

# Defining Conflict Resolution

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- a. How would you define conflict resolution?*
- b. How is it related to peacemaking?*
- c. Can conflict resolution always be fair/just to all parties?*

## **Abstract:**

This paper will consider the meaning of the term "conflict resolution." The differences between "conflicts" and "disputes" will be examined, together with what is required to settle or manage conflict. The focus of this paper will be on interpersonal conflict. After defining "peace" it will be argued that conflict resolution is not an entirely satisfactory form of peacemaking. It will be argued that conflict resolution processes such as mediation do not always lead to fair and just outcomes for all parties.

In analysing conflict resolution it is appropriate to define firstly "conflict" and then "resolution". While it is acknowledged that conflict occurs at many levels, from interpersonal disputes to clashes between countries, the focus of this essay will be at the interpersonal level. The term "conflict" has been used to describe a broad range of human activities including hostility between people to international war. The traditional notion of conflict as a "fight, struggle or clash of principles" (Oxford Dictionary, 1976) is unsatisfactory because interpersonal disputes are rarely about a clash of principles. Coser (1967, cited in Moore, 1996) has defined conflict more broadly as a "struggle between two or more people over values, competition for status, power or scarce resources (p.16)." Wertheim, Love, Peck and Littlefield (1998) view conflict as occurring when there are real or perceived differences in interests (i.e. wants, needs, fears, concerns) that cannot be simultaneously satisfied. Tillet (1991) believes conflict manifests when the needs and values of two or more parties are incompatible.

It can be argued that conflict has its origins in objective and subjective causes such as competition for external resources (e.g. power, land or status) or it can arise when there is a clash between the internal beliefs, values, and interests of two parties. Authors such as Moore (1996) and Tillet (1998) perceive conflict as occurring at various levels of consciousness. These commentators distinguish between latent conflict - characterised by underlying and sometimes unacknowledged tensions and emerging conflict - where the dispute is acknowledged and the parties are identified - but a process for resolving the dispute has yet to emerge - and manifest conflicts where the parties engaged in the dispute have reached an impasse despite attempts at resolution. At this stage the conflict is overt and individuals can pursue resolution through legal action, mediation, negotiation or physical or verbal violence.

There is debate as to whether it is useful to distinguish between conflicts and disputes. Tidwell (1998) regards conflicts and disputes as part of the same continuum with the main differentiating factor being that conflicts tend to be of greater intensity than disputes and are less subject to negotiation. Tillet (1991) highlights the differences between conflicts and disputes by drawing attention to the contrasting sources of tension. He argues that disputes occur when there are competing interests or goals whereas conflict has its origins in fundamental differences in human values and needs. An interesting consideration arising from this issue is whether solutions in the form of resolution or settlements represent the desired outcome for both conflicts and disputes. If the cause of the problem differs between conflicts and disputes as it does in some cases, so may the preferred outcome and approach to managing or

solving the problem. For instance, an estranged couple arguing over the distribution of property may simply require a settlement to this problem. However, a couple who seek relationship counselling because of marital difficulties may benefit from conflict resolution strategies aimed at identifying the underlying sources of tension in the relationship. Such a strategy "deals with the total human being" (1998, Burton, cited in Tillet, 1991, p.1) by addressing the values and motivations that fuel the conflict as opposed to simply addressing a symptom of the problem.

Similarly, the concept of "conflict resolution" is also open to many interpretations. On one hand, conflict resolution can be regarded as any process that resolves or ends conflict via methods which can include violence or warfare. Alternatively, it can be viewed as a non-violent process that manages conflict through compromise, or through the assistance of a third party who either facilitates or imposes a settlement or resolution. Conflict resolution processes are many and varied and can be seen on a continuum ranging from collaborative, participatory, informal, non-binding processes (such as mediation, conciliation, third party negotiation) to adversarial, fact-oriented, legally binding and imposed decisions that arise from institutions such as the courts and tribunals (Boulle, 1996). Typically, non-adversarial practices such as mediation, negotiation, arbitration and conciliation are practices which have been associated with conflict resolution or alternate dispute resolution (ADR) procedures rather than adversarial institutions such as courts and tribunals where a settlement is imposed on the disputants by an external authority (Boulle, 1996). In contrast mediation, conciliation or negotiation are activities that facilitate communication between participants who are seeking to resolve their differences in a cooperative way.

Some commentators such as Wertheim et al (1998) and Fisher and Ury (1996) believe that the key to resolving conflict is to focus on interests rather than positions, which is the solution one party seeks to impose on another. Burton (1986, cited in Tidwell, 1998) has argued that resolution between two parties in conflict can only occur when "relationships have been re-examined and realigned" (p.9). Although this form of resolution may be regarded by some as more desirable it is not always practicable. Resolution in cases of marital separation or divorce can in some cases simply mean the settlement of an outstanding property dispute rather than the "realignment of relationships." The "transformation" of relationships may be an ideal pursued by a third party who is intervening on behalf of the disputants, but it is not necessarily the goal of the disputants who may simply desire a solution to their problem. Laue (cited in Charles Sturt University, 1998) has argued that conflict can only be considered resolved if the following conditions are met:

- The solution jointly satisfies the interests and needs of the parties via joint agreement.
- The solution does not compromise the values of either party.
- The parties do not repudiate the solution even if they have the power to do so following the settlement.
- The solution is fair and just and becomes self-supporting and self-enforcing.

