- Section II -

Mediation for the Resolution of International Private Sector Conflicts

An Analysis of the Jaqalanka Mediation

September 2005

Aleisha Stevens
LL.B./M.A. International Affairs Candidate

Executive Summary

This study investigates whether mediation can act as an efficient dispute resolution technique in the context of International Private Sector Conflict (IPSC). Findings indicate that it is in the interest of multinational corporations to be amenable to international mediation because (1) considerable domestic benefits of the process apply in the international arena and (2) interests in maintaining optimal productivity levels can be addressed through settlement. Benefits also accrue to domestic stakeholders through (1) the consideration of interests, such as labour rights and personal safety, and (2) the provision of a forum to air grievances in countries with unresponsive or repressive governmental and judicial systems. Mediation is found to be a sustainable solution to IPSCs largely because it addresses party interests; as a result, costs of defecting from the final agreement are greater than the benefits of compliance. This sustainability is augmented if agreements promote change in production ideology and labour standard awareness through educational provisions. This in turn creates a ripple effect so that benefits accrue to non-party stakeholders in the short term; the case study in question is too recent to provide credible data regarding long run effects. The presence of substantial international pressure by politically or economically significant parties appears to be an important motivating factor for engaging in mediation, and may also play a part in compliance with the final agreement.

TABLE OF CONTENTS

Introduction – Statement of the Problem …………………………………..………………… 4

Research Question ……………………………………………………………………….4

Working Definitions and Acronyms.……………………………………………..…..……4

Methodology.……………………………………………………………………..………….5

-INVESTIGATION -

STAGE I

Why Corporations Use Mediation to Resolve Domestic Disputes……………………………7

STAGE II

Mediation in the International Business Arena - The Jaqalanka Case Study………………15

STAGE III

Analysis of Jaqualanka Case Study and Research Question Responses……………….………19

Summary of Findings and Policy Recommendations. ……………………………………….26

- CHARTS AND APPENDICIES -

Table 1: Analysis of Party Interests in Jaqalanka Mediation………………………………..20

Table 2: Comparison of Domestic and International Corporate Benefits of Using Mediation……………..……………………………………………………………..…21

Appendix 1: Dispute Resolution Stairway, ADR Continuum……….………………………28

Appendix 2: Memorandum of Settlement……………………………………………………..29

Introduction – Statement of the Problem

Section I of this study has served to highlight the ubiquitous and persistent nature of human rights violations in the international business community, and the absence of effective means for addressing the issue.[1] The conclusions generated indicate that a courtroom approach to International Private Sector Conflict (IPSC) is generally unsatisfactory given the current legal framework for dealing with these disputes. There also exists an increasing recognition that legal standards cannot in themselves ensure an end to systemic inequalities or trigger a change in attitudes.[2] The consequence of these findings is that, even if the litigation process could be considered a viable short-term option (which it is not at this point), there is doubt as to whether it can effect sustainable, long-term change in production ideology concerning human rights.

Research Question

This purpose of Section II is to explore the possibility of using the alternative dispute resolution technique of mediation in order to effect positive change in the area of corporate governance and human rights. More specifically, this investigation seeks an answer to the question: Can mediation act as an efficient dispute resolution technique in the context of IPSCs? The concept of "efficiency" as used here will be measured using three distinct characteristics:

(1) Acceptability of the technique to business parties
(2) Acceptability of the technique for aggrieved parties, and
(3) Sustainability of the solution

Working Definitions and Acronyms

- Alternative Dispute Resolution (ADR): A procedure for settling a dispute by means other than litigation. Examples include arbitration, mediation, and mini-trial[3]
- BIO - Board of Investment, Sri Lanka
- Corporate Social Responsibility (CSR): The management of business processes to create an overall positive impact on society by considering the interests of all stakeholders. Stakeholders may include employees, customers, suppliers, community organizations, subsidiaries and affiliates, joint venture partners, local neighbourhoods, investors, and shareholders

---

[1] The author would like to thank Rights and Democracy for its funding and logistical support throughout this research endeavour.
[2] Julie Macfarlane, "The Mediation Alternative" in Julie Macfarlane, ed., *Rethinking Disputes: The Mediation Alternative* [Toronto: Edmond Montgomery Publications Ltd., 1997] Pp.50
[3] Bryan A. Garner, ed., *Black's Law Dictionary, 7th edition* [Minnesota: West Group, 1999] Pp.78

- Export Production Zones (EPZs)*:* A geographically identified area that provides generous import and export concessions and cheap labour to attract foreign direct investment.
- FLA – Fair Labour Association
- Foreign Direct Investment (FDI): Foreign asset investment into domestic structures, equipment, and organizations. For example, a company from one country making a *physical* (rather than portfolio) investment into building a factory in another country
- ILO – International Labour Organization
- International Private Sector Conflicts (IPSCs): Disputes between a corporation and/or a corporation's affiliated production sector and non-corporate, non-government stakeholder groups such as laborers or NGOs.

Methodology

This investigation proceeds in three stages. The methodological approach adopted in Stage I is that of comparative case studies and quantitative surveys. These analytical tools are employed to demonstrate why businesses are increasingly turning to mediation – as opposed to using litigation or other alternative dispute resolution techniques - to resolve domestic disputes. While a thorough discussion of the various forms of conflict resolution is beyond the scope of this study, Appendix 1 is a useful summary for those unfamiliar with the basic theoretical and procedural approaches of each.

Stage II involves a focused case-study analysis of mediation in private sector international conflict. The case to be analyzed involves the rights of garment workers –rights such as freedom of association and fair wages - in a factory that outsources to Nike (amongst other companies). Ideally, a large sample of such mediated disputes would be analyzed for similarities and differences in order to make general conclusions about the use of mediation to resolve these conflicts; however, such cases are not common, or at least not commonly publicized. The case to be analyzed nonetheless has general application, because the issues to be resolved are representative of those commonly found in labour disputes arising in the Export Production Zones (EPZs) of developing countries. Through these similarities, the case emphasizes the potential for successful application of mediation to a large number of international corporate-labour disputes worldwide.

Stage III is a response to the research question, and draws on the information provided in Stages I and II for analysis and conclusions. The acceptability of mediation to business and aggrieved parties is measured using numerous operationalized factors that contribute to party cost-benefit analysis when deciding whether to participate in mediation. Because of the relative

dearth of information relating to the mediation of IPSCs, this section also makes use of extrapolative methods and theoretical application in order to conduct the analysis and generate conclusions. The necessity of using predictive methodology highlights the need for quantitative research on the subject; this is especially true given the increasingly globalized nature of business transactions, and the resulting inability of domestic laws to deal effectively with corporations who do not impose upon themselves the task of corporate social responsibility.

The resulting analysis and conclusions begin to fill the current information gap regarding the utility of mediation in internationally based business disputes between corporations and workers, and as such constitutes an important contribution to the field of international human rights.

STAGE I:
Why Corporations Use Mediation to Resolve Domestic Disputes

In its most ideal form, mediation is a confidential process in which a neutral third body facilitates the identification of party interests so as to assist disputants in the consensual process of reaching a mutually agreed upon and sustainable solution. Over the past fifteen years, mediation has received increased attention from the corporate world as a means of resolving business related disputes. A CPR Institute for Dispute Resolution report published in 1998 found that,

> "The business community and the bar serving it have come increasingly to shun full-scale litigation and to regard business disputes as problems to be solved rather than contests to be won or lost. The appeal of mediation has consequently become evident, even for some of the largest and most complex disputes".[4]

What explains this sudden interest on the part of the business community in solving disputes through the use of alternative dispute resolution techniques? Case study analysis reveals nine reasons why businesses have come to prefer the process of mediation to that of litigation, arbitration, and negotiation.

