

# INTERNATIONAL ENVIRONMENTAL MEDIATION AND THE ETHICS OF MODERNITY

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**ABSTRACT:** International environmental conflicts that marked post-modern society are complex, dynamic and break with traditional borders concepts, pointing out, for this reason, new solution mechanisms. These mechanisms are the ones that take into account the participation of new actors, who will act supported by an ethics of responsibility, according to Hans Jonas, who values dignity and inter-human relations in continuous interaction with the environment. In this perspective, globalization contributed to the building of networks in which fluidity is a continuous movement. With regard to this dynamic, it is necessary to seek new resolution methods for international environmental conflicts that meet the liquid modernity and that allow major participation of parties involved. And the international environmental mediation, object of this paper, will be analyzed in

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order to verify if it is a suitable method for promoting dignity and consolidating democracy for present and future generations.

**Keywords:** Mediation. Environmental Conflicts. Ethics of Responsibility. Democracy.

## **INTRODUCTION**

The complexity of the environmental conflicts, marked by the fast development of new technologies, led to the economic growth but jeopardized the environmental balance and triggered consequences such as climate changes, shortage of natural resources, forced migrations and several other issues which demand a sustainable and cooperative adjustment among several actors in pursuit of pacifying solutions.

The right to environmental and social peace must be addressed under the perspective of the international law and of the indivisibility of the human rights in line with the economic, social and cultural rights.

Such conception leads us to the right to development, which demands an ethical and supportive globalization, where the human person is the central subject of development and must be active, participative, and recipient of the right to development.

Under this perspective, the implementation of measures aimed at the mediation culture is important because its practice might foster the ethics of responsibility, reach the sustainable development and promote the construction of pacifying solutions of international environmental conflicts.

With this ideology, the current article seeks first to analyze the relationship between globalization and international environmental conflicts. Next, it points out the importance of building up a network of mediators, a feature of the liquid modernity (BAUMAN, 2001), which allows mediation to flow through various levels.

Finally, it addresses some concepts of mediation and its development in the international context, focusing on the contribution of the international environmental mediation to the awakening of the ethics of responsibility of Hans Jonas.

## **1. GLOBALIZATION AND INTERNATIONAL ENVIRONMENTAL CONFLICTS**

Globalization has helped bring societies and their environmental destinations closer than ever. At the same time, the environmental problems increasingly transcend the national borders and set forth challenges to the health of the planet. The development of more efficient laws and

environmental legal systems all over the world has thus become critical to direct the economic development and the growth to a path of environmental sustainability. (YANG; PERCIVAL, 2009)

Policy makers who respond to these demands have recognized that environmental protection must be addressed holistically and expansively. Local problems cannot be set apart from national, regional or even global conditions. As a result, the interface of the national (national and local) and international environmental legislation is expanding fast (KISS, 2007).

The internationalization of the markets and the emergence of a global civil society have presented new opportunities and new challenges. Communication networks allow for a faster knowledge of the existence and reach of the environmental problems, resulting from technology and changes to nature or to the scope of human activities. All this promotes the need for developing and reviewing the national and international legal framework jointly.

There are multiple and complex causes of conflicts, such as border and interethnic tensions. Using a small amount of the funds spent on war weapons yearly, consultation and consensus mechanisms which decrease the possibility of death and destruction can be established.

And it is under this context that environmental conflicts, which can be conceptualized as the social dispute which occurs when someone has a certain aspiration to use a given natural resource and someone else creates a barrier so as to prevent or regulate this conduct, are found.

But the conflicts should not be seen negatively. The way to find solutions in a democratic society starts from opposing points of views from different sectors which, ultimately, face each other and debate their stances in order to make the best decision about any public subject.

In face of this complex context taking shape, associated with the transnational magnitude of the causes and effects of the environmental problem, it is necessary that the environment protection be part of the concern of the States, organizations and government and non-government international institutions and also of the civil society itself so that we can have more resilient and prosperous societies.

And in order to meet this delicate and difficult relation of the post-modern society, environmental law seems consistent, taking into consideration that it is part of the latest branches of the international legal system. The ability it has to unite a more and more ample, diversified and complex regulation has been decisive for such adhesion (KISS, 2007).

