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## MEDIATION OF PRIVATE UNITED STATES-MEXICO COMMERCIAL DISPUTES: WILL IT WORK?

**Walter A. Wright**<sup>a1</sup>Copyright (c) 1996 by the New Mexico Law Review; **Walter A. Wright****I. NAFTA EXPANDS THE NEED FOR APPROPRIATE ADR PROCEDURES**

We live in exciting times for the growth of trade and investment between the United States and Mexico. With the passage of the North American Free Trade Agreement (NAFTA),<sup>1</sup> commercial transactions between our two countries are expected to increase dramatically over a period of several decades.<sup>2</sup> The opportunities for long-term economic growth have generated an atmosphere of optimism and hope, on both sides of our common border, that the United States and Mexico will overcome their troubled past<sup>3</sup> and become partners with Canada in developing a brighter economic future based upon mutual respect and trust.<sup>4</sup>

Providers of alternative dispute resolution (ADR) services in the United States also are anticipating the consequences of increased trade with Mexico. Article 2022(1) of NAFTA provides that Mexico, Canada, and the United States “shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.”<sup>5</sup> As anticipated by NAFTA, increased trade and investment between our two countries will generate \*58 a greater number of commercial and other disputes requiring ADR providers' services. Numerous ADR providers in the United States are positioning themselves to administer and resolve the anticipated disputes.<sup>6</sup>

**II. ARBITRATION ALREADY IS RECOGNIZED AS AN APPROPRIATE ADR PROCEDURE IN THE INTERNATIONAL ARENA**

Arbitration is the ADR procedure most accepted today in international commerce.<sup>7</sup> It is the only ADR procedure expressly named in Article 2022(1) of NAFTA.<sup>8</sup> Arbitration also appears to be the one ADR procedure generally understood today by disputants on both sides of the United States-Mexico border.<sup>9</sup> The acceptance of arbitration in the international arena is the result of many years of educating legislators, judges, lawyers, and the international business community about arbitration's terminology, procedures, and benefits.<sup>10</sup> Advocates of arbitration also have endeavored to ensure that arbitral awards are enforceable in as many jurisdictions as possible.<sup>11</sup>

As a result of much hard work, there appears to be a general understanding internationally about what arbitration is, how it works, and where an arbitral award can be enforced.<sup>12</sup> Because of this general understanding, and because special arbitration procedures and institutions exist to accommodate disputes that occur in international commerce,<sup>13</sup> \*59 business people experience a degree of comfort when they choose to arbitrate their transnational commercial disputes.

**III. MEDIATION CAN PROVIDE A COUNTERBALANCE TO ARBITRATION'S LIMITATIONS**

Having stipulated that arbitration is an appropriate means for resolving private U.S.-Mexico commercial disputes, one also must recognize its inherent limitations. Arbitration is an adversarial process. Arbitrators impose decisions on disputants, and every arbitration produces at least one loser. Arbitration does little to preserve damaged business relationships.<sup>14</sup> Those involved in cross-border commercial disputes may prefer a more collaborative process, one that allows disputants to negotiate solutions beneficial to everyone concerned and that emphasizes the preservation of business relationships.

Because arbitration is the only ADR procedure expressly named in NAFTA, other ADR procedures to be encouraged as appropriate models for resolving private cross-border commercial disputes remain unidentified. In the United States, mediation is recognized as an effective dispute resolution procedure that provides a collaborative, problem-solving approach to resolving conflicts.<sup>15</sup> Because of mediation's domestic success as an alternative to litigation and arbitration, it is worth considering whether United States mediation models can be useful tools for resolving United States-Mexico commercial disputes.

#### IV. MEDIATION DOES NOT SHARE ARBITRATION'S ACCEPTANCE IN THE INTERNATIONAL ARENA

Unlike arbitration, there is no international consensus about what mediation is or how it works.<sup>16</sup> In the United States, when we use the term "mediation," our understanding of the term is based on our knowledge of, and experience with, familiar United States models. We tend to think of mediation as an informal process in which a neutral third party, the mediator, assists disputants in recognizing interests, clarifying issues and generating options to resolve disputes. Generally speaking, \*60 disputants are expected to negotiate and craft their own resolutions. The mediator merely facilitates the process.<sup>17</sup>

In Mexico, the terms "mediation" and "conciliation," sometimes used interchangeably,<sup>18</sup> can describe a process quite different from what we know as mediation in the United States. Mexican "mediators" and "conciliators" tend to be neutral evaluators who express opinions regarding the merits of parties' claims and who recommend proposed resolutions of disputes.<sup>19</sup> Mexicans are sophisticated in their use of third-party intermediaries to avoid and compromise litigation, but for all practical purposes, mediation procedures commonly used in the United States are not found in Mexico.<sup>20</sup>

#### V. CULTURAL ASSUMPTIONS CAN IMPEDE UNITED STATES MEDIATION MODELS' USE IN CROSS-BORDER COMMERCIAL DISPUTES

##### A. *Direct Transfer of United States Models Considered*

Mediators in the United States, having witnessed the recent growth of mediation as an accepted settlement procedure domestically, are likely to explore ways of enhancing the acceptance of U.S. mediation models in Mexico and their use as tools for resolving cross-border commercial disputes. One possible approach is to educate Mexicans about U.S. mediation models, encourage the use of those models in Mexico, and trust that over time a common understanding of mediation based on U.S. models will develop. This approach assumes that Mexicans will \*61 welcome U.S. mediation procedures. The current literature on this subject suggests, however, that U.S. mediation models are not uniformly accepted in Latin America.<sup>21</sup>

Advocates of a direct transfer of U.S. mediation models to Mexico may have the best of intentions, but they also may fail to understand that the models are based on cultural assumptions not generally accepted in Latin American countries, including Mexico. Such advocates should first examine the assumptions on which U.S. mediation models are based, then determine whether Mexicans are likely to feel sufficiently comfortable with the models to use them voluntarily.

