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The New Zealand Centre for Conflict Resolution

The NZ CCR was established in 1996, with the initial funding assistance of the Victoria University of Wellington Foundation. It is located in the Law School.

The aims of the Centre include:

- The promotion of public and academic awareness of all aspects of dispute resolution, through public seminars and lectures and through the fostering of cross-disciplinary links in the University;
- Hosting of international visitors on an occasional basis (that is, not under the auspices of an established Fellowship programme);
- The promotion of new courses of study in dispute resolution – including Arbitration and a general undergraduate course in Dispute Resolution;
- Co-operation with other University Centres in research, seminars and teaching – including the Institute for Policy Studies, the Centre for Strategic Studies, and the Centre for Public Law;
- Co-operation with government agencies in policy development – including the Ministry of Social Development, the Race Relations Commission, the Human Rights Commission;
- Training and development work with judicial and quasi-judicial agencies – including the Environment Court, and the Employment Relations Service;
- Co-operation with professional agencies in legal and dispute resolution practice, including the New Zealand Law Society, the Arbitrators' and Mediators' Institute of New Zealand, and LEADR (Leading Exponents in Alternative Dispute Resolution).
- Participation in international networks of university centres and agencies in dispute resolution.

Desde acuerdos digitales a ciudadanos cibernéticos: las TIC, resolución de disputas en línea y diálogo cívico.

El objetivo de este trabajo es trazar las líneas generales del desarrollo de la resolución de disputas en línea, desde las primeras fases de gestión de comunicación en línea y “flaming”, pasando por el desarrollo de herramientas para la resolución de disputas en el comercio a través de Internet, a la fase actual en la cual los recursos de las TIC y resolución de disputas conjuntamente fomentan el diálogo en contextos de conflictos violentos (como en Sri Lanka) o de poca participación social y cívica.

From Digital Deals to Cyber Citizens. ICT, Online Dispute Resolution and Civic dialogue

Ian Macduff*

“Digital citizens need to develop a new rhetoric of participatory discourse.”¹

1. Introduction

The aim of this paper is to outline the developments in online dispute resolution from the early phase of managing online communications and “flaming”, through the development of tools for resolving disputes in online commerce, to the current phase in which the resources of ICT and dispute resolution combine to foster dialogue in settings where either there is ongoing violent conflict (such as Sri Lanka) or where there is diminished social and civic participation. My particular interest is in this last phase or aspect of the use and promise of ICT: its capacity to provide venue, forum, tools and rhetoric for the promotion of civic dialogues.

In exploring this topic, I wish to link three elements:

- a. First, the tools, language and experience of conflict resolution developments provide the broad context: dialogue, whether in settings of intense conflict or of diminished social participation, calls on the tools of negotiation, mediation and, at its most basic, conversation;
- b. Secondly, developments in online dispute resolution, from the management of online conversations to the facilitation of online commerce, provide both the challenge of a new “location” and the metaphor of networks; and
- c. Third, the public, normative, civic dimension of dispute resolution indicates an emerging priority and imperative, in contexts where often the private aspect is emphasised, whether this is in talking of the virtues of private settlement and justice or the individualised world of downloaded music, news and chosen associations.

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¹ Stephen Coleman & John Gøtze, “Bowling Together: Online Public Engagement in Policy Deliberation” (Hansard Society, ISBN 0 9000432 36 5; downloaded copy)



A recent issue of *International Negotiation*² contains a number of essays dealing with “Negotiation in an insecure world”. These essays range across topics such as ethnic and identity conflicts; international business negotiation in a globalising world; intervention options and policies in conflict regions; and negotiation and weapons of mass destruction. Similarly, a late 2006 issue of *PIN Points*³ adds to that list of fields of negotiation with comments on the role of “new” (that is, unofficial) negotiators in the practice of international and diplomatic negotiations; the role of ‘horizontal’ negotiations (for example, parallel negotiations on climate change, trade, and development); negotiating with terrorists; and the relationships between war, diplomacy and negotiation.

The issues such discussions highlight include: the perennial significance of negotiations, whether for transactions or conflict transformation; the diverse and challenging contexts of such negotiations; the ongoing reflection on and development of the tools of negotiation; and the wider range of official and unofficial agencies and individuals who have a role in negotiating outcomes which have legal, policy and diplomatic outcomes. The two aspects of this development that I would highlight are, first, the ever-wider circle of those engaged in negotiations and at some level of dispute resolution, ranging from the conventional and official to the grassroots and barely visible; and second, the recognition, in this expanding world of negotiators, of the need for resources, tools and skills in the old arts of dialogue and dispute resolution.

At the core of this paper is the practice of negotiation or, more widely, the role of dialogue in engaging people – whether disputants or citizens – in decision-making and outcomes. This paper is not, however, directly about negotiation. Rather, I propose to look in two directions in relation to negotiation. First, this is a paper about the developments of negotiation via information communications technology – about the potential of non-face-to face negotiations, and the uses of the technology where the parties are separated either by physical distance or by animosity and a history of conflict, or merely by the “social distance” of disinterest and loss of citizen engagement. Second, this is a paper about the most recent “phase” of development in ICT and its potential in moving, as my title suggests, from dispute resolution to the fostering of civic engagement, community building and “civic literacy”⁴.

In exploring these issues, I will traverse related and current developments in the field of dispute resolution, specifically the reinvention or rediscovery of the public dimension of what has, for the last three decades, been regarded as essentially private dispute resolution through negotiation and mediation. I will therefore consider the perceived relation between the processes of negotiation and the reinforcement of civic and community norms. In the same way that recent writers on the ‘private’ processes of mediation have turned their attention to the public and democratic role of settlement⁵, so too will I suggest that the capacity of the Internet to allow individuals to create the “daily me”⁶ of i-Tunes, podcasts, chatrooms, newsgroups, and personally selected

² *International Negotiation*, Vol. 11, No. 2, 2006

³ *PIN Points*, Newsletter of the “Processes of International Negotiation” Network, #27, 2006

⁴ This term is taken from Henry Milner’s, *Civic Literacy: How Informed Citizens Make Democracy Work*, (Tufts University Press, 2002).

⁵ Carrie Menkel-Meadow, “Peace and Justice: Notes on the Evolution and Purpose of Legal Processes,” *The Georgetown Law Journal*, 94: 553 (2006); Susan Stern & Howard Gadlin, “Conflict Resolution and Systemic Change,” pre-publication draft, Augsut, 2006

⁶ The term is said to have been coined by MIT Media Lab founder Nicholas Negroponte.

news outtakes, can also be turned to collective and civic advantage in fostering the kind of *connection* that the 'republic' rests on⁷.

One further thread runs through much of this recent conversation about conflict and negotiation: the challenge and dynamics of negotiations shaped by the "politics of identity" and by group loyalties. This is most obviously the case in intrastate ethnic conflicts (or conflicts which have become "ethnicized"); but it is also increasingly a salient issue in policy formation⁸ in stable states and, in the world of "virtual communities" where identities can be fictional and where affiliations and loyalties are likely to be both ephemeral and distant. In settings of intense conflict and fractured relationships, the question is one of building the confidence and the capacity to re-enter dialogue. In stable and virtual states, the question is also one of building the capacities and commitments to connect to the normative and political life of one's civic community – and the engage in what Rabbi Jonathan Sacks refers to as "dialogues of difference"⁹.

In his book *Mind and Nature*¹⁰, Gregory Bateson reflected, as natural scientist, anthropologist and psychologist, on the "pattern which connects" elements of nature. That is, is there something that connects the crab, to the lobster, to human being and other forms of life – what connects, at least physically, apparently disparate entities?

Taking this question to another level, to the level of human association and connection, his inquiry becomes one into the physical and metaphysical, genetic and social, patterns of connection. Bateson suggests that what connects us is that we all think in stories¹¹. Stories are historically and culturally part of the resources we use to bind us together and to our pasts. As Eli Wiesel comments¹²:

"Our lives are rooted in story. Our stories are our lives. We find out who we are by the stories we tell and are told. The lives we live and the conflicts we embrace are held together by motif and myth. If we are to gain a sense of who we are, where we stand in the world, what our relationship in and with the world is to be, then we must see how our story works. A story is a way to articulate what it is we are living through and how the world lives in us as we live in it ... Stories give meaning to common and shared experience."

