Is there a Right of Access to Mediation?

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Abstract
Soft or non-aggravating handling of conflicts, mediation and peaceful settlement of disputes, though in progress are not always available, moreover as they sometimes compete with authoritative or coercive official decisions. In international law, there is a mandatory duty to seek settlement of disputes through peaceful means. In national and local law, the obligation or the possibility to resort to such means greatly differs, ranging from totally non-existent to a highly promoted mechanism. Nevertheless, greater knowledge of and access to mediation and cooperative conflict management by all individuals, social groups and institutions would benefit the international community and others as well as the degree or quality of peace attained by humanity worldwide. To uphold this process of progress towards more peace through peace means to handle conflict, this study explores the possibility of granting a right of access to mediation and other similar mechanisms of peaceful settlement of disputes.

PART ONE. INTRODUCTION

I. Foreword

This paper wishes to open the discussion on possible means to grant greater access to peaceful settlement of disputes and therefore to improve and enhance the practice of mediation in all realms of life. It is addressed to acting or learning mediators but also in a larger perspective to lawyers and to all those concerned by the progress of peace; to those thinking that peace is an essential right in need of practical means and support to be fulfilled.

This brief study has no ambition at being totally new or comprehensive regarding the fields explored and the laws quoted. These laws are quoted as examples known to us. They are or may be many other useful examples in other circumstances, jurisdictions and practices. Further, as an independent researcher and a lawyer rather than as a mediator or a full time researcher, we have limited access to previous scientific studies on the links between mediation and law. We have

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therefore little means to thoroughly do the research needed to present or compare our work with other research eventually previously done on this topic or issue. Should there be other works on the links between the access to mediation, peace and human rights, we would be more than happy to learn from them and to cooperate with their authors towards the mainstreaming of peaceful settlement of disputes.

In part one, in a theoretical approach (I) and mostly for those that are less acquainted with meditation and similar practices or for those looking for arguments to enhance them (II), we present a modest overview of what these procedures are, of where they are or should be used and by whom (III); and henceforth why they should be used and used more (IV). Then the relation between peaceful settlement of disputes and criminal law is partly explored (V) and, as mediation is usually deemed as being a "free will" process, the links between rights and duties are explored to distinguish such a duty or freedom to mediate and the very different duty to make mediation available (VI).

In part two, looking at practical aspects of accessing to mediation means and procedures, we will look at existing law regarding international law (I) and national law, hereby Swiss law (II).

Summarizing our finding in part three (I), we shall make a few recommendations for the progress of mediation (II).

II. Why enhance mediation?

As a recall or as a tool of greater understanding, we here give a humble overview of the "state of the art" regarding violence prevention and conflict management, in the present time; the purpose being to value the need and quality of the concrete work done so far for peace in these fields and to give a fair view of the work ahead.

1. Following Steven Pinker's assumption when he asserts that violence is diminishing in human history[1], as there is still way too much violence going on or as the risks of violence happening are still very high, there is a need to find new ways to work towards more harmonious societies, towards societies where conflict is prevented, or if it nonetheless arises, societies where conflicts are solved without aggravating them and, whenever possible, using non-violent and peaceful means.

2. Totally forbidding violence and henceforth creating societies where peaceful settlement of disputes becomes the norm is the high goal. Living in societies where the cultures of peace and non-violence highly prevail is the ideal. The objective is through a step by step approach to create societies where the choice not to use violence is sufficiently strong and efficient and where the means to avoid using force or violence are easily available to, thereafter, substantially reduce the number

of cases of violence, including cases of self-defense leading to violence and excesses in the use of force.

3. To understand and underline that such an objective is necessary, possible, within reach and in progress quoting Sustainable Development Goal (SGD) 16.1 is useful and adequate[2]: "*[By 2030, to …] significantly reduce all forms of violence and related death rates everywhere".*

May be sadly, it must here be said that besides the above mentioned SDG goal 16.1 and goal 16.7 on inclusive participation to public decisions, the SDG's have missed out, totally, on peaceful settlement of disputes. Nevertheless, the "Mediation community" will have to and will find other avenues to value and progress with its work.

4. At the very base of this mediation work, it must be said or recalled that both in national and in international law, violence of all sorts including war, is totally illegal[3].

5. The legal exceptions permitting the use of force (which must be distinguished from violence): self-defence and or legitimate use of force need to be addressed more and monitored better in theory as in the field. If prevention and mediations have failed, the use of force may be, to some limited extent, legitimate if it is proportionate, or said otherwise if it does not unnecessarily aggravate the situation or violate basic human rights. It must here be recalled that exceptions to the illegality of violence and these only, because they are used to legitimate the existence of war and armies breed the existing culture of violence in all its forms of destructions (latent, potential or effective). When the recourse to force is too easily available or culturally acceptable, it conversely severely impedes the progress of mediation and of peaceful settlement of disputes.

6. Moreover, the other way around or said positively the rights to life, security and integrity are substantially and should be sufficiently promoted as essential values to be protected, both as such – living (these) rights and thus enhancing the human condition and their respect– and as rights morally, legally and substantively supporting the interdiction of violence.

7. However big the exceptions to the illegality of violence and however basic human rights are still in need of realization, it can nevertheless be asserted that the legal context (though indeed perfectible and in need of being known better) is sufficiently in place both to forbid violence and to achieve the present aim: to enhance respect of and for peace (as opposed to legitimizing violence) and therefore to create, on solid legal ground, the tools needed to repel violence and to improve its regress through prevention and non-violent conflict handling.

8. The flaw of the existing or tolerated violence is therefore mainly a cultural and historical phenomenon, not a legal weakness. Too easy a recourse to violence being illegal (even if international and local laws forbidding violence can use major improvements and enforcements), it is a cultural and a historical change that is needed to set up the infrastructures needed and able to solve conflicts non-violently, including as we shall see hereby a right of access to these procedures.

9. We can here use the distinction between positive and negative peace[4]. The later is to address the existing violence with law or force, which are far from being sufficient as they addresses symptoms or manifestation of violence and have only indirect preventive effects, mostly because they act only once the damage is done or once the violence has occurred. Positive peace is to create the infrastructures – and among them a more frequent or common use of mediation – needed first to prevent and avoid conflicts, then to assure that they do not degenerate into violence should they arise anyhow and finally to give them non-aggravating solutions using peaceful settlement of disputes possibilities.

10. For this to be, it must be made clear that such non-aggravating and peaceful solutions to conflict readily exist in a given society and that, as they are available, they then need to be used more systematically.

11. Enshrining peaceful settlement of disputes in law and practices, in the infrastructures and morals of a society is surely a way to assert that both people and institution are aware or become aware of the existence of such procedures and to ensure that they have the means to use them and effectively do so.