1. Mediation is Less Expensive Than Arbitration or Litigation

Mediation is less expensive than more formal dispute resolution processes because there are no witnesses, no discovery, no expert fees and none of the other costs associated with litigation. A 1990 study sponsored by the Forum on the Construction Industry requested respondents rank ADR processes for cost reduction benefits from low (1) to high (5). Mediation led the ADR procedures for cost reduction, rating between 3.95 and 4.31.[5] Statistics from the CPR Institute for Dispute Resolution reported similar findings. In 1993, the organization successfully resolved business disputes involving $1.7 billion in controversy through ADR. Of firms using mediation, 73 firms had an average cost savings of $420, 548 per case, for a total cost

[4] "Oil and Gas Industry ADR" in *ADR Cost Savings and Benefits Studies* [CPR Institute for Dispute Resolution, 1998] Pp. 4. Path: Lexis > Legal > Area of Law - By Topic > Alternative Dispute Resolution > Model ADR Practices and Procedures > CPR Institute for Dispute Resolution > Oil & Gas Industry ADR > Keyword search: Oil and Gas Industry ADR. Accessed Sept.14, 2005

[5] "Industry Sector ADR Studies: Construction" in *ADR Cost Savings and Benefits Studies* [CPR Institute for Dispute Resolution, 1994]. Pp.5. Path: Lexis > Legal > Area of Law - By Topic > Alternative Dispute Resolution > Model ADR Practices and Procedures > CPR Institute for Dispute Resolution > Search term "Construction". Accessed Sept.14, 2005.

savings of $30,700,000. In contrast, the 67 firms using arbitration had an average cost savings of only $61, 567 per case.[6]

Mediation is also less expensive when compared to litigation, a fact that is gaining increasing recognition from large and small firms alike. For example, the Toro Company, a major manufacturer of lawn care products, began an Early Fact Investigation and Mediation Program in 1990. Among submitted claims, 95% have settled at an average savings of $45, 617 *per claim* in contrast to estimated litigation costs, amounting to an annual reduction of $900,000 in defense and settlement costs. This program has also reduced annual liability insurance premiums by approximately $1.8 million.[7] The Florida Department of Environmental Regulation likewise undertook a mediation program in 1990, in the form of environmental enforcement dispute resolution. Participants in the 13 cases conducted over the course of two years reported an average direct savings of $325,000 per case as compared to litigation.[8] As these cases demonstrate, the costs and burdens of litigation have the potential to be disproportionate compared to the benefits of the process, even for the winner of a lawsuit.[9]

2. Mediation is Less Time Consuming than Arbitration or Litigation

The second advantage to the use of mediation is the lowered cost in terms of time invested in the dispute. This conclusion is supported by a 1990 study sponsored by the Forum on the Construction Industry. The organization distributed a survey requesting respondents rank ADR processes for time reduction benefits from low (1) to high (5). Mediation led the ADR procedures for time reduction, with scores ranging between 3.94 and 4.27.[10] As with the lowered financial cost of dispute resolution through the use of mediation, the lower temporal cost

---

[6] "Broad Commercial ADR Surveys" in *ADR Cost Savings and Benefits Studies* [CPR Institute for Dispute Resolution, 1994]. Pp.2 n.102. Path: Lexis > Legal > Area of Law - By Topic > Alternative Dispute Resolution > Model ADR Practices and Procedures > CPR Institute for Dispute Resolution > Search term: Broad Commercial. Accessed Sept.14, 2005

[7] "Specific Company ADR Program Reports" in *ADR Cost Savings and Benefits Studies*. [CPR Institute for Dispute Resolution, 1994] Pp.2. Path: Lexis > Legal > Area of Law - By Topic > Alternative Dispute Resolution > Model ADR Practices and Procedures > CPR Institute for Dispute Resolution > CPR ADR Cost Savings & Benefits Studies > Keyword search "specific company". Accessed Sep.14, 2005

[8] "Industry Sector ADR Studies: Environmental" in *ADR Cost Savings and Benefits Studies*. [CPR Institute for Dispute Resolution, 1994] Pp.2. Path: Lexis > Legal > Area of Law - By Topic > Alternative Dispute Resolution > Model ADR Practices and Procedures > CPR Institute for Dispute Resolution > CPR ADR Cost Savings & Benefits Studies > Term search: Environmental. Accessed Sept. 14, 2005

[9] "CPR European Mediation Procedure and Commentary: Mediation Commentary" in *International ADR* [CPR Institute for Dispute Resolution, 1998] Pp.3. Path: Lexis > Legal > Area of Law - By Topic > Alternative Dispute Resolution > Model ADR Practices and Procedures > CPR Institute for Dispute Resolution > International ADR > Search term: CPR European Mediation Procedure Commentary. Accessed Sept.14, 2005

[10] *Supra* note 5 at 5

of mediation has been noticed by large, multinational corporations. For example, Deere and Company, maker of heavy equipment, began a voluntary mediation program for product liability cases in 1990. Wilson McCallister, Product Liability Counsel for Deere, noted, "In mediation, you can solve in one day a case that would take years to resolve in litigation".[11]

3. Mediation Helps to Preserve Business Relationships

The processes of litigation and arbitration focus mainly on legal rights and who has been wronged in the past, making for an antagonistic and adversarial process. By contrast, mediation typically focuses on interests and future interactions, which creates a problem-solving atmosphere rather than rivalries between participating parties. Even when agreement does not occur during the proceeding, the enhanced mutual understanding resulting from the process of mediation substantially improves the prospects for a later agreement.[12] This conclusion is supported by the findings of the Florida Department of Environmental Regulation: 77% of it's mediation participants reported that the process of mediation had improved communication either "strongly" or "moderately".

The positive results of maintaining amicable business relationships extend beyond the parties immediately involved; Such activity also impresses investors, who can feel confident that the good-faith settlement of commercial disputes signals ability on the part of a firm to deal with conflict in a commercially sensible manner. This means to increased confidence among stockholders, improving business from an economic standpoint.

4. Mediation is Confidential

Another benefit of using mediation is that the process is entirely confidential. The confidentiality of a mediation session is upheld even if an agreement is not reached. This means that, should the issues not be resolved and the case go to court, no previous accessions or potential agreements may be admitted as evidence to weaken a party's legal arguments. This is an attractive alternative to litigation for businesses seeking to maintain a positive public image for investors and consumers. By maintaining confidentiality, firms can avoid public exposure of business mistakes, internal problems, and trade secrets that might disrupt relations with creditors, suppliers, customers and even employees.[13]

The benefits of mediation confidentiality were well illustrated in 1994, when the Haft family business empire, the Dart Group, ground to a halt over a father-son dispute. Before long,

---

[11] *Supra* note 7 at 1
[12] *Supra* note 9 at 2
[13] "Why You Should Mediate Business Disputes" [Mediate.Ca] www.mediate.ca/whymediate.htm

the Haft family was split along opposite sides of the father-son battle, and legal bills passed the $30 million mark.[14] Judge Rufus King III recognized that continuance of a courtroom process would likely mean disaster for the business, and ordered the parties to the mediation table. A subsequent article in the Washington Business Journal reported that,

> "Many people were surprised and disappointed when the Hafts settled their differences privately in mediation, instead of battling publicly in courts. Press previews had whetted appetites for titillating personal dramas and revelations of closely guarded business secrets of Herbert Haft."[15]

Through the use of mediation, the Hafts reached an agreement (albeit at too late a stage to preserve their business) and averted what was undoubtedly going to be a very long, expensive, and sensationally reported courtroom brawl.