Sensitive to the seriousness of the problems which affect the common environment, the States have had an understanding towards the need to cooperate in search of solutions. As Ruiz (2014) points out, there are three factors which put the internationalization of the environmental problems and the need for cooperation towards the corresponding solutions, namely the cross-border contamination, the export of risk or globalization of environmental problems and the increasing globalization of the economic system, into evidence.

To this end and aiming at addressing such international issues, cooperation comes forth as a new spirit. Being one of the first principles of the international environmental law, it was proclaimed in the 1972 Stockholm Declaration in its principle 22, and in the Rio Declaration, whose article 24 claims that “every country, large or small, must concern itself with the spirit of cooperation and on equal terms with the international issues related to the protection and improvement of the environment”.

And, in order for the international cooperation process to be efficient, the expansion of the actors involved is its determinant. From this perspective, the single action of the States is not enough; the cooperative participation of the NGO's, which gradually gain status and become part of the processes of compilation and application of the international environmental law (KISS, 2007), is a prime note.

The integration of the principles of cooperation, from the prohibition of the use of force to the solution of disputes, in terms of environment, along with the strengthening of the mediation of environmental conflicts points to the building and consolidation of environmental peace.

## **2. THE NETWORKING OF MEDIATORS IN LIQUID MODERNITY**

Over the past two decades, there has been a significant increase in the number and variety of the actors involved to avoid, mitigate and resolve conflicts.

In the post-modern society, conflicts about government control, natural and economic resources are its characteristic feature, which demands the existence of a complex network of objectives and agents, with local, regional dimensions and which go beyond the frontiers of a country.

Under this complex scenario, the involvement of other actors can ensure fundamental elements such as greater legitimacy, efficacy and equity for the final solution, the mediation having an important role for that purpose.

The international mediation is traditionally performed by States, though they do not have the monopoly on this activity. In addition to the States, actors who play the role of mediators for peace can be identified. They are the international organizations, non-government organizations and individual actions.

The regional and sub-regional organizations have recently turned into active actors in the management and resolution of conflicts. Mediation has been supported more and more by these organizations. Over the past years, the non-government actors, or actors from the private diplomacy (PDA), as mentioned by Marshall (2012), have given mediation support to institutional and state peacemakers.

The contemporary conflicts demand a Multi-track mediation, which would be the performance of mediators at different levels or stage of the conflict. The Track 1 mediator, as State or international organization, has a more political and formal performance. It contributes little in the sense of guaranteeing the appropriation on the parts of the peace treaty. As for the non-government mediators, Track 2, they can act bottom-up to transform the underlying system of the conflict using communication and facilitation strategies (WIGELL, 2012).

With regard to this smooth moment we are living in, when Bauman (2001) explains the relationship between modernity and time/space, he claims that the relationship between time and space becomes procedural, variable and dynamic, which justifies the transition from heavy modernity (solid) to light modernity (liquid), comparing the former to a hardware and the latter to a software.

So, it is necessary to identify mechanisms of conflict resolution which can meet this smoothness. For this purpose, international environmental mediation can contribute to the current needs, which are to present an answer to the environmental issue, but which allows the building of an environment of sustainable peace, taking into account the local contexts of each conflict, of each affected individual, group or society as well as their cultural aspects.

It is necessary to verify if the mediation can contribute to making all the actors involved in the conflict aware, as agents responsible for the environment where they live and which will be handed over to those to come, in order to confirm if it can strengthen the ethics of responsibility, advocated by the philosopher Hans Jonas (2015).

### **3. INTERNATIONAL ENVIRONMENTAL MEDIATION AND THE ETHICS OF RESPONSIBILITY**

Mediation is a method based on the negotiation processes and also a form of response easily adaptable and sensitive to the context which features the expansion of the negotiation process to reflect the different conflicts, participants and situations (BERCOVITCH, 2016).

Moore (1986, p. 6) defines mediation as “an extension and a drawing-up of the negotiation process. Mediation involves the intervention of an impartial, neutral and not having any power as a deciding authority third party, accepted by the parties to voluntarily help them reach a mutual agreement”. The mediator’s neutrality and the lack of authority to make decisions are brought to light by Moore (1986), who sees the mediator as the one who voluntarily helps the parties in order to reach solutions mutually acceptable to the issues in dispute.