12. It must then be highlighted that law is in itself a form of force or even violence. Law can be the safety background or the net needed for greater freedom, but it can also, at least at first sight, impede on autonomy, self-understanding and freedom of choice. This would be somewhat in contradiction or lessening the importance of both the personal responsibility to choose not to use violence – if the means needed for one not to resort to violence are available – and limit the free-will needed to peacefully and autonomously choose to enter into and to participate in non-conflictive solutions. Said otherwise, if instead of taking responsibility for peace and peaceful solutions, one can rely on the force of the law and the power or responsibility of others, namely of authorities or on a State culture of power, law and its force may also limit the capacity to build long term peaceful solutions and practices.

13. Further, the right to security, which is vested in each and every one but is also granted by each and every one to all others, is not fully understood and practiced, unless the State makes it clear that peaceful solutions must be practiced by people as well.

14. Moreover, even when admitting that some laws are or may be universal (mostly human rights but also – hopefully – the principle of solving conflicts peacefully), the authority holding the right to enforce such law, enforcing it if needed by force or coercion, may be contested by the people or by some people, for good or not as good reasons. This systemic flaw – the State(s) wanting to combat violence by using force or violence – can breed rebellion or worse, terrorism.

15. So forth, law can set the frame or show the way, including morally and democratically, and law enforcement or legitimate use of force can assure a reasonable respect for these legal values, moreover if they are universal, but neither can law or its enforcement, by themselves, create the free will and the culture, the responsibility but also the infrastructures needed to go beyond the use of force and power and to enhance therefore the use of non-conflictive or non-enforced (at least at some stages of the procedure) methods of conflict solving.

16. Though this is changing and rather rapidly, force through law also impedes, or comes in partial contradiction with the necessity to create the infrastructures needed to address conflict responsibly, personally and ideally in a peaceful and universally non-violent approach[5]. Specifically, the availability of force, law and power does or may restrain the availability of, or the will to use mediation and similar non-coercive (or less coercive) means to address conflict[6].

17. This is particularly visible and unacceptable when the means to solve conflict through threat or force lead to arms races and thereafter when the means needed for peaceful settlement of disputes are unavailable or spoiled for other such purposes.

18. Said otherwise, both law and the monopole of the State on the use of force reach their limit when force negatively influences choice, or when by their enforcing nature they instill fear or rebellion thus causing a threat or a disruption to social cohesion. They so forth enter in contradiction with the free and open choice of peace and of refusing to resort to force or violence (and to their costs or indignities). They impede the free choice of entering into a more peaceful or even non-conflictive conflict-solving procedure, or with the legitimate will of the people of walking beyond force and threat, towards of a world of and at peace.

19. This limit is reached not inasmuch because the law and the monopole of force are (intrinsically ?) prone to force or violence (though there is still a lot of work to be done on that and towards "non-violent institutions"[7]) but because as they retain, to some extent righteously, a right to use force in case of serious need, it is harder for these powers or for the people that hold them to conceive and grasp the benefits of progress of and to look beyond or further than the prevention of

violence and of the use of force (or to transcend the present state of violence throughout the world) towards more participative or non-enforced solutions to conflicts, towards a higher degree of serenity and greater infrastructures as needed to avoid force and violence, and towards institutionalizing more mediation.

20. Because this "authoritative stance" is however declining in time, partly also because people becoming more educated, they are less prone to obey to authority and more in search of cooperative practices; or because of the only apparent contradiction between force and "soft justice", States and people in power do need help and new practices towards the now official goal of reducing violence[8]; goal from which they will benefit as well, as do individuals and the human society as a whole, by creating more space for cooperative government (good governance?) and diminished levels and burdens of violence.

21. Therefore, mainstreaming a culture of mediation is certainly one of the tools needed to approach the objective of reducing violence by providing, at large and for all, the tools needed to peacefully settle disputes.

22. To routinely learn how to use these tools and having them readily available is the structural environment needed for the progress of mediation.

23. Providing the legal and material infrastructures needed for a greater access to mediation and to peaceful settlements of disputes at large is the practical tool needed towards a more peaceful and therefore a more sustainable future.

24. As the legal part of this paper will show, States do progress towards such ideals and practices. Nevertheless, granting a right of access to mediation would both speed up the process of reducing violence and empower individuals and legal entities to use it more, therefore mainstreaming mediation and peaceful settlement of disputes, as needed to be living in peace.

III. Mediation: what it is, where it is used and for whom?

1. Leaving aside, at least for now, prevention of violence at large as well as other efforts undertaken towards the diminution of violence and further the effects mediation has or will have on prevention and reduction of violence, for the purpose this paper we shall admit that the parties are committed to solve their conflict without violence; that is peacefully or as peacefully as possible.

2. Unless otherwise specified, we shall use the term "mediation" writ large to include all peaceful settlement mechanisms to the exception of the judicial and arbitration procedures. These two procedures are already regulated by large bodies of law and produce abundant practice.

3. Regarding arbitration (and as it is also to a lesser extent the situation for mediation), the public at large is not (yet) sufficiently aware of the existence of

these types of procedure. Nevertheless, in some specific spheres – for States about international contracts and some financial issues[9], for big companies in various ways – the availability of arbitration means is mostly acquired or assured and the right of access to these procedures is granted either through an automatic mechanism present in a treaty or a contract, or on a reciprocal basis if a case needing such a settlement arises and if the parties agree to use it.

4. Therefore the term "mediation" for the purpose of this paper includes and covers meditation *per se* (one or more mediators facilitating the search and establishment of a lasting solution by the parties), but also ombudsmen, conciliation and other forms of facilitation, including traditional mechanisms such as the ones used by indigenous people, as an example among many the *gacaca* used in Rwanda[10]. As approaching synonyms, we also use "peaceful settlement of disputes" or eventually "soft justice" though this last expression is, in our humble opinion, less precise or legally accurate.

5. Though it is sometimes becoming "official", we do not use the term "alternative dispute resolution" as we do not consider mediation and other such means as being an "alternative" solution to anything else that would be "normal". Further, we wish to see peaceful settlements to become mainstream practice, not an alternative one.

6. As we consider that mediation should be made available and access to it granted to all and at all levels of society – individually, locally, nationally and internationally – the distinction between these various levels of human infrastructures and activities should barely be needed. However, as these various levels grant different rights and possibilities and as they are at various stages of their development towards systematic peaceful settlement, we shall use the distinction between them to progress through the topic.

7. Some special attention will be given to human rights, as they are non-negotiable basic values, but also as they often come across and overlap the national or international categories as their jurisdictions and conflict solving methods and possibilities transcend the traditional distinction between the national and international realms of power, but also hopefully the ones between coercive and "progress or cooperative" law[11].

8. As mentioned here and by, if norms are firm and sometimes universal, there is a strong trend towards cooperative mechanisms to apply them and to progress smoothly towards their implementation. This trend is lead both by the growing and sometimes legitimate reluctance of the people to blind obedience or to what is not clearly understood or agreed upon, moreover as more of them become highly educated, and secondly by the fact that the UN and the international community at

large have limited coercive powers, thus seeking for other ways to progress towards their goals. And it does not go without saying that mediation as a more humane and empowering procedure is part of that evolution, possibly also because the long term results of participative mechanisms breed more lasting results; as there is more direct implication of the parties, they are more concerned by long term quality.

