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The Journal

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ENVIRONMENTAL MEDIATION AND CLIMATE CHANGE: A CALL FOR ACTION

THE HONOURABLE LOUISE OTIS⁽¹⁾

Abstract

In this contribution, the author calls the international community for the wide and immediate use of mediation to effectively deal with many aspects of climate change. This covers issues such as the global environmental negotiations themselves, fiscal issues, displaced populations, and governance. The need for a real time strategy team could not be more immediate.

The current climate emergency is an irremediable tragedy that threatens the earth. It transcends state borders and forces us to redefine the means of coordination and conciliation between sovereign states. More than ever, negotiation and mediation are essential in the design of our intervention models.

We are beyond the stage of immediacy. We are surpassing the state of emergency, because it is now a question of the survival of living species. The Intergovernmental Panel on Climate Change (“IPCC”), the United Nations body for assessing the science related to climate change, issued recently its sixth assessment report on the

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physical science basis of climate change with alarming conclusions (“Report”). The Report confirms that some of changes that affected climate are irreversible; that CO₂ concentrations and increase rate have augmented, and highlights the need for rapid, sustained and large-scale reductions of climate change. ⁽²⁾

Day after day the effects of climate action occur to such an extent that we have grown used to it like regular features of life. As if the fatality of the disaster now inhabits the collective unconscious of the inhabitants of the Earth.

The extraction of resources has tripled over the past 30 years, and 70% of global energy still comes from fossil fuels, with carbon emissions continuing to rise.⁽³⁾ Without needing to read scientific reports to believe the disastrous climate change, laypersons are witnessing an unprecedented rise in temperatures, bushfires and forest fires spreading through continents – with limited undertaking on their side to change consumer behavior contributing to this crisis. Melting glaciers threatens the planet with immeasurable flooding, and the oceans have become receptacles for 8.8 million tons of plastic each year. The permafrost of the arctic and boreal regions contains between 1,460 and 1,600 billion tons of carbon, not counting viruses and bacteria which, once released, will cause health disasters.

In December 2015, 196 parties convened to a historic moment—the Paris Agreement—resulting from long negotiations spanning over 30 years to fight against climate change and take actions aiming to reach a future with a low intensity of carbon.⁽⁴⁾ The Agreement entered into force on 4 November 2016 and is considered “ **a landmark** in the multilateral climate change process because, for the first time, a binding agreement brings all nations into a common cause to

(2) <https://unfccc.int/news/un-climate-change-welcomes-ipcc-s-summary-for-policy-makers-on-the-physical-science-basis-of-climate>. For a concise summary, please consult the 6th Assessment Report Factsheet at https://www.ipcc.ch/site/assets/uploads/2021/06/Fact_sheet_AR6.pdf

(3) <https://www.iea.org/reports/net-zero-by-2050>

(4) <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

undertake ambitious efforts to combat climate change and adapt to its effects.”⁽⁵⁾ It fixes a global objective to keep the temperature increase below 2 degrees. Although the objectives of nations are voluntary, these countries commit to report on their climate policies and their results, and to participate in collective accounts of global efforts. This obligation of transparency is undoubtedly the agreement’s point of solidity because there is still no International Environmental Court, nor any coercive mechanisms to ensure that nations respect the targets.

The Paris Agreement establishes collaboration and cooperation between the signatory countries. Therefore, the agreements can only emanate from consensus. Undoubtedly, it is time to change the ways of getting to consensus and to consider new approaches.

The United Nations Climate Change Conference UK 2021 (COP 26) will be the most decisive since the 2015 summit. It will be necessary to accentuate collaboration and cooperation with extraordinary efficacy to create new routes towards a global social contract. Undoubtedly the first.

The time has come to include big mediators in the global environmental negotiations. We no longer have the luxury of lengthy face-to-face negotiations of the kind we carried out thirty years ago. We need to include neutral third parties who are impartial and independent to guide, activate, and accelerate the negotiations.

The world needs professional mediators who have already conducted hundreds of mediations. Mediators who have travelled to the limits of the human soul throughout their entire professional life, and who know its smallest hidden corners. Those who know how to read hesitation, body language, voice inflections. Those whose are skilled at dealing with deadlocks and impasses. One does not become mediator on the spot. It is a profession and sometimes it is an art.

