
CONSTRUCTIVE RESPONSES TO CONFLICT IN EMERGING DEMOCRACIES DISTINGUISHING BETWEEN CONFLICTS AND DISPUTES

Developing democracies face a severe challenge. The transition to democratic rule brings into the open the historical and political conditions that prevailed prior to the transition.

In the transformation process, citizens and government officials are likely to experience all the tensions and conflict suppressed during the authoritarian regime, as well as all the conflicts that come during the transformation to democracy. Moreover, both democracy and market economies generate issues that cause disputes. Market economies promote creativity, competition, individualism, and aggregation of resources that generate disputes between competing market entities. Finally, a functioning democracy actively promotes disputes by encouraging differences of opinion, expression of ideas, formation of different political parties and groups, and the development of policies that may be inimical to the government.

In the pre-democratic period, issues become conflicts when they were managed through forms of repression, violence, avoidance, or ideology. Issues become disputes when they are managed through transparent rule of law systems. The difference is that the latter system is designed to resolve differences peacefully, while the former system is designed to manipulate or suppress them at all costs. Moreover, in non-rule of law systems, nearly all issues are politicized in that issues have inherent political meaning. There is limited or no "space" for open dialogue and exchange. While in rule of law systems, some disputes may have a political dimension, few are politicized given the breadth of expression and exchange.

This distinction in the management of issues and differences needs to be taken into account when designing rule of law systems. In the transformation to democracy, it becomes apparent that during the authoritarian regime there has been distortion, corruption, and atrophy in the judicial mechanisms for the management of issues and a corresponding psychological mistrust within the citizenry in state instruments of resolution.

When embracing the issues of repression and the issues raised during the transformation to democracy (privatization, title concerns, employment security and unionism, etc.), democratic governance is forced to immediately develop systems that can embrace the previously suppressed issues of social and economic justice, as well as create systems that address the transformation of the state from one political and economic entity into another. This is an overwhelming challenge. In addition, the new rule of law system needs to be credible and embraced by citizens, who have learnt to mistrust or avoid all state justice mechanisms.

Thus the development of policies, systems, and processes for the management of disputes requires not only new mechanisms in democratic society, but the psychological transformation in how citizens and government officials embrace the difference between conflicts and disputes. In democratic society there are no conflicts; there are only disputes that require management through transparent systems of dispute resolution.

This distinction holds true for disputes between democratic countries and gives credence to the norm that “democracies do not war with one another.” Moreover, it is precisely this distinction that fosters complex forms of relationship building between nations in security (NATO), union formation (United States, European Union, OSCE), and broad economic alliances (European monetary system) and regional trade mechanisms (NAFTA, Mercosur). All of these arrangements generate disputes, not conflicts, resolved through agreed upon mechanisms. Accordingly, even the most tense trade dispute is not politicized through an apparatus of repression, because of the breadth of communication and dialogue associated with the negotiations and resolution. While there may be some exception to the framework set forth here, for purposes of this presentation this framework will be used throughout this paper.

SYSTEMS AND PROCESSES FOR THE MANAGEMENT OF DISPUTES

While western governments have been anxious to establish rule of law systems in the new democracies, it should be stressed that in the field of conflict management much has been learned that transcends the institutional mechanisms of judicial litigation and resolution. It is possible today to design a comprehensive rule of law architecture based on the early settlement of disputes, which gradually removes decision-making power from the disputing parties as they abdicate more responsibility to third-party decision-makers.

The foundation of the new learning on dispute management is based on an understanding of the nature of disputes and the fact that nearly all disputes arise out of some connection or relationship between the parties. Since the dispute was not the reason the relationship was established, but only a manifestation of its present compromise, it is useful to understand the context of the relationship and the intended future interests of the disputants to decide what type of dispute management process best suits their needs. From this perspective, not every dispute is appropriate for judicial decision-making, and accordingly, building rule of law systems that have judicial decision-making as the only mechanism for dispute management gives the new democracies old thinking that does not comport to the broad dispute management work taking place in western societies.

The following diagram outlines a comprehensive rule of law system designed from the perspective of early dispute resolution that keeps disputants powerful. There are many different processes set forth relevant to the management of differences. These mechanisms are not theoretical or only operative in North America, but have been implemented by Partners for Democratic Change over the past ten years in Central and Eastern Europe, and are described in more detail below in “Building In-Country Capacities for Dispute Management.”

There are several models that address disputes directly, and function in the domain of civil society and not governmental institutions. Different models are applicable to different situations. For example, if you use a classic labor management mediation process for an ethnic dispute where the parties do not trust one another, you may have selected the wrong methodology. A process that relates first to building communication, trust, and relationship, and then addresses substantive issues may be required. Partners’ Centers in Bulgaria, Slovakia, and Hungary are conciliating ethnic disputes, while a mediator trained by Partners-Bulgaria resolved the recent Bulgarian airline strike in May 2000 using a labor management model. Two different models for two different situations.