The intervention of a third professional person in the mediation process and the responsibility of the parties for adopting decisions are characteristic features of all the definitions

which shape the mediation. The absolute protagonism in the decision-making belongs to the parties and the mediator is to organize and conduct the procedure. Within this dynamic, the mediator just helps, cooperating for the parties to reach a solution, but in an impartial and active manner.

The mediation process is a form of non-binding, non-violent and non-coercive intervention. When mediators act in a conflict, be it internal or international, they do so in order to affect, change, solve, alter or influence it somehow by offering ideas and knowledge, and such aspect is another characteristic feature. Voluntariness is also a feature within this process. The actors involved keep control over the results of the conflict and the freedom to accept or reject the mediation or the mediators' proposals. It works on ad hoc bases (BERCOVITCH, 2016) basically.

To Bercovitch (2016), the definition which better translates this process is the one which constitutes a process of conflict management, in which the ones involved in the conflict seek help, or accept an aid offer from an external agent (be it an individual, an organization, a group or a State) to change their perceptions or their behavior and to do it without turning to the use of force or without calling upon legal authority.

International mediation is examined from several angles, and four major traditions have certainly arisen out of this study. So, the first study group has in the scholars associated with the Harvard University Negotiation Program its bases, offering advice on what makes up good conflict management in real situations (BERCOVITCH, 2016) as contribution. Fisher, Ury and Patton (2014) stand out in this segment with books and manuals about how mediators and negotiators must behave, what defines good negotiation or mediation and how conflicts can be solved, "Getting to Yes" (1981) being its best example.

The second group presents as contribution the development of a set of applicable rules to every international and national conflict, using the various techniques of interaction and problem solving, combining political action with scientific experimentation.

Research done by economists and followers of the Game Theory, who developed mathematical models to examine how people behave in conflict situations whose conditions are of great rationality and information, makes up the third group. The review of strategies to make concessions and reach agreements is common practices of these studies.

The fourth group is represented by descriptions and empirical investigations of mediation cases that seek to develop theories and offer general courses of action through detailed description of a particular case of international mediation, mediation-oriented lab experiments and quantitative studies that include various international mediation cases (BERCOVITCH, 2016).

As a tool of diplomacy and foreign policy, of peace promotion and of expression of international law, mediation proves to be adequate when a conflict is long, lasting or too complex; when the effort by the parties for its management has come to a standstill; when the parties are

willing to accept the additional costs or deaths caused by the conflict; and when the parties are willing to cooperate, tacitly or explicitly, to break the impasse (BERCOVITCH, 2016).

Philosopher Hans Jonas proposes the principle of responsibility as an ethic principle, in which when people act, they must do so in such a way “that the effects of their actions are compatible with the survival of human life on Earth” (2015, p. 40). It is a concern with the future generation, a reflection on how mediation can contribute to ensuring intergenerational equity.

To the author, sustainable living in the contemporary world suggests sharing ethical values through which basic welfare conditions for current and future generations are verified. So, every human action must be compatible with the survival of human life in the future; everybody is responsible for promoting sustainability.

Sustainability is a contemporary value which takes shape from the maturity of the society to understand its own responsible existence on the planet.

This responsibility must create mutual efforts, compared to a network of actors, such as State, government organizations, non-government organizations, civil society; each one has some knowledge which can better the productivity of the other by means of interdependence. The conflicts of the post-modern era demand a dynamic and flexibility which a single level of action cannot produce, depending on the complexity of the conflict, notably, environmental conflicts. In order to solve the problem, the involvement of the political, economic and social spheres will be necessary. The mediator will many times act in different spheres in the search of a common goal, which is to promote dignity and consolidate the democracy of the current and future generations.

## **CONCLUSIONS**

In the area of environmental conflicts, solutions that are creative and different from the traditional ones, which are not enough to address the preservation of the environment and the survival of future generations, are required.

The environmental crisis is expressed through the loss of the meaning of the human existence and the sustainability has belittled its use. From this perspective, the challenges to build a sustainable post-modern society must have an acceptance devoted to the ethics of responsibility, which introduces the international environmental mediation as a settlement procedure of flexible conflict and easily adapted to the environmental dynamic.

Therefore, the international environmental mediation emerges as a peace prevention, building and maintenance tool to be used by several actors (mediators) given its features for dialogue encouragement, the participatory process, stimulus to cooperation, solidarity among the

peoples and mainly the possibility of mediators acting in several conflict levels, building a network of peacemakers.

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