##### B. *United States Cultural Assumptions*

Certain cultural assumptions concerning conflict and its resolution are at the core of the mediation models used in the United States. Cultural assumptions are beliefs so completely accepted within a group that "they do not need to be stated, questioned, or

defended.”<sup>22</sup> When members of a group consider certain beliefs to be fundamental, they may assume the beliefs are universally held. In fact, the beliefs may not be accepted beyond the confines of the group.<sup>23</sup>

Assumptions concerning conflict are generated in a dominant U.S. culture that can be described as “individualist” or “low context.”<sup>24</sup> Like most individualist societies, the United States is an economically developed country with a capitalist economy. Social mobility fosters the creation of a large middle class. The dominant family unit is the nuclear family, consisting of one or two parents and a small number of children. As with most other low-context cultures, the United States is urbanized and industrialized, with a tradition of individualist thinking and action.<sup>25</sup>

Among the consequences of individualist culture are occupational mobility and greater income equality among the various sectors of the economy. Individuals tend to feel responsible for their own economic destinies. As a general rule, there are opportunities to question authority, \*62 freedom of the press prevails, and the political system is balanced and stable.<sup>26</sup>

Members of low-context cultures tend to focus on their rights and responsibilities as individuals. Conflict is considered a logical and inevitable result of individuals' efforts to establish their places in society. Members of low-context cultures tend to view conflict on an individual-versus-individual or individual-versus-group basis. The causes and effects of conflicts are seen through a similar prism focusing on individuals.<sup>27</sup>

In low-context cultures, disputes often are triggered by perceived infringements of individuals' rights. Persons tend to approach conflicts with specific goals in mind, outcomes that will vindicate their rights and improve their positions in relationship to other individuals or groups. From this perspective, conflict can be viewed as an instrument of social change. In some circumstances, it is seen as a positive development.<sup>28</sup>

At the outset of a dispute, members of individualist cultures tend to negotiate directly with their perceived adversaries. Specificity, direct statement of demands, open self-disclosure, and flexibility are valued.<sup>29</sup> Direct negotiations begin with a discussion of the facts, continue with the identification of issues, and proceed to an issue-by-issue resolution of the dispute.<sup>30</sup> Because members of low-context cultures generally prefer direct negotiation as an initial conflict resolution method, third-party intermediaries usually are not involved at the outset of conflict situations. Only when direct negotiations fail do parties consider resorting to third parties such as mediators.<sup>31</sup>

The dynamics of a negotiation may change when a mediator becomes involved, but cultural preferences continue to exert their influence. In keeping with our society's general trend toward specialization, mediation today is recognized as a profession,<sup>32</sup> especially mediation of commercial disputes.<sup>33</sup> Mediators are viewed as specialists who, through formal training, possess particular knowledge and skills in dispute resolution. When selecting a mediator, disputants concern themselves with such factors as a proposed mediator's professional background, mediation training, length \*63 of mediation experience, and the number of cases mediated.<sup>34</sup> Parties usually pay mediators who assist in resolving commercial cases.<sup>35</sup>

Concepts of neutrality and impartiality are central to most U.S. mediation models. The very definition of mediation typically contains a reference to a neutral or impartial third party who assists disputants in resolving a conflict.<sup>36</sup> When selecting a mediator, parties tend to choose a person who has no knowledge of their dispute and no formal relationship to either party.<sup>37</sup> A potential mediator is expected to disclose any circumstance that may give rise to bias or a conflict of interest.<sup>38</sup> Moreover, the mediator is expected to have no stake in the outcome of the mediation.<sup>39</sup>

Once a mediator is selected, the mediation usually takes place in an office setting.<sup>40</sup> While mediation procedure is much less formal than courtroom procedure, certain rules do exist. The mediator normally explains these rules as the first order of

business.<sup>41</sup> After explaining the rules, the mediator allows each party to describe the dispute, from the describing party's point of view, in the presence of the other party(ies).<sup>42</sup> The mediator then may encourage the parties to speak and negotiate directly with each other.<sup>43</sup> The negotiations, whether they take place in joint session or in a manner resembling shuttle diplomacy, tend to proceed in a linear, issue-by-issue manner.<sup>44</sup> As a general rule, the mediator does not opine on the merits of any party's claims.<sup>45</sup> While the mediator \*64 assists the parties in generating options to resolve their dispute, the mediator does not impose a solution.<sup>46</sup>

The primary goal of the mediation is to reach an agreement that addresses the issues identified by the parties.<sup>47</sup> As a general rule, the parties who attend the mediation are expected to have sufficient authority and autonomy to resolve the dispute at the mediation session.<sup>48</sup> If the parties reach an agreement, it typically is reduced to writing and signed by all parties.<sup>49</sup> Whether or not an agreement is reached, the mediator is not expected to have any further involvement in the parties' dispute following the mediation's conclusion.<sup>50</sup>

Experienced mediators may find it tedious to review such "obvious" aspects of United States negotiation and mediation procedures. However, these features of "proper" negotiation and mediation practices are precisely the features that can complicate the use of U.S. mediation models in international commercial disputes between United States and Mexican nationals. The complications arise because conflict and its resolution are commonly approached in a very different manner in Latin American cultures.

### *C. Latin American Cultural Assumptions*

Although diverse cultures are found in every Latin American country, dominant cultural values in Latin America generally are described as "high context" or "collectivist."<sup>51</sup> Such cultures often are found in countries with non-capitalist economies and lower economic and industrial development. When compared to individualist societies, collectivist societies are characterized by a smaller degree of social mobility and a weaker development of the middle class. Extended families or tribal structures are dominant. Parents tend to have larger numbers of children. High-context cultures are common in rural populations. They also are found in urban, industrialized societies, such as Japan, that have long traditions of collectivist thought and action.<sup>52</sup>

Among the consequences of a collectivist culture are low occupational mobility and less income equality among the various sectors of the economy. High-context individuals tend to look to their employers for economic security. As a general rule, there are fewer opportunities to question authority, freedom of the press does not always prevail, and \*65 political systems sometimes are less balanced and more unstable. Dominant collectivist cultures have been identified in many parts of Asia, Africa and Latin America.<sup>53</sup>

Members of high-context cultures tend to place great value on the cultural norms of the primary groups to which they belong and on compliance with those norms.<sup>54</sup> Within groups, collectivism and harmony are cherished. The interests of individuals may be subordinated or sacrificed for the benefit of larger groups.<sup>55</sup>

Because of the emphasis on harmony, communication among members of collectivist cultures is replete with manifestations of politeness, deference, and respect.<sup>56</sup> When criticism is necessary, it tends to be offered cautiously and indirectly in order to "save the face" of the criticism's recipient.<sup>57</sup> Conflict often is not viewed positively, as it threatens group harmony. In fact, there frequently is a reluctance to discuss openly an emerging conflict. Rather, the tendency is to ignore it for a period of time in the hope that it will resolve itself.<sup>58</sup>

In collectivist cultures, conflict generally is sparked by a perceived violation of group norms. When conflict emerges, it is often used to express dissatisfaction with the offense to collective norms and to encourage compliance with them. From this perspective, conflict can be viewed as a means of preserving the status quo rather than as an instrument of social change.<sup>59</sup>

At the outset of a dispute, instead of confronting their adversaries directly, members of high-context cultures tend to employ third-party intermediaries to assist in conflict resolution. A triangular approach frequently is preferred in order to preserve the disputants' dignity and thereby diminish the risk of escalating the level of conflict.<sup>60</sup>

When selecting intermediaries, neutrality is not always a primary concern. Rather, there is a tendency to seek out "insiders," respected members of the parties' social network who are familiar with the context in which the dispute arises. In fact, the intermediaries may know the disputants and their family members personally. Insiders are preferred in collectivist cultures because their familiarity with the context of the dispute is perceived \*66 as providing them with greater insight into how the dispute might be resolved. Because insiders are members of the same social network as the disputants, they also are seen as having a stake in the outcome. Presumably, they share an interest in restoring harmony to the group.<sup>61</sup>

