

LEADERSHIP ACADEMY (STAGE 3)

READING: CONFLICT RESOLUTION¹

Dispute resolution

Parties in dispute are able to choose from among several methods of resolution. They can (a) hold discussions and come to some form of agreement, (b) ask a third party to (i) assist them in their negotiations or (ii) make a decision on their behalf; or (c) they can withdraw cooperation. In a worst case scenario, they can resort to force.



When they move on the continuum from “free choice of solutions” (ie through direct communication among the parties) towards “imposed solutions”, their own leverage decreases, while their level of satisfaction with the outcome often shows a reduction.

In most cases, when disputing parties are not able to solve a problem by themselves - ie to agree on something - but resort to arbitration or adjudication, the process damages their relationship. The process often lasts a long time and engenders frustration; in the end, at least one party is likely to remain dissatisfied.

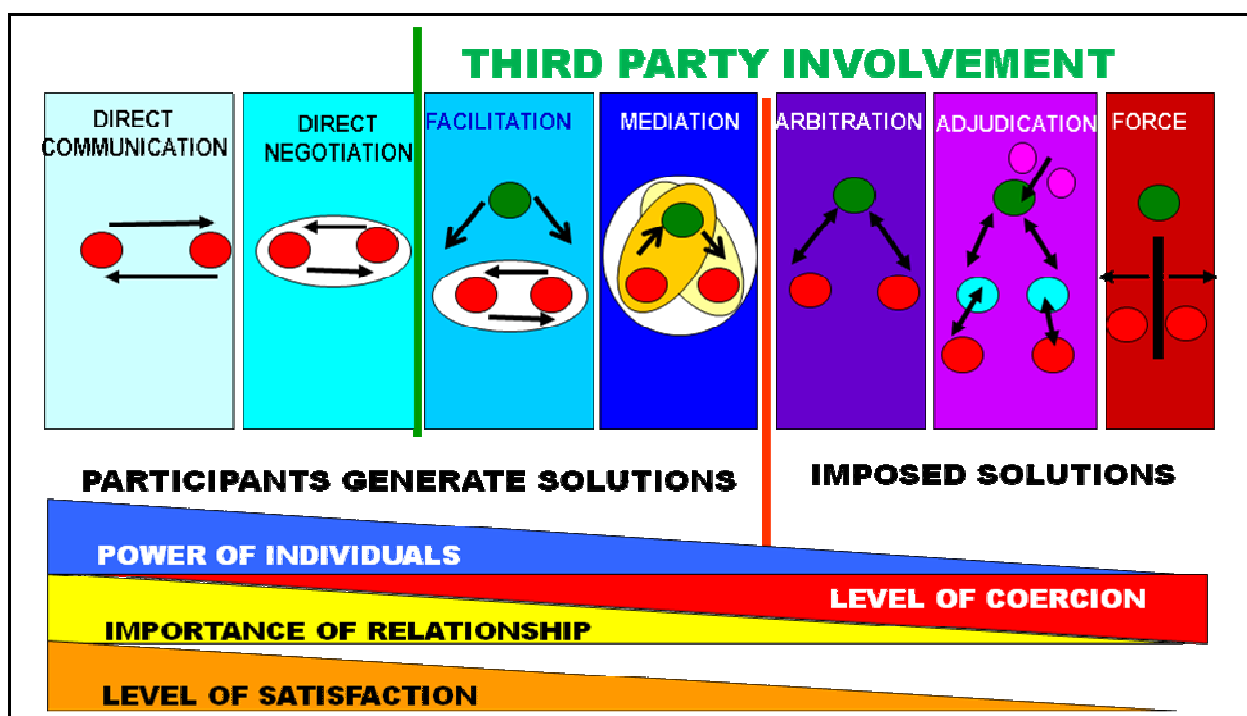


Figure 1: Dispute resolution strategies

¹ Drawn from papers of Katalin Pallai

Alternative Dispute Resolution (ADR) refers to processes and techniques applied in an effort to resolve conflicts/disputes without resorting to a judicial process. They are peaceful processes available for use by disagreeing parties so that such parties can come to a mutually accepted agreement.

The two ADR methods that are most widely used in resolving community disputes are **mediation** and **restorative justice**. The attraction of both methods is in the principles they follow; they both require:

- a) *A deep belief in the right and capacity of individuals to make informed and responsible decisions about their own lives when adequate conditions have been created.*
- b) *The need to create possibilities for them to:*
 - i. *Be present and speak up.*
 - ii. *Drop masks.*
 - iii. *Reveal aspirations, acknowledge mistakes and accept responsibility.*
 - iv. *Act in accordance with core values.*
- c) *The value of a neutral (or non-partisan) third person (facilitator or mediator) to support the stakeholders in their joint learning and problem solving - and in their quest for a mutually agreeable solution.*

The use of ADR methods by municipalities to strengthen local governance is a relatively new phenomenon. While in more complex cases, it would be sensible for the municipal leadership to seek help from a trained mediator or facilitator, the Mayor or a colleague often has to act without such professional support. It is useful, therefore, that he/she understands the ADR approach.

ADR in community disputes involves **stakeholder participation**. Dialogue is key. It provides opportunities for both the municipal leadership and for local people and organisations to experience what participation really means and how beneficial it can be. This will support the emergence of **more participatory local governance**.

The level playing field

A community dispute often implies an understandable conflict among individuals or groups of stakeholders - for example, between:

- *A restaurant owner's satisfaction with her/his clients and the neighbours' frustration with the noise.*
- *Developers of a run-down area and current residents.*

- *Stakeholders in NIMBY² cases.*

These are all rational conflicts among positions and interests. We call them **symmetrical**, as the parties are assumed to be on a **level playing field**; they can be considered equal parties in the negotiations even though their respective power may differ.

In such cases, the parties in conflict can decide to discuss the options directly with each other, call in a mediator, or go to court within the framework of a civil law case.

If their choice is mediation, the mediator seeks to assist parties to explore needs and interests and achieve a mutually agreeable solution. The mediator will try to lead the parties towards collaboration **in a way where both sides can gain**.

The principle underlying such an approach is that, by unearthing more of the actual