9. Further, the human rights procedures and practices are highly linked with peaceful settlement of disputes. For one, the practice of regular reports, ideally showing progress form one report to the next a few years later is a form of soft justice. As is the non-coercive approach, though legal and binding, of all complaint mechanisms of the human rights treaty bodies, at the United Nations but also at the European Court of Human Rights and in other regional jurisdictions[12].

10. As such, one of the most promising endeavors for the progress of mediation is the ongoing process (or attempts) at the Human Council and now at the general assembly to have peace recognized as a human right. One of the practical dimensions of granting such a right will indeed be the enhancement of peaceful settlement of disputes for individuals and social groups as limit or supersede the use of force or coercive means thus increase peace at large. Withstanding the facts that a right to peace should, to be coherent, be peacefully implemented and therefore will require all possible attempts at peaceful settlement (thus also having a strong preventive effect) and that exercising and living, that linking all human rights together as to one another in a common process is or should also and indeed a peaceful practice[13].

11. Regarding those in need of access to mediation, the first useful element is the principle of inclusivity. If there is a right of access to mediation it is granted to all. This may be difficult to handle as all may not be acting in good faith and be of good will and as parties will never have totally similar objectives. But the more access to mediation is granted, the more the parties will know that they infringing peace and could be held responsible for that if they do not use the available peaceful mechanisms.

12. Then distinction between States, international institutions, legal entities, individuals and social groups (small or large) in need of mediation may become important, all being or being capable of becoming active actors to a mediation and as all shall have a similar right of access to mediation. However, their respective nature as legal or dialogue entities, as well as the circumstances may bring a need to differ the approaches to their right of access to mediation.

13. Proper attention should also be given to small or large groups of population, moreover if they are armed as they may generate international conflict, though then

they may not be or might not be subject to the international duty to solve conflict peacefully.

14. And this where this paper reaches its main limit. Unless peaceful settlement is made mandatory, not only for States but for all, or at least for all armed groups, if international peace and security are threatened, the States face the disadvantage of being the one from which it is required to build peace, while their opponents do not have or perceive a similar duty.

IV. Why mediate? Why make mediation more easily available?

1. Settling disputes peacefully limits casualties and damages, gives experience and empowerment to the participants and beneficiaries, thus improves world and local peace, individual behavior and conflict prevention. By lightening the burdens and costs of conflict, peaceful settlement of disputes opens new avenues for progress and development[14], for the well-being for all. As it causes less damage, peaceful settlement improves dignity.

2. Settling disputes without aggravating them, but also without the threat of punishment or retaliation, of being outcasted or of any further damages (if any occurred) except eventually reparation gives greater space to consciously and autonomously address the issue, preserves the social link and the connectedness within the community, be it local or through the world village and if successful brings experience and skills to the people and for the community to learn from the arisen difficulty, to limit reoccurrences, to face them more peacefully should they arise again.

3. Without the threat of worsening the situation (though there may be pressure as needed or felt, preferably peacefully expressed and transparent) mediation offers a greater space and more peace (or the possibility to create such a space of peace) to understand, discuss, negotiate and elaborate, to enter honestly and deeply into the matter. And to seek thereafter reparatory, preventive, lasting and ideally happy solutions. A more peaceful space gives better opportunities to become committed to the discussed solutions and thereafter to implement and evaluate them thoroughly, or if need be to adapt the adopted solutions.

4. The parties, free from the fear of further violence or deprivation have also greater chances and a greater freedom to preserve, expose and negotiate their rights and interests; they find greater incentives to repair or to offer solutions, if need be alternative or creative ones, thus allowing for a more direct access to, and easier understanding of the causes, visible or not, of the dispute and of the possible future evolutions of the conflict and its solutions. They also acquire greater possibility to draw from or to design lessons learned, by and for the parties as for society.

5. As part of the evaluation process of the dispute and of its solution, extracting the lessons learned from a conflict solved peacefully does not only bring direct relief to the parties, it also opens possibilities to create efficient and long term prevention mechanisms, sometimes entailing major changes in societies. This is important in most if not all cases, but is especially important in situations involving major inequalities, as the parties will have to take in account the needs and grievances of all the ones implied, not only in the dispute but in society at large.

6. There is a virtuous circle there. The conflict solved deeply, peacefully and definitively, to a sufficient degree of the satisfaction of all parties as for all, serves as an example and as an empowerment tool, as a lesson learned for the parties and further to anyone concerned by similar situations.

7. Therefore, it also serves as a development for society as a whole. Not only as it enhances the knowledge of the virtues of mediation, but moreover as it may address deeper causes of violence or conflict than the attitudes, behavior, practices or choices of the parties, such as the structural problems of a society that may have had their part of responsibility in the arising of the conflict, or may have appeared either through the conflict and its arising or through the mediation process.

8. It is needed to highlight here as well that reaching greater understanding of the conflict, by the parties and by all those concerned including by-standers, thereafter giving proper attention to the implementation of the solution, greatly lessens the risks of reoccurrences.

9. Further, more peaceful settlement of disputes in society gives lesser reasons for the State to resort to power and to the use of force, thus also reducing its need to build strong and costly security apparatuses (law enforcement, police and military forces), moreover lessening the need to legitimate such forces and their costs (or abuses sometimes).

10. Therefore, mediation lessens the burdens and the responsibilities of the State regarding its duty to assure security and of having sometimes to assume the subsequent violence and rights violations that may result from violence or force. Henceforth, peaceful conflict handling and settlements diminishes the economical costs of security[15], for the authorities as for the tax payers, but also the level of "conflictuality" of a society.

11. So forth, a society where the use of force is less frequent and causes less damage is more cooperative and the State, reciprocally the population, build a more harmonious relation with each other[16].

12. It can also be repeated here that the more people become educated (and all over the world the number of people reaching higher education and/or sound

access to knowledge is growing[17]), the less these people will be and will want to be prone to, or victim either of blind obedience or of enforced solutions. Therefore they will demand more intelligent and humane, cooperative and participative solutions to disputes rather than authoritative ones, both within the population and as authorities.

13. Another virtuous circle is created when conflicts are solved peacefully as people peacefully handle their conflicts by themselves (though sometimes with help): the more the people will solve their conflicts peacefully and become therefore less entangled in conflict, the more there will be space and energy to enhance preventive mechanisms and to create spaces and zones … times of peace, joy and serenity.

14. In another perspective, the more the people will realize that through mediation they may be called to, or be held personally responsible for either the appearance of a conflict and its consequences, or for building or failing to build non-aggravating solutions, the less the State will be willing take over the responsibility of the conflict. The more the people will rely on peaceful solutions, solution in which they are implied, the more the people will be cautious to improve prevention as well. And we do recall that the individual right to security is also a duty to provide security, according to one's means and possibility; peaceful settlement is one of them and it is not abusive to say that it is a noble one.

15. Deeper still into the virtuous circle, the more energy and time, efficiency will be dedicated to prevention and to non-aggravating solutions, the more energy will be available to live more harmoniously, thus caring more for others, for sustainable development and for health and happiness and indeed for enjoying evermore our improving longevities.