In high-context cultures, unless they are a part of the formal legal system, third-party intermediaries generally are not members of distinct conflict-resolution professions. As a rule, extra-legal intermediaries act informally and without pay.<sup>62</sup> Negotiations take place outside formal office settings<sup>63</sup> and tend to be conducted through a series of private meetings between an intermediary and one party to the dispute. The entire negotiation may take place without the disputants ever meeting with each other.<sup>64</sup> The negotiating style of the parties tends to be "affective-intuitive," which has been described as a style "based on relational, emotional, and personal perceptions of the situation and on the hunches that arise from these perceptions."<sup>65</sup> During the negotiations, the parties may request and receive advice from the intermediary as to how the dispute should be resolved.<sup>66</sup> If an agreement is reached, there is less of a tendency to reduce it to writing.<sup>67</sup> After the dispute is resolved, the parties likely will have continuing contacts with their intermediary.<sup>68</sup>

## VI. EFFORTS TO INTRODUCE UNITED STATES MEDIATION MODELS TO LATIN AMERICAN COUNTRIES AND CULTURES

### *A. Difficulties in Direct Transfers Are Not Surprising*

Given the different approach that members of low-context cultures have to conflict, it is not surprising that efforts to transfer U.S. mediation models to such cultures have encountered some difficulties. The difficulties are well illustrated by recent attempts to use U.S. mediation models in Latin American countries and cultures.

### *B. Lederach's Experiences in Central America*

In the mid-1980s, John Paul Lederach provided workshops on mediation and conflict resolution to church and community groups throughout \*67 Central America. Because he was on an assignment from the Mennonite Central Committee and the initial part of his work was related to his doctoral thesis, he kept a diary of his experiences.<sup>69</sup> He has since written several articles<sup>70</sup> and at least one book<sup>71</sup> that describe the difficulties he encountered in attempting to train Central Americans to use a mediation model that had been developed by the Mennonite Conciliation Service as a means for resolving disputes among Mennonite church groups and communities in the United States.

The Mennonite mediation model described in Lederach's writings resembles the "community-based" model used by many dispute resolution and neighborhood justice centers throughout the United States.<sup>72</sup> However, it also reflects the Mennonites'

philosophy of working for social justice through nonviolent means.<sup>73</sup> In Central America, Lederach often worked with the poorest members of society, providing mediation and related training for use as tools to balance power and achieve social change peacefully.<sup>74</sup>

When explaining the mediation model to his Central American trainees, Lederach conducted the workshop sessions in Spanish and used training materials written in Spanish. Members of the training groups demonstrated the model in role plays based on actual Central American conflicts. However, when asked for their comments, the trainees reported feeling uncomfortable with certain aspects of the model, that to them it seemed “North American.” Following one role play, a trainee commented to the participants that they had “looked like *gringos*.”<sup>75</sup>

\*68 The trainees' remarks in the workshops caused Lederach to examine the model to determine what made it appear to be “North American” to his Central American trainees. After careful consideration, he concluded that the model was grounded in at least five significant cultural assumptions that do not necessarily apply in a Central American context: (a) that mediation should be a formalized process; (b) that disputants prefer to communicate directly with each other, and that direct communication among disputants is a necessary ingredient for an acceptable resolution of a dispute; (c) that a monochronic, issue-by-issue negotiation is the logical approach to resolving a dispute; (d) that the primary goal of a mediation is to reach an agreement regarding issues that the disputants have sufficient autonomy to resolve (rather than to reconcile the disputants or consider a resolution's effect on the wider community); and (e) that the mediator should be an anonymous specialist who enters the parties' lives for a brief period of time, then departs.<sup>76</sup>

Lederach's conclusions led him to develop an “elicitive” (as opposed to “prescriptive”) approach to training. The elicitive approach seeks to develop conflict resolution models that are appropriate for the cultures in which they will be used. Rather than prescribe a model, the trainer guides the workshop participants in discovering and developing models that are based on their cultural knowledge about how conflict is approached and resolved. The resulting models may or may not resemble mediation as we know it in the United States.<sup>77</sup>

*C. University of Victoria Research on Adaptability of North American Mediation Models to Immigrant (Including Latin American) Cultures in Vancouver, British Columbia*

The mediation model used by local dispute resolution organizations in Canada strongly resembles the “community-based” model that United States neighborhood justice centers and dispute resolution centers employ.<sup>78</sup> From 1990 to 1994, the University of Victoria Institute for Dispute Resolution (UVic) conducted research to determine whether the model is an appropriate means for resolving disputes that involve persons from other countries and cultures.<sup>79</sup> UVic studied members of five immigrant communities located in Vancouver, British Columbia, broadly categorized as Latin American, Vietnamese, Polish, South Asian, and immigrants from Chinese-speaking countries.<sup>80</sup>

While the UVic study found that respect, caring, and procedural fairness are three overarching principles that apply in conflict resolution across cultures, it also found that North American mediation models are not \*69 universally accepted by persons from other cultures. Among the UVic study's numerous conclusions are the following:

- (a) the formal, linear mediation model prevalent in North America has limitations when applied in multicultural settings;
- (b) there are limitations to the usefulness of third-party neutrality and face-to-face negotiations;
- (c) a single intervenor may not meet disputants' needs when a conflict involves persons from different cultural backgrounds, so teams of co-mediators may be useful; and

(d) rather than develop a universal intervention model for application to all conflicts, it may be useful to develop a spectrum of models adaptable to the needs of parties from diverse cultural backgrounds.<sup>81</sup>

#### *D. Family and Community-Based Mediation in Puerto Rico*

Since 1983, the Conflict Mediation Center (CMC) has offered a successful “court-connected” mediation program in San Juan, Puerto Rico. The CMC mediates family and community disputes, small claims and landlord-tenant conflicts, among others; in so doing, it employs a mediation model derived from the “community-based” model used by similar organizations in the United States.<sup>82</sup>

To accommodate local culture, CMC allows potential clients to inquire personally about its services at any time during office hours, without an appointment. It takes special care to ensure privacy in family cases, promotes an informal atmosphere at its offices, conducts mediation sessions in Spanish, allows disputants to touch each other in inoffensive ways while communicating during mediation sessions, and emphasizes short written agreements. Because CMC's clients tend to ascribe a high degree of power and authority to the mediators, clients sometimes interpret the mediators' options and suggestions as orders. Therefore, the mediators regularly remind the clients that they do not impose resolutions on disputants.<sup>83</sup>

While CMC has modified a U.S. mediation model to accommodate Puerto Rican culture, the model appears to have survived its transfer to a Latin American culture with most fundamental characteristics intact. For example, mediation sessions are held in an office setting. The mediators are professionals, not part of the disputants' social network. Family members who accompany disputants to CMC's offices do not participate in the mediation sessions. The parties communicate and negotiate directly with each other during mediation sessions. Agreements are reduced to writing.<sup>84</sup>

\*70 The experiences of CMC in Puerto Rico offer some hope that U.S. mediation models can be used in cross-border commercial disputes with Mexicans. When considering the Puerto Rican experience, however, one must recall that, in addition to 400 years of Spanish rule, Puerto Rico has undergone almost 100 years of more recent influence, both political and cultural, as a United States possession and commonwealth.<sup>85</sup> This influence, not duplicated in Mexico, may have spawned an individualist component of Puerto Rican society that accepts the U.S. mediation model. One must also note that the CMC program is a small one--there are only six staff members at CMC's offices in San Juan, while Puerto Rico's population is over 3.5 million.<sup>86</sup> Therefore, certain segments of Puerto Rican society, possibly large collectivist ones, may not feel comfortable with or voluntarily use CMC's mediation services.

