

## MEDIATION

Central European University, the Summer University, Budapest 2014

*Professors Petra Bard, Borbala Fellegi, Christian Hartwig, Erin Jenne, Csilla Kollonay, Lela Love, Markus Petsche, Joseph Stulberg and CEU PhD student, Natalia Andrea Peral*

### COURSE TEXT:

**THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, 2d ed.**, Stulberg and Love (**Document # 1**)

**SUPPLEMENTAL ASSIGNMENTS** (assignments organized by class day) (referred to as **Document #**)  
Both the advance reading assignments (to the extent possible) and additional course readings are posted to the CEU website (and identified below by Document #, as well as by title).

Helpful Background Reading: Getting to Yes, Fisher, Ury and Patton. This book is widely available and translated into many languages.

Breaks will be scheduled during each class period but are not indicated on the syllabus.

### **COMPLETION REQUIREMENTS:**

For all students, class attendance is mandatory. Completion of the program and the awarding of a certificate requires completing the written journal assignments described below.

Keeping a Journal: Students are asked to maintain a journal that will include four entries. Each entry should be the equivalent of approximately two typed double-spaced pages (500 words). The journal may be hand-written (but, in that case, must be legible!). The topic for entry 1 and entry 4 are prescribed. Students may choose their own topics for other entries with the goal of tying reading, class material and aspects of students' own experience together. Suggested topics for entries 2 and 3 are provided only as an assist; please ignore the suggested topic if you would prefer to write about something else. Journals are due in the last class from all students. Journals will help the instructors provide references for participants if they are requested.

**June 23, 2014, Monday**    **INTRODUCTION, OVERVIEW OF DISPUTE SETTLEMENT, NEGOTIATION & MEDIATION**

### **Reading (to be completed, if possible, before course begins):**

OPTIONAL BUT RECOMMENDED: GETTING TO YES, Fisher, Ury and Patton

Chapters 1-5, THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, 2D ED., Stulberg and Love, Text 1 [**Document #1**]

The Uses of Mediation (from the Negotiator's Fieldbook), Stulberg & Love [**Document #2**]

### **Post-class Assignment:**

#### **Journal entry 1 – Required Topic: cross-cultural interviews**

Working in groups of 4 or more, with students from as many different countries or locales (e.g., rural and urban) as possible, students will discuss and determine the most important similarities and differences between the national negotiating styles and other ways of resolving conflicts of the countries and cultures represented in the group. Students might explore whether other cultures are different in terms of: tendencies towards avoidance, competition and collaboration; formality and informality; punctuality, eye contact, and spatial distances between people in conversations and meetings; the role of gender, religion and age; preferences for problem-solving versus third party decisions. Write a journal entry reflecting on lessons learned from this conversation.

9:00-12:15            **Introduction and Course Overview**  
                             **Principles of Dispute Settlement**

Lecture and general discussion examining assumptions about dispute settlement, analyzing various dispute settlement methodologies, and exploring the role of mediation within that context.

**The Voluntary Resolution of Disputes**

Group exercise designed to illuminate the principles and dynamics underlying negotiation. The nature of the outcome, the importance of structuring the process, the role of information, preferences and priorities, the rationale of establishing trade-offs, and the facilitators and inhibitors of consensus-building will be stressed in the analysis.

12:15-1:30 **Lunch**

1:30-2:10 **Welcome to Budapest/Mediation and the Rule of Law in Central and Eastern Europe**

*Professor Csilla Kollonay*

2:10-3:30 **The Mediator at Work**

A demonstration of how a mediator works to resolve a dispute.

**Overview of Mediation**

An examination of the various functions the mediator fulfills and the types of traits/interpersonal skills required of the persons discharging these functions.

3:30-4:00 SUN Orientation (in the classroom)

(Optional 4:00-5:00 Library tour.)

**June 24, 2014, Tuesday** **BEGINNING A MEDIATION, ACCUMULATING INFORMATION AND DEVELOPING THE AGENDA; APPLICATION TO CRIMINAL JUSTICE AND INTERNATIONAL COMMERCIAL DISPUTES**

**Reading (to be completed, if possible, before class):**

Chapters 6-8, *THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY*, 2D ED., Stulberg and Love [Document #1]

*A Future Where Punishment Is Marginalized: Realistic or Utopian?*, Braithwaite, 46 *UCLA L. REV.* 1727 (1999) [Document #3]

**Post-class Assignment:**

**Journal entry 2 – topic of your choice**

Suggested topic: Would a mediation process “work” in a particular context (e.g., domestic cases) in your home environment? What adjustments to the process might make it more likely to succeed in the designated environment?

9:00-10:30 **Beginning the Mediation Conference**

An examination of the impact of different seating arrangements. Participants will examine the components of an opening statement. Interpersonal skills with regard to eye contact, language use, and creating a structured but comfortable environment will be the focus of the analysis that follows.

10:30-10:45 **Break**

10:45-12:30 **Accumulating Information and Listening Constructively**

Demonstration and analysis focusing on fact-gathering techniques, note-taking skills, and questioning skills. Interactive exercises will illuminate the task of translating hostile and adversarial communication into building blocks of collaborative dialogue.

**Framing Interests and Issues to Construct the Agenda**

Lecture and discussion examining the mediator's role in, and responsibility for, identifying, framing and ordering the issues in dispute. Exercises will follow.

12:30-1:30

**Lunch**

1:30-2:00

**Mediation Simulation for BAD (the first 3 elements in BADGER)**

2:00-2:50

**Mediation's Place in Restorative Justice Regimes in Criminal Cases***Professor Petra Bard*

Through lecture and discussion, participants will explore the unique theoretical and practical challenges posed by designing and implementing mediation in criminal cases. Special emphasis will be given to adaptation and use in Eastern/Central Europe, including in Hungary where amendments to the Criminal Procedural Code authorize use of mediation. The presentation will include a video showing a criminal justice mediation.