16. And so it is or could be said that on the long term, solving conflicts without further damage, peacefully and responsibly will diminish the need for both prevention and mediation. There is a lesson of wisdom and humbleness there: mediation and peaceful settlement of disputes may be a trade or a needed part of socio-political infrastructures, but they are not a goal for themselves; they are only a tool towards more peaceful, harmonious and lasting people and societies.

17. It is here worthwhile to quote Steven Pinker again as he demonstrates that if delegating security to the State (the Hobbesian model) – this starting around the 17th century by establishing strong, official and centralized police forces – did substantially lower crime rates, these rates have then reached a staggering level under which new mechanisms are needed to keep progressing towards less violent societies[18]. Peaceful settlement of disputes becoming mainstream practice is or

could be one of these mechanisms allowing humanity to go beyond the limited and sometimes contested or abusive capacities of law enforcement.

18. It must finally be strongly highlighted, a virtuous circle once more, that the more the people in any given society will solve their conflicts peacefully, the clearer and the stronger the stand against all forms of violence will become. Further, so will also become stronger the call to prevent conflicts from degenerating into violence. And of course, such calls lead to improvement or reinforcement of mediation and peaceful settlements. In another direction, these calls will also improve the search for new tools and for their implementation, and express and realize the will and the work needed to reduce violence[19].

19. For all these reasons, the demand for mediation will certainly rise and progress. This demand needs to be supported by new means and infrastructures.

V. To mediate or to punish? A necessary but "far end" dilemma

1. The moral and the political authority needed to punish are not always given or recognized either to such an authority, to the persons punishing or by the persons punished or in risk of punishment.

2. Setting a limit between what can be mediated and what receives a moral or legal disapproval sufficiently strong to punish or to legitimate punishment is not our purpose; moreover as sometimes both happen together.

3. Evaluating, including with statistics, the effects of punishment on prevention and on non-reoccurrences of offences and further comparing these effects with the ones mediation has on conflict resurgence is beyond the reach of this study[20].

4. However, to assess the eventual existence of a right of access to mediation before a criminal judgment, there is a need to look deeper at the matter.

5. First, there is a need to recall that because punishment, whatever legitimate, imposes harm and therefore inevitably, though legally, imposes infringements of someone else's human rights – a form of violence thus making somehow the person who tolerates punishment a moral accomplice –, punishment should only be a very (very, very) last resort solution.

6. Then we shall make a strong call for intelligence and value enhancement. Criminal law does not even state, or expressly word out as a right, the values it protects; it only describes what happens in case of a violation of the law. Conversely, human rights cover usually the same values, though instead of threatening of a harm in case of a violation of the protected value, human rights empower to that value, stating it as inherent to human nature and making thereupon this value a right, an entitlement giving therefore good reasons to value it, for one's own sake but for others as well in a reciprocity process. As such, values

expressed positively and granted as rights, rights that one can live, share and claim, are more proactive. Because they are lived and known, and hopefully cherished, these values and rights bring positive responsibilities – at least if assumed peacefully – instead of stealth thus producing much more direct prevention effects.

7. It must also be said or recalled that high numbers of legal infringements are committed by young males. Said otherwise, what is mostly punished is lack of experience and of behavioral knowledge, lack of education. Therefore, what is needed is space for learning, understanding and prevention, for progress rather than command, at least for the vast majority of offences; those that could be solved by a better understanding, reconstruction of the social link and through a greater satisfaction of basic needs, infringements or legal violations that could also, most likely, be "mediated".

8. Thus, considering the limited educational powers of punishment[21], the high risk of misunderstandings and of judicial errors, the high costs, both economical and human of the criminal system and again however legitimate, the harm done by punishment, whenever mediation is possible and sufficient to solve the conflict and to reasonably assure non-reoccurrence and reparation or restoration, mediation should be preferred to criminal punishment and be made readily available.

9. For all these reasons and others (here withholding reparation of damages that can be done without punishment), it may appear that some people would object to punishment, either totally or partially. If offered the possibility, some would prefer alternative or non-punitive solutions. Some others may object to punishment as such or to certain types, methods or degrees of punishment. Or they may also object to punishment because it is often unequal regarding race or social status. Some may object to punishment if other attempts at solving the conflict without punishment (peaceful settlement of disputes!) have not been previously thoroughly attempted. They may also object if they think, feel or fear that punishment adds a burden to the problem, eventually making it harder to find a solution respecting their own values, rights and interests. Further, once such a fulfilling solution is found or offered, it could well be that many people, once satisfied, would probably abandon the need or the intent to punish, to see the offender punished. Finally, there are persons who refuse to punish thinking that punishment at large is of little effect on reoccurrences or that it mostly breeds cruel and authoritative behavior, eventually violent societies[22].

10. Would such people, to avoid taking part in punishment, have instead a right of access to peaceful settlement of disputes? I hold that in these circumstances, as in others, though it may not yet be fully recognized by law, there is right of access to mediation.

VI. To be obliged to mediate and to freely participate in the process and the result? A constructive contradiction.

1. A right of access to mediation would not, as such, make it mandatory to use mediation or other peaceful means, unless this duty is imposed to the parties by a legal obligation.
2. Presently, such a duty to settle disputes peacefully and therefore a duty to have or to find the necessary means to do so, though universal for the international community through international law, is rather rare in national law.
3. In both situations, international or national law, such a duty to settle disputes peacefully is, could or would still be backed by more coercive means if the mediation process would fail.
4. And such a duty to mediate, as well as a right of access to mediation, would in no circumstance be a duty to find an agreement, therefore mediation going against free will.
5. So forth, good will and acting in good faith, as well as the freedom to do so are usually needed prerequisites for a successful and comprehensive, for a lasting solution to a dispute. Could such a spirit (good dispositions and a free endeavor towards a good solution) arise from the obligation to settle the dispute peacefully?
6. The contradiction between being obliged to settle or to try to settle the dispute peacefully and having the freewill needed to do this fully and to do this well is only apparent.
7. We can wish for a mandatory mandate to settle all disputes peacefully and this could easily be legally supported by the need to find ways to implement the interdiction of violence. Such a duty imposed to all to settle disputes peacefully could also be supported by the state's duty to avoid resorting to force, whenever possible[23], because of the possible negative effects and infringements on human rights any use of force entails.
8. To some extent, the duty to settle disputes peacefully, though well inscribed in the UN charter could still be enlarged and be considered comparatively in internal law as being "a general principle of law recognized by all civilized nations", as these principles are recognized under the Statute of the International Court of Justice[24].
9. How could this duty to settle disputes peacefully be extended or opened up to be mandatory in internal law as well is the next step, the idea being that if peaceful settlement would be more routinely practiced at national and local level, it would also become more of a cultural imperative helping just as much to solve international conflicts peacefully.