(5) <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

We need to create a team of cutting-edge environmental mediators to tackle the next decade (1) **fiscal mediators** for the reconstructing international taxing towards environmental goals, (2) **field mediators** assisted by scientists, for displaced populations following flooding, cataclysms, desertification, (3) **governance mediators** for coordination between states and companies. A solid, mobile team that works and moves in real time. A real Time Strategy Team. Right now. Immediately.

You know, since the end of the 1970's, enlightened by a solid empirical path and nourished with reflections from legal thinkers, we know that mediation is a transcendent phenomenon in the history of modern law. Mediation constitutes, in appropriate cases, a reconstruction of social justice.

Additionally, the United Nations has given legitimacy to mediators who work in the context of the Charter of the United Nations, through normative tools (such as the relevant Security Council and the General Assembly Resolutions), as well as the Secretary General's Bulletins. Recently, and to the point, the United Nations Department of Political Affairs and the United Nations Environment Programme published, in 2015, a "Natural Resources and Conflict: Guide for Mediation Practitioners" ("Guide").⁽⁶⁾ This guide is addressed to professional mediators and describes mediation case studies in countries afflicted by environmental disasters across continents. Given the stakes they involve and their complexity, those types of mediation cannot be improvised; they need to be conducted by very skilled professionals.⁽⁷⁾

(6) https://peacemaker.un.org/NRC_MediationGuide_2015.

http://www.peacemediation.de/uploads/7/3/9/1/73911539/discussion-points-2_translating-mediation-guidance-into-practice.pdf

(7) For example, this type of mediation includes an assessment of the entire conflict dimensions to determine the suitability of mediation, and how it can be conducted. This assessment is extensive and should cover both desk and field research to understand the numerous factors in environmental conflicts. According to the Guide, some of the issues that need to be considered in assessment are as follows: "The issues in contention; The parties, their interests, their interconnections, and their capacity to engage; The status and condition of the relevant governance frameworks, including those for dispute resolution; The political, socioeconomic, and environmental context; Potential entry-points to start the mediation process; Possible elements of process design from each party's perspective." (See page 16)

In 2016, I was invited to the launch of the Guide. Given that I have conducted mediations in environmental conflicts, in Canada, I was asked to share my own experience and highlight the parallel between national and international mediation. What surprised me, however, was realizing that specifically in the field of environmental conflicts, there are common grounds between national and international mediation: we apply the same mediation techniques, and we prepare our files in the same way. An evaluation phase, a preparatory or pre-mediation phase, the mediation itself - which is a negotiation led by a neutral third party - and the implementation phase when there is an agreement. This Guide provides mediators with a critical tool for creating, managing and leveraging knowledge at the national or international level.

Nevertheless, this UNEP guide recognizes: “...*Despite its promise, mediation has been under-utilized by the international system in addressing disputes over natural resources.....the international system still lags behind in acting on opportunities for proactive use of mediation as a tool ...*”

The time has come to regain the time lost in face-to-face negotiations between opposing parties. We no longer have time for negotiations based on firm positions, and concessions that take months.

I am considering the populations that are currently displaced, and that will become displaced over the next year and decade. Climate refugees are now the human face of climate change. Oxfam shows that catastrophes created by climate change were the principal factor in internal displacements over the course of the last decade, forcing about 20 million people per year to leave their homes.⁽⁸⁾ The UN Refugee Agency (UNHCR) describes climate change as “the defining crisis of our time and disaster displacement one of its most devastating consequences.”⁽⁹⁾

(8) <https://www.oxfam.org/en/research/forced-home-climate-fuelled-displacement>

(9) <https://www.unhcr.org/climate-change-and-disasters>

The delicate questions of (1) financial and technical aid to bring support to communities and of (2) populations relocation in countries or territories often hostile to their arrival call for mediation in real time by experts trained in these issues.

Whether we like it or not, we find ourselves in a conflict with our planet. We will have to redefine with humility how we live and what solidarity and sharing mean, in ample measure.

In the Algonquian language, one of the First Nations in Canada, we say *MAMIDOSEWIN*, which means “we walk together towards a common destination.”