5. Mediation is a Non-Binding Process

The voluntary nature of mediation includes a customary rule that parties involved retain control over the entire process. They mutually select the mediator, decide what issues are to be addressed, when sessions will be scheduled, and how fees will be apportioned. It is also the parties who decide how closely they will adhere to the final arrangement; Mediation generally cannot be used to "hold" parties to an agreement or a statement once an agreement has been met, unless parties so agree via contract. Should one side later break the contractual agreement--which mediators say is extremely rare--the other side can obtain a court order to enforce the original agreement.[16]

While the non-binding nature of mediation has its obvious disadvantages – parties may act in bad faith and back out of the process or an agreement – the advantages can outweigh the potential shortcomings. If parties know they will only be bound to the process through their own consent, they will be much more inclined to "give mediation a try", since there is little to be lost through the process and much to be gained. The non-binding nature of the process and retention

[14] David Gange and Scott Meza, "Achieving Collaboration Through Mediation" in *Family Business Conflict Resolution Handbook*, *2003* http://www.business-mediation.com/Materials/Achieving%20collaboration%20FBH.pdf Pp.3
[15] David Gage, *The Hafts and Mediation: Lessons for Businesses*. [Washington: Washington Business Journal, June 17-23 1994] 13:5 http://www.business-mediation.com/News_articles/news_wbj199406.html Pp.1. http://www.beyondintractability.org/m/transformative_mediation.jsp
[16] Kaufman, Steve. "See you Out of Court" *Nation's Business*. [Washington: Jun 1992] 80:6, Pp.58

of control helps to allay any fears of those who see themselves in more powerful positions, because their perceived advantage in the courtroom is never lost.[17]

In addition, factors can be brought into play to induce parties to act in good faith. For example, mediators can emphasize to firms the need to maintain a good public image in order to retain the confidence of shareholders and stockholders. Laborers can be reminded of their interest in retaining viable employment, and coming to a final, sustainable agreement. If interests such as these are addressed properly in the final agreement, incentive to defect is reduced and parties will have no reason to engage in bad-faith behaviour.

6. Mediation Yields a High Rate of Satisfaction

One benefit that is equally applicable to all parties involved in mediation is the high level of satisfaction that can be generated from the practice. Participants in the Florida Department of Environmental Regulation mediation reported a 76.9% resolution rate, with only 12% of parties not satisfied with the process or results. [18] Of the 23.1% of parties who did not resolve their dispute, at least half of them were nevertheless satisfied with the mediation process. This can be explained by referring to our previous discussion about how mediation encourages dialogue and strengthens partnerships, even when no agreement is reached.

7. Mediation Presents an Opportunity to Create Value

Not only does mediation allow the relationship between disputing businesses to outlast the dispute, it can create a constructive forum in which previously unexplored avenues of positive business relations and effective business strategies can be examined and adopted. Studies have shown that many business disputes are resolved through innovative arrangements not previously contemplated,[19] using ideas that would never have been explored had there not been a need for constructive problem solving. Such arrangements may involve agreements on a new set of terms or a redefinition of relationships. It is important to note that courts and arbitrators cannot generally impose such non-cash settlements;[20] both are restricted to declaring a "loser" through the granting of money damages and injunctions, even when other solutions are more appropriate.[21] By contrast, mediation creates a discussion ground where parties are encouraged

---

[17] *ibid* at 2. This is especially important in the context of international private sector conflicts, where power imbalances prevail and corporations might otherwise be reluctant to give up their perceived legal benefits to the "weaker" stakeholder groups
[18] *Supra* note 8 at 2
[19] *Supra* note 9 at 1
[20] *Supra* note 9 at 3
[21] *Supra* note 4 at 4

to focus on their interests, not just their legal rights. This sets the stage for a "win-win" solution whereby both parties can not only resolve their conflict, but could also actually benefit from the examination of innovative problem-solving solutions.

8. Mediation Allows for the Consideration of Legitimate Business Concerns

Businesses stand to gain a great deal from mediating disputes because it offers a forum to have legitimate business concerns taken into consideration. Not only does this contribute to the sustainability of the final agreement, it also keeps constant - or augments - the economic viability of the firm. Such was the experience of the founder and minority owner of a small distributing company near San Francisco. When he discovered that one of his executives and stockholders was on the verge of opening a competing firm--apparently with the help of unauthorized use of company funds – the company founder fired the executive and sued him. The resulting situation did not look good: The executive countersued, and lawyers in the case estimated legal costs would amount to a minimum of $35,000 for each party. In addition, the mandate of judges and arbitrators is to make findings of fact and apply remedies, not to make sound business and personal decisions. Turning over absolute decision-making power to such a third party in a business context would be risky because the outcome is unpredictable and may not be in the best interest of one or both businesses.

The case ended up in mediation at the suggestion of council; in the resulting agreement the executive agreed not to use trade-secret information, which might have destroyed the distributing firm. It took only one day to resolve this business concern, with a total cost of $2,000 to be divided evenly between the parties.[22]

9. Mediation Provides a 3rd Party Neutral to Help Overcome Negotiation Barriers

The presence of a third party neutral can help to overcome barriers to resolution that are often insurmountable when negotiation is used. Below are listed the barriers that might be encountered in a negotiation, and the means by which they can be overcome by mediation.[23]

- **Negotiation Barrier #1: Subjective & inaccurate party perception:** Parties typically come to the negotiation table with specific ideas about the facts of the case and what constitutes a fair outcome. Irrespective of how inaccurate these ideas might be, they can

---

[22] *Supra* note 16

[23] Bennett G. Picker "How to Best Aid Negotiations by Breaking Down Barriers," *Alternatives to the High Costs of Litigation* [CPR Institute for Dispute Resolution, December 2001] 19/11 Pp.251-7 Path: Lexis > Legal > Area of Law - By Topic > Alternative Dispute Resolution > Model ADR Practices and Procedures > CPR Institute for Dispute Resolution > Alternatives to the High Cost of Litigation. Accessed Sept.14, 2005

be entrenched to the point where parties cannot be swayed from their positions. Mediators acts as an agent of reality, providing an objective point of view to dispel unrealistic expectations and balance two opposing, subjective opinions.