10. However, if inscribing in the law, nationally as internationally, the duty to settle disputes peacefully is the ideal, granting a right of access to mediation and creating a correlative duty to provide for peaceful means of settlement could be a previous step, eventually sufficient in itself.
11. A right of access to mediation means instead of duty to settle peacefully would respect the necessary freedom needed either to propose such mechanisms to opponent parties or to accept the solution created or proposed during the mediation or if needed and accurate, it would keep open the possibility to resort to more coercive means, if a solution does not appear as possible or feasible.
12. Having the opportunity to easily propose mediation, because there is a correlative State duty to fulfill the right of access and to provide mediation means or to assure they are available, this duty though binding at the infrastructural level (the State must ensure that such procedures are available) opens up the possibility to more routinely exert the needed freedom to choose to handle the conflict and its issues in a more satisfactory and somehow autonomous manner.
13. The right of access and the duty to provide means for peaceful settlement are therefore the ground needed to freely access mediation and further to freely elaborate and if successful, to freely adopt proper solutions.
14. It is finally noteworthy to mention that greater availability of such procedures will enhance their routinely use, both in quantity and quality. The more mediation there is, the more the people will rely on it, the more they will call for it and show their good results and the greater the chances are that people will make the best possible use of it and that they will promote mediation thereafter.
15. Similarly, if mediation is used more, more frequently and more openly, in all realms of life and at all levels of society, it will add social pressure on the parties for them to use such mechanisms more and eventually more often, and to use them successfully.

PART TWO: **ACCESS TO MEDIATION IN EXISTING LAW**

Before entering into what a right of access would be – how it would be granted, organized and made available by whom and for all – let us take a brief look at what already exists in international, national or even local law and practices.
This chapter has no ambitions at being comprehensive. It only intends to give a sufficient overview of the present situation to give a quick stance at how a right of access functions or could function, for international law and at the United Nations and at how it is proposed in Swiss national and local laws. More research should be done to do a more comprehensive study of what already exists regarding the right of access to mediation, locally as worldwide.

I. International law

A. The united Nations

a. The duty to settle disputes peacefully

1. Such a requirement exists for States in international law at least if there is a serious risk that the continuance of the dispute may endanger peace and security.
2. In our opinion, this duty can and should be made universal and therefore be introduced in national constitutions and laws as well.
3. The UN Charter reads (article 2, § 3) :

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered".

4. Article 33 (the first one of chapter six of the Charter; the one on peaceful settlements of disputes) refers precisely to peaceful settlement means and mechanisms:

CHAPTER VI
PACIFIC SETTLEMENT OF DISPUTES
Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

5. The last sentence of paragraph one, an open clause, includes local or indigenous practices.

6. The **Security Council**, using its capacities under chapter VI (though not always referring to specific articles), regularly uses its ability to call upon States to settle their disputes peacefully[25].
7. If it has not been done yet, the efficiency and results of such calls should be measured and studied thoroughly and be published more widely. Moreover, I hope I am not presuming against what already goes on or on what is in preparation and that do not know of, but improvements of these calls to settle disputes peacefully and of their follow ups are highly needed[26].
8. Making these calls to settle disputes peacefully systematic and holding a comprehensive record of such calls, opening this record to the public including to civil society and thereafter keeping track and proof of these calls and of their following effects, moreover if chapter VII on the use of force to restore peace is

thereafter used in the situation would be in our understanding a strong peacebuilding mechanism.

9. Secrecy or dignity of States is no reasons not to have a clear list of what and when States are or were called upon to settle peacefully, of when they were offered an opportunity or called upon to preserve peace, through mediation writ large or through other means, and especially disarmament.

10. Nevertheless, the Security Council has developed in recent years a growing general practice of conflict prevention, manifested by various specific or general initiatives and resolutions. To name but a few, the resolutions on "women, peace and security" or very recently the one on youth and security (res n° 2250, December 2015[27]).

11. How this has influenced the diminishing of conflicts, armed or not and of violence throughout the world since the end of the cold war is still to be measured and demonstrated[28]. Moreover if the Security Council is to be held responsible or accountable for the state of peace on the planet[29]. And sadly, this has not been sufficient to avoid, in recent years a new rise of the numbers and scope of armed conflicts and casualties.

12. However, by setting or by improving worldwide standards of peace and tools of mediation, at least through or for some specific locations, groups of populations or on some specific themes, the Security Council participates or seems to be participating in the progress of the culture of peace, in the realization of of a sustainable peace.

13. The *methods* used by the Security Council, at first to assess a situation and then the ones proposed to the parties to settle such disputes peacefully may greatly vary[30].

14. By resolution 1625 (2005), the Security Council has given to the **Secretary General** an overall mandate to assist countries at risk of being entrenched in an armed conflict.

15. The Secretary-General, regularly and systematically contributes to the work towards improving peace, indeed using among others mediations means. He does so by submitting reports to the Council or by directly helping the parties to find solutions.

16. Must here be mentioned the nominations of Special Envoys and Advisors, some of them functioning as mediators or more recently, the creation of UN regional political offices and if need be supported by the Mediation Support Unit and a Standby Team of Mediation Experts. These have discreetly but frequently helped to address emerging or incipient conflicts[31].

17. However, the works on the infrastructures of and for peace at large, including the promotion and availability of peaceful settlements of disputes, can still largely progress. An expression of that is the fact that the commission on the consolidation of peace has seen its mandate limited to post-conflict reconstruction, receiving no mandate at all to do conflict prevention. Various recommendations to that end can be found in the two reports issued in 2015 on the UN's architecture for peace and on peace keeping operations[32].

b. The right of access to mediation at the UN

1. Article 35 of the Charter gives to States a right to call the attention of the Security Council or of the General Assembly on any situation that "is likely to endanger the maintenance of international peace and security (art 34)".

2. It reads :

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention (…) [then similar to §1].

3. (…) [Coordination with the General assembly and article 12].

3. This constitutes, in our opinion, a right of access to mediation. However, as long as the Security Council or the General Assembly do not have an explicit correlative duty to reply to all such calls, the right cannot be legally considered as complete, and reciprocal.

4. The present practice, with improving infrastructures and surely greater availability of the Secretary General may be a sufficient substitute for such a duty to offer mediation means, at least as long as the Secretary General has sufficient human and economical means to address all situations he knows off, or that are reported to him.

5. However, there is a need to highlight that the clearer the right of access is expressed and legally stated, the more available it will become and thus the more it will enable a bottom up approach, States routinely calling for more mediation, thus improving conflict prevention and alleviating the costs and burdens of conflicts, and the duties or needs to address them using more coercive means should peaceful settlement fail.

6. As said a public record of peaceful settlements calls and proposals would help this.

B. The right of access to mediation of Non-State actors

1. As present conflicts are so often involving non-state armed actors, it is essential to provide mechanisms enabling these actors to access mediation and similar peaceful procedures as well.

2. However, this poses a large array of unsolved questions.

a. First an external intervention, if the concerned State does not agree to it, violates the principle of non-intervention in internal affairs (Charter, article 2, §7), unless the conflict threatens international peace and security.

b. Then because these groups are armed groups, starting with the possessions of such arms and further if human rights or other legal legitimate prescriptions have been violated by the group or its members, these groups are illegal.

c. Further, giving them an official access to mediation could legitimize their existence or activities.