In the diagram five models of dispute management are set forth.

- **Direct Negotiations**

- **Conciliation**
- **Mediation**
- **Arbitration**
- **Judicial**

Direct Negotiations

Each model relates to a set of distinct characteristics which may or may not overlap or relate to the application of other models. For example, in Direct Negotiations, parties may dispute over issues that are not, nor could be, the subject of judicial proceedings in their present form. In the making of a contract the parties engage in direct communication and negotiate over issues that would not be the subject of a judicial proceeding, if at all, until the contract was signed. Direct negotiations between the mayor of a city and the Roma leadership over social and educational issues likewise may not be the subject of judicial proceedings, but very important to address.

In short, Direct Negotiations have the broadest application and are the most common form of dispute management in democratic society. For the most part, Direct Negotiations take place in civil society, as when union leaders and industry management prepare to negotiate a labor contract. The disputing parties are in the most powerful dispute management position when employing Direct Negotiations. The parties control all the perimeters of the management process by mutually agreeing to: meeting time and place; language and process used; parties present; issues discussed and to be decided; agreements made; follow-up actions; and, all other aspects that relate to motivating the parties to agree. By not having any third-party, those involved in Direct Negotiations are most powerful in decision-making on all issues of process and content relating to the dispute.

To promote the utility and efficacy of Direct Negotiations, the negotiating parties should be trained in effective negotiation processes and skills. Partners-Poland, in the early 1990s, trained Solidarity wage negotiators in state controlled factories throughout Poland, and many of the Partners' Centers train NGO leaders, government officials, Roma activists, and union and management representatives in how to affect a good resolution through Direct Negotiation skill training.

Conciliation

Conciliation is a relationship building mechanism designed to be applied when the disputants lack a common frame of trust and interests essential to moving toward reconciling perceived competitive positions or hostile relations.

Conciliation processes are most applicable in disputes and tensions between ethnic groups, national minority and majority groups, relationships associated with work, families, youth, school, and peer groups. Conciliation is continued negotiations using a facilitating third-party.

In the diagram, the conciliators and disputants are arranged within a circle. In this process, there are no private meetings or caucuses between the conciliator(s) and the parties. Everything that is to be stated is expressed openly so that each party in the dispute, and there may be several parties, can hear the needs and interests of the other disputants and from this process have a better understanding for how the dispute arose out of their relationship. Some of the case studies set forth in the Appendix highlight the relevancy of conciliation processes in ethnic and national minority disputes.

While specific agreements are common in the conciliation process, it is primarily designed to clarify and strengthen the relationship between the disputants. If the tangible outcome the parties seek is an apology

over behavior, this may be a more appropriate and needed outcome than some judicial monetary resolution. When parties are in a contractual situation and what binds them together is the contract, it is quite likely that improving the relationship itself will not be sufficient to satisfy the parties. In this case, another process model is needed.

Mediation

In the classic form of mediation, often applied in labor-management and contractual disputes, the parties want some specific, concrete, and often monetary resolution of their contractual dispute. This may be in order to terminate the contract or to move forward with the agreement. In contract disputes, the relationship between the parties is defined by the contract and may not exist but for the contract. Accordingly, how well the parties like one another may have little bearing on what they need from the resolution of their contractual differences. A process model that stresses relationship building, like the conciliation model, may prove dissatisfying to labor-management disputants, who seek resolution over issues dealing with over time, benefits, and production schedules. These types of issues are best managed in a mediation process, which is designed to engage a third party in formal negotiations between the disputants. In fact, mediation is often defined as negotiations by a third party.

While in the mediation process the third-party mediator does not have legal power to force a decision on the parties, the mediator does have “process power” extracted by the manner in which the process is managed. By being able to caucus privately with each disputant and learn their needs, acceptable compromises, anxieties and fears, the mediator is able to negotiate back and forth with the disputants from the position of process and knowledge. The mediator having all the information has power to facilitate and propose a resolution that the mediator believes will be acceptable to the parties.

In the diagram, mediation processes are often used in labor-management, environmental, and international issues. In May 2000, applying mediation processes, the stalled Balkan Airline strike was ended when a mediator trained by Partners-Bulgaria worked with the parties to resolve their contractual differences. In this case, the application of a conciliation process that resulted in improved disputant relationships would not have achieved the type of resolution of ownership, wages, and labor conditions relevant to the mediating parties. Most interestingly, the Balkan airline dispute was managed between the parties and the mediator in civil society without the imposition of governmental oversight or mechanisms.