- **Negotiation Barrier #2: Reactive devaluation:** Parties may reject settlement proposals made by another party based on the source of the proposition rather than its merits. Mediators can help to overcome this barrier by establishing trust between the parties, first by normalizing the mistrust and then helping parties to overcome it through sharing of interests and grievances in a non-accusatory way. If this is not possible, a mediator can present a proposal as her own or as hypothetical situation, which the party being propositioned would be more likely to consider.
- **Negotiation Barrier #3: Bad-faith behaviour:** Direct negotiations occur without a referee, and can be conducive to bad-faith behaviour such as non-negotiable demands, intimidation, and personal attack. Such tactics were employed in negotiations between Haitian employer Grupo M, and the local union, SOKOWA. A report written by Jane Regan and published by the Maquila Solidarity Network explained,

> "It [was] not the first time SOKOWA members lost their jobs. Last time around, on Mar. 1, only a few weeks after the union registered with the government, 34 employees were summarily fired. A month of international mobilizing and a push from Levi got them their jobs back and elicited promises that negotiations would take place.
>
> But as months went by, tenuous relations turned sour. After several failed sessions and what SOKOWA says were scare tactics by management, workers decided to hold a one-day strike Jun. 7. When they showed up the next day, they were locked out. Three days later, the lay-offs were announced.
>
> "The company refuses to negotiate," [labour group organizer] Augustin said during an interview. "Instead, they harass and beat people and are threatening to close down completely unless workers join a 'yellow union' management is setting up."" [24]

- In mediation, parties and counsel are monitored by an authoritative third partyand provided with an outlet to air grievances. They thus feel less compulsion to resort to bad-faith tactics such as violence or extreme behaviour.
- **Negotiation Barrier #4: Extrinsic pressures:** There might be outside pressures working against one or both of the parties in a negotiation that prevent prompt settlement. For example, a firm representative might feel the need to impress employers by hard

[24] Jane Regan "Workers fight for Rights in Free Trade Zone" [Maquila Solidarity Network: July 27] http://www.maquilasolidarity.org/campaigns/grupom/grupom_ipsarticle2004.htm Accessed Sept.3, 2005

lining, or the firm itself might have a need to “make an example” of the dispute to discourage other groups from similar behaviour. While the mediation process might not be able to dispel these extrinsic pressures, a skilled mediator can bring them to the fore and include them in considerations when attempting to reach a resolution.

STAGE II:
Mediation in the International Business Arena - The Jaqalanka Case Study

Mediation has thus distinguished itself as a dispute resolution technique that has unique characteristics of value to the interests of the domestically operating business community. But do these benefits of mediation apply in the international arena as well? And how do the aggrieved parties benefit or lose when mediation is used to resolve an internationally based conflict? Data providing a response to these questions can be found through an analysis of the Jaqalanka dispute.

The Jaqalanka factory is located in Sri Lanka's Katunayake Export Processing Zone (KEPZ). Situated in the south-west quadrant of the country 20 kilometers from Colombo, the zone covers 190ha of flat land.[25] The KEPZ is the longest-operating EPZ in the country,[26] having been established in 1978 under the auspices of an International Monetary Fund (IMF) initiative.

The dispute in question arose at the factory in March of 2003 when management refused to issue a standard festival bonus that had been offered to workers every year since the opening of the factory.[27] Management refused the bonus the grounds that the company was operating at a loss. Workers challenged the accuracy of the statement, arguing that there was no change in the manufacturing of goods at the factory and management could therefore afford at minimum the bonus that had been offered the previous year (amounting to one month's salary). Workers brought the dispute to the attention of the Workers Council, a body made up of elected officials whose task was to present worker grievances to relevant authorities. Preliminary negotiations between the Workers Council and management proved unsuccessful, leading many production sections at the Jaqalanka factory to strike. Seeking a more effective means of representation, 220

---

[25] *Katanayaki EPZ.* Board of Investment, Sri Lanka http://www.boi.lk/InvestorSite/content.asp?content=about5&SubMenuID=36 Path : Why Invest in Sri Lanka > Free Trade Zones and Industrial Parks > Free Trade Zones > Katunayake EPZ. Accessed Sept. 9, 2005

[26] *Visit of the Deputy Minister Mr. Arjuna Ranatunga to KEPZ.* [Board of Investment of Sri Lanka : July 7th, 2004]. http://www.boi.lk/boi2005/view.asp?NewsID=1483&CatID=1 Accessed Sept.5, 2005

[27] See Clean Clothes Campaign http://www.cleanclothes.org/urgent/03-07-30.htm for a detailed description of the Jaqualanka dispute events.

of the 400 workers at the factory joined the Free Trade Zones Workers Union (FTZWU) and requested union intervention to settle the dispute.[28]

Management recognition was a prerequisite for launching union negotiations in the Sri Lankan EPZs. Under Sri Lankan law, such recognition was only required if a minimum of 40% of workers requested union membership. When the Jaqalanka referendum was held in July 2003 to determine if it met the 40% requirement, only 17 workers out of 400 voted. A panel of international observers from U.S. and European labour groups contested the results, reporting intimidation and harassment on the part of management.[30] This intimidation - including death threats - continued after the election, and workers found recourse to legal authority futile; reports to police were dismissed as fabrications,[31] and the Sri Lankan Board of Investment participated in actively discouraging union activity.[32] It was clear that management, with the support of authoritative government bodies, was unwilling to consider unionization of its factory, and workers were unwilling to continue without it; what began as a simple dispute over a yearly bonus had escalated into a seemingly intractable conflict.

> "Labour representatives alleged that the Sri Lankan BIO …has discouraged union activity… [and] that the Labour Commissioner, under BIO pressure, has failed to prosecute employers who refuse to recognize or enter into collective bargaining with trade unions"
>
> - US State Department, *Country Reports on Human Rights Practices 2002: Sri Lanka* (2003)

---

[28] For more information on freedom of association in Sri Lanka, see "Campaign to Support the Free Trade Zone Workers of Sri Lanka", [Clean Clothes Campaign, 2001] at http://www.cleanclothes.org/urgent/01-09-23.htm, Sarah Perman "Behind the Brand Names: Working Conditions and Labour Rights in Export Processing Zones" [International Confederation of Free Trade Unions, December 2004] http://www.icftu.org/www/PDF/EPZreportE.pdf Pp.50-53, and *Labour Standards and Employment Relations Manual.* [Board of Investment, Sri Lanka: March 2004] Path: Board of Investment, Sri Lanka > BIO Guidelines > Laour Standards http://www.boi.lk/pdf/manual.pdf . All accessed Sept.14, 2005.

[29] "Fair Labour Association to Mediate Round Table Discussions Focusing on Jaqalanka Parties to Seek Solution to Union Recognition Dispute at Sri Lankan Factory" [Fair Labour Association Press Release: October 1, 2003] http://www.fairlabor.org/all/news/docs/Jaqalanka.pdf and "Justice for All: The Struggle for Worker Rights in Sri Lanka" [American Center for International Solidarity: 2003] http://www.solidaritycenter.org/files/SriLankaFinal.pdf Pp.22-23

[30] "Report of SOMO Workshop on Complaint mechanisms in the context of monitoring and verification of codes of conduct" [Center for Research on Multinational Corporations: Amsterdam October 17th 2003] http://www.somo.nl/monitoring/reports/03-12-complaints-workshop.htm and Sarah Perman "Behind the Brand Names: Working Conditions and Labour Rights in Export Processing Zones" [International Confederation of Free Trade Unions, December 2004] http://www.icftu.org/www/PDF/EPZreportE.pdf Pp.51. Accessed Sept.14, 2005.