Although this form of resolution seems ideal because it aims to achieve an enduring outcome it is not always practicable in situations where the relationship between two parties is severely strained or when there is no ongoing relationship to be maintained. In such situation parties in conflict will often attempt to maximise their gains at the expense of the other through the negotiation or bargaining process (Boulle, 1996). To summarise, conflict resolution can be viewed as a problem solving process which is designed to offer parties an opportunity to resolve their differences collaboratively. This process often involves third parties who employ techniques and methods that are aimed at facilitating communication between parties engaged in conflict.

Before answering the question of how conflict resolution is related to peacemaking it is important firstly to consider what is meant by the term "peacemaking". The relevance or otherwise of conflict resolution processes to peacemaking needs to be considered in the light of the meaning given to this term. Laue (cited in Charles Sturt University, 1998) has defined peacemaking as the "active process of peace, the behaviour of actors and institutions that leads to more peaceful relations" (p.303). Peace is considered by Laue (cited in Charles Sturt University, 1998) as the state of relations between individuals or groups that is characterised by the absence of war, the presence of social justice and economic wellbeing, and the respect of human rights. Galtung (1985, cited in Barash, 1991) used the term "positive peace" to denote a society that is free of overt as well as structural or institutionalised violence which permits its citizens to enjoy economic, social advancement, political equality and freedom from oppression.

In considering whether conflict resolution as defined previously is related to peacemaking the question needs to be asked whether conflict resolution processes facilitate peace. It is debatable whether processes such as mediation or negotiation when applied to interpersonal, community, or organisational disputes constitute activities that can be regarded as peacemaking. Although the process of conflict resolution in these cases may generate a mutually agreed upon settlement that results

in improved relations between parties it does not necessarily meet Galtung's (1985, cited in Barash, 1991) and Laue's (cited in Charles Sturt University, 1998) definition of a peacemaking activity. These commentators have argued that peace is defined by the presence of justice and equality in society as well as the absence of war or structural violence. Although conflict resolution procedures may be indicative of a society that encourages reconciliation between individuals (e.g in a community, organisational or interpersonal context) it is not an activity that can be regarded as "peacemaking" unless it addresses problems that arise from the absence of peace (e.g. war, injustice or structural violence).

In addressing the question of whether conflict resolution procedures are "always fair and just to all parties" this essay will confine its discussion to examining the conflict resolution process of mediation. There is some debate (e.g. Scimecca, 1993) as to whether mediation, conciliation, arbitration, third party facilitated negotiation, etc merely manage conflicts or whether they actually resolve them. For the purpose of this essay the term ADR and conflict resolution will be used interchangeably. The area of conflict resolution is broad and it is felt the question of whether conflict resolution is "fair and just to all parties" could best be addressed by focussing on one example of a widely used conflict resolution process - mediation.

Conflict resolution processes such as mediation, conciliation and third party facilitated negotiation are not without its critics (e.g. Astor, 1994 and Scimecca, 1993). There is concern that conflict resolution processes such as mediation focus on settling conflicts or disputes without considering the impact of power disparities between parties and the "advantage this gives to the more powerful party" (Scimecca, 1993, p.217). Alternative Dispute Resolution (ADR) procedures such as mediation often assume that disputants are equally capable of negotiating a satisfying outcome on their own behalf. This assumption ignores the fact that enormous disparities can exist at an economic, social or intellectual level between individuals. For instance, if the financial resources of one party exceeds that of another, a potential power imbalance already exists and this can translate into an advantage during the mediation process. Mayer (1987) argues that individuals with poor persuasive skills who have low self-esteem and lack knowledge about their rights are less likely to successfully negotiate their way through a mediated settlement than an informed or articulate participant. Scimecca (1993) believes that mediation along with other ADR processes become instruments of social control when they ignore the reality of power differences and perpetuate the status quo.

Third party neutrality and even handedness are regarded as attributes or skills which are important in mediating successfully between parties in conflict (Turner and Saunders, 1995). The dilemma of the mediator when faced with two unequal parties is whether to maintain a neutral stance and in doing so reinforce the status quo or attempt to balance the imbalance between parties. Astor (1991) argues that mediators can redress power disparities between parties by insisting on procedural equality and demanding respectful behaviour from participants. Indeed an individual's negotiating power can be improved through strategies such as those outlined in Fisher and Ury (1996) however, these may not be sufficient alone to counter variables such as feelings of personal disempowerment, mediator neutrality/bias or limited financial/legal resources.

