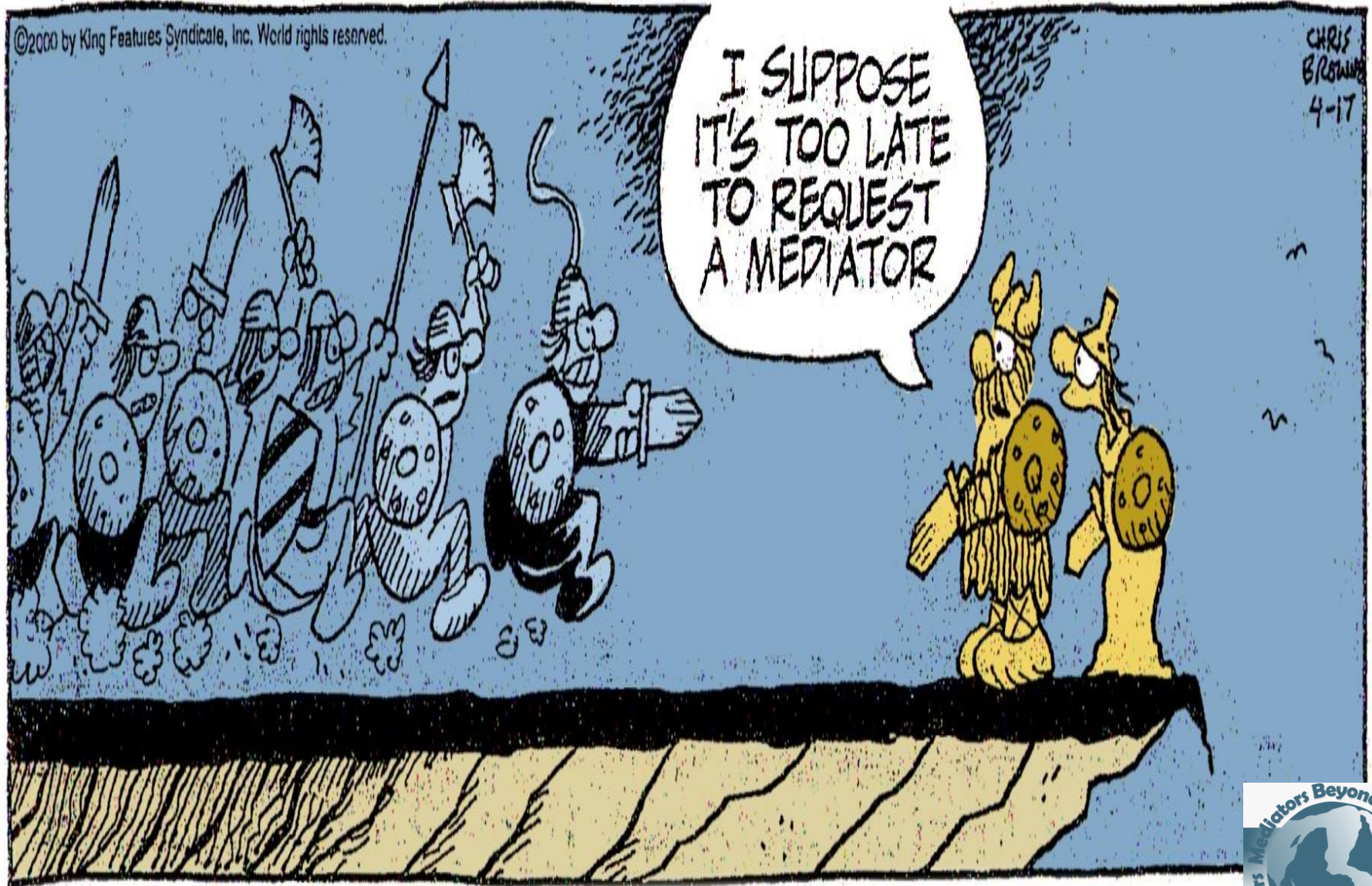
Is “conflict resolution capacity” sufficient?

- Do all parties, in any context, on any scale, have the culturally relevant resources to work through their conflicts and settle their disputes?
- Sufficient skills?
- Access to impartial third parties?
- Appropriate people, organizations, and facilities?
- Time, money, understanding, training?
- **And now to Part Four – Tom Fiutak via Skype**



Hagar the Horrible by Chris Browne

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Thank you for your interest and participation!

On to the conversation...your comments and questions...

Suzi (& friends)



Tom



Gregg