[31] Sarah Perman "Behind the Brand Names: Working Conditions and Labour Rights in Export Processing Zones" [International Confederation of Free Trade Unions, December 2004] http://www.icftu.org/www/PDF/EPZreportE.pdf Pp.52 Accessed Sept.9, 2005

[32] *ibid* at 51

The Mediation

Enter the Fair Labour Association (FLA), a multilateral organization designed to complement international and national efforts to promote respect for labor rights.[33] One instrument used by the FLA to satisfy this mandate is the Third Party Complaint. This mechanism allows any person or organization to confidentially report to the FLA about any situation of serious noncompliance concerning the FLA Workplace Code of Conduct or Principles of Monitoring with respect to the production facilities of FLA-affiliated companies.[34] Since Jaqalanka produced clothing for FLA member Nike, the FTZWU was able to make use of the FLA system to file a third party complaint.[35]

Nike likewise requested FLA intervention to resolve the dispute. The company has released no statements explaining the motivation behind the request; however, a viable theory is that the company was engaging in efforts to improve its public image. Nike had suffered bad publicity in the 1990's when poor working conditions in its Vietnamese factories caused an increase in critical press and public expressions of concern. Although the connection is disputed, some cite this poor human rights reputation as the reason for the heavy fall of Nike's stock beginning in 1995.[36] Regardless of the connection, Nike's actions clearly demonstrated a concern for it's public image; in January 1997 the company launched a public relations campaign to fight off charges that it was a global abuser of sweatshop labour. Press releases, letters to newspaper editors and university heads, and the controversial release of the Andrew Young report, were all part of the movement to convince Nike's ethical buyers and stockholders that it was a socially responsible corporation.

> At the time of the dispute, the European Union (EU) was considering withholding additional trade preferences on exports from Sri Lanka to EU countries because of worker rights violations in the EPZ factories. This likely had a large impact on government support and compliance for the mediation process.

Based on the requests of the FTZWU and Nike, the FLA called on the Center for Policy Alternatives, a respected local NGO, to establish a mediation roundtable. The session took place in October 2003 with Auret van Heerden, executive director of the FLA, acting as mediator. Parties to the mediation included representatives of Jaqalanka, the FTZWU, the Sri Lankan

---

[33] Fair Labour Association > About Us > http://www.fairlabor.org/all/about/index.html

[34] For more information about the third party complaint mechanism, see the Fair Labour Association at http://www.fairlabor.org/all/complaint/index.html

[35] The case had already led to the filing of a complaint with the ILO Committee on Freedom of Association, and petitions to both the US Government and EU challenging Sri Lanka's trade benefits.

[36] Some authors claim that Nike's stock fall from 76$ to $46 within a year was a reflection of the Asian Crisis rather than Nike's poor record of respect for labour rights. For example, see Patricia Sellers "Four Reasons Why Nike's Not Cool" *Fortune* [New York: March 30, 1998] 137:6. Pp.1-2

Government, Nike, and the FLA.[37] After 7 months of attempted negotiation and escalating conflict, the dispute took less than a week to resolve with the help of an impartial and authoritative third party. Parties signed a Memorandum of Settlement on October 16, 2003; it included a clause outlining management's acceptance of worker representation by the FTZWU, and provisions whereby the union was to call off its international solidarity campaign.[38] Eight months later parties reconvened for an evaluation of the implementation of Memorandum agreements, and all were satisfied with the progress that had been made.

---

[37] The factory also produced for VF(for their Red Kap workwear brand), and a VF representative was present, but the role of VF was minimal and has been omitted for the sake of analytical clarity.
[38] To view the text of the final agreement, see Appendix 2. The original version, including signatures, can be found at the FLA site: http://www.fairlabor.org/all/news/docs/Jaqalank2.pdf

STAGE III:
Analysis of Jaqualanka Case Study and Research Question Responses

To review, this study seeks to determine whether mediation can act as an efficient dispute resolution technique in the context of private sector international disputes. The concept of "efficiency" as used here is measured using three distinct characteristics:

(1) Acceptability of the technique to business parties
(2) Acceptability of the technique for aggrieved parties
(3) Sustainability of the solution

Acceptability of Mediation for Business and Aggrieved Parties

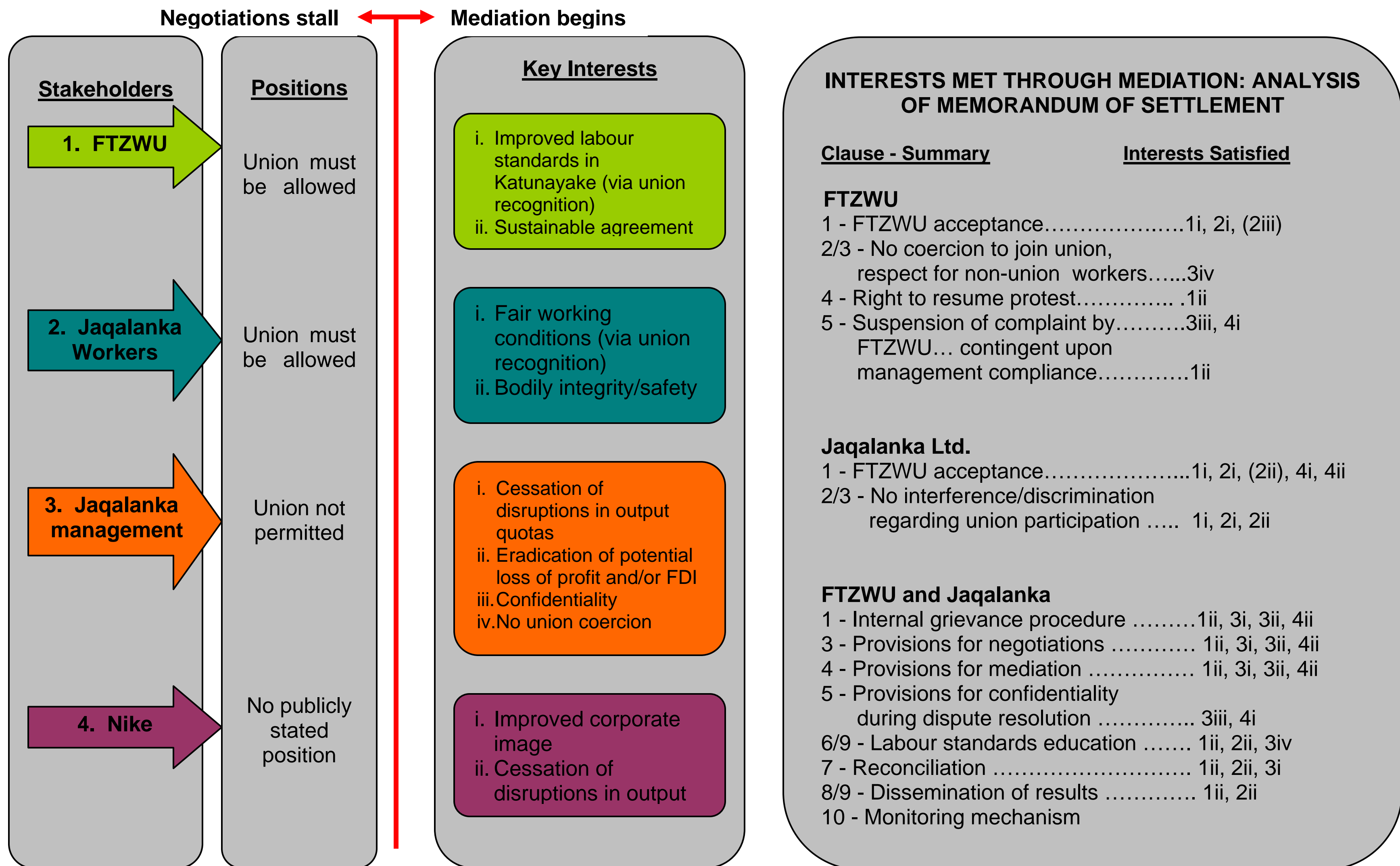
Although the mediation sessions themselves have been kept confidential, the Memorandum of Settlement from the Jaqalanka mediation is publicly available, and provides useful data that can be applied to generate conclusions relevant to the research question. The first and most important point to note is that the mediation session succeeded where the negotiations failed because it took party interests into account. During negotiations, parties had failed to identify the reasons why each side was making its particular demand. Management knew workers were demanding union formation, and workers knew that management was actively discouraging this demand, but tough negotiation tactics such as harassment and striking prevented awareness of the interests that lay behind these positions. Instead, negotiations were a zero-sum game whereby it was necessary for one party to "lose" for the other to "win".

