Conflict management processes in the cultural soup

Peter Condliffe
Conflict management processes in the cultural soup

Peter Condliffe

I am particularly pleased to introduce this special edition of the ADR Bulletin dealing generally with the issue of the role of culture as an element in conflict and its management.

You will find here a number of writers who represent a wide range of cultural views. Recently I had the chance to visit China where I met and talked to a number of administrators, academics, students and mediators and this has inspired the idea for this edition. So I will start with a contribution from my host on that trip, Professor He Yunfeng of Shanghai Teaching University.

The First Step in Chinese Mediation: a comment

Different people, surrounded by various cultures, have different patterns of dealing with conflicts. China has quite a different culture from other nations. When dealing with Chinese conflicts, the mediator must make the first step to make good relationships with all the parties concerned. This is the most important thing in mediating Chinese conflicts. It usually determines if the mediation will be successful or not.

What does ‘relationship’ mean in mediation? It means that the mediator should try to make ‘friendships’ with the parties concerned; to be more precise, to make the parties think that the mediator seems to be as reliable as their own friends. If the mediator can successfully make good relationships with the parties, the parties will think of the mediator as their ‘friend’. If this happens, they will be feeling confident about the result of the conflict.

However, the relationship-making must go on ‘secretly’. This means the mediator should not let one party know that he or she is making or has made good relationships with the other party. Otherwise, the party will not voluntarily co-operate with the mediator. If the relationships with both parties have been set up successfully but the one party does not know the relationship between the mediator and the other party, both of the parties of the conflict will believe that the mediator will make the mediation in favour of them, and that the result of mediation will come out as well as they expect!

In this way Chinese conflict management skills are much different from the way of dealing with Western conflicts. The latter requires an image of fairness from the mediator — for Western dispute settlements, the most important thing is to make both parties believe that the mediator will settle the dispute impartially. But in the Chinese culture, mediators must make both parties believe the mediator will settle the dispute in their favour. This is like the ‘prisoner’s dilemma’ game. Though the parties know the mediator actually cannot do as they expect, both parties still have such a
One of my enduring problems with many of the advocates of alternative dispute resolution is that they tend to define the object of inquiry (that is, the dispute) separately from issues related to the society in which it occurs. Theory and practice is thus derived from the nature of the dispute itself rather than from the interactive social processes which transform it. These advocates follow what I term the ‘dispute focused approach’.

In my view this leads to a problematical assumption that there is a compatibility between disputes in different societies. However, there is strong empirical evidence to suggest that third party interventions, such as mediation, significantly differ from one social group to another, and from one problem to another. Advocates of ADR processes often seek to present a simplified view of the alternatives in dispute management so as to rationalise their application and use. Fortunately, the advocates of these simplified views have not been without their critics.

There is also a species of ADR disciples who advocate what can be called the ‘new formalism’. They assume that there is a definite range of processes that exist in any society for settling disputes and that there is a fit between disputes and those processes which most effectively deal with them. This approach, as exemplified in the writings of Fuller, Danzig and Goldberg, Green and Sander, also does not adequately put dispute processing in its socio-cultural and political contexts.

I would rather see disputes as ‘social constructs’ whose meanings change with the audience, which is constantly and actively redefining it. Fortunately, there are a number of other models of disputing which may be more useful: for example, models that treat disputes not as discrete isolated events but as representative of a continuous and cyclical movement. Rummell’s model of latent and actual conflict is probably the best example. In this model an existing potential for conflict (conflict structure) is followed by a demonstration by one or more of the parties of their power (conflict situation), and finally the manifestation or display of that power (manifest conflict). This is represented in box 1 over the page.

This conceptualisation is similar to Deutsch’s division of conflict into underlying and overt (or manifest) conflict. The former is hidden, denied or implicit,
while the latter is express and open. The advantage of conceptualising conflict in this way is that it can be seen as being shaped by the social context in which it occurs. Rummell further maintains that once an important social issue goes through the stages of his cyclical model, the socio-cultural context will be affected and may itself set off another round of latent or manifest conflict.

While this conceptualisation has its limitations, it is a useful way to perceive conflict as the constant playing out of structurally opposed forces. It may also be implied from this model that in some situations conflict may be desired by the participants. This is most clearly seen in industrial and environmental disputes. These ‘cycles’ or ‘rituals’ of disputing may also be interpreted as important socio-psychological aspects of the process of conflict. This view of conflict draws heavily upon Lewis Coser’s seminal concept of conflict as an instrument of social integration. To Coser, conflict is a group binding and preserving institution which maintains and establishes legitimate distributions of power.

Perhaps of more use here is Richard Abel’s attempt to point out and explain the presence of a constantly evolving and dynamic relationship between social institutions and culture on the one hand, and dispute processes and institutions on the other. This work anticipates and parallels the research and writings of the anthropological and socio-legal ‘schools’ of contemporary legal scholarship.

Abel provides a basis for comparison of different dispute processes in different societies. In particular, he attempts to isolate those elements which may explain why certain dispute processes are used in different societies. He concludes that certain structural properties of the dispute are highly significant. The most important of these is the role of the intervener in the dispute. This role revolves around three important aspects:

1. Specialisation — the degree to which the intervener’s role requires special knowledge and skills;
2. Differentiation — how the intervener is kept apart from or assumes ‘separateness’ from disputants; and
3. Bureaucratisation — the tendency to rationalise the role of the intervener to the needs of the organisation.

Further, any given dispute institution represents only one possible way of handling a given dispute. This is understood if it is recognised that in any particular society there will be a range of disputing institutions to deal with any particular dispute. These can range from highly specialised, differentiated and bureaucratised institutions, to those which are minimally so. Disputant choice will affect both the shape and existence of such institutions. This is related to the type of social relations within that society which will generate certain types of disputes and lead to certain preferred solutions. Therefore, to explain why certain dispute institutions occur in any society requires an understanding of broader social forces. In summary, we have to look at both social structures and disputant choice.

Box 1: Rummell’s model of conflict

<table>
<thead>
<tr>
<th>CONFLICT STRUCTURE</th>
<th>Interests that have a tendency to oppose each other.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONFLICT SITUATION</td>
<td>Opposing interests are activated.</td>
</tr>
<tr>
<td>MANIFEST CONFLICT</td>
<td>Specific behaviour or action.</td>
</tr>
</tbody>
</table>

My first mediation

The dispute was between two neighbours over the lighting of a fire in a stove on a hot day. One of the neighbours had a serious illness. After the mediation, which took a whole day (8 am to 5 pm) the relationship was restored.

The Department of Justice, for whom I work, has the responsibility of...
In other words, there is a constantly evolving and dynamic relationship between social institutions and culture on the one hand and dispute processes and institutions on the other. To explain the complexity of disputing behaviour we need to incorporate a composite of norms and social factors. Also, by treating dispute processes as part of their social context and culture we can see them as both cause and effect. Rather then simply thinking of disputing processes as resulting from a particular type of society as normally suggested, it may be worth considering to what type of society or culture such processes will lead:

The following articles will hopefully challenge and stimulate you to think about some of the underlying assumptions that are brought into the management of conflict.

Peter Condliffe is Executive Manager of the ADR Branch of the Queensland Department of Justice and can be contacted at 07 3239 6278 or <Peter_Condliffe@justice.qld.gov.au>.

Endnotes


continued on page 24 ➣
Condliffe: Conflict management processes in the cultural soup

> continued from page 16


6. Sarat A, as above note 5; Esser J, as above note 5.


16. Abel R, above note 5, p 244.

17. As above, p 244.

18. As above, p 242-53.