I speculate in this paper that the Internet is one more resource we can use – along with the more familiar tools of conflict management and face-to-face resources such as mediation, civil conversations – in order to convey our stories. This becomes all the

⁷ cf Cass Sunstein *Republic.com*, (Princeton Univ. Press, Princeton & Oxford, 2001). See also David J Rothkopf, "Cyberpolitik: The Changing Nature of Power in the Information Age," *Journal of International Affairs*, Spring 1998, 51, 2: 325-359

⁸ J Boston, P Callister & A Wolf, *The Policy Implications of Diversity*, (Institute of Policy Studies, Victoria University of Wellington, 2006). See also G. Delanty, "Two conceptions of cultural citizenship: A review of recent literature on culture and citizenship," *The Global Review of Ethnopolitics*, 1: 60-66 (2002). The distinction Delanty draws, reflecting on the current trends, is between a "cosmopolitan citizenship" which seeks to move beyond the accommodation of minorities and give central attention to issues of identity and belonging; and 'liberal or communitarian multiculturalism' which affirms the basic principles of liberalism and seeks to accommodate the diversity of contemporary ethnicities within states. Either way, the challenge – and the "discontent" – is to find ways to reconcile the conventional state-based norms of citizenship with the identity-based expectations of political participation

⁹ J Sacks, *The Dignity of Difference*, (London & New York, Continuum International Publishing Group; 2nd edition, 2003)

¹⁰ G. Bateson, *Mind and Nature: A Necessary Unity*, (Bantam, 1980)

¹¹ *ibid*, pp 14-15

¹² Eli Wiesel, quoted in J. Elkins, "The quest for meaning: narrative accounts of legal education," *Jnl of Legal Education*, v. 38 (Dec. '88) p. 577-98

more important where the nature of the conflict, or the physical distance between the parties, renders direct contact more difficult or more dangerous.

In the same way that the ancient Agora was the place to meet and the forum for public discourse, I wish to explore the emergence of the modern electronic Agora both *descriptively* – in identifying a range of ways in which the Internet serves a parallel purpose; and *critically* – noting that the modern Agora is susceptible to control, misuse, and trivialisation. Unlike the ancient Agora, however, the modern counterpart allows citizens the use of the technology not only to enhance their connection with distant others but also to retreat from participation, through selective newsgathering, highly selective engagement with typically like-minded others, and an ironic *dis*-connection from the world through the use of the technology of connection¹³.

I will develop some preliminary ideas I explored a few years ago¹⁴, on the potential of Internet-based communication tools and information sources in “mediating distance”, where the distance is not so much created by physical separation across oceans but political and security distance, created by conflict, mistrust, and fear. The development from that paper will be to explore the role of ICT in fostering negotiation and participation in relatively stable political settings, but where the challenge remains to find new forms of citizen engagement and commitment.

2. Developments in Online Dispute Resolution: an overview

There may be something of an irony in looking at the role of the relatively impersonal tools of email and the Internet in relation to negotiation and mediation. For most practitioners of mediation, negotiation and facilitation, a large part of the appeal and value of the process lies in the face-to-face communication, the advantages of participation, and the advantages of engaging in dialogue. Yet now we have rapidly developing examples of the blending of the tools of mediation, dialogue and negotiation with the technological tools of electronic communication and data management. At the core of our commitment to work in this field, however, is the common concern with the facilitation of communication.

What I will explore is the emerging and potential role of computer-based technologies in this enterprise, as an adjunct to and development of the kind of interaction with which we are more familiar. In the same way that diplomats in an earlier era might have feared that the invention of the telegraph and telephone would endanger traditional diplomacy, and they still found that there was no substitute for face-to-face communication, so too the present exploration of the role of the Internet provides less of a challenge than an opportunity both to conventional diplomacy and to the new range of actors and agencies involved in the work of peace building. Internet communication resources are unlikely to displace the need for face-to-face interaction; but they are, on emerging experience, likely to facilitate that communication in cases where the relationships have been fractured by intense conflict or, at the very least, where information can be provided through the medium of the Internet.

I will briefly outline here three key phases in the development of the use of Internet technology in responding to – and in many cases, causing – conflict in the online world. The point is to illustrate the emerging maturity of the field and of our experience with

¹³ Again especially Cass Sunstein, *op cit*

¹⁴ Ian Macduff, “Mediating Distance: Online Tools for Reconciliation?” ADR Online Monthly, <http://www.ombuds.org/center/adr2002-7-Macduff.html>



the technology and its capacity. It is also to underline the increasing emphasis on networked rather than hierarchical connections, which gives a particular quality to patterns of global communication and parallels the democratic ideals of participatory forms of dispute resolution and politics.¹⁵

The developments in online dispute resolution (ODR) can be seen in three overlapping and ongoing phases. In each of these phases there is a need to respond to a particular level of technological development of and access to ICT resources; and each phase of technological and dispute resolution development at least implicitly raises questions about the kind of “community” in which online communication, commerce and conflict occur. For this reason, questions about technology and negotiation techniques are, I suggest, inseparable from issues of *law* (in terms of the governing rules), *ethics* (in terms of the norms of human interaction), and *politics* (in terms of the structures, boundaries and policies of the community of participants).

(a) The first wave of development created the need to develop ways to respond to the inevitable flaming and miscommunication that occurred in the burgeoning ‘virtual community’ – Internet protocols, the management of the relations and communication of this community.¹⁶ This can be seen largely as a matter of necessary internal regulation of the otherwise anarchic world of the Internet, with controls ranging from recommended “netiquette” through to the management of communication through requirements that participants in online conversations should register, have passwords and be subject to the constraints of ‘membership’. The open texture and relative anonymity of the Internet still create challenges for the management of communication, all the more so in the regulation of pornographic material and the protection of minors from potential predators on the Net. This aspect of Internet communications is beyond the scope of this paper and has been dealt with extensively elsewhere.

(b) The second wave of development revolves around the online commercial and consumer community¹⁷, reflecting the burgeoning world of online commerce and, with that, the necessary protection of consumers and businesses. At an institutional level, this phase has seen the development of protocols and structures for the management – and in some cases mandatory arbitration – of disputes that arise in the Internet world.

¹⁵ For a recent example of the democratising value of the electronic communications, see Robert C. Johansen, “An E-Parliament to Democratize Globalization: An Idea Whose Time has Come,” Kroc Institute Occasional Paper #22:OP: 3, Kroc Institute for International Peace Studies, University of Notre Dame, November 2002

¹⁶ E.g. Ian Macduff, “Flames on the Wires: Mediating from an Electronic Cottage,” *Negotiation Journal* 10: 5 [1994]; Henry H Perritt Jr., “Dispute Resolution in Electronic Network Communities”, 38 *VILL. L. REV.* 349 (1993). See also Howard Rheingold’s early study *The Virtual Community: Finding Connection in a Computerized World*, (Martin Secker and Warburg Ltd., London, 1994)

¹⁷ Eg E van den Heuvel, “Online dispute resolution as a solution to cross-border e-disputes: An introduction to ODR,”

http://www1.oecd.org/dsti/sti/it/secur/act/online_trust/vandenheuvel.pdf; Consumers International, Disputes in Cyberspace 2001: Update of Online Dispute Resolution for Consumers in Cross-Border Disputes (Nov. 2001), available at

http://www.consumersinternational.org/campaigns/electronic/adr_report_2001.pdf; Laurence Boule, “Options for Cyber-Med”, 1 *ADR BULLETIN* 121 (1999); Ethan Katsh, “Online Dispute Resolution: Some Lessons from the E-Commerce Revolution”, 28 *N. KY. L. REV.* 810 (2001); Ethan Katsh, et al., “E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of ‘eBay Law,’” 15 *OHIO ST. J. ON DISP. RESOL.* 705 (2000), available at <http://www.umass.edu/cyber/katsh.pdf>; Henry H Perritt Jr., “Dispute Resolution in Cyberspace: Demand for New Forms of ADR”, 15 *OHIO ST. J. ON DISP. RES.* 675 (2000), available at <http://www.disputes.net/cyberweek2000/ohiostate/intro.htm>. See also a bibliography on ODR at

<http://www.law.washington.edu/ABA-eADR/resources/bibliography.pdf>



For example, ICANN (the Internet Corporation for Assigned Names and Numbers¹⁸), and the World Intellectual Property Organisation¹⁹ have established relatively formal procedures for the resolution of conflicts relating to domain names. The OECD²⁰ and American Bar Association²¹ have each developed provisional protocols relating to the protection of consumers in online, cross-border transactions, responding to the reality of the online commercial world that clearly generates its own problems as well as those familiar to any human interaction. We may note that the disputes that arise here can be of varying complexity, in that cross-border online transactions raise issues of jurisdiction and law which are more complex than online commercial transactions within the single jurisdiction.