> In the ADR field, the term "position" refers to the voiced demands of the parties, while the term "interest" refers to the reasons why the demands are being made. By identifying the interests behind the positions, mediation can find sustainable solutions to seemingly intractable conflicts.

Co-authors Fisher and Ury note that, while it is frequent for positions to be diametrically opposed, disputing parties often have interests that do not conflict but merely differ.[39] This distinction is crucial because it implies that, if parties can understand that their interests are different but not contrary to one another, it is possible for them to work together to find solutions that satisfy the needs of each. The analysis provided in the chart below reveals that this was in fact the situation at the Jaqalanka factory; party positions were opposed, but interests were merely different and, in many ways, complementary.

[39] Roger Fisher and Willian Ury "Getting To Yes: Negotiating Agreement Without Giving In" [New York: Penguin Books, 1981] Pp.43

Table 1: Analysis of Party Interests in Jaqalanka Mediation



As the above table demonstrates, the Memorandum of Agreement has been designed to address the interests of each party without demanding large concessions from either side. This allows the conclusion that mediation is ideal for both businesses and aggrieved parties because it finds a mutually acceptable solution through discussion of substantive needs. Not only is the dispute settled, it is settled in a manner that satisfies key stakeholders. This conclusion speaks to the sustainability of mediated agreements; when parties have their interests met, the costs of defection from the settlement become greater than the costs of compliance, and the final agreement becomes self-enforcing.

The benefits accruing to firms who use mediation for IPSC is also evident when examining the relevance of the domestic benefits of mediation in the international sphere. The analysis contained in the following chart makes use of the facts of the Jaqualanka case to reveal that most of the domestic benefits of mediation previously discussed are applicable to IPSCs.

Table 2: Comparison of Domestic and International Corporate Benefits of Using Mediation

Domestic Business Advantages to Using Mediation	Applicable in the International Sphere?
Less expensive than arbitration or litigation	*Indeterminate* The American Center for International Labour Solidarity reports that employers in Sri Lanka pay legal council 45,000 rs. per day to defend labour cases in court.[40] Costs incurred by parties during the FLA mediation are not available, so a comparative measure is not possible. It should be noted that the FTZWU did not raise any issues regarding financial inabilities during the process, and the FLA has no published notices of costs in their third party grievance procedure outline.
Less time consuming than arbitration or litigation	*Not Applicable, however…* This issue did not arise in the Jaqalanka case study; the case did, however, clearly illustrate that mediation can be less time consuming than negotiation because it helps to overcome barriers such as bad faith negotiation tactics and extrinsic pressures.
Helps to preserve business relationships	*Yes* In this case, follow up reports indicate the relationship was not merely preserved but improved. During a follow up meeting some months after the mediation, workers and management expressed appreciation for one another and "pledged to continue to work together in partnership".[41]

[40] "Justice for All: The Struggle for Worker Rights in Sri Lanka" [American Center for International Solidarity: 2003] http://www.solidaritycenter.org/files/SriLankaFinal.pdf Pp.11. Accessed Sept.14, 2005

[41] "Jaqalanka Ltd and Free Trade Zones And General Services Employees Union (FTZAGSU) Dispute Settlement Process" [Clean Clothes Campaign Press Release: 24 June 2004] http://www.cleanclothes.org/urgent/04-06-24.htm Accessed August 30, 2005

Confidential	*Yes* Statements by parties during the mediation are not public knowledge, and confidentiality in future dispute resolution activity is assured in the Memorandum of Agreement.
Non-binding	*Yes* Continued participation in the mediation was not compulsory, which likely encouraged participation in the mediation. The nature of the agreement, however, makes compliance in the best interest of both parties. It is thus binding only in the sense that a reasonable cost-benefit analysis would yield the conclusion that compliance is most beneficial.
Yields a high rate of satisfaction	*Yes* The Clean Clothes Campaign reports that, at the eight-month evaluation meeting in June 2004, "the parties agreed that the process had worked successfully."[42] The union at Jaqalanka is fully operational, and there have been no strikes since the mediation session.
Presents an opportunity to create value	*Yes* In accordance with the final agreement, arrangements were made in the months following the mediation that created value for both workers and management. These include: ➢ The establishment of an internal grievance procedure to address future conflict ➢ Union organization rules that ensured non-interference with productivity ➢ Training and capacity building education for selected employees from management and operational levels. The few minor issues that arose in the first eight months after the mediation took place were quickly resolved to the satisfaction of the parties thanks to dispute resolution practices. "Both parties believe that the trust gained and the confidence built will help strengthen the process going forward".[43]
Allows for the consideration of legitimate business concerns	*Yes* A set of practical arrangements for Branch Union activities was agreed upon and implemented in December 2003. Arrangements include procedures for meetings and provision of a notice board for the Branch Union; crucial to the arrangements is the understanding that union activities are not to interfere with the company's productivity.[44]
Provides a 3rd party neutral to help overcome negotiation barriers	*Yes* This benefit was highly evident in the Jaqalanka case; mediation enabled cessation of conflict that had escalated due to external pressures on management and hard-line negotiation tactics by both parties.

[42] *ibid*
[43] *Supra* note 40
[44] *Supra* note 40

In addition to these dometic benefits found in the international arena, there are futher corporate benefits to mediating international disputes that are not present in domestic situations. For example, through the use of mediation firms can avoid the uncertainties and unfamiliarity of foreign court litigation. Jurisdiction in international disputes might not fall in the home country of the firm, and the result can be a time-consuming and confusing legal proceeding with an unpredictable outcome. Mediation can also provide a more personal link between corporations and local stakeholders, increasing firm awareness of domestic interests and thus acting as a preventative measure for conflict. This is a crucial business consideration, since social and political stability are key factors that investors weigh when determining if an overseas investment is safe; both are often lacking in firm initiatives that are perceived by the local population as a threat to their personal rights. The resulting strikes, protests, and rights-oriented campaigns can slow or halt overseas initiatives, damaging firm profits and decreasing investor confidence back home.

> ***Mediation in Sri Lanka***
>
> The people of Sri Lanka, like the people of many Asian countries, have traditionally practiced mediation. The use of mediation began with the reign of the Ceylon kings, who ruled Sri Lanka prior to colonial settlement. During the Ceylon Empire, the *Gamsabhawa*, or village council, was responsible for facilitating amicable settlement of disputes.

