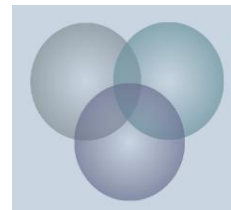




International Max Planck Research School
‘Retaliation, Mediation and Punishment’
Conference Call
‘On Mediation’
4th – 8th February, 2014



Venue: Max Planck Institute for European Legal History, Frankfurt/M.

As a unique and interdisciplinary research and teaching network for doctoral studies the International Max Planck Research School on Retaliation, Mediation and Punishment observes retaliation, mediation and punishment as interrelated and complementary concepts to establish, negotiate, maintain and re-gain social order, peace and human security. Within the scope of REMEP a series of international conferences is organised to present and discuss recent research on the basic concepts of retaliation, mediation, and punishment in a transdisciplinary setting combining anthropological, historical, international, legal and criminological perspectives and aiming at comparison. After the first conference ‘On Retaliation’ the second conference will be held between the 4th and 8th of February 2014 at the Max Planck Institute for European Legal History and will focus on the concept of mediation. Invited experts and members of the Research School will present basic theoretical and empirical approaches as well as recent research and case studies on mediation with reference to the basic concept and to the disciplines co-operating in the REMEP programme, and, in particular, aiming at transdisciplinary aspects. One of the main aims of the conference is to enhance the interdisciplinary dialogue on a subject matter that is intensely debated within different fields of knowledge, often without taking into account the findings of other discipline’s scholarship.

Following the basic design of REMEP the leading approach of the conference is to explore the variety of concepts, modes and manifestations of mediation in current as well as in historical settings regarding the interdependences and interrelations with the concepts of retaliation and punishment. Current developments and recent research activities in the disciplines of social sciences humanities and especially law testify to a growing interest in mediation as a non-violent and cost-saving mode to negotiate, regulate or settle various conflicts and disputes between two or more parties/actors using the help of a third party as mediator who, in contrast to an arbiter or adjudicator, has not the authority to pass on a final decision. However, conventional normative and social theory often undervalues the complex relationship between mediation, retaliation and punishment as interrelated and complementary concepts to establish, negotiate maintain and re-gain social order, peace and (human) security on different levels and in various settings. Mediation is used in a variety of conflict scenarios related to social and economic conflicts, cultural diversity and diverging normative orders, violence and crime or international conflicts. Insofar it could range from alternative dispute resolution in egalitarian societies to conflict management procedures in (post-) conflict societies, often embedded in plural normative configurations. Hence, mediation could influence or even challenge retaliation, punishment or formal legal procedures, and vice versa; it can be observed that from the early modern period up to recent developments authorities or legal systems attempted to regulate mediation procedures by law or adopted certain elements. On the other hand, (private) parties do not only resort to mediation, but can as well use retaliation or the legal system to regulate conflicts thus enhancing the actors’ abilities to manoeuvre within or among these repertoires, especially under conditions of plural normative settings or cultural diversity.

Starting from the basic problem of the complex interrelations between retaliation, punish-

ment and mediation, the conference aims to explore the variety of actors, groups and conflicting parties resorting to mediation or acting as mediators in different constellations, which range from central political/judicial authorities, states, global governance institutions, or transnational organisations to non-governmental, regional actors, ethnic or religious communities, kinship groups and local, diaspora, expatriate or migrant groups. Within this broad field, a specific aim is to analyse the role and function of mediation with regard to the interdependences, overlaps, tensions, and collisions between acephalous societies characterised by the absence of a central political authority or areas of limited governance on the one hand and nation states and central authorities on the other hand, manifesting on local, regional and national as well as on trans- and international levels. Current trends and recent research show that mediation, especially on a transnational level and concerning large scale conflict, exchange of violence, international or human security or conflicts related to cultural diversity undergoes a reconfiguration and challenges the concepts of retaliation and punishment and the respective normative orders and legal systems.

As a consequence, mediation as a concept and a practice of conflict management and dispute resolution refers to institutional and normative hybridity as well as to plural normative configurations such as local or customary law, religious law, private or criminal law, or supranational norms. In this respect a further focal question of the conference concerns the function and practice of mediation with regard to plural normative orders, normative and institutional hybridity, and the diversity of alternative dispute resolution and conflict regulation. Though traditionally considered as ‘alternative’ private dispute resolution, under the condition of normative hybridity and cultural diversity mediation allows to analyse the interplay, conjunctions, overlappings, collisions or blurred boundaries between extrajudicial and judicial conflict resolution and the ways conflict and dispute are addressed in the nomosphere within, beyond, across or even independently from state legal orders and institutions. An example could be the interrelation between private, non-governmental mediators and formal legal systems/institutions, or the ambiguous function of mediation within formal/legal procedure, manifested, for instance, in victim-offender mediation, out-of-court settlements and transitional or restorative justice and related reconciliation processes. Thus, the conference aims also to examine the interrelation between mediation and other modes or institutions of conflict regulation, notably with regard to their function and capability to regulate, solve or reconcile disputes (in particular in settings of cultural diversity) and to establish, negotiate, maintain and re-gain social order, peace or (human) security.