This phase of development has also fostered the emergent role of what has been referred to as the “fourth party” in online communications²². While the mediator or facilitator is the familiar third party in interpersonal conflicts, the suggestion is that the Internet itself serves as a fourth party, as a repository of information, or as a neutral place to “meet”, or even as a merely technical conduit and algorithm for determining outcomes between “best offers”.

Similarly, this phase reflects a concern with developmental and economic issues, a recognition at an international and UN level of the issues of online commerce, dispute resolution and access to technology – and, in the face of this commercial development, a concern with the impact of the “digital divide”²³.

Two aspects of this phase can be briefly summarised: the first is that it involves the ongoing development of rules and practices to govern and protect online commerce, and in particular, to protect consumers; second, it involves the development of rules to govern the Internet itself. In both cases, the policy and jurisprudential challenge is to find that equilibrium between the avowed open texture – even the ‘anarchy’ – of the Internet on the one hand, and the clear need for regulation and protection on the other. It will be obvious that the Internet repeats, in virtual spaces and communities, the same questions that have shaped the jurisprudence of political communities²⁴.

(c) A different context for the development of Internet communications – the third wave of development – is the world of diminished social capital, fractured communities, fragmentation of relations, and the contemporary context of internal and ‘intractable’

¹⁸ <http://www.icann.org/>

¹⁹ <http://www.wipo.org/>, <http://arbitrator.wipo.int/center/index.html>

²⁰ OECD, “CONSUMERS IN THE ONLINE MARKETPLACE: THE OECD GUIDELINES THREE YEARS LATER”; Report by the Committee on Consumer Policy on the Guidelines for Consumer Protection in the Context of Electronic Commerce, doc no. JT00138646 DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY, DSTI/CP (2002) 4/FINAL, 03-Feb-2003

²¹ American Bar Association, “Task Force on E-commerce & Alternative Dispute Resolution: Draft Preliminary Report & Concept Paper”, Draft, May 2001, <http://www.law.washington.edu/ABA-eADR>

²² Note that there are four principal forms of online dispute resolution: expert systems for the automated resolution or settlement of disputes (www.cybersettle.com; www.clicknsettle.com); arbitration; consumer complaint handling processes (using, for example, email); and online mediation.

²³ See UN Economic Commission for Europe, Committee for Trade, Industry and Enterprise Development, Forum on Online Dispute Resolution, with particular reference to ODR in Transition Economies TRADE/WP.8/SEM.5/AC.3/1, 21 March 2002, Information Notice for the Forum on Online Dispute Resolution.

²⁴ The development of the world of “v-business”, in which participants in jointly created online societies spend real money on virtual items (houses, artefacts etc) is going to present yet another variant on this challenge. V-business is also an emerging issue of web management and web-based management of accounts, client information and so on.



conflicts²⁵. Here the perceived roles of Internet communication are in facilitating communication, democratisation, and the dissemination of information²⁶. It is this development that highlights the potential of communications technology in facilitating dialogue, reducing information deficits and inequality, and fostering democratisation.

I place this discussion of the role of ICTs alongside the recent inquiries into the loss of social capital – including the perceived risks to social cohesion where diversity is poorly managed²⁷ - and the role of deliberative democracy as a means and process for mediating civic values. As is indicated in a range of contemporary commentaries on the role of the virtual world and networked communications, the potential lies not merely in the facilitation of individual choices of books, news and music but also – at least at our most optimistic – in the enhancement of democratic and civic participation.²⁸ The potential of the Internet and ICT-based communications to foster and enhance civil (and civil) communications needs also to be placed alongside its capacity to foster misunderstanding and a retreat from constructive communication. It is, however, the former attribute I wish to focus on here.²⁹

This ‘third phase’ has, I believe, two emerging and parallel aspects to it. In both cases we turn from the development of tools of dispute resolution and regulation arising from the nature of the Internet itself, and to the *potential* contribution of those tools to the facilitation of communication, trust building, and community development where such interaction has either been fractured by conflict or has become more attenuated through the loss of community participation or citizen disengagement. In the first case, there is an exciting and promising level of development of peace building through ICT; in the second, the development of e-government, e-governance, and ‘teledemocracy’³⁰ offer pathways for the creation of the ‘cyber citizens’ of the title to this paper.

The second of these aspects is the civic analogue of the emerging uses of ICT in internal conflicts. It has the potential to respond to the kinds of concerns raised in a variety of fora, ranging from Singapore’s Centre for National Security’s inquiry³¹ into the ‘faint signals’ of the ‘fault lines’ that can be discerned in relatively stable communities, through to broader sociological analyses of the decline in civic engagement and

²⁵ On intractable conflicts, see the discussion in H & G Burgess, (eds) “Colloquy: Challenges to Intractability”, *Conflict Resolution Quarterly*, 24: 173 (2006)

²⁶ Ian Macduff “Mediating Distance: Online Tools for Reconciliation?” ADR Online Monthly, <http://www.ombuds.org/center/adr2002-7-Macduff.html>

²⁷ See Robert Putnam, “E Pluribus Unum: Diversity and Community in the Twenty-First Century. The 2006 Johan Skytte Prize Lecture”, *Scandinavian Political Studies* 30: 137 (2007)

²⁸ See, for example, Mats Engström, “Rebooting Europe: Digital deliberation and European democracy” The Foreign Policy Centre, Nov 2002. Available as a download at <http://fpc.org.uk/publications/61>. His concern is to ensure that there is clear policy development of the use of digital resources which also ensures widest participation and avoids capture of the medium by solely commercial interests

²⁹ On the capacity for the Internet to facilitate miscommunication, consider Daniel Goleman’s comments on “Cyber-Disinhibition”: “The Internet inadvertently undermines the quality of human interaction, allowing destructive emotional impulses freer reign under specific circumstances. The reason is a neural fluke that results in cyber-disinhibition of brain systems that keep our more unruly urges in check. The tech problem: a major disconnect between the ways our brains are wired to connect, and the interface offered in online interactions. . . The greatest danger from cyber-disinhibition may be to young people. The prefrontal inhibitory circuitry is among the last part of the brain to become fully mature, doing so sometime in the twenties. During adolescence there is a developmental lag, with teenagers having fragile inhibitory capacities, but fully ripe emotional impulsivity.” http://www.edge.org/q2006/q06_5.html#goleman

³⁰ Ted Becker & Christa Slaton, *The Future of Teledemocracy*, (Praeger Publishers, 2000).

³¹ Centre for National Security (CENS) Working Paper, “The Other Singaporeans: Perceptions of Race and Religion in Singapore’s Official Multiculturalism” (2006)



participation³². It is also consistent with analyses by public law specialists on the impact on the republic of this decline in public discourse on law, policy and values³³.

At the risk of some oversimplification, it might be said that each of these phases of the development in ICTs has in common the facilitation of new and networked patterns of engagement between participants (including government agencies), and a concern with the impact of these patterns on norms of community and of the 'republic'.

A key element in almost all recent commentaries on contemporary international and intra-state conflict acknowledges the increasing role of non-state actors – whether as paramilitary combatants and as agencies in the pursuit of resolution and conflict transformation. The role of the Internet reflects and facilitates that multi-agency participation. On the one hand, the Internet seems to mirror the roles of non-state and unofficial agencies in responding to contemporary conflict: the emergence of new, non-state actors on the international stage and the mobilisation of those actors around perceived causes or leaders. On the other, the stage is also set for non-state actors of a constructive disposition to become engaged in the search for prevention and peace. To the extent that these new forms of mobilisation create the challenge of internal and international violence, it becomes necessary to explore the role of a complex of agencies in the pursuit of peace. Precisely because this is a world in which conflict involves this complex of actors, we are compelled to explore the multilateral, multilevel responses to the threat and consequences of conflicts which makes multitrack diplomacy and the work of Track II agencies in particular – regional organizations, NGOs, leading individuals – all the more relevant.