#### *E. The Author's Experiences at the Harris County (Texas) Dispute Resolution Center*

Since 1989, the author has acted as a bilingual mediator in approximately thirty-five disputes involving Spanish-speaking persons from Latin American countries. All of the disputes have been mediated under the auspices of the Harris County Dispute Resolution Center in Houston, Texas.<sup>87</sup> Most of the disputants have been immigrants from Mexico and Central America. In some of the cases, all parties have spoken Spanish; in others, some parties have spoken Spanish and others English. The mediations have involved landlord-tenant issues, employment disputes, verbal and written contract claims, juvenile and gang-related activities, neighborhood quarrels, and child custody and property division issues in divorce cases.

Most of the disputes have been mediated using the “community-based” model, but some have used the “litigation” or “caucus” model.<sup>88</sup> Beyond conducting the mediation sessions in Spanish (or in bilingual cases, Spanish \*71 and English), no modifications of either model's procedures have been made to accommodate the Spanish-speaking parties. In almost all cases, the Spanish-speaking disputants have appeared comfortable with the process. As a general rule, they have participated

actively, expressed their concerns openly, and negotiated effectively. A written agreement has been reached in approximately ninety percent of the cases.

The author's personal experiences indicate that people from Latin American cultures can participate effectively in U.S. mediation procedures. These experiences, however, must be tempered with the understanding that large numbers of Latin Americans residing in Houston may not use the Dispute Resolution Center's mediation services because they do not feel comfortable with the mediation model. One also must remember that the disputants in the author's cases were living voluntarily in the United States, a bastion of low-context culture, when they mediated their cases. The disputants, originally from Latin America but residing in Houston when their mediations occurred, may have experienced United States negotiating techniques and incorporated individualist traits into their behavioral patterns prior to the mediations. Their previous exposure to United States culture may have enhanced their comfort levels with the mediation process. In cross-border commercial disputes involving lifelong residents of Mexico, the Mexican disputants' comfort levels with U.S. mediation procedures may not be nearly as high.

## VII. THE EXTENT TO WHICH UNITED STATES MEDIATION MODELS ARE APPROPRIATE FOR USE IN MEXICO

### *A. Individualist and Collectivist Cultures in Mexico*

Mexicans' dominant cultural values, like those of other Latin Americans, are collectivist.<sup>89</sup> Mexicans value their relationships within groups, particularly within their extended families. Consensus and harmony are treasured in most social and business organizations. Because conflict is viewed as a threat to overall harmony, there is a reluctance to confront interpersonal differences directly. And because criticism usually is taken personally, it often occurs in private, to avoid a loss of face for the recipient.<sup>90</sup>

When a disagreement does arise, great effort is made to prevent it from escalating into an open confrontation. To that end, and to preserve each party's dignity, insiders are asked to be conduits for communications and negotiations between disputants. For example, in disputes between \*72 parents and children, godparents may be asked to intervene. In business disputes, close business associates may be approached for advice and intercession. Negotiations may take place without the disputants ever speaking directly to each other. The dominant negotiating style appears to be based on deductive reasoning. The parties first attempt to agree on basic principles, then they apply the principles to the facts at hand. In most cases, "win/win" resolutions of disputes are preferred. Thus, Mexicans' general approach to conflict and its resolution places them squarely within the realm of high-context cultures.<sup>91</sup>

When compared to other Latin American cultures, Mexico appears to be in the middle range of the high-context spectrum. A somewhat dated survey that measured the individualist and collectivist tendencies of forty countries' cultures ranked Mexico number twelve of the twenty countries whose cultures exhibited more collectivist than individualist tendencies. In gauging individualism on a scale of one to 100, Mexico received a score of thirty. Venezuela, Colombia, Peru and Chile received scores of twelve, thirteen, sixteen, and twenty-three, respectively. Brazil and Argentina, the other two Latin American countries surveyed, received respective scores of thirty-eight and forty-six. By way of comparison, the United States, with a score of ninety-one, was found to be the most individualist country surveyed; Canada received a score of eighty.<sup>92</sup>

Mexican society, while traditional, is far from static. Economic reforms in Mexico during the last decade have begun to change Mexicans' customary relationships with their government, their employers, and each other. The passage of NAFTA is expected to hasten this process as Mexican businesses attempt to compete with companies from the United States and Canada.<sup>93</sup> Economic pressures, combined with a likely increase in Canadian and United States cultural influences, could have the effect of enlarging the individualist component of Mexican society.

Observers of Mexico already have noticed that the upper and middle classes exhibit certain individualist traits.<sup>94</sup> This trend may be attributable to the concentration of the upper and middle classes in the urban, industrialized areas of Mexico, their exposure to United States cultural values through travel, movies and television, and the tendency of many well-educated Mexicans to obtain some part of their higher educations in the United States or Europe, where low-context cultural attitudes prevail.<sup>95</sup> On a regional basis, similarities to United States culture have been detected in the northern industrial state of Nuevo Leon, its capital \*73 Monterrey, and in the cities along Mexico's border with the United States.<sup>96</sup>

### *B. Parameters on the Use of U.S. Mediation Models to Resolve United States-Mexico Commercial Disputes*

#### 1. Identifying sectors

Although there are no empirical studies to support any firm conclusions about the likely acceptance of U.S. mediation models by Mexicans, existing studies of Mexican culture suggest there are regional and class sectors of Mexican society, which exhibit individualist traits, and which may be open to the idea of mediating their disputes in formats based on U.S. mediation models. Because many commercial disputes between United States and Mexican nationals are likely to involve persons from these sectors (i.e., members of the upper and middle classes and persons from Northern Mexico), there is reason to expect that mediation, as we know it in the United States, can find a degree of acceptance as a tool for resolving United States-Mexico commercial disputes. Because most segments of Mexican society are collectivist, however, cross-border commercial disputes involving collectivist individuals are also likely to occur, and using U.S. mediation models to resolve those disputes may be inappropriate. Careful consideration should be given to individual Mexican disputants' social characteristics and negotiation preferences before proceeding with the use of U.S. mediation procedures to resolve transnational commercial disputes.