There are also additional benefits to mediation accruing to domestic stakeholders. Mediation provides workers with a forum to air grievances that is often absent in their domestic legal systems. This benefit should not be mistaken as a promotion of complicity towards inept judicial infrastructure; domestic laws in Sri Lanka need to be strengthened and enforced to prevent infractions and ensure those who violate labour laws are dealt with in a manner proportionate to their crime. It is nonetheless currently the unfortunate truth that a Sri Lankan worker fired for union activity might have to wait months or years to receive court attention for wrongful dismissal. [45] In the meantime work is difficult to find in the EPZs, and support by authorities for union participants is notoriously poor so justice will not necessarily be forthcoming.[46] The presence of an authoritative third party who operated outside of pressures from the Sri Lankan governmental and judicial sphere helped to balance what had been a lopsided negotiation process. The resulting mediation provided the Jaqalanka workers with employment stability and increased access to labour rights in a timely manner.

---

[45] *Supra* note 39 at 11

[46] Freedom of association rights have actually habitually been upheld in Sri Lankan courts. See *De Alwis v. Attorney General*, SC 7/1987, SCM 28.3.88 and *Wijeratne v. Attorney General*, S.C. Application No. 379/93, S.C.M. 2.3. 94. The issue in Sri Lanka instead lies with the Board of Investment and the Labour Commissioner, whom have proved resistant to encouraging or protecting right of freedom of association in Sri Lanka's EPZs. For discussion, see *Supra* note 39 at 12-13.

Sustainability of the Solution

One major concern about the use of mediation in the international sphere is its non-binding nature. The question of why any corporation, affiliated production institution, or domestic group would voluntarily choose to adhere to a mediated agreement for any significant amount of time raises questions about the effectiveness of mediated solutions in terms of their sustainability. The Jaqalanka case provides data that responds to this concern, largely through evidence that it is not necessary for an outcome to be legally binding in order for it to endure.[47] Instead, a non-binding outcome can encourage long-term compliance through (1) the meeting of interests in the final solution (2) the presence of appropriate clauses in the Memorandum of Agreement that address issues of dispute resolution, monitoring, and education (3) the support of influential stakeholders.

The sustainability of the Jaqalanka solution has already been discussed in a positive light through an examination of interests that were met in the Memorandum of Agreement. It was demonstrated that this increased the disadvantages of defection and the advantages of compliance, so that a reasonable cost-benefit analysis by parties would yield the conclusion that adhering to the Memorandum is the best course of action. For example, Jaqalanka management has an interest in avoiding bad publicity and further international pressure, while the FTZWU has an interest in legitimacy and recognition; both interests are assured so long as parties meet the terms of the Memorandum. This leads to self-induced compliance, which is logistically more conducive to sustainable agreements than a third party enforcing a long-term agreement between protesting parties.

The Memorandum of Agreement also encourages sustainability through clauses 1, 3, and 4 of the joint agreement section; it does so first through a provision for conflict prevention, which is followed by the provision of a dispute resolution framework. By addressing the potential for future disputes and providing a forum to air grievances, the Memorandum safeguards against the escalation of conflict into hardball negotiation tactics, which would almost certainly involve breach of the agreement. In addition, clause 10 of the joint agreement section provides for the intermittent presence of a third party to encourage timely compliance through a relaxed monitoring process by the FLA. Finally, clauses 6, 8, and 9 ensure education regarding the form and substance of the Memorandum via training sessions and dissemination of the results. This

[47] There had been no reported incidents of defection from the Memorandum of Agreement at the time of writing (September 2005)

encourages sustained compliance through both employee and management awareness of rights, and the integration of a new set of labour values.

There is evidence that such an integration has in fact occurred, not only at the Jaqalanka factory but also beyond. Workers at Jaqalanka have reported improved working conditions, and the FTZWU has reported that it now has greater freedom to operate in the zones; it has successfully organized in ten other factories.[48] For the part of management, there have been no further complaints of labour disruptions due to union activity, and a follow-up report states that, "At today's meeting to review the progress made, the parties agreed that the process had worked successfully and pledged to continue to work together in partnership". There is no question this attitude between the parties reflects a new perspective that promotes respect for each other's interests.[49]

The final issue to be considered in relation to sustainability of IPSC mediation is the presence and influence of international pressure. While the precise degree of influence from outsiders encouraging mediation cannot be measured, it is reasonable to assume that Nike's request for FLA intervention had a significant impact on the decision of Jaqalanka management to engage in discussions with the FTZWU. This highlights the crucial role that outsourcing multinationals can play in encouraging respect for fair labour. When contractors express an interest in resolution of labour disputes through mediation, it impacts management behaviour in two ways. First, it provides support that dispels fears that contracts will be lost through the process; second, it encourages management compliance through the knowledge that contractors are happier when their names are not associated with poor labour practices.

International political bodies also have an influential role to play. At the time of the dispute, the European Union (EU) was considering withholding additional trade preferences on exports from Sri Lanka to EU countries because of worker rights violations in the EPZ factories. This undoubtedly had a large impact on government support for the mediation process, which is a crucial consideration given the poor reputation of government bodies in encouraging freedom of association in EPZs. The express displeasure of such a powerful political and economic body would also impact likelihood of adherence by management, who would feel pressured by potential loss of contracts, and also a concerned government, to act in good faith.

[48] *Supra* note 31 at 52
[49] *Supra* note 40

Summary of Findings and Policy Recommendations

Despite the above-demonstrated value of using mediation to resolve IPSCs, there has been little academic attention paid to the matter. The purpose of this investigation was to begin exploring the issue in the hopes of partially filling the current information gap. This study has illustrated that mediation can act as an efficient dispute resolution technique in the context of international private sector conflicts. This is because mediation provides benefits to international corporate endeavors, including benefits experienced at the domestic level, and additional benefits specific to the international arena such as avoidance of the uncertainties of internationally based litigation and creation of ties with indigenous populations. Indigenous populations also stand to benefit from mediation through the provision of a legitimate forum to air grievances. The presence of a non-affiliated third party is especially beneficial for those domestic stakeholders who live under the rule of governments that are complicit towards or actively discourage labour rights.

Although the FTZWU was specifically focused on union organization at the Jaqalanka factory, the results of the mediation roundtable have created a ripple effect, spilling over into other areas of the Katunayake free trade zone to spread the benefits of improved labour standards to other workers. Evidence suggests that this is because mediating international disputes can promote the end of systemic inequalities and trigger a change in attitudes for all stakeholders to a dispute, whether they are directly or indirectly involved. Certain factors in the Jaqalanka case facilitated this diffusion, such as the educational programs built into the final agreement, and the support and recognition of international authorities (such as the EU) for the mediation process in general.