By way of civil society parallel, in the contexts of stable societies, ICT provides the vehicle and the tools for a wide range of forms of participation – from mobile phones to chat rooms, web logs, public access radio and open source software. These provide for networks and forms of horizontal and dispersed communication. Not only might ICT provide the *technology* for communication and dialogue on world affairs, peace and domestic politics; it might also provide an *organizing principle* – i.e. that of "networking"³⁴.

From the outset in the development of Internet-based communication, it has been

³² See especially Robert D. Putnam's *Bowling Alone: The Collapse and Revival of American Community*, (New York, Simon & Schuster, 2000). See also <http://www.bowlingalone.com/>

³³ Sunstein, *op cit*, n.6. In response to Sunstein's concern with the loss of 'republican' values in the internet, see Jared Beck, <http://blogs.law.harvard.edu/jbeck/2003/11/20/>, "Cass Sunstein and the Daily Me" (2003):

"Is Cass Sunstein really correct that the Internet is headed toward a utopia/dystopia characterized by "complete personalization of the system of communications?" My impression is that his is an over-reductionist view of the Internet experience motivated by the desire to fit old communitarian arguments to new modes of communications. I think he misses a lot about the Internet in his portrait of the "Daily Me." It is telling that Nicholas Negroponte, who coined the idea of a "Daily Me," also talked about a "Daily Us." But the "Daily Us" is conspicuously absent from Sunstein's vision."

³⁴ David Bollier, "People / Networks / Power: Communications Technologies and the New International Politics" (Report of the 12th Annual Aspen Institute Roundtable on Information Technology; The Aspen Institute, 2004). p. v. See also Charles M Firestone, in "Foreword" to "The Rise of Netpolitik" How the Internet in Changing International Politics and Diplomacy," (A Report of the Eleventh Annual Aspen Institute Roundtable on Information Technology; The Aspen Institute, Colorado, 2003)



necessary, despite the aspirations of a relatively unconstrained means of communication, to establish norms of participation, whether these are basic rules of “netiquette” or the formal requirements of mandatory arbitration imposed on ISPs and domain name users. Internet users will, of course, participate in widely divergent and dispersed ‘communities’: the core value and appeal in the Internet is the facility it offers to access information, like-minded people and resources well beyond individuals’ physical reach or the boundaries of nations. This is, however, both a virtue and a peril. As Lim comments³⁵:

“The Internet appeals to isolated individuals by helping them to connect with people worldwide with whom they share some commonality. It also leads these individuals to spend more time with this de-territorialized community at the expense of interaction with their immediate physical environments. In cyberspace, communities are no longer tied to nations . . .”

In the absence of the conventional shape and present of physical communities, and in the face of Internet users’ capacity to forge closer virtual links with those outside their real communities, it becomes necessary to imagine ways in which those same technologies that foster dispersed affiliations can be used to reinvent cyber citizens.

I will explore below the prospect that the same technologies and modes of participation that are being developed in settings of intra-state conflict, to foster dialogue, trust, confidence and community building, have their peacetime analogues and with the same objectives.

In summary, the development of ICT through these phases shows a shift from the tools and management of bare information and communication, to commerce and enterprise, to the current phase of world affairs, peace building and domestic politics. The common elements in each of these phases of development are:

- A breaking down of old patterns and hierarchies and increasing role of horizontal and networked rather than predominantly hierarchical relationships;
- Challenges to familiar borders and boundaries – whether through the nature of internal political conflicts or through the very nature of Internet communication;
- A greater degree of participation – and demands for participation – in political and social; thus greater expectations of public participation and information;
- The tension between, on the one hand, a greater degree of fragmentation within and between communities and on the other, emerging and new patterns of integration and networking;
- The need, reflected in the organizational tools of ICANN or WIPO, or e-Bay, to develop new or adapt existing processes of decision-making to respond to demands of the technology or to the needs for rapid and open communication

The question that arises at this stage in the development of ICTs is as to the potential role of Internet communication to facilitate the new integration. Will the Internet fulfill the expectation of Frances Cairncross³⁶ that it will “increase understanding, foster

³⁵ Merlyna Lim, *Islamic Radicalism and Anti-Americanism in Indonesia: The Role of the Internet*, (East-West Centre, Washington, 2005), 44

³⁶ Frances Cairncross, *The Death of Distance* (Boston, Harvard Business School Press, 1997, 1st ed., p. xvi); cited in the CSIS Report, “Reinventing Diplomacy in the information Age,” (Oct. 1998), <http://www.csis.org/ics/dia/final.html>, p.16). See also <http://www.deathofdistance.com/>. That comment does not appear in the 2001 edition. However, as the final point in the section “The Trendspotter’s Guide to New Communication”, Cairncross suggests that “Democracy will continue to spread: people who live under dictatorial regimes will be more aware of their governments’ failures. Democracies have always

tolerance, and ultimately promote worldwide peace”?

3. Current developments in uses of ICTs in conflict prevention and democratisation

This section will briefly explore the two parallel developments in what I have referred to as the third phase in ICT development:

- (i) its role in peace building in settings of ongoing internal conflicts, and
- (ii) its potential in facilitating community building, civic engagement.

The common ground here between peace building and community building lies in the power of ICT to foster decentralised communication and engagement. Networks [re]distribute influence and information and, especially via the Internet, transcend the usual national barriers. And, within stable states, electronic networks may parallel and reinvigorate conventional networks. As Jamie MetzI comments in “Network Diplomacy”³⁷,

“globalization and the information revolution are empowering decentralized networks that challenge state-centered hierarchies.”

Ironically, those networked communications in conflicted settings may take advantage of the anonymity of electronic communications, to overcome or mitigate the risks associated with the identification of individuals³⁸; and in domestic, stable settings, they may conversely foster ways of overcoming the anonymity of modern life styles and of remote communication.

This common ground is the one alluded to in my Introduction: the central importance of negotiation and dialogue and – through the Internet and other forms of electronic communication – the creation of spaces for dialogue. The technology of the Internet provides the virtual and physical space³⁹; the ongoing educational task is that of building the capacity to engage in those dialogues and negotiations – avoiding the temptations, which the Internet and “real life” may offer, of retreat into one’s familiar

been more reluctant to fight than dictatorships. In addition, countries will grow yet more economically interdependent. People will communicate more freely with human beings on other parts of the globe. As a result, while wars will still be fought, the effect may be to foster world peace.” [*op cit*, 2nd ed, 2001 p. xvii.]

³⁷ J MetzI, “Network Diplomacy,” Information Revolution and World Politics Project, Carnegie Endowment for International Peace,

http://www.ceip.org/files/Publications/network_diplomacy.asp?from=pubdate, reprinted from the *Georgetown Journal of International Affairs*, Winter/Spring, 2001. For additional resources on the Internet and democratisation, see publications at the Carnegie Endowment for International Peace:

http://www.ceip.org/files/Publications/Pub_by_topic.asp#anchor

³⁸ See Michael Reimann, “Das Internet als Medium für Demokratisierung und Verständnisbildung - Beispiel Bosnien-Herzogowina” in *conflict and communication online*, vol 1, No. 2, 2002, <http://www.cco.regener-online.de>, ISSN 1618-0747. Reimann comments on the importance of anonymity for those engaged in online discussion groups during the conflict in the Former Yugoslavia – in settings in which names signified ethnic identity and created the possibility of personal risk. Similarly, the Germany-based internet chat room for children, <http://www.kidopolis.org/sites/index1.htm>, allowed Bosnian, Croatian, and Serbian children to adopt new identities for the purpose of the “agora”.

³⁹ See, for example, the work of the Kettering Foundation:

<http://www.kettering.org/Programs/International/international.html>

and unthreatening “enclave”⁴⁰, and of characterisation of “the other” as not worthy of dignified engagement.

ICT in conflict prevention and peacebuilding:

By way of illustration of the first aspect of this peacebuilding role of ICTs, I turn to the example of Sri Lanka. This provides a fruitful example both because of the tragic and recently renewed communal conflict that has taken at least 70,000 lives and displaced hundreds of thousands more over two decades, and because of the uses of grassroots technology, ranging from cell phones to websites and community radio, in the attempt to rebuild trust, communication and the possibility of peace⁴¹.