3. Nevertheless, if peaceful settlement of disputes is to become a universal norm, ways around these difficulties need to be found. In our opinion informal availability of mediation means, though so often quite useful or successful, are not sufficient to ascertain that mediation and peaceful settlement are not only an option but a pre-requisite to preserve peace and avoid resorting to force, and to respect human rights, including, as we will show the right to peace.

4. Therefore, though we do admit development, fair share of resources, progress of human rights, safe environment and disarmament are essential for the progress of peace, we also hold that much more formal infrastructures are needed for the progress of peaceful settlement of disputes, that they should be inclusive and based on an open right of access to mediation.

C. Regional mechanisms

This study would require, to be more complete, to encompass an overview of the right of access to mediation through regional peace and security mechanisms. However, due to time and resources constraints, this will have to wait for better or other times.

D. Human rights

The links between human rights and peaceful settlement of disputes are worth mentioning because a right of access to mediation, granted to all as human rights are granted to all, will forward a universal culture of peacefully settling disputes.

Moreover, the links between peace, security and human rights are gathering more attention[33]. And though it may seem evident that violations of peace automatically entail violations of human rights, the work to merge these two silos of

development and well-being (peace and human rights fulfillment), the work to bridge them is tremendous; this study opens one of these bridges.

1. Because a right of access to mediation would forward peaceful settlements, it will also ease and greatly enhance the progress of human rights at large as it will enable all actors, rights holders as duty bearers but also rights holders among themselves[34], to cooperate as peacefully as may be and to act together for the common, peaceful and coordinated expression of all human rights.

2. If needed be, the right of access to mediation (at large the right of access to peaceful solutions) will also bring peaceful means to human rights problems and conflicts. But it will also highlight the duty to solve individual and collective conflicts – as well as all fundamental issues related to human rights – in a peaceful and thus less damaging and more constructive manner.

3. Deeper, as human rights are said to be based on human nature and needed to fulfill and achieve life in dignity, openly integrating peace and peaceful settlements of disputes in human rights theory and practice, in human rights mechanisms shows and expresses the fundamental presence (or some could even say the prevalence) of peace in human nature and the need to see peace accomplished in and through all human activities and rights, to achieve thereupon the realization of all human rights for all.

4. Looking back half a century, it is evident and partly due to the non-coercive and egalitarian nature of international law that human rights procedures have already found new ways to address conflicts, without any or barely any use of force or coercive measures. Advocating for more peaceful – and sometimes new – approaches of human rights issues is therefore, though yet insufficiently practiced or promoted a logical trend.

5. Practically since 2008, the Human Rights Council has on its agenda the concept of a "human right to peace"[35]. The General Assembly of the United Nations will be ceased of this issue in the fall 2016 session.

6. The existence of such a human right to peace is contested by a certain number of States[36] and supported by States that are far from being the most peaceful ones. But the process is nevertheless ongoing and therefore the awareness of peace standing as a universal right is growing.

7. There are various legal sources to the human right to peace, some more or less binding. As a general principle, article 28 of the Universal Declaration on human rights is worth quoting:

> *Everyone is entitled to a social and international order*
> *in which the rights and freedoms*
> *set forth in this Declaration can be fully realized.*

If this is not peace, then what is? Yet, this peace without naming it, as such a social and international order can only be peace prone and give itself the necessary measures for peace to progress, to be peacefully maintained or build, the be as peacefully as may be restored, if needed.

8. One of the constitutive and practical elements of a right to peace will be the enhancement of peaceful settlements of disputes, the establishment of more infrastructures therefore and a procedural sub-right: the right of access to mediation.

9. Another practical aspect of having a human right to peace fully recognized and implemented will be regular reports on how countries progress towards peace.

10. This will also provide for a supervision or evaluation mechanism looking at how the infrastructures set for peaceful settlement of disputes function and progress.

E. <u>The right of access to mediation and inclusivity</u>

1. As human rights are universal, if there is a right of access to mediation and peaceful settlement of disputes, it shall be granted to each and all.

2. They are however two limits and in our opinion two limits only:

a. The right of access to peaceful settlement itself and the meditation process should not be exercised violently. Physical and verbal violence are certainly clear criteria for excluded behavior, as are threat and bribery. More delicate is the distinction between acting in good faith and for legitimate interests and violence, most likely depriving others.

b. Similarly, the mediation process requires a certain degree of reason and a fair base of human values, or the will to acquire or construct them to have a chance to succeed. How can the absence of such mental capacities can be combined with mediation is to be determined case by case.

3. This being said, every person with a sound mind and the fair will to overcome the problem should be granted the possibility to solve its conflict by peaceful means.

II. Internal law

As mediation progresses in local law and practices as well, it has seemed important to us to do some research as well to see if there is a right of access to mediation in national and local laws. Here again, we are limited by the possibilities and henceforth, we will focus on Swiss Law only.

A. The Swiss constitution

Dated 1999, the Swiss constitution contains no direct provision regarding mediation. It has however an article that states that the Swiss Confederation shall promote the peaceful co-existence of peoples[37]

B. The Swiss legislation

1. The code of civil procedure[38] contains the obligation for the judge to attempt conciliation with the parties, in almost all situations (articles 208 to 212).
2. Hereby conciliation is not yet mediation, but it surely is the full application by the judge of an attempt at settling the dispute peacefully, thus mainstreaming peaceful settlements.
3. Then if both parties agree, the procedure can be suspended for a formal mediation (213-218).
4. There is therefore a right of access to mediation. And we know that most jurisdictions hold an updated list of certified mediators. However, a single party cannot formally ask for mediation without the consent of the other party, nor can the judge require it from an unwilling party.
5. Therefore the right exists, but it also implies to duty to convince, without the legal procedure, the other party to agree to attempt the mediation and then only can the judge suspend the civil procedure.
6. The criminal procedure code[39] has no clause whatsoever regarding mediation.
7. The criminal procedure code for juveniles[40] allows the prosecutor and the judge to suggest mediation for most petty offences. Though indirect, one can say that there is a right of access to mediation, as one can always ask to the judge or to the prosecutor to propose the mediation.

C. The legislation of the local Swiss States (Cantons)

It is worth it to mention the rewritten constitutions of two local Swiss States, Vaud (2003) and Geneva (2012) as the progress of mediation through these local texts is evident, both in general principles and for practical applications.

For known reasons by now, we here limit ourselves to the text of the Constitutions of these States. Subsequent laws enabling the Constitution to be effective and regulating the details of the procedures do exist or should exist as they are in preparation. They are however, beyond the reach of this study.

a. Regarding **general principles on peace and conflicts**[41]:

1. The Constitution of the Canton de Vaud reads (article 6, § 2, c)[42]:

In all its activities, the State shall see that justice and peace prevail.
It supports prevention of conflicts.

2. Justice comes first to be able to restore peace if needed, with justice and need be by force, should prevention have failed.