Several of the Partners’ Centers manage mediation systems, including Partners-Bulgaria, Czech, Hungary, Poland, and Slovakia. In addition, all the Partners Centers have the capacity to train mediators and conduct specific mediation sessions.

Arbitration and Judicial Mechanisms

Arbitration and judicial mechanisms can only be used when one disputant is alleging a violation of contractual or statutory rights. These mechanisms are formal and designed to award one disputing party an outcome that negates the value of the other disputant’s claim. These result oriented mechanisms often affect termination of the relationship or discourage future interaction between the parties.

In many transitional democracies, judicial systems are weak, corrupt, or dysfunctional, requiring substantial resources and time to rebuild into transparent rule of law mechanisms. Moreover, while many countries have arbitration statutes, few arbitrations have taken place in fact and even fewer arbitrators or lawyers have the skills to utilize this process. Finally, where corruption exists in the judicial system, arbitration can have limited utility since it uses the legal system to enforce arbitrators awards. Recently, to combat judicial corruption, Partners, at the request of the World Bank, designed a mediation/arbitration statute for the Albanian Ministry of Justice that creates a professional discipline of mediators and

arbitrators insulated from the formal legal system.

In a well designed, comprehensive dispute management system, arbitration and judicial mechanisms are last resort efforts employed when other less costly and time consuming processes have been exhausted.

COMPREHENSIVE DISPUTE MANAGEMENT SYSTEM

The diagram presents the architecture for a comprehensive dispute management system for a developing democracy. Building from Direct Negotiations to Judicial resolution, the comprehensive system has several characteristics:

- Diverse process components
- Disputant selection opportunities
- Slow gradation from less to more onerous third-party processes

The value of a comprehensive design is that it affords the right process for the right dispute, and does not impose a judicial process, which is the most time consuming and expense, on every type of disputes.

To implement the comprehensive design requires attention to public policy and the movement of disputes consistently into less onerous dispute management channels. For example, in an ethnic dispute, have the parties been in direct communication and negotiation with one another and might not a conciliation process encourage this step if it had not been taken? Similarly, before filing in court a contract dispute have the parties sought to mediate it, and if not, should they not be urged to take this step before using public court processes? Policies that promote early dispute settlement and mechanisms that leave disputant parties empowered are the building blocks of a comprehensive system. Courts and arbitration processes are at the end of the system offering formal outcomes when the parties are unable to resolve the issues themselves.

Research and practice instruct that for change and dispute resolution to take place requires a change in the relationship between the disputing parties, a difficulty as many antagonists will not sit in the same room together. These methodologies all reinforce the concept that if we can change relationships between people, both in their citizen capacity and at times in their governmental capacity, we can change community and public policy.

BUILDING THE METHODOLOGY AND TOOLS FOR CHANGE MANAGEMENT

There are various citizen processes for addressing change from deeply divided to coherent communities. The second diagram "Community Change Processes" outlines models appropriate in different types of communities.

In deeply divided communities, there is no sense of common community. It is difficult for people to deliberate on a common problem because there is no sense of "we." This can be seen in Kosovo between Serbs and Albanian Kosovars. In such conditions, a Sustained Dialogue for Deeply Divided Communities may be most appropriate similar to Harold Saunders' (VP, Kettering Foundation) extensive efforts in Tajikistan. The purpose of the Sustained Dialogue in deeply divided communities is to change relationships between people in the community. This is a citizen to citizen process that does not involve government leaders.

The Sustained Dialogue process begins with an understanding that relationship building must start very

early in the process and is the key component to moving the process forward. Accordingly, in the Sustained Dialogue process one “backs up” quite far with the participants before encouraging them to address substantive issues.

It is uncommon to see the application of this process in developed or developing democracies, which more likely initiate Deliberative and Cooperative Planning Processes.

In segmented communities, specific population groups are able to come together, but they may not have the tools to deliberate on their needs or develop an action plan. The deliberative process is designed to make a specific community cohesive on its issues. This citizen process can have the effect of organizing a community around common objectives and does not have government officials as participants. However, once it has defined its common objectives, the community needs to bring in others, and begin a new process that includes multiple stakeholders. This is more like the cooperative planning process.

Coherent communities are able to utilize cooperative planning processes precisely because the stakeholders are in a relationship with one another and reachable. In such societies, there is a “we” when discussing the specific problem. The problem they are working on defines who the stakeholders are.

In building a culture of democracy, it is essential that we build the relationships between people that will provide civic actors with the ability to initiate, engage and interact with others to achieve common ends.