For a number of years, the communal – or ethnic – voices on either side of this conflict have used Internet technology, but more often to present partisan views of the conflict. The Tamil website, <http://www.eelam.com/>, for example, presents a view of the “extreme frustration at the unchanging attitude of successive Sinhala regimes towards resolving the burning Tamil national question and, in particular, at the deceitful handling of the current peace efforts by three successive Sinhala regimes”. Similarly, another Tamil website, <http://www.tamilnet.com/>, presents accounts of the conflict which are, understandably, disposed to seeing the Tamil population as victims of ongoing governmental and – more specifically – Sinhalese – attacks.⁴²

Conversely, websites such as <http://www.lankapage.com/> and <http://www.lankaweb.com/news/latest.html> tend to be more pro-government and specifically anti-Tamil in their reporting – and concerned to argue that the negotiations are a fundamentally flawed process because they are based on the assumption that the Tamil Tigers are a legitimate negotiation partner. Other websites, such as <http://theacademic.org/>, tend to be more neutral in their reporting though, as will be the case in most war reporting, the language of the news is often charged and likely to be perceived as partisan – even in such simple matters as the use of words such as “rebels” to describe the LTTE.

If the principal use of the web for the last two decades has been partisan representation of the nature of the conflict, more recent developments are far more hopeful and illustrative of the capacity of the same technology to build intercommunal co-operation and trust. A few brief examples will suffice to illustrate this. These examples also illustrate the potential for collaboration between non-governmental organizations and grassroots movements to provide – as far as possible – neutral information and a safe forum through which to engage in dialogue. In this collaboration it is also clear that attention is being turned specifically to the question as to the potential of ICTs in humanitarian and peace operations. Beyond being a resource that might incidentally be used for the storage or provision of information, or for the

⁴⁰ As Sunstein has noted, *op cit*, n. 6, Sunstein’s recognition that ‘enclave’ deliberation is important in order to elicit the perspectives of members of those enclave; but is only truly valuable if also connected to and engaged with civic deliberation.

⁴¹ This is also an example of the ways in which grassroots, mid-level and diplomatic processes can exist side by side and reinforce each other’s peace building activities.

⁴² Significantly, this website also reports (on 21 December 2006) the comments of Eric Solheim, the Norwegian International Development Minister closely involved in the ongoing negotiations, to the effect that the late Anton Balasingham, the LTTE’s chief negotiator and theoretician, was a “man of integrity”. This view can only reinforce the Sri Lankan Government’s view that the Norwegian delegation is pro-LTTE.

facilitation of communication, the technology itself is now the subject of governmental and non-governmental attention⁴³.

In 2005, for example, the Swiss Government initiated a project called “ICT for Peace”, the aim of which is to focus on the provision and application of information technology in areas of conflict. This initiative arose from the deliberations of the World Summit on the Information Society which, recognizing the negative impact of conflict on development and the attainment of the UN’s Millennium Development Goals, seeks to make constructive use of the technology.⁴⁴ This project, ICT4Peace, is one of the agencies, along with the Swiss Peace Foundation⁴⁵, that has been working with local and grassroots agencies in Sri Lanka, in particular, the Centre for Policy Alternatives⁴⁶ to foster the capacity of civil society to engage in constructive inter-communal activities, and – as indicated earlier in this paper – to promote reliable information, trust, and dialogue.

Five brief examples, in ascending order of technical novelty, will suffice to illustrate the steps that can be taken to use modern communications technology, including the relatively simple technology of cell phones, to pursue these goals.⁴⁷

First, the Sri Lankan Foundation for Co-Existence (FCE), in currently running a “pioneering early warning and response system”⁴⁸, involving

- i) a community-based network of volunteers forming peace committees, identifying peace and conflict indicators; and
- ii) a team of 20 field monitors with motorbikes and mobile phones, monitoring the ground situation, reporting daily by phone and SMS or email to an Information Centre based on Colombo; and
- iii) at the Information Centre, a process of verification and collation of information for dissemination to legislators and decision makers.

Several observations can be made about this experiment. First, it is an example of collaboration between Sri Lankan grassroots initiatives and international, government-funded NGOs: the FCE here is working in association with the Swiss Peace Foundation. Second, it involves a co-ordination of both basic technology – small motorbikes and mobile phones – and more elaborate early warning systems for conflict prevention and mitigation: the project works with Swiss Peace’s “FAST” early warning system, developed for and implemented in over twenty countries in Africa, Asia and Europe.⁴⁹ Third, it involves collaboration between grassroots and community-based

⁴³ See generally D Stauffacher, W Drake, Paul Currión & J Steinberger, “Information and Communication Technology for Peace: The Role of ICT in Preventing, Responding to and Recovering from Conflict,” (2005; UN ICT Task Force & ICT for Peace <http://www.ict4peace.org/>); Gordon Smith, “Reinventing Diplomacy: a Virtual Necessity”, <http://www.usip.org/vdi/vdr/gsmithISA99.html>

⁴⁴ See <http://www.ict4peace.org/>

⁴⁵ <http://www.swisspeace.org/>

⁴⁶ <http://www.cpalanka.org/>

⁴⁷ For a more extended discussion, see Sanjana Hattotuwa, “Daring to Dream: CSCW for Peacebuilding,” (Conley Tyler, Melissa, Katsh, Ethan and Choi, Daewon (Eds.), *Proceedings of the Third Annual Forum on Online Dispute Resolution*. International Conflict Resolution Centre, University of Melbourne in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific. www.odr.info, March 2005); “Untying the Gordian Knot: ICT for Peacebuilding and Conflict Transformation,” (paper presented to Third Annual Forum on Online Dispute Resolution, Melbourne, Australia, 2004).

⁴⁸ See *Peace IT!*, No. 1/2006, p. 2

⁴⁹ see <http://www.swisspeace.org/fast/>: “FAST International is an independent early warning program covering 20 countries/regions in Africa, Europe and Asia. The objective of FAST International is the early recognition of impending or potential crisis situations in order to prevent violent conflict. FAST



groups, local Track II agencies (here, the FCE), and government agencies: the aim of the conflict monitoring is to provide timely and accurate information on likely flashpoints in the conflict for central decision-makers.

The second example from Sri Lanka again involves relatively simple and established technology – radio – and its use as a vehicle for the voices of those affected by the conflict and as a source of information for all the parties. As with the Singaporean CENS project on seeking to foster social cohesion and resilience⁵⁰, so the “Voices of Reconciliation” radio project⁵¹:

“aims to enhance social, political and cultural cohesion in Sri Lanka through podcasts and radio productions that feature the ideas and opinions of citizens rarely featured in mainstream media. Content is in Sinhala, Tamil and English with a special focus on civil society initiatives and perspectives on peace, reconciliation and democracy.”

The Voices of Reconciliation Radio can be accessed through and is associated with the third initiative – as we move up the scale of technological complexity but remain relatively accessible: an initiative of InfoShare and the Centre for Policy Alternatives is the establishment of “Groundviews”, an open-access, unmoderated, tri-lingual website. This, too, is associated with another web-based initiative, “Voices of Peace”. Groundviews is Sri Lanka’s first and so far only tri-lingual citizens’ journalism website. Launched in December 2006, it features articles focussing on issues of humanitarian access, human rights, peace, democracy, constitutional reform and governance. Recent articles have addressed issues ranging from the recruitment of child soldiers, to populist mobilisation and the process of business recovery in Jaffna, the northern city most badly affected by the decades of conflict and displacement.

In commenting on the role of websites such as Groundviews, Sanajana Hattotuwa says⁵²:

“‘Citizen journalism’ can help move the country towards peace. Through web-based technologies, even citizens in Sri Lanka who have been effectively cut out of mainstream media - bursting, as it is, with the propaganda of political elites - have found new ways of expressing themselves, their concerns, their aspirations and their ideas for resolving conflict.

Often, this new age of citizen journalism lacks the grammar of age-old diplomacy and socio-political norms - the conversation is raw, visceral, impatient, irreverent, pithy, provocative.”

International aims at enhancing political decision makers` and their staff’s ability to identify critical developments in a timely manner so that coherent political strategies can be formulated to either prevent or limit destructive effects of violent conflicts or identify windows of opportunity for peacebuilding.”

<http://www.swisspeace.org/fast/methodology.htm>

⁵⁰ “Social resilience refers to the ability of a community to restore normalcy in the event of a severe trauma such as a terrorist attack, an epidemic, a severe economic crisis or a natural disaster. The current global climate has underscored the salience of competing ethnic and religious identities in disrupting the social fabric of nations from within. Moreover, according to conventional wisdom, Singapore’s social cohesion rests precariously on stable inter-racial and inter-religious relations. While Singapore’s social resilience has yet to be put to the test, the extent to which its social fabric can withstand an attack depends on the level of trust among the various groups prior to the event.” “The Other Singaporeans: Perceptions of Race and Religion in Singapore’s Official Multiculturalism”, CENS Social Resilience Programme, §1.2.