Scimecca (1993) believes ADR processes trivialise grievances because they focus on the symptom rather than the cause of problems (i.e. "the unequal distribution of power") (p.217). This author argues that ADR processes assume that rational individuals should be able to resolve their differences and if they cannot it is they rather than society who is responsible for this failure. An important question is whether ADR processes are suitable in dealing with conflict that involves structural violence or oppression and indeed whether is it just or even appropriate for such problems to be eliminated via a consensus achieved through mediation? When individuals or groups sit as unequals "at the table" there is the potential for the more powerful party to be advantaged by the ADR process. ADR or conflict resolution procedures have the potential to redress power imbalances through interventionist strategies aimed at equalising power. Alternatively they can reinforce the status quo or at worst perpetuate inequality in society by encouraging negotiation between unequal parties.

Another major criticism of ADR or conflict resolution procedures extends to concerns that settlements arising from these processes are not subject to public scrutiny. For instance, participants in mediation or conciliation are not compelled to produce documents pertaining to their dispute, there is no public record of the settlement and critical information cannot be subpoenaed. Individual testimony is not subject to testing through cross-examination on oath and there are no penalties for perjury (Boullé, 1996). Another concern is the potential for one party to mislead the other (e.g. in the case of a mediated divorce settlement). Astor (1994) believes women are disadvantaged by mediation because they may "negotiate for what they think they can get, rather than...what is equitable" (p.5). This author (1991) reported that agreements reached in mediated family disputes were less favourable to women than those

achieved in the courts. Indeed the settlement agreement at the conclusion of mediation, may take the form of a binding contract which can only be overturned by court proceedings (Boulle, 1996). If the less powerful party has been manipulated or coerced into an unjust agreement they have the option of pursuing costly legal action or accepting an unfair settlement. In conclusion, conflict resolution processes such as mediation are not always fair and just to all parties despite their good intentions.

Some authors have questioned whether the white, middle class professionals who dominate the area of ADR or conflict resolution are sensitive to cross-cultural differences when managing disputes involving individuals from non English speaking backgrounds. Indeed, Barsky, Este and Collins (1996) have questioned the competence of mediators who have not undertaken training aimed at developing mediator awareness and sensitivity to cross cultural issues. People from non-English speaking backgrounds may differ in their expectations and ability to communicate their needs during the mediation process. These needs should be taken into consideration by the mediator when facilitating discussion between parties otherwise one side has the potential to gain an advantage over the other if they belong to the dominant culture within that society.

In conclusion, there appears to be some basis for the argument that ADR processes such as mediation are not always fair and just to all parties. However mediation and other ADR processes are not responsible for the maldistribution of power in society (Turner and Saunders, 1995) although these processes have the potential to institutionalise or perpetrate inequality when they favour the more powerful party by ignoring such imbalances. Mediators can consciously address this issue by for instance refusing to mediate in cases of intimidation or violence or by adopting an interventionist approach that levels an uneven playing field. Although mediation and other ADR processes are not without flaws they offer a cost-effective alternative to the courts and have the potential to produce enduring outcomes because these are constructed by participants rather than imposed on them by a third party. Such a process can be empowering and in some cases transform the psychological map that marks individual relationships following conflict.

## REFERENCE LIST

- Astor, H. (1994) *Violence and Family Mediation Policy*. Australian-Journal of Family Law, 8: 3-21.
- Astor, H. (1991) *Mediation and Violence Against Women*. National Committee on Violence Against Women December 1991, ACT: CPN Publications.
- Boulle, L. (1996) *Mediation: Principles, Process and Practice*. Sydney: Butterworth.
- Fisher, R and Ury, W. (1996) *Getting to Yes*. UK: Random House.
- Laue, J.H. *Contributions of the Emerging Field of Conflict Resolution*. In *HRM 540 Theory of Conflict Resolution: Study Guide Module 1*, (1998) Charles Sturt University.
- Mayer, B. (1987) *The Dynamics of Power in Mediation and Negotiation*. Mediation Quarterly, 16: 75-85.
- Moore, C. (1996). *The Mediation Process*. San Francisco: Jossey-Bass Publishers.
- Tidwell, A. (1998) *Conflict Resolved*. Great Britain: Biddles Ltd.
- Tillet, G. (1991) *Conflict and its Resolution*. In *HRM 540 Theory of Conflict Resolution: Study Guide Module 2*, (1998) Charles Sturt University.
- Turner, B and Saunders, R. (1995) *Mediating A Planning Scheme Amendment: A Case Study in the Co-Mediation of a Multi-Party Planning Dispute*. Australian Dispute Resolution Journal, 6: 284-295.
- Scimecca, J.A (1993) *Theory and Alternate Dispute Resolution: A Contradiction in Terms?* In *HRM 540 Theory of Conflict Resolution: Study Guide Module 1*, (1998) Charles Sturt University.
- Wertheim, E., Love, A., Peck., C and Littlefield, L. (1998) *Skills for Resolving Conflict*. Victoria: Eruditions.