2:50-3:10

**Break**

3:10-4:00

**Mediation v. Arbitration of International Commercial Disputes***Professor Markus Petsche*

Professor Petsche will lead participants through an exploration of the differences between mediation and arbitration of international commercial disputes. Students will be challenged to analyze what process is appropriate for particular scenarios.

**June 25, 2014, Wednesday GENERATING MOVEMENT AND ELECTING TO CAUCUS; TRANSFORMATIVE MEDIATION**

**Reading:** Chapter 9-10, THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY, 2D ED., Stulberg and Love [**Document # 1**]  
Descriptions of Mediations [**Document #4**]

**Post-class Assignment:****Journal entry 3 – topic of your choice**

Suggested topic: Have you changed the way you communicate or negotiate as a result of the material you have studied so far? Provide an example and the results of the change in behavior.

9:00-1:10

**Mediator Strategies for Generating Settlement**

Lecture, discussion, and exercises examining the rationale of various settlement strategies that a mediator can use to move the parties towards agreement. Analysis will highlight persuasive techniques for moving parties from impasse to settlement.

**Meeting Separately with the Parties**

Examination of the purposes and strategies of meeting in caucus sessions with the parties. Participants will assume either the mediator's or a party's role and conduct a caucus. Analysis will follow.

1:10-2:10

**Lunch**

2:10-3:10

**Mediation Simulation for BADGE**

3:10-4:00

**Other Approaches to Mediation/Transformative Mediation***Professor Christian Hartwig*

**June 26, 2014, Thursday DEALING WITH DIVERSITY, COMEDIATION and RESTORATIVE JUSTICE**

Reading: Chapter 12, *THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY*, 2D ED., Stulberg and Love [Document # 1]; *Practice Guidelines for Co-Mediation: Making Certain That “Two Heads Are Better Than One”*, Love and Stulberg [Document #5] *The Restorative Approach in Practice: Models in Europe and in Hungary*, Dr. Borbála Fellegi [Document #6]; and chapters 1 and 2 in *Handbook for Facilitating Peacemaking Circles*, go to: <http://www.foresee.hu/en/segedoldalak/news/677/a742c69583/17/>

Post-class Assignment: Topic of Your Choice

Suggested topic: How does diversity play a role in conflict or conflict resolution in your home environment? For example, are the neutral mediators or adjudicators a certain gender or age? How successful are ethnic minorities in using public processes? **Or** Suggested topic 2: When you find yourself at an impasse or “stuck” for some reason, what works for you in terms of generating movement?

- 9:00-11:50      **Dealing Effectively with Diversity**  
Discussion, analysis and exercises focusing on interpersonal and communication skills critical to facilitating dialogue in contexts in which issues of personal, cultural, gender and ethnic diversity are pervasive.
- 11:50-12:30      **Co-Mediation**  
An exploration of the advantages and disadvantages of working with a team and of guidelines for effective partnerships.
- 12:30-1:45      **Working Lunch/Building a Career in Dispute Resolution (optional)**  
Informal discussion and advice regarding study and business-building opportunities in the field of conflict resolution.
- 1:45-3:30      **Mediation’s Place as a Restorative Justice Process in Disputes involving Ethnic Differences**  
*Professor Borbala Fellegi*  
Presentation and film about a community mediation project in a Hungarian village. Students will be introduced to the main principles and practices of restorative justice and its applicability on the different levels of social policy and the justice system. Participants will engage in group work related to a real school case, and the lecture will be closed by a film linked to the case.
- 3:30-4:00      **Presentations on Mediation from around the World**
- Movie Night (optional):      ***Pray the Devil Back to Hell: Mediation in Action***  
Film and discussion about mediation’s role in contemporary disputes.

**June 27, 2014, Friday CLOSING THE MEDIATION, ETHICS, MEDIATION IN INTERNATIONAL POLITICS AND FINAL SIMULATIONS**

**Reading:** Chapters 11 and 13, *THE MIDDLE VOICE: MEDIATING CONFLICT SUCCESSFULLY*, 2D. ED., Stulberg and Love [Document # 1]  
Uniform Mediation Act [Document #6]  
European Code of Conduct for Mediators [Document #7]  
*Directive of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters* (April 23, 2008) 15003/07 FINAL [Document #8]

- 9:00-11:00      **Bringing Closure to the Session**  
Strategies for effectively closing a session will be explored and practiced.  
**Ethics and Confidentiality in Mediation**

Discussion and exercises focusing attention on issues surrounding confidentiality and ethical dilemmas faced by mediators, particularly challenges to a mediator's impartiality, and the potential for abuse of discretion and power.

11:10-1:10

**Mediation in International Politics***Professor Erin Jenne and Natalia Andrea Peral*

Professor Jenne will introduce concepts and types of international mediation, as well as theories of international mediation: predictors of success and failure.

In the second hour, Natalia Peral will provide illustrations of predictors of mediation success and failure using empirics from two different, highly celebrated cases of international conflict mediation: (1) The Oslo Peace Process in the 1990s, and (2) Kosovo status negotiations of 2000s. General lessons for national governments, international organizations, and independent practitioners will be explored.

1:10-2:10

**Lunch**

2:10-4:00

**Mediation Simulations**

Participants will conduct a complete mediation conference, beginning with the opening statement and concluding with the written agreement. Both participants and professors will provide feedback to the mediator. Analysis will follow completion of each simulation.

**Reflections and Closure**