A change in core values augments the sustainability of the solution, although the main factor affecting short-term sustainability appears to be the accurate identification and satisfaction of party interests in the final agreement. Drawing on the Jaqalanka case study, other factors to consider when examining the issue of sustainability are the presence of:

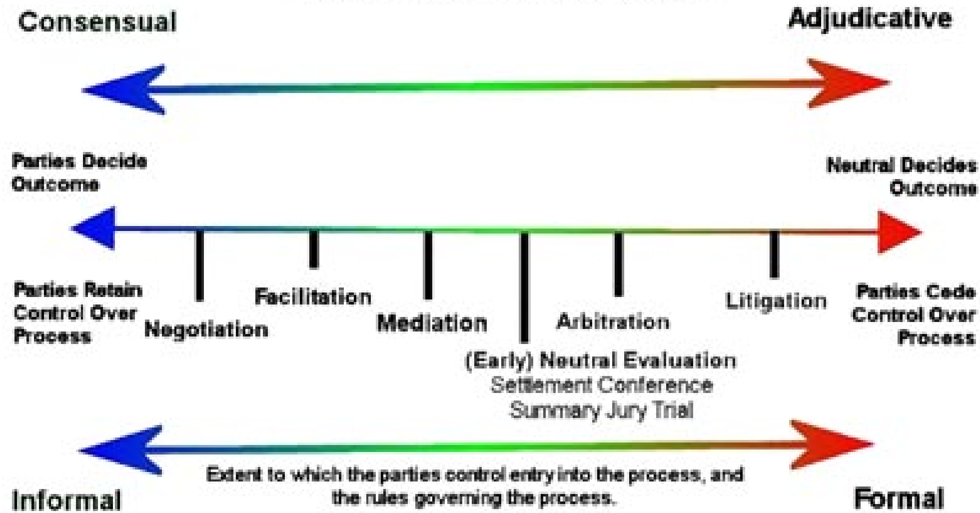
- An effective monitoring mechanism capable of performing routine evaluations of agreement implementation
- Provisions in the agreement memorandum that outline the process for resolving future disputes in a timely fashion
- Clauses in the agreement memorandum that provide clear benefits to parties in the event of compliance, and revoke the benefits in the event of defection.
- Influential third parties who support the final agreement (such as the FLA and EU)

- Educational clauses that address core labour values and inform workers and management of their respective rights in the workplace.

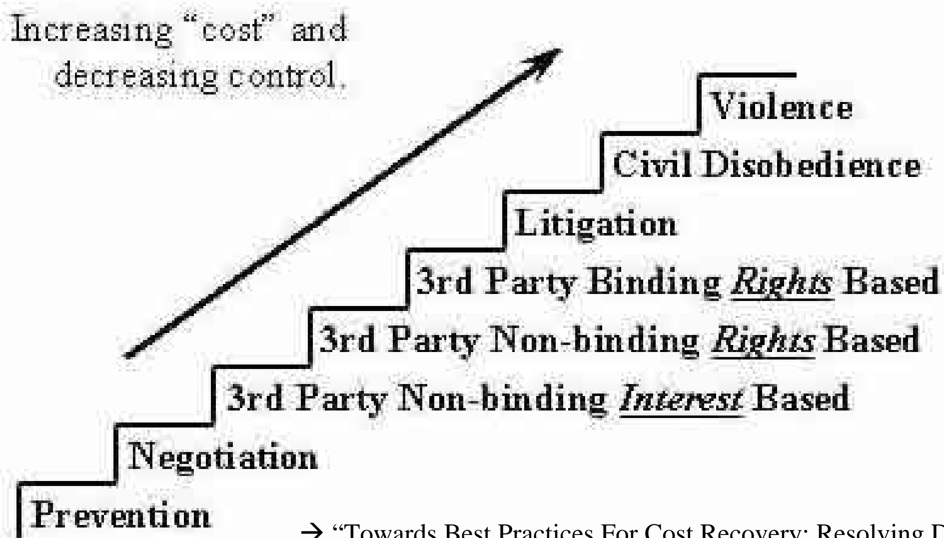
The presence of each of these factors in the Jaqalanka dispute helps to explain the initial and ongoing success of the mediated settlement.

END

APPENDIX 1



→ New York State Unified Court System >" What is Alternative Dispute Resolution?"
http://www.courts.state.ny.us/ip/adr/What_Is_ADR.shtml



→ "Towards Best Practices For Cost Recovery: Resolving Disputes"
Health Canada Cost Recovery Committee Conference Report, October 1999
http://www.hc-sc.gc.ca/ahc-asc/pubs/extern-charg-frais/disputes-differends_e.html

APPENDIX 2

Memorandum of Settlement[50]
Between
The Free Trade Zone Workers Union
141, Ananda Rajakaruna Mawatha
Colombo 10
And
Jaqalanka Ltd, Katunayake

It is hereby agreed between the Free Trade Zones Workers Union (FTZWU) and Jaqalanka Ltd, Katunayake that the dispute over union recognition be settled on the following terms:

The FTZWU, for its part-

1. Seeks acceptance by Jaqalanka Ltd as the representative of FTZWU members concerns.

2. Agrees to respect the right of workers to form and joint, or not, organizations of their own choosing.

3. Agrees not to harass, victimize, discriminate against or otherwise subject non-union workers to any unfair practices.

4. Reserves the right to resume the international campaign if the good faith understandings reached herein are not respected by the company, subject to the union exhausting all procedures for the resolution of disputes set out in this agreement.

5. The FTZWU agrees to request that the complainants suspend their complaint (dated 21 July 2003 filed by the ICFTU and 22 September 2003 filed by the ITGLWF) to the ILO Committee on Freedom of Association pending the successful outcome of the review after six months as provided for in this agreement, which period will begin on the signing of this agreement. If the parties agree that the real progress has been made towards ensuring freedom of association at Jaqalanka Ltd the FTZWU will request that the complainants amend their complaint to remove all prejudicial reference to Jaqalanka ltd.

The Jaqalanka Ltd, for its part –

1. Accepts the FTZWU as the representative of FTZWU members concerns.

2. Agrees to respect the right of workers to form and joint, or not, organizations of their own choosing.

3. Agrees that no workers or union members will be harassed, victimized, discriminated against or otherwise subjected to any unfair labour practices.

Both the FTZWU and Jaqalanka Ltd agree-

[50] Tie Asia http://www.tieasia.org/Documents/Memorandum_of_Settlement-Typed.doc Accessed September 8, 2005

1. An internal grievance procedure for Jaqalanka Ltd be formulated by the parties at a meeting to be convened by the CPA within 14 days.

2. That the future relationship of the practice to collective bargaining will be governed by the Industrial Disputes Act as amended by Act No 56 of 1999 or any decision mutually be agreed upon by the parties.

3. The parties will meet as and when the company or the union request a meeting to discuss grievances of union members. For this purpose the parties may call upon the CPA to facilitate the meeting.

4. Upon conclusion of this agreement the parties will make a written request to the Commissioner General of Labour to appoint an authorized officer in terms of section 3(1) C of the IDA to conciliate in the event of any deadlock in the internal grievance procedure.

5. No party issue any public declaration on the merits of a case while under review by the grievance procedure or the authorized officer.

6. The parties request training and capacity building on issues of freedom of association and sound industrial relations to be facilitated by FLA/CPA.

7. Both parties commit to a process of healing and reconciliation and to uphold the rule of law, including practical arrangement for the union activities, to be negotiated within seven days of the signing of this agreement. This will include the cessation of negative campaigning and publicity.

8. The company will exhibit a copy of this agreement in all three languages on the company notice board for the information of the workforce in order to publicize the understanding reached between the parties including the company's recognition of the right of workers to freedom of association.

9. The parties issue s statement to the workforce in order to clarify the principles of freedom of association and the understanding reached at the present meeting. The FTZWU, FLA and CPA will be present at the meeting, Jaqalanka Ltd and FTZWU request the Labour Commissioner to be present.

10. This forum will meet in six months to consider progress made in implementing this agreement. The parties will, in the first instance, jointly request the Commissioner General of Labour to convene the meeting.

Signed at Colombo, 16 October 2003-

Signed.	Signed.
Harin Fernando & Daniel Ortiz	Anton Marcus (General Secretary)
On behalf of Jaqalanka	On behalf of the FTZWU

Witnessed by-

Signed.	Signed.
Palitha Atukorale	Auret Heerden
Chief organiser –JSS	FLA