⁵¹ <http://www.radio.voicesofpeace.lk>

⁵² Sanjana Hattotuwa, “The Promise of Citizen Journalism,” January, 2007, personal email and at <http://www.madrid11.net/articles/srilanka220107>

This source of information – this citizen journalism – contains not only ‘popular’ views of the conflict, but also academic commentary on issues such as nationalism, mobilization, and central politics, providing yet another indication of the kind of collaboration made possible through ICT.

A fourth initiative is again a development from the preceding ones and is perhaps more limited in its accessibility – though likely to be accessed by Sri Lanka’s substantial diaspora population: the creation of podcasts on topics relating to the conflict, reconciliation, economic development, and the disparity in conditions between the regions of Sri Lanka. Podcasting is fast becoming the medium of choice for web-based self-publicity in highly wired societies, and an increasingly important mode of information delivery in online education⁵³. That same relatively simple technology can be turned to the purposes of peace in settings where the parties in conflict need reliable information and the capacity to hear and tell their own stories of peace. Recent podcasts, accessed through the Voices of Reconciliation Radio, include topics such as the use of direct democracy by villages in resolving disputes⁵⁴, the impact of the ongoing violence on the tourist industry⁵⁵, discussions of rights, development and the erosion of living conditions in the predominantly Tamil north and east⁵⁶, and the role of the Government in relation to the alleged recruitment of child soldiers by the breakaway Tamil “Karuna faction”⁵⁷.

The fifth and final example involves the use of “blogs” or weblogs. Increasingly popular as a form of placing one’s own views on the web, blogs also have a number of academic and quasi-governmental authors and “bloggers”. The risk of the blog as a form of self-publicity is that it increases the already high noise-to-signal ratio on the web: there is far more information available that we could ever need or want to have access to!⁵⁸ However, the significant value of some of the blogs provided by, for example, legal academics, is the capacity to access recent law and commentary, and to engage in dialogue in ways hitherto simply not possible⁵⁹. In the conflict setting, blogs can provide ongoing and updated information, typically at grassroots level, and supplement other and more conventional forms of information⁶⁰. InfoShare, one of the

⁵³ See, for example, the highly-regarded Open University of Catalonia [www.uoc.edu]; or the projects at Berkeley [<http://itunes.berkeley.edu/>] and Carnegie Mellon Universities [<http://www.apple.com/education/profiles/carnegie/>], in making course material and public events available online and through podcasts. See also the podcast side of Open Democracy http://www.opendemocracy.net/globalization/podcast3_4284.jsp

⁵⁴ <http://www.radio.voicesofpeace.lk/page.php?v/298>

⁵⁵ <http://www.radio.voicesofpeace.lk/page.php?v/310>

⁵⁶ <http://www.radio.voicesofpeace.lk/index.php?v/0>

⁵⁷ <http://research.infoshare.lk/2007/01/21/hrw-podcast-on-sri-lanka-government-complicity-evident-in-karunas-child-recruitment/>

⁵⁸ For a recent polemic against the Internet, and especially blogs and “wikis”, see Andrew Keene, *The Cult of the Amateur: How the Internet is Killing our Culture*, (Doubleday, 2007)

⁵⁹ For a blog related to the subject of this paper, see Lawrence Lessig’s blog at <http://www.lessig.org/blog/>; for an ongoing constitutional law dialogue between Prof Gary Becker and Justice Richard Posner, see <http://www.becker-posner-blog.com/>; for an excellent and regularly updated legal theory blog, see Lawrence Solum’s <http://lsolum.blogspot.com/>. One recent development is the first mediation-related video blog, initiated and hosted by my Wellington colleague Geoff Sharp, at <http://mediationvblog.com/>.

⁶⁰ Note also the manner in which blogs can provide an additional and alternative voice in international fora, such as the women’s commentary from the 7th World Social Forum in Nairobi: <http://womenwsf.wordpress.com/about-2/>; or provide a more focussed commentary on human rights, such as Mary Robinson’s “Realizing Rights: the Ethical Global Initiative”: <http://www.realizingrights.org/>



bodies closely involved with the preceding initiatives, provides an excellent resource in its regularly updated blog at <http://research.infoshare.lk/>. Recent blogs from InfoShare include comments on the risks to humanitarian workers in conflict zones⁶¹; the contribution of religion to the peace process⁶²; NGO accountability⁶³; and a link to the Public International Law and Policy Group's⁶⁴ simulation on the Sri Lankan peace negotiation process⁶⁵.

What can we make of these developments? At the heart of the exercise is a response to one of the issues identified by writers on inter-communal and ethnic conflict: the fear generated by the lack of reliable information about the nature of the conflict, the attributes and aspirations of “the other side”, and the prospects for peace and reconciliation⁶⁶. In the absence of information, provided either by as neutral a source as possible or by *all* sides to the conflict, people will typically retreat into their own partisan and increasingly unchallenged and extreme views of causes and solutions⁶⁷.

In these examples, the uses of ICT serve at least three linked functions: first, the involvement of a wide range of participants in the monitoring of flash points and communal ‘fault lines’; second, the generation of a body of information about the conflict, constantly updated, and regularly fed up the decision-making chain; and third, the provision of relatively accessible media – mobile phones, community radio, open websites – to facilitate dialogue, especially where face-to-face communication is dangerous.

It would be naïve, of course, to imagine that this has been entirely without problems: the risk and trust involved in allowing open-access websites both underscores the need for authentic participation and dialogue *and* creates the real likelihood that the decades of conflict will spill over into the web pages. The vituperative nature of some of the postings on the Sri Lankan websites indicates the ways in which the conflict might simply be carried over into a different context. And any attempts to moderate the conversation is seen by those posters as a mark of the graphically described attributes and inclinations of the moderator. This, in a very real sense, takes us back to the first phase of Internet development discussed earlier and illustrates the ongoing challenge – in face to face and virtual communication – of finding the balance between the trust involved in open communication and the need for protection and controls.

An aspiration of this kind of experiment is that the experience of participation and engagement might foster both a shared commitment to the peace process and a sense of common citizenship. In conflicts such as Sri Lanka's, the inter-communal and separatist animosity has its political analogue in the desire for distinct and identity-based citizenship⁶⁸. In both conflict-saturated and stable communities, the claims of citizenship are increasingly marked by expectations of recognition based on culture,

⁶¹ <http://research.infoshare.lk/2007/01/26/killing-aid-workers-the-dangers-of-humanitarian-work-today>

⁶² <http://research.infoshare.lk/2007/01/24/religious-contributions-to-peace-making>

⁶³ <http://research.infoshare.lk/2007/01/23/debating-ngo-accountability>

⁶⁴ <http://www.publicinternationallaw.org/about/index.html> - a “global pro bono international law firm”

⁶⁵ http://www.pilpg.org/areas/peacebuilding/simulations/#Sri_Lanka

⁶⁶ D A Lake and D Rothchild, “Spreading Fear: The Genesis of Transnational Ethnic Conflict,” in Lake & Rothchild (eds). *The International Spread of Ethnic Conflict: Fear, Diffusion, and Escalation*, (Princeton, Princeton University Press, 1998), Ch 1.

⁶⁷ See Cass Sunstein, “Deliberative Trouble: Why Groups go to Extremes,” 110 *Yale Law Jnl*, 71 (2000), available online at http://www.yalelawjournal.org/archive_abstract.asp?id=342

⁶⁸ See generally R Ganguly and I Macduff (eds), *Ethnic Conflict and Secessionism in South and South-East Asia: Causes, Dynamics, Solutions* (Sage, New Delhi, 2002)



ethnicity, or faith⁶⁹. This is not the place to go into this topic, save to note that the arguments emerging from a cosmopolitan, rather than multicultural perspective⁷⁰ emphasise the importance of policies and practices which both recognize the interests of identity but remain grounded in the democratic principle of common citizenship.