#### 2. Education for Individualist Sectors

Mexican individualists are the most likely users of U.S. mediation models in cross-border commercial disputes. Before using the models, however, the individualists must become aware of the models' existence and effectiveness. Information about the models can be channeled to individualists by demonstrating the models before professional organizations, providing courses of instruction at the university level in Mexico, and effective use of the Mexican press. Such educational activities could generate understanding and use of the models by Mexican individualists when they have disputes with United States businesses and entrepreneurs.

#### 3. A Different Approach for Collectivist Sectors

Modifications of U.S. mediation models may be necessary in dealing with the more collectivist sectors of Mexican society. Several modifications are suggested by Lederach's experiences and UVic's research. For example, in the more collectivist areas of Mexico, it may be necessary to identify and provide mediation training to respected "insiders" whom members of local society will trust. It also may be appropriate to conduct certain types of mediations in settings other than business offices. Instead of requiring the disputants to speak and negotiate directly with each other \*74 in joint sessions, it may be necessary to conduct an entire mediation through a series of private meetings between the mediator and one of the disputants. Conceivably, the parties may never speak to each other until a negotiation is successfully concluded. In disputes of sufficient size or complexity, co-mediators from the United States and Mexico may be warranted. If modifications do not produce dispute resolution procedures that collectivist Mexican disputants feel comfortable using, Lederach's experiences and UVic's research suggest that it may be necessary to develop new procedures that all disputants on both sides of the border will feel comfortable using.

## VIII. CONCLUSION

If ADR professionals in the United States are interested in taking advantage of the entire range of NAFTA opportunities, they can begin by appreciating the cultural values that shape United States negotiating styles and dispute resolution models. Then they should attempt to understand the cultural values that shape negotiating styles and dispute resolution methods in Mexico. Once the differences are understood, it may be possible to approach interested persons in Mexico to discuss to what extent procedures used in one country can be adapted for use in the other country. In addition, persons from both countries can work together to develop appropriate cross-border dispute resolution models that citizens of both countries will accept and use. If representatives from our two countries are able to develop mutually acceptable dispute resolution processes, NAFTA's chances of success will be enhanced, and a milestone on the road to peace and prosperity will be passed.

## Footnotes

- <sup>a1</sup> President and shareholder, Levey & Wright, P.C., Houston, Texas. L.L.M. (International Legal Studies), New York University, 1979; J.D., University of Houston, 1976. The author gratefully acknowledges the editorial advice and assistance of Daphne Levey, Rafael Aldalve, and Rona Mears.
- <sup>1</sup> North American Free Trade Agreement Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States (U.S.G.P.O. 1993) [hereinafter NAFTA].
- <sup>2</sup> While the consensus of liberal and conservative economists is that the short-term and medium-term effects of NAFTA may be small, the long-term effects could be dramatic and beneficial to all three NAFTA parties. Thomas J. Schoenbaum, *The North American Free Trade Agreement (NAFTA): Good for Jobs, for the Environment, and for America*, 23 GA. J. INT'L & COMP. L. 461, 465-68 (1993).
- <sup>3</sup> For explanations of past difficulties between the United States and Mexico, see T.R. FEHRENBACH, FIRE & BLOOD: A HISTORY OF MEXICO 374-76, 391-402, 513-18, 525-27 (Da Capo Press 1995) (1973); JAMES D. COCKCROFT, MEXICO: CLASS FORMATION, CAPITAL ACCUMULATION, AND THE STATE 70-74, 103, 109-11, 123, 124-25, 136, 265-72 (2d ed. 1990); ALAN RIDING, DISTANT NEIGHBORS: A PORTRAIT OF THE MEXICANS 316-39 (Vintage Books 1989) (1984).
- <sup>4</sup> For projections of NAFTA's future impact, see, e.g., CLINTON ADMINISTRATION, THE NAFTA: EXPANDING U.S. EXPORTS, JOBS AND GROWTH (U.S.G.P.O. 1993); Judith H. Bello & Alan F. Holmer, *The NAFTA: Its Overarching Implications*, 27 INT'L LAW. 589 (1993); Roy Maclaren, *The View From Canada*, U.S./LATIN TRADE, May 1995, at 112; G. Edward Powell & R. Christopher Wyatt, *The North American Free Trade Agreement: Its Purpose, Scope, and Importance to the U.S.*, INT'L TRADE, Summer 1993, at 23; Ewell E. Murphy, Jr., *From the Yukon to the Yucatan: Houston's Stake in the New North America*, HOUS. LAW., May-June 1992, at 29.
- <sup>5</sup> NAFTA, *supra* note 1, at art. 2022(1).
- <sup>6</sup> See, e.g., Ricardo D. Palacios, *International ADR Down Mexico Way: Old Borders, New Frontiers, New Challenges!*, ALTERNATIVE RESOL. (State B. of Tex. ADR Sec., Austin, Tex.) Feb. 1995, at 6 (describing the efforts of several ADR providers in Texas).
- <sup>7</sup> Marc Blessing, *Globalization (and Harmonization?) of Arbitration*, 9 J. INT'L ARB. 79, 81 (1992).
- <sup>8</sup> Arbitration agreements and awards also receive special NAFTA attention in terms of their enforcement. Article 2022(2) of NAFTA provides that "each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes." NAFTA, *supra* note 1, at art. 2022(2). Article 2022(3) provides that "[a] Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* or the 1975 *Inter-American Convention on International Commercial Arbitration*." NAFTA, *supra* note 1, art. 2022(3). Both the United States and Mexico have ratified the two Conventions mentioned in art. 2022(3). See *Scoreboard of Adherence to Transnational Arbitration Treaties*, NEWS & NOTES FROM THE INST. FOR TRANSNAT'L ARB. (Southwest Legal Found., Dallas, Tex.), Jan. 1995, at S-1, S-3, S-4 (listing countries that adhere to, *inter alia*, the two Conventions referred to in NAFTA art. 2022(3)) [hereinafter *Scoreboard*].