3. The Constitution of the State of Geneva has brought another dimension to the concept as it reads (art 184, § 3 on public force)[43]:

In all conflictive situations, the use of force should be avoided or limited.
All concerned persons shall concur.

4. The disposition is interesting not only because it clearly states that force should not be used or should nevertheless be controlled if in need of being used, but also that all concerned persons have a duty not to use force; a duty therefore addressed to the general public, each and every one, thus reinforcing from another perspective the illegality of violence, the limitations on the use of force and indeed, the need or the right to use peaceful settlement methods.

b. Regarding **mediation and peaceful settlement of disputes:**

As dispositions are more numerous, we do not here reproduce them in full.

1. The Constitution of the Canton de Vaud contains a clause an administrative mediation (art. 43 § 1). It is more alike or close to an ombudsman procedure. But it surely is granted to all and the ombudsman has a duty to address the case.
2. For administrative issues (they are a few limitations), generally speaking there is a right of access to mediation and a correlative duty to address the matter.
3. The State can (art. 43 § 2) and does support private mediation. Either directly by supporting mediation associations or by holding official lists of certified mediators.
4. The Constitution of the Canton of Geneva contains various dispositions regarding mediation. Attached to the freedom to organize unions at the work place is the duty to solve conflicts, first by using negotiation or mediation (art. 36). An administrative mediation exists as in the Canton de Vaud (art. 115). A general clause in the chapter on the Judiciary states that the State encourages meditation and other extrajudicial means to address litigation (art. 120).
5. All these articles are cultural progresses for mediation. However, they are still partial and do not systematically grant a right of access and provide for or

guarantee the existence of the infrastructures needed for mediation to always be possible.

PART THREE: **SUMMARY OF FINDINGS AND RECOMMENDATIONS**

I. **Summary of findings**

A. **A right of access to meditation: delimitations**.

1. A right of access to mediation is not a duty to mediate.

It is only the guarantee of having the possibility to mediate, because one can claim such a possibility and because the needed infrastructure to mediate exists.

2. However, such a duty to mediate or to settle peacefully can or could be added through law as it is done in international law for States. In our (courageous) opinion, it can also be done by any intelligent or autonomous judiciary organ, based on the general principle of repelling violence, or of avoiding forcing authorities or other to recourse to the use of force or specific agreements. Either the duty to mediate or a right of access to mediation can and should be added to all peace agreements.

3. A right of access to mediation, distinguished from a duty to peacefully settle, imposes no obligation to mediate on the other parties. It only offers the possibility to mediate. However, as it calls on the other party to consider this possibility, it is a path opener.

4. A right of access to mediation is not binding on the outcome of the mediation. And though there is a final limit in the illegality of violence or in avoiding recourse to force, there are intermediary "harder" possibilities such as arbitration or judicial decisions accompanied by coercive means should the mediation fail.

5. Similarly, a right of access to mediation does not limit the free possibility of calling for or using more coercive solutions. Though in our opinion, coercive measure instead of peaceful settlement should only be used if they are deemed as necessary.

6. The correlative duty to provide for mediation means and therefore to grant the right of access, by providing proper means to mediate can be direct or indirect. The State either has mediation means available within its administrative or judicial structures, or it proposes or supports other independent or private mediation structures. Ideally, it also supports or participates to the costs of the mediation structure and processes.

B. **A right of access to meditation: <u>overview of what exists</u>.**

1. At the present (very limited) stage of our research, we only found that a complete right of access to mediation and an equivalent duty to provide mediation means only exists, in internal law, when mediation structures are within governmental administrations.
2. Sometimes, as it is the case at the UN and elsewhere, the practice of mediation is sufficiently common for the needed infrastructures to fulfill the duty to exist, in the field if not, or not yet in law.
3. For the UN, there is a clearly defined right of access for States. But the infrastructures needed to address the right and to answer to the demand and to be sure the demand is answered to, though well in place are not sufficiently legally defined.
4. For the access to mediation of non-State actors, everything still needs to be defined and created.
5. Regarding human rights, for individuals as for states, though limited, the possibilities to mediate or peacefully settle sometimes exists, but much more because human rights are so often regulated by soft law procedures than because of a direct focus or trend of using peaceful settlement of disputes as a conflict soling method. More attention should be given to on peacefully settling disputes by individuals through human rights procedures.
6. Generally speaking and for what we know, we can say that mediation and other peaceful settlements largely exist. That the right of access is sometimes present and grounded in law, but that much more can be done to ground it both in practice and law, and for it to be a part of the process to see the peaceful handling of conflicts become mainstream law and practice.

C. **A right of access to meditation: <u>definition</u>**.

After having explored the existence and possibilities of a right of access to mediation, we can offer the following definition:

The right of access to mediation is the possibility, in any conflict (or almost any), to call for a peaceful settlement of dispute mechanism's to be readily available, accessible to all, and henceforth to propose it to opponent parties. It also entails the cultural and legal environment needed to assure that the existence of the right is known and that it is used successfully.

II. **A right of access to mediation: <u>recommendations</u>**.

Changing the laws, moreover a constitution or an international treaty and changing practices are a slow process needing strong support, either through determination

and or through cultural and popular support. At some stage, however, to be lasting the process of growth of mediation and of peaceful settlement of disputes will or may be in need of recognition, through general principles of law and but also and eventually through more or less hard law.

However, the process also needs strong infrastructural endeavors and establishments, as well as evaluation means of these to progress towards more peaceful settlement of disputes and to fulfill the right of access to these procedures.

Therefore we recommend:

- The establishment of mediation procedures and institutions, for all levels of society and for all persons and situations, except for the most heinous crimes, on regular basis in every or almost law concerned by disputes and every time a peace agreement in reached, for the agreement and its implementation and itself, but just as well for the future should new conflicts arise.
- Open access to mediation and peaceful settlement procedures for each and all.
- That every time making a law or a taking a decision regarding a conflict (potential or effective), the possibility of peacefully setting the situation and of introducing mediation or similar procedure in the law on a long term basis be considered.
- As much as possible, to consider introducing peaceful settlements of disputes as a legal duty in internal law.

CONCLUSION

The field is plowed, peaceful settlement of disputes, mediation and other means therefore are slowly and surely entering into human practices, into societal infrastructures and, one may say, in civilized principles. However, the seeds available do not yet cover the whole field, or said otherwise do not yet repel violence as much as they could.

This paper as shown that much of these seeds are planted; they need to be nurtured to bear flowers and fruit, and to spread more seeds.

The process is ongoing, but it needs support and intent to move to the next step. The future is in the making!

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[1] Steven Pinker, "*The better angels of our nature", Viking books, 2011, chapter two.*

[2] http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

[3] War is illegal because of the article 2 § 3 (fully quoted further) and § 4 of the UN Charter, forbidding the use of threat or force in international relations. The exception provided for in article 51 regarding self-defence highly limits the possibility and therefore does not permit war as such. (And 51 probably does not grant a right to have massive armies and weapons of mass destruction, but this is another issue).