Considering mediation as a concept to informally or formally regulate conflicts in institutional and normative hybrid/plural settings, a further approach of the conference concerns the various procedures of mediation, analysing modes and techniques as well as the role of the different mediation-agents. With regard to the latter, a prime intention is to examine and compare the different roles and functions of arbiters, mediators, and agencies, notably by analysing such issues as status, abilities, skills, training, accountability, and benefits, also taking into account that mediation could develop into a profitable business of a ‘mediation and peace industry’ which could produce considerable costs for involved parties. Concerning the various informal and formal procedures and practices of mediation such aspects as the form of communication, the languages, logics, and techniques as well as the questions of access, the social construction (or labelling) of conflict parties and their identity patterns, and the strategies for inclusion and exclusion in situations of conflict are of particular interest. These topics are closely connected to the pivotal question if and how mediation produces acceptable, viable and sustainable results (or unintended effects) concerning the regulation of conflicts, the reso-

lution of disputes, the reconciliation after (mass) violence, or the establishment of the truth. This, finally leads back to compare the capacity of mediation to establish social order, peace and human security with the interrelated and complementary concepts of retaliation and punishment.

Suggested Topics for Conference Papers, Addressing Structural Problems of Mediation

Based on these general considerations, conference papers could address one or several of the following fields and some related questions from the angles of social anthropology, legal history, public international or (comparative) criminal law, as well as criminology, preferably aiming at transdisciplinary aspects and facilitating comparative analyses.

- 1) Basic approaches to the concept of mediation and its interrelations to retaliation and punishment
 - How and to which extent is mediation interrelated to retaliation and punishment and if so, under what circumstances/conditions can mediation constitute an alternative or an option to these concepts? Is mediation, on the other hand, influenced by the concepts of retaliation or punishment?
 - When and under what circumstances/conditions do parties to a conflict resort to mediation/mediators (instead of retaliation or legal means)?
 - Which specific historical or recent conflict can be discerned in which mediation gains a significant/prime role to regulate conflicts and settle disputes?
 - How can we conceptualise mediation with regard to other modes of alternative dispute resolution and arbitration?
 - What role does the concept of mediation play in social control and in the maintenance of order and security?
- 2) Actors, Groups and Levels of Mediation
 - Which agents/agencies (private/non state actors, global governance institutions, transnational organisations, semi-professional agencies, legal institutions) act as mediators/arbiters in different constellations and on different levels?
 - To what extent are mediators/arbiters connected to the various levels of mediation, ranging from local and national to trans- and international levels/settings? How is mediation connected with international relations between nation-states, global governance institutions and transnational actors?
 - How can we conceptualise the function of mediation with regard to acephalous societies and/or nation states/central authorities?
- 3) Hybridity and Plurality of Normative Settings
 - How is mediation related to cultural diversity and diverging normative orders?
 - How and to what extent is mediation related to plural normative settings, legal diversity, and institutional hybridity?
 - To what extent is mediation related to formal legal systems/institutions and how can we conceptualise the interplay or collisions between extrajudicial and judicial conflict resolution (regarding, for example, victim-offender mediation, out-of-court settlements and transitional or restorative justice)?
 - How is mediation integrated into legal systems or regulated by authorities or law?
- 4) Procedures and Modes
 - How are status, abilities, training, or accountability connected with the function of mediators/arbiters?
 - What are the costs or the benefits of mediation/mediators; does it constitute a profitable business?
 - Can we discern specific forms of communication, languages, logics, and techniques of mediation and can we determine how they are connected to the social construction of conflict parties, identities, inclusion and exclusion?
 - How can we value the capacity of mediation to produce acceptable, viable and sustainable results and provide for peace, human security and social order, notably in comparison to the concepts of retaliation and punishment?

Based on this general outline we welcome contributions which address one or several of the issues mentioned, taking a basic and theoretical approach to the concept of mediation or providing empirical case studies. Speakers will be invited on the basis of submitted abstracts (1,000 characters max.) to be sent to Karl Härter (haerter@rg.mpg.de) and Carolin Hillemanns (c.hillemanns@mpicc.de) by 30 Sept. 2013. A selection will be made in early October.