- 9 See Wayne I. Fagan & Carlos Gabuardi Arreola, *The Arbitration of Private Commercial Disputes Between Residents of Texas and Mexico*, 24 ST. MARY'S L.J. 803, 804 (1993); Hope H. Camp, Jr., *Binding Arbitration: A Preferred Alternative for Resolving Commercial Disputes Between Mexican and U.S. Businessmen*, 22 ST. MARY'S L.J. 717, 718, 722-24 (1991).
- 10 See, e.g., Michael J. Mustill, *Arbitration: History and Background*, 6 J. INT'L ARB. 43, 43-56 (1989).
- 11 See, e.g., *Scoreboard*, *supra* note 8 (listing of jurisdictions).
- 12 See Blessing, *supra* note 7, at 81-89 (concluding that, while certain differences persist, "there is an ongoing globalization process of arbitration, also with a harmonization of its basic notions." *Id.* at 88); see generally *Scoreboard*, *supra* note 8.
- 13 See, e.g., WAYNE I. FAGAN, ALTERNATIVE METHODS OF DISPUTE RESOLUTION: CONCILIATION, MEDIATION AND ARBITRATION IN THE U.S., at Apps. 17-25 (1994) (reprinting UNCITRAL Model Rules of Procedure for Arbitration Proceedings; Rules of Procedure for the Inter-American Commercial Arbitration Commission; International Chamber of Commerce Rules of Conciliation and Arbitration; London Court of International Arbitration International Arbitration Rules; American Arbitration Association International Arbitration Rules, Commercial Arbitration Rules, and Supplementary Procedures for International Commercial Arbitration; and Japan Commercial Arbitration Association Commercial Arbitration Rules).
- 14 John W. Cooley, *Arbitration vs. Mediation--It's Time to Settle the Differences*, 66 CHI. B. REC. 204, 215 (1985). Larger international arbitrations have been criticized as being "too slow, too formalised and too expensive." Mustill, *supra* note 10, at 56.
- 15 See, e.g., Ellen J. Pollock, *Mediation Firms Alter the Legal Landscape*, WALL ST. J., Mar. 22, 1993, at B1 (documenting the increased use of mediation throughout the United States).
- 16 MICHELLE L. DURYEYEA, CONFLICT AND CULTURE: A LITERATURE REVIEW AND BIBLIOGRAPHY 11-12, 79 (1992). Roger V. Volkema, *Alternative Dispute Resolution in Brazil*, 7 MEDIATION Q. 51 (1989) (describing a mediation program not based on United States models).
- 17 No single mediation model is accepted throughout the United States. However, most U.S. mediation models have similar features. In general, there is a first stage in which the mediator explains the mediation process and each disputing party provides that party's perspective on the dispute; factual, legal and other issues are identified. In the second stage, the mediator facilitates the recognition of each party's interests, the generation and assessment of options for settlement, and the negotiation of a resolution. In the final stage, the parties reach an agreement and the mediator usually assists them in reducing the agreement to writing. If no agreement is reached, the mediator attempts to assure that the parties depart from the mediation as amicably as possible. See Marsha L. Merrill, *Mediation*, in HANDBOOK OF ALTERNATIVE DISPUTE RESOLUTION 37, 47-50 (Amy L. Greenspan ed., 2d ed. 1990); see also *infra* notes 45, 72, & 88. See generally Robert Crowe, *Mediation of Business and Insurance Disputes*, 32 ST. LOUIS B.J. 29, 30-32 (1986) (describing mediation procedure for commercial disputes); Melinda Osteryer, *Dispute Resolution Centers: A comprehensive approach to resolving citizen disputes*, HOUS. LAW., Sept.-Oct. 1986, at 13 (describing a "community-based" mediation procedure). For other authors' descriptions of mediation models divided into more numerous stages, see KIMBERLEE K. KOVACH, *MEDIATION: PRINCIPLES AND PRACTICE* 23-28 (1994); JAY FOLBERG & ALISON TAYLOR, *MEDIATION: A COMPREHENSIVE GUIDE TO RESOLVING CONFLICTS WITHOUT LITIGATION* 38-72 (1984).
- 18 In the author's own experience, Mexicans sometimes use the words "mediation" or "mediator" to describe a "conciliation" or "conciliator." Interview with Samuel Ramos, Professor of Law, Universidad de Monterrey, in San Pedro Garza García, Nuevo León, México (June 10, 1994).
- 19 See, e.g., Humberto Briseño Sierra, *El arbitraje de la compromex*, 21 JURIDICA 131, 148, 160 (1992) (describing the conciliation procedure contained in the COMPROMEX arbitration rules). Mexican conciliation procedures resemble the conciliation procedure described in the UNCITRAL Model Rules of Procedure for Conciliation Proceedings, wherein a neutral conciliation commission considers information provided by the parties, then proposes specific settlement terms. FAGAN, *supra* note 13, at 103 App. 15.
- 20 Palacios, *supra* note 6, at 7.
- 21 See *infra* Part VI.

- 22 *Culture and Values: Some Givens*, MEDIATION AND FACILITATION TRAINING MANUAL: FOUNDATIONS AND SKILLS FOR CONSTRUCTIVE CONFLICT TRANSFORMATION 78 (Jim Stutzman & Carolyn Schrock-Shenk eds., 3d ed. 1995) (adapting information obtained from The Community Board Program, San Francisco, Cal.).
- 23 *See id.*; *see, e.g.*, EVA S. KRAS, MANAGEMENT IN TWO CULTURES: BRIDGING THE GAP BETWEEN U.S. AND MEXICAN MANAGERS 3-20 (rev. ed. 1995).
- 24 DAVID W. AUGSBURGER, CONFLICT MEDIATION ACROSS CULTURES: PATHWAYS AND PATTERNS 28 (1992). At the outset of a discussion of any nation's culture, particularly that of the United States, it is important to acknowledge that cultural diversity exists. In the United States, a nation of immigrants, the universe of cultural values is as diverse as the peoples who inhabit the Earth; there is no single negotiating style or universally accepted dispute resolution method. Having said that, it is equally important to acknowledge that dominant U.S. cultural values affect a preponderance of U.S. negotiating styles and constitute the foundation on which most U.S. mediation models are built.
- 25 *See* GEERT HOFSTEDE, CULTURE'S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK-RELATED VALUES 149-54, 165-71 (abr. ed. 1984).
- 26 *Id.* at 171-74.
- 27 *See* AUGSBURGER, *supra* note 24, at 28-29, 200-05; Diane LeResche, *Comparison of the American Mediation Process with a Korean-American Harmony Restoration Process*, 9 MEDIATION Q. 323, 326 (1992).
- 28 *See* AUGSBURGER, *supra* note 24, at 29-31, 200-05; *see also* JOHN P. LEDERACH, PREPARING FOR PEACE: CONFLICT TRANSFORMATION ACROSS CULTURES 7-10 (1995); LeResche, *supra* note 27, at 326.
- 29 AUGSBURGER, *supra* note 24, at 32, 200-05; Birkhoff, *supra* note 28, at 12.
- 30 *See* AUGSBURGER, *supra* note 24, at 33. Another pattern, less frequently used in individualist cultures, is the "axiomatic-deductive," which begins with a general principle, then applies the principle to specific facts. *Id.* at 33.
- 31 *Id.* at 32-33, 200-05.
- 32 *See* LeResche, *supra* note 27, at 330; John P. Lederach, *The Mediator's Cultural Assumptions*, CONCILIATION Q. (Mennonite Conciliation Svc., Akron, Pa.) Summer 1986, at 2, 2-5, *reprinted in* MEDIATION AND FACILITATION TRAINING MANUAL, *supra* note 22, at 80; *see also* AUGSBURGER, *supra* note 24, at 200-05.
- 33 *See generally* ERIC GALTON, REPRESENTING CLIENTS IN MEDIATION 8-24 (1994); Steve Brutsché *Mediation Cross-Examined*, 53 TEX. B.J. 580, 582 (1990); Crowe, *supra* note 17, at 29-33.
- 34 *See, e.g.*, GALTON, *supra* note 33, at 8-24; Merrill, *supra*, note 17, at 44-46; Brutsché, *supra* note 33, at 582.
- 35 *See, e.g.*, GALTON, *supra* note 33, at 16-19; AM. ARB. ASS'N, COM. MEDIATION RULES 12 (1992).
- 36 *See, e.g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 154.023(a) ("Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.").
- 37 Lederach, MEDIATION AND FACILITATION TRAINING MANUAL, *supra* note 32, at 80, 83; *see also* AUGSBURGER, *supra* note 24, at 200-05; Merry, *supra* note 16, at 85; LeResche, *supra* note 27, at 330.
- 38 *See, e.g.*, STATE B. OF TEX. ADR SECT., ETHICAL GUIDELINES FOR MEDIATORS No. 4 (1994); SOC'Y OF PROF. IN DISP. RESOL., ETHICAL STANDARDS OF PROF. RESP. No. 4 (1986).
- 39 *See, e.g.*, STATE B. OF TEX. ADR SECT., *supra* note 38, at No. 3; SOC'Y OF PROF. IN DISP. RESOL., *supra* note 38, at No. 1.
- 40 *See* LeResche, *supra* note 27, at 332; Crowe, *supra* note 17, at 30; Lederach, MEDIATION AND FACILITATOR TRAINING MANUAL, *supra* note 32, at 80-83; *see also* Ostermeyer, *supra* note 17, at 14.