ICTs and rebuilding civic commitments:

The key uses of ICTs in conflict monitoring, mitigation and transformation are those of fostering participation, dialogue, shared commitments and, in the end, a broad foundation of civic values. These, of course, are all rendered fragile and risky in situations of ongoing conflict. The same goals remain relevant in the second context of current ICT development – in the creation of the cyber citizen in essentially stable and democratic communities, but in which civic commitments may be attenuated by a range of factors, including apathy, the perceived lack of access to political or economic influence, and the diminution of civic literacy. As suggested above, the power of the Internet and the related tools of mobile phones, blogs, podcasts, and websites, is that of providing an increasingly familiar space for accessing information and engaging in dialogue. It is, for those happily referred to now as “digital natives”⁷¹, the place where they are more likely in fact to feel “at home” and choose to access music, videos and information. Ideally, the technology will provide digital spaces for both “natives” and “immigrants” to engage in and foster civil society – in the same way as the conflict zone experiments outlined above are attempts to *re-create* civil society out of war.

The potential of this second aspect of online life is the creation of a “digital commons” – a digital counterpart to the physical commons which historically (and possibly nostalgically) might have been shared. Domestically, this civic commons becomes important because of the perceived increasing unreliability of public and political information and the rising apathy of the public on political issues⁷²; internationally, access to information is vital to correct or supplement distorted perceptions, to provide credible alternative narratives, and to foster the prospect of engagement in peace building. Recent writing in this field suggests that, far from the “bowling alone” and declining social capital of Putnam’s analysis, the potential exists through the Internet to foster the “bowling together” Coleman and Gøtze refer to⁷³. They begin by identifying two key features of the contemporary political landscape:

- a) A decline in political participation; rise in citizen apathy; increase in consumerist orientation (including towards politics); decline in confidence in familiar models of democratic governance; paralleled by
- b) The rise in digital technologies: potential for new public participation;

⁶⁹ See, for example, Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era*, (Princeton, Princeton University Press, 2002)

⁷⁰ Kwame Anthony Appiah, *Cosmopolitanism: Ethics in a World of Strangers*, (New York, W W Norton & Co, 2006); Appiah, *The Ethics of Identity*, (Princeton, Princeton University Press, 2005); Amartya Sen, *Identity and Violence: The Illusion of Destiny*, (New York, W W Norton & Co, 2006); Eduardo Medieta, “Communicative freedom, citizenship and political justice in the age of globalization,” *Philosophy and Social Criticism*, 31: 739-752 (2005); Ayelet Shachar, “Two Critiques of Multiculturalism,” 23 *Cardozo Law Rev*, 253 (2001); Shachar, *Multicultural Jurisdictions: Cultural Differences and Women’s Rights*, Cambridge, Cambridge University Press, 2001)

⁷¹ The counterparts to “digital natives” are “digital immigrants” – those who have not grown up wholly in this digital age and who have not embraced, and may never wholly embrace the technology. See: http://technologysource.org/article/digital_natives_digital_immigrants/

⁷² See J G Blumler & S Coleman, “Realising Democracy Online: A Civic Commons in Cyberspace”, IPPR/Citizens Online Research Publication, No. 2, March 2001. See also Hang Wu Tang, “Let a Hundred Flowers Bloom: Digital Speech in Malaysia,” *Asian Journal of Comparative Law*, 1: 1 (2006) [Electronic version, published by The Berkeley Electronic Press: <http://bepress.com/asjcl.vol1/iss1/art12>]

⁷³ Stephen Coleman & John Gøtze, “Bowling Together: Online Public Engagement in Policy Deliberation” (Hansard Society, ISBN 0 9000432 36 5; downloaded copy).

communication relatively unconstrained by time and location; potential for citizen responses to policy formation.

In this respect, the discussion of the role of ICT in fostering civic literacy and cyber citizens moves on from the world on conflict resolution to the realm of deliberative democracy. Again, this is a subject requiring separate treatment but the lessons that can be drawn from this discussion, and linked to my speculation on the role of ICT and online dispute resolution are relatively simple: they centre on a concern for the *promotion of dialogue and engagement* as essential to a dynamic polity and commitment to the institutions of governance and law. In the language used by Coleman and Gøtze (echoing J S Mill), the concern is to create “civic spaces” for wider participation – recognizing at the same time the risks of populism and “plebiscitary decision-making”⁷⁴ but arguing also that the best counter to this risk is the exposure to a wider range of voices and reasoning.

There is still likely to be a tension between an ‘official’ interest in the role of the Internet (strategic, managerial)⁷⁵ and the citizen interest (critical, participatory, transformative – or simply entertainment). In this respect, the contemporary discussion about the Internet and dispute resolution and public engagement reflects the differing traditions of political philosophy – between the individual-centred liberalism of Mill and the conservatism of Burke; and between a respect for and fear of participatory decision-making. For all that Mill had a fear of public mediocrity and capacity, he nevertheless saw the potential in creating civic spaces. The language of capacity building had not been invented in his time, but the idea is there: the importance of public discourse, and the protection of “spaces” for that discourse, in order to foster the capacity of the individual to exercise his or her rights (and obligations) and, at the same time, to appreciate the principles of shared citizenship. The only difference now is that the “spaces” are virtual: the optimism and aspiration remain the same.

Cass Sunstein also turns to Mill and Dewey in support of the concept of spaces for “deliberative dialogue” in the development and maintenance of democracy⁷⁶:

“It is hardly possible to overstate the value, in the present state of human improvement, of placing human beings in contact with other persons dissimilar to themselves, and with modes of thought and action unlike those with which they are familiar . . . Such communication has always been, and is peculiarly in the present age, one of the primary sources of progress.”

In this respect, the classical and jurisprudential discussions about rights and citizenship take on a contemporary challenge – that of divided loyalties, multicultural claims, and attenuated political commitments; and a new context – that of the virtual world which has the capacity both to exacerbate and to contribute to the solution of these challenges.

⁷⁴ Op cit, p. 10.

⁷⁵ See, for example, See R D Steele, “Virtual Intelligence: Conflict Avoidance Through Information Peacekeeping” (<http://www.usip.org/vdi/confpapers/virintell.html>). His point, following the recognition of distributed information, is that there is typically a gap between those who have power (presumably higher up the decision-making chain) and those who have knowledge (private sector, grass roots etc) and that “we require a strategy to create a ‘virtual intelligence community’ to inform governance and promote peace building”. (p. 1)

⁷⁶ J S Mill, *Principles of Political Economy*, (1848), p.594; cited in Sunstein, *Republic.com*, op cit supra, p. 191



Thus, Blumler and Coleman have argued⁷⁷ that the internet possesses ‘a vulnerable potential’ for this role, that is, of civic engagement and deliberation, and that the creation of a ‘civic commons in cyberspace’ –

“could become part of the democratic furniture: an integral component of the representative system (the Commons) and an open space for the represented to gather and talk (the civic commons).”

Blumler and Coleman identify three elements as central to the development of the domestic civic commons⁷⁸:

- a) The changing relations between the public and holders of political authority; heightened expectations that attention will be paid to the ballot box [but equally a recognition that this can be trivialised or focussed on single-issue participation];
- b) An impoverishment of mainstream political communication; a decline in the depth and quality of “civic communication”; and
- c) The ‘vulnerable potential’ of new interactive media to improve communication and participation; vulnerable because of the lack of effective infrastructure and the risk of commercial control.

At the heart of this prospect for the civic uses of ICTs, then, lie a rise in theories and expectations of democratic, deliberative participation (despite the corresponding rise in political disengagement and apathy), and the increasing attention paid to the attributes of citizenship, including the challenges of multicultural citizenship. As in the case of the use of ICTs in the contexts of internal conflicts, participation (“noisy but civilised discussion”⁷⁹) is vital to the invigoration and survival of democracy. In both peaceful (domestic) and conflicted contexts, participation at the margins and dissent are responses to exclusion and lack of voice.

What we also see is that techniques and technologies that have been lauded as essentially private – mediation, and the Internet – need to be seen equally in terms of their civic and public contributions. Mediation in the West, for example, has been fostered for its values of private settlement, autonomy, confidentiality, and choice; yet in its original homes – especially in Africa and Asia – mediation served and serves more of a public, normative and socially integrative function. The parallel with ICT is that while ICT does foster narrowcasting, the translation of citizens into consumers whose priority is choice, autonomy and a new technoculture, that same technology can be seen and used in terms of its capacity to foster engagement, citizenship, civic dialogues⁸⁰:

“In short, the interactive mediaspace offers a new way of understanding civilisation itself, and a new set of good reasons for engaging with civic reality more fully in the face of what are often perceived (or taught) to be the many risks and compromises associated with cooperative behaviour.”