These methodologies can advance constitution-making (Tajikistan), institution-building (Hungarian public TV development and management), public rule making (Argentina environmental rules), and political campaigns (Slovak Campaign OK'98). Cooperative planning legitimates the development of institutions, policies, and regulations, because it brings citizens into the planning, development, and decision-making public process and provides broader civic understanding on how institutions function and the demands they are required to respond to. These cooperative methodologies can affect change and develop on the part of citizens a new psychological perspective about their role and interaction with local government, national ministries and other NGO leaders.

BUILD LOCAL CAPACITY TO ACHIEVE EFFECTIVE CHANGE AND DISPUTE MANAGEMENT

Partners for Democratic Change' Centers work on conflict, disputes, and change in societies that are going through democratic transformation.

One of the successful things we have come to see and learn is that it has been extremely important to develop in-country capacity to manage change, conflict, and disputes--that it cannot be done from the outside no matter the quality of experts that are brought to any particular country that is engaged in the process of democracy building. At some point, citizens, politicians, professionals, and others have to acculturate conflict and dispute management skills, adapt them to the particular conditions, and apply and test them in their societies. Democracy and its mechanics for dispute management is not something one can just import. It is a social process, not a mechanical process.

Partners attention is focused on developing in-country capacity for the development and application of conflict, dispute, and change management. Capacity means having the ability to train, train trainers, educate, and apply change, conflict, and dispute management processes through in-country professionals. To affect a culture of change, conflict, and dispute management and promote a more comprehensive rule of law system requires trained in-country professionals able to apply theory and

practice in civil society, governmental ministries, parliaments, municipalities, universities, and courthouses.

Since 1990, Partners has worked to build local, sustainable institutions to implement the processes and approaches we presented today.

Initially, we focused on the dissemination of these ideas through the development of graduate and post-graduate curricula within Central and Eastern European universities. Through this approach, we were able to reach future leaders from a variety of fields, and introduce new, interactive pedagogical techniques. At the same time, the impact of ideas beyond academia was hard to measure. As a result, we decided to develop indigenous NGOs outside the universities, entirely staffed and managed by local professionals.

These NGOs had the mandate to disseminate change, conflict, and dispute management skills such as effective communication, interest-based negotiation, and meeting facilitation as broadly as possible through training. Training as a profession was itself a new concept, often conjuring up images of whip-wielding lion tamers. Partners Centers developed highly professional, interactive training services, and thus assisted thousands of NGO, local government, and business leaders who were striving to cope with their new roles within post-totalitarian societies.

This approach had the desired effect of reaching a large audience and empowering new players in civil society with needed skills. What Partners Centers lacked, however, was the capacity to actually intervene in conflicts and disputes.

Therefore, in 1994, we began to work with Centers to develop intervention programs, such as mediation centers, ethnic conciliation commissions, and cooperative planning services. In the beginning, this was not easy; mediation was invariably mistaken for meditation, and the occasional confused disputant attempted to contract with Centers to physically harm the other party. Fortunately, persistent outreach and education efforts eventually paid off. Last year, Centers mediated more than 1,000 community, ethnic, municipal, and private sector disputes, and facilitated multi-party cooperative planning processes on housing, taxation, education, and environmental issues in about 50 communities.

Throughout this period, we also pursued public policies that recognized mediating processes as legitimate, viable options under the rule of law. This includes such policies as local-level statutes allowing for citizen participation via cooperative planning processes, as well as national legislation permitting or mandating courts to refer cases to mediation.

As independent local NGOs, Partners Centers have carved out their own niches and developed highly specialized practices (e.g. the Czech Center has expertise in family mediation, the Romanian Center in the promotion of a change, conflict, and dispute management culture in the public sector, etc.). This provides an enormous opportunity for sharing lessons across borders. We work with Centers to create opportunities for cross-fertilization, such as regional trainings in which one Center presents its specialization to the rest of the network. This has enabled Centers to increasingly diversify their products and services, thus empowering them to a broad range of local issues.

The following Diagram highlights the Centers' capacity building, application, and sustainability stages. And the next Diagram demonstrates the common themes of a national Center underscoring the importance of creating sufficient capacity to affect a culture of change, conflict, and dispute management in the public, educational, civil society and market sectors. And, the final Diagram provides an overview of the diversity

and unique work of the different Partners' Centers.

In addition, the ability of the Centers to share their expertise among other members of Partners' network has contributed to Centers' financial sustainability. Partners' Centers have pursued sustainability through work in the market sector (providing skills and services to Volkswagen, IKEA, and other corporations), contracts with municipalities, government ministries, and international organizations, and grants.

Finally, a key lesson we have learned over the past decade is that while each of the approaches we have explored (university curricula development, training programs, intervention services, and public policy promotion) has value, it is the combined pursuit of all of these methods that results in the greatest impact in transitioning societies.

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