- 41 Merrill, *supra* note 17, at 38; LeResche, *supra* note 27, at 332; Brutsché, *supra* note 33, at 580; Crowe, *supra* note 17, at 31; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 80.
- 42 Merrill, *supra* note 17, at 48-49; Brutsché, *supra* note 33, at 581; Crowe, *supra* note 17, at 31; *see* Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 80-83.
- 43 Merrill, *supra* note 17, at 49-50; LeResche, *supra* note 27, at 333; Crowe, *supra* note 17, at 31; *see* Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 81-83; *see generally* Brutsché, *supra* note 33, at 581.
- 44 *See* Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 81-83.
- 45 Merrill, *supra* note 17, at 42-43; *see* Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 81-83. This is one of the basic tenets of the “facilitative” mediation model, which appears to be the dominant model in the U.S. today. However, there is a more “proactive” or “evaluative” model in which the mediator may comment on the merits of the parties claims and suggest possible resolutions of their dispute. *See* Anthony T. Accetta, *Mediators as Problem Solvers*, 23 *COLO. LAW* 561, 562 (1994); Kate Thomas, *Mediation Boomtown Rises on Shaky Foundation*, *TEX. LAW*, July 10, 1995, § 3 (Supp.), at 5, 8.
- 46 *See, e.g.*, [TEX. CIV. PRAC. & REM. CODE §§ 154.023\(b\); 154.053\(b\)](#), STATE B. OF TEX. ADR SECT., *supra* note 38, at No. 1; Merrill, *supra* note 17, at 42-43; Crowe, *supra* note 17, at 29.
- 47 Merrill, *supra* note 17, at 50; LeResche, *supra* note 27, at 327; Crowe, *supra* note 17, at 29-31; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 33, at 81-83.
- 48 LeResche, *supra* note 27, at 328; Brutsché, *supra* note 32, at 580, 584; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 81-83; *see also* AUGSBURGER, *supra* note 24, at 30.
- 49 Merrill, *supra* note 17, at 50; Crowe, *supra* note 17, at 31; Ostermeyer, *supra* note 17, at 16; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 83.
- 50 Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 83.
- 51 *See* AUGSBURGER, *supra* note 24, at 28.
- 52 *See* HOFSTEDE, *supra* note 25, at 148-75.
- 53 *Id.*
- 54 AUGSBURGER, *supra* note 24, at 28.
- 55 AUGSBURGER, *supra* note 24, at 30; LeResche, *supra* note 27, at 327-28; *see, e.g.*, MICHELLE L. DURYEY & J. BRUCE GRUNDISON, *CONFLICT AND CULTURE: RESEARCH IN FIVE COMMUNITIES IN VANCOUYER, BRITISH COLUMBIA* 51-54, 74-76, 91-94 (1993).
- 56 *See, e.g.*, KRAS, *supra* note 23, at 32-33 (describing Mexican rules of etiquette); DURYEY & GRUNDISON, *supra* note 55, at 54; JOHN C. CONDON, *GOOD NEIGHBORS: COMMUNICATING WITH THE MEXICANS* 37-40 (discussing Mexican communication preferences).
- 57 AUGSBURGER, *supra* note 24, at 28, 33; *see, e.g.*, KRAS, *supra* note 23, at 30-31.
- 58 *See* AUGSBURGER, *supra* note 24, at 33; LeResche, *supra* note 27, at 326; Birkhoff, *supra* note 28, at 12; *see, e.g.*, DURYEY & GRUNDISON, *supra* note 55, at 51-54, 58, 91-94, 98, 108-10, 115.
- 59 *See* AUGSBURGER, *supra* note 24, at 29-32; LeResche, *supra* note 27, at 327, 335; Birkhoff, *supra* note 28, at 14.
- 60 AUGSBURGER, *supra* note 24, at 32-33, 200-05; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 81-83; *see, e.g.*, DURYEY & GRUNDISON, *supra* note 55, at 51-54, 57-59, 77, 79, 95-97, 113-14.