⁷⁷ J G Blumler and S Coleman, *Realising Democracy Online: A Civic Commons in Cyberspace* IPPR/Citizens Online, 2001, p. 4-5

⁷⁸ *ibid*, pp 5-6

⁷⁹ *ibid*, p7

⁸⁰ Douglas Rushkoff, “Open Source Democracy: How Online Communication is Changing Offline Politics”, www.demos.uk, p. 16. See also Jack M. Balkin, “Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society,” *N.Y.U.L.Rev* 79: 1 (2004) – for a comment on the manner in which digital technologies and digital “speech” change our thinking on free speech, with a particular emphasis on protecting democratic “culture”.

4. Conclusions:

I began this paper with a comment on the pervasiveness of negotiation and of the contemporary opportunities for negotiation, ranging from the familiar worlds of commerce and business to the pressing challenges of environmental and climate change negotiations and – the most difficult – the negotiation of the end of conflicts. I also indicated that I had one principal concern here, which was to comment on a new and burgeoning field of negotiation in the online world – a challenge to negotiation and communication created by the exponential growth in online business, education, broadcasting and, predictably, conflict. This development in both negotiation and the online world has led to an unexpected feature: the challenges to civic and community commitments created by the borderless and curiously disconnected form of interaction of the Internet, matched now by a relatively recent and vigorous commitment to the use of the Internet to foster civic dialogues, public participation, and informed decision-making.

One version of this, which I will not go into here, is of course the significant growth in e-government: no listing of cities and states using some form of web-based government information and service provision could hope to be up to date⁸¹. Similarly, international and intergovernmental initiatives on governance, policy formation, and citizen participation find voice on the Internet – one recent example of which is the “E-Parliament” initiative⁸², the co-founder of which is Professor Bill Ury, one of the co-authors of a hugely successful text on negotiation⁸³. The same issues that concern the authors of the print-based journal, *International Negotiation*⁸⁴, are also the subjects of online policy deliberation co-operation between elected parliamentarians and concerned constituents (and not necessarily their *own* constituents) through such an e-Parliament.

The noise-to-signal ratio on the Internet might seem at times to be exceptionally high; it might also seem that the Internet provides both information overload (just try a Google search on almost anything!) *and* information deficits (in the capacity to retreat into partisan news collecting); the Internet itself is also a field of conflict in the tension between anarchy and control, both needing management and rules and resisting them. However, the capacity of the Internet which I have outlined here, this ‘third phase’ in the development of online dispute resolution and negotiation, appears to offer an opportunity for *public reasoning*: an engagement going beyond the provision of information and delivery of services that e-government offers; and going beyond mere

⁸¹ A brief, incomplete but illustrative listing could include: <http://forum.wien.at> (Vienna); <http://mansefoorumi.uta.fi> (Finland); <http://www.comune.bologna.it> (Bologna); <http://www.nordpol.dk> (Denmark; open debate/dialogue between citizens and politicians; response to very low voter turnout); <http://www.uspeak.org.uk> (UK – contributions on welfare and work); <http://www.hansardsociety.org.uk> (Hansard Society, e-democracy programme: <http://www.hansardsociety.org.uk/eDemocracy.htm>); <http://tom.riik.ee> (Estonia); <http://www.edentool.org/> (Electronic Democracy European Network); <http://www.info-europe.fr/debat/> (France & EU initiative – discussion of European policy initiatives; 5 different web sites); <http://www.viemediation.at/> for information on the mediation process for Vienna Airport.

⁸² <http://www.e-parl.net/eparliament/welcome.do>

⁸³ R Fisher, W. Ury, & B Patton, *Getting to Yes: Negotiating Agreement without Giving In*, (New York, Penguin Books, 2nd ed., 1991)

⁸⁴ *supra*, p.1



discussion⁸⁵ to the facilitation of dialogue and, in the end, commitment to dynamic civic values⁸⁶.

The constitutional and jurisprudential parallel to this development is the growing commentary on deliberative democracy and work which draws connections between the role of dispute resolution and democracy – specifically in the articulation of public norms and the reinforcement of principles of governance through the resolution of disputes, including online disputes⁸⁷. If, in conflict zones, the aim of this citizen participation through ICT is to foster the kind of understanding and trust that can contribute to the reconstruction of democratic governance and civil society, in stable societies the parallel aim is surely to continue to attend to the interests of governance – and to do so especially through fostering civic literacy and participation.

One recent response to the decline in civic participation and to the risks of conflict and instability has been the promotion of perhaps the most basic human resource and capacity that we have: the capacity to engage in conversation⁸⁸. As suggested earlier, what connects us – according to Bateson and others – is the stories we tell⁸⁹. If we now go the political step beyond those stories and conversation, and if we see negotiation as more than mere bargaining, the task is that of fostering open and fair processes (including online resources) in order, in turn, to foster civic and collective choices – and cyber citizens.

“Dialogue, as we are choosing to use the word, is a way of exploring the roots of the many crises that face humanity today. It enables inquiry into, and understanding of, the sorts of processes that fragment and interfere with real communication between individuals, nations and even different parts of the same organization. In our modern culture men and women are able to interact with one another in many ways: they can

⁸⁵ Though it must be added that both of these remain foundational.

⁸⁶ See Hang, “Let a Hundred Flowers Bloom: Digital Speech in Malaysia,” fn 72 above, p.5: “It is true that the contents of most blogs are not particularly profound. In fact, most do seem to be quite banal. However, I dispute the argument that there is no social value in the digital conversation that ensues from blogging. When all these blogs are hyperlinked and networked to one another and bloggers and their readers congregate metaphorically in cyberspace and produce a cacophony of voices on the Internet where people comment on the news, remark about each other’s postings, rant about their everyday experience, encourage each other, criticize, flirt, joke etc. something more significant emerges from this din. This digital conversation can properly be characterised as a growing culture of democratization.”

⁸⁷ C. Menkel-Meadow, “The Lawyers’ Role[s] in Deliberative Democracy,” Public Law & Legal Theory Research Paper Series, Georgetown University Law Center, Research Paper No. 784530 (downloaded from <http://ssrn.com/abstract=784530>); James S Fishkin, “Realizing Deliberative Democracy: Virtual and Face to Face Possibilities”, CAE, Electronic Working Papers Series, Paper No. DEG 007; Tamara Witschge, “Online Deliberation: Possibilities of the Internet for Deliberative Democracy,” Paper submitted to Euricom Colloquium, Electronic Networks & Democratic Engagement, October 2002; David Kahane, “Pluralism, Deliberation and Citizen Competence: Recent Developments in Democratic Theory,” (on file with author, electronic version); Thomas S Ulen, “Democracy and the Internet,” *Journal of Law, Technology and Policy*, No. 2, Fall 2001. See also Cass Sunstein, “On a danger of deliberative democracy,” *Daedalus*, Fall 2002, 120.

⁸⁸ See, for example, Theodore Zeldin, *Conversation* (The Harvill Press, 1998); See also <http://www.oxfordmuse.com/>; <http://www.fastcompany.com/online/41/zeldin.html>; <http://www.abc.net.au/rn/linguafranca/stories/2007/1813885.htm>. Cf also Jonathan Sacks, *The Dignity of Difference* op cit supra, p2: “The greatest single antidote to violence is *conversation*, speaking our fears, listening to the fears of others, and in that sharing of vulnerabilities discovering the genesis of hope.” [italics in original]

⁸⁹ See also Seyla Benhabib, “Toward a Deliberative Model of Democratic Legitimacy,” in Benhabib (ed) *Democracy and Difference: Contesting the Boundaries of the Political*, (Princeton, Princeton University Press, 1996). cf also Appiah, *The Ethics of Identity* (supra, at p257): “the basic human capacity to grasp stories, even strange stories, is what also links us, powerfully, to others, even strange others.”

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sing dance or play together with little difficulty but their ability to talk together about subjects that matter deeply to them seems invariably to lead to dispute, division and often to violence. In our view this condition points to a deep and pervasive defect in the process of human thought.”⁹⁰

⁹⁰ D Bohm, D Factor, and P Garrett, (1991) ‘Dialogue – a proposal’ http://www.infed.org/archives/e-texts/bohm_dialogue.htm