The illegality of violence, at large or in national law, is still a field to be explored and improved. One could say that besides legitimate self-defence and cases of necessity, or eventually to some extent for legitimate use of force by authorities, the general principle forbidding violence is inscribed in criminal law. It is working on lessening the breadth and uses of the exceptions that will make the principle effective.

[4] J. Galtung, «Violence, Peace and Peace Research». *Journal of Peace Research*, 6, 3 (1969), 167-191.

[5] Some premises of what infrastructures for peace could or will be are found in the works of the NGO advocating for ministries for peace, the I4P international network. http://www.i4pinternational.org/infrastructures-for-peace

[6] As we shall see, the limits between enforcement and peaceful settlements are various and sometimes blurred; one example being to impose the search of a peaceful settlement, or of the solution found therein.

[7] Christophe Barbey: *« Non-violence of States. Some best practices: the human right to peace, peace in constitutions and countries without armies ».* Paper presented at the IPRA (International Peace Research Association) bi-annual conference, Istanbul 10-15.8.2014. Unpublished. Available: http://www.demilitarisation.org/spip.php?article172. See also Infrastructures for peace network, here: http://www.i4pinternational.org/infrastructures-for-peace.

[8] Reminder: the duty to reduce violence is set worldwide through SDG 16.1.

[9] See as an example, the Permanent Court of Arbitration operating in the same building as the International Court of Justice in The Hague. https://pca-cpa.org/en/home/

[10] The list of such traditional means could be very long. Has it been done?

[11] As mentioned here and by, if norms are firm and sometimes universal, there is a strong trend towards cooperative mechanisms to apply them and to progress smoothly towards their implementation. This trend is lead both by the growing and sometimes legitimate reluctance of the people to blind obedience or to what is not understood, moreover as more of them become highly educated and by the fact that the UN or the international community at large have limited coercive powers, thus seeking for other ways to progress towards their goals. And it does not go without saying that mediation as a more humane and empowering procedure is part of that evolution, possibly also because the long term results of participative mechanisms breed more lasting results because of direct implication of the partie.

[12] Much more could be done and said on the links between human rights and their procedure and peaceful settlement of disputes, including regarding the soft law approach of other regional human rights mechanisms.

[13] For some work at the UN's Human Rights Council: http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace.aspx Or for some NGO work: http://www.aedidh.org/?q=node/1144 or http://www.demilitarisation.org/spip.php?rubrique10
A strong example of peaceful coordination of all human rights is the need to reconcile freedom of expression with freedom of religion, both needing to cohabitate peacefully for the good of all.

[14] See as an example the Geneva Declaration on armed violence and development. http://www.genevadeclaration.org/. Or the Global Peace Index that measures peace, its progresses and weaknesses, but also its resilience and what is needed to sustain it: the "pillars of peace". Institute for economics and peace, *Pillars of Peace,* Sydney 2013, http://www.visionofhumanity.org/#/page/news/693

[15] The Global peace index proposes, among many others some research on the costs of security. http://www.visionofhumanity.org/#/page/indexes/global-peace-index

[16] Global Peace Index, Pillars of peace. http://www.visionofhumanity.org/#/page/news/693

[17] I once heard of study that compares levels of education in society with the arising of major revolutions or societal changes all through history. Help needed to find the reference again. However, both the process of educational growth and societal change may by now have become permanent, hopefully for the good of all.

[18] Note 1.

[19] Part of the work to reduce violence goes through measuring it to address it. See the works of WHO on prevention of violence. http://www.who.int/violence_injury_prevention/violence/status_report/2014/en/. Or the Geneva declaratio. Above note 14.

[20] Has it been done? Can I have a reference?

[21] Education as such has barely any part in the penal judicial process and the effects of punishment on reoccurrences are very limited. See Claudio Besozzi, *Prison et changement. Une étude qualitative sur la récidive après une première peine privative de la liberté*, « Prison and change, a qualitative study on reoccurence after emprisonnment », 1999, available here: https://www.bj.admin.ch/dam/data/bj/sicherheit/smv/dokumentation/ber-besozzi-f.pdf.

[22] It could also be interesting to look at possible objections to punishment through a gender approach as more offenders are found in the male population. I know of no references of such studies, but they may exist.
[23] See the constitution of the local State of Geneva, *hereafter*.
[24] Statute of the International Court of Justice, article 38 §1c. http://www.icj-cij.org/documents/?p1=4&p2=2#CHAPTER_II
[25] See "Repertoire of the practice of the Security Council" for details. http://www.un.org/en/sc/repertoire/
[26] The "Review of the United Nations Peacebuilding Architecture (29.6.2015)" is not as detailed. However, some recommendations (n° 135 and the ones on the peacebuilding commission) could include going in that direction.
[27] http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2250(2015)
[28] It must be recalled that whatever the present state of affairs may be, there was at least until recent years a diminishing of armed conflicts, and seemingly of armed violence, as a general trend since the end of the cold war. Lotta Themnér and Peter Wallensteen, "*Armed Conflicts, 1946-2012"*, Uppsala conflict data program, p. 4, Journal of Peace Research, July 2013, 50:509-521.
[29] More peacefully, the 2015 report on the Peacebuilding Architecture of the UN recommends "benchmarking" progresses in peace operations; which can and should also be done both for the progress of peace worldwide and for the quantitative (frequency) and qualitative progress of mediation and similar practices. http://www.un.org/ga/search/view_doc.asp?symbol=A/69/968, § 134, page 49.
[30] Quite unknown, is the fact that Security Council sometimes sends local missions both for fact finding and to help find – or mediate – solutions. *See the "repertoire" note 25.*
[31] Report of the High Level Independent Panel on Peace Operations. 17th of June 2015. http://www.un.org/sg/pdf/HIPPO_Report_1_June_2015.pdf, § 68-73, p. 32.
[32] Above, note 24.
[33] See as examples the work of Michelle Parleviet, https://ku-dk.academia.edu/MichelleParlevliet, of the Human Rights Council on small arms.
[34] Horizontal human rights are rights that people can claim from and for one another, differing or complementing vertical rights that States have a duty to respect towards the people.
[35] http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/L.18
[36] To name them, mostly the western States and their allies, the US, the European Union, Japan and others.
[37] https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a54
[38] https://www.admin.ch/opc/fr/classified-compilation/20061121/index.html
[39] https://www.admin.ch/opc/fr/classified-compilation/20052319/index.html
[40] https://www.admin.ch/opc/fr/classified-compilation/20080702/index.html
[41] For much more on the place of peace in constitutions, see Christophe Barbey, *La démarche constitutionnelle en faveur de la paix dans les États Fédérés. Expériences faites à Genève et dans le Canton de Vaud,* "The Constitutional Proccess Towards Peace in Federated States. Lessons learned from Geneva and the canton de Vaud". Proceeding of the congress "Peace and Constitutions", University of Burgundy, Dijon 2012, edited by ESKA, Dijon, 2015. Or http://www.demilitarisation.org/spip.php?rubrique17
[42] All translations from French by the author https://www.admin.ch/opc/fr/classified-compilation/20030172/index.html
[43] https://www.admin.ch/opc/fr/classified-compilation/20132788/index.html