- 61 See AUGSBURGER, *supra* note 24, at 32-33, 200-05; *see also*, DURYEA & GRUNDISON, *supra* note 55, at 51-54, 57-59, 77, 79, 95-97, 113-14; LeResche, *supra* note 27, at 330; Birkhoff, *supra* note 28, at 12-14; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 81-83.
- 62 See LeResche, *supra* note 27, at 330; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 81, 83.
- 63 Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 81, 83.
- 64 See generally LeResche, *supra* note 27, at 333; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 81-83.
- 65 AUGSBURGER, *supra* note 24, at 33; *see, e.g.*, LeResche, *supra* note 27, at 329.
- 66 See AUGSBURGER, *supra* note 24, at 200-05; LeResche, *supra* note 27, at 329, 331, 334; Birkhoff, *supra* note 28, at 12; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 81-83.
- 67 LeResche, *supra* note 27, at 335; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 82, 83.
- 68 AUGSBURGER, *supra* note 24, at 200-05; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 83.
- 69 See John P. Lederach, *Cross-Cultural Dispute Resolution: Diary of a Trainer*, *CONCILIATION Q.* (Mennonite Conciliation Svc., Akron, Pa.) Spring 1988, at 2.
- 70 See, e.g., *Learnings from Central America Training*, *CONCILIATION Q.* (Mennonite Conciliation Svc., Akron, Pa.) Spring 1988, at 2; Lederach, *supra* note 69; Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32.
- 71 See LEDERACH, *supra* note 28.
- 72 The “community-based” mediation model is used in neighborhood justice centers and community dispute resolution centers throughout the United States. The model commonly is employed to resolve consumer claims, small labor disputes and controversies between neighbors. In most “community-based” mediations, a lawsuit is not pending and the parties do not have attorneys. The parties meet with a mediator at a place arranged by the neighborhood justice center or the community dispute resolution center. Most disputes are resolved in a single joint session attended by all parties and conducted by the mediator. The parties conduct direct negotiations with each other. Caucuses, or private meetings between the mediator and one party, generally are not used. For an example of a “community-based” mediation model, see Ostermeyer, *supra* note 17. For a general description of a community-based program, see KEVIN S. CASEY, *ADR AT THE DRC: AN OVERVIEW OF THE DISPUTE RESOLUTION CENTER OF HARRIS COUNTY, TEXAS* (1991).
- 73 See generally Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 22 (training manual used by the Mennonite Conciliation Service). For a brief history and description of the Mennonite Conciliation Service's work, see John P. Lederach & Ron Kraybill, *The Paradox of Popular Justice: A Practitioner's View*, *THE POSSIBILITY OF POPULAR JUSTICE: A CASE STUDY OF COMMUNITY MEDIATION IN THE UNITED STATES* 357 (Sally E. Merry & Neal Milner eds., 1995) [hereinafter *THE POSSIBILITY OF POPULAR JUSTICE*]. For a critique of the Mennonite training model, see Vicki Shook & Neal Milner, *What Mediation Training Says--or Doesn't Say--about the Ideology and Culture of North American Community-Justice Programs*, in *THE POSSIBILITY OF POPULAR JUSTICE*, *supra* at 239, 244-47, 256-59, 262.
- 74 See LEDERACH, *supra* note 28, at 3, 82.
- 75 *Id.* at 37-38.
- 76 Lederach, *MEDIATION AND FACILITATION TRAINING MANUAL*, *supra* note 32, at 82-83.
- 77 LEDERACH, *supra* note 28, at 55-62.

- 78 See generally DURYEA, *supra* note 16; see also *supra* notes 17 & 72 for resources containing descriptions of community-based models.
- 79 BRISHAKAI LUND ET AL., CONFLICT AND CULTURE: REPORT OF THE MULTICULTURALISM AND DISPUTE RESOLUTION PROJECT 1 (1994).
- 80 See generally DURYEA & GRUNDISON, *supra* note 55.
- 81 See LUND ET AL., *supra* note 79, at 4-7.
- 82 See Mildred E. Negrón-Martinez, *Alternative Dispute Resolution: the Puertorrican Experience*, in SEEKING COMMON GROUND 99, 101 (James B. Boskey & Douglas M. McCabe eds., 1994); see also *supra* notes 17 & 72 (for resources containing descriptions of community-based models).
- 83 Negrón-Martinez, *supra* note 82, at 102-04.
- 84 *Id.* at 100-04.
- 85 Puerto Rico was occupied by Spanish forces in 1493. Spain ceded Puerto Rico to the United States in 1898, following the Spanish-American War. In 1900, Puerto Rico was formally integrated into the United States economy, and in 1917, Puerto Ricans became United States citizens. In 1952, Puerto Rico became a United States Commonwealth with limited self-government. Luís G. Rodríguez, *Puerto Rico*, in THE OXFORD COMPANION TO POLITICS OF THE WORLD (Joel Krieger ed., 1993).
- 86 Negrón-Martinez, *supra* note 82, at 99-100.
- 87 For descriptions of this mediation program, see CASEY, *supra* note 72; Ostermeyer, *supra* note 17.
- 88 The “litigation” or “caucus” model often is used to resolve pending lawsuits. As a general rule, the parties are represented by counsel. The mediator often is an attorney. Mediations typically are conducted in the mediator's office and begin with a joint session during which each party and/or the party's attorney explains the case to the mediator from the explaining party's point of view. The joint session educates the mediator about the factual and legal issues in dispute. After the joint session, the mediator conducts a first caucus, or private meeting, with one party and that party's attorney. During the caucus, there is an examination of the strengths and weaknesses of the party's case, the risks of proceeding to trial, and the economic and other costs of continuing the litigation. Options are generated for the settlement of the lawsuit. The mediator then conducts a similar caucus with the other party. At the end of a successful caucus, the mediator has additional information and a settlement proposal to bring to the other party. Before a case is resolved, the mediator usually has several caucuses with each party. Thus, the mediator acts as a “shuttle diplomat” for the exchange of information and settlement proposals. For descriptions of the “caucus” model, see Brutsché, *supra* note 33; Crowe, *supra* note 17.
- 89 Mexico is a large, populous country, and within its borders thrive diverse peoples and cultures. Broad differences among Mexicans can be drawn along class, racial, and geographic lines. Differences among individuals also abound. See generally FEHRENBACH, *supra* note 3, at 654, 658; KRAS, *supra* note 23, at xvii-xxii; COCKCROFT, *supra* note 3, at 186-236; RIDING, *supra* note 3, at 254-94. Nevertheless, collectivist cultural values are dominant in Mexico, as they are in other Latin American countries. HOFSTEDE, *supra* note 25, at 158.
- 90 See KRAS, *supra* note 23, at 15, 17, 23-24, 30-31, 68-69; ROBERT T. MORAN & JEFFREY ABBOT, NAFTA: MANAGING THE CULTURAL DIFFERENCES 50, 57, 61, 67, 123-24 (1994); CONDON, *supra* note 56, at 23-27.
- 91 See generally KRAS, *supra* note 23, at 27-28, 30-31; Lederach, MEDIATION AND FACILITATION TRAINING MANUAL, *supra* note 32, at 81 (referring to the use of godparents as intermediaries in Latin American cultures).
- 92 HOFSTEDE, *supra* note 25, at 158. The information on which the survey was based was collected from 1967 to 1973. *Id.* at 39.
- 93 See KRAS, *supra* note 23, at ix-x, xiii; FEHRENBACH, *supra* note 3, at 648-58; COCKCROFT, *supra* note 3, at 313-17.
- 94 See KRAS, *supra* note 23, at 23-24; FEHRENBACH, *supra* note 3, at 656-59; MORAN & ABBOT, *supra* note 90, at 58.
- 95 See, e.g., FEHRENBACH, *supra* note 3, at 656-59.

96 See generally KRAS, *supra* note 23, at xvii-xxii; RIDING, *supra* note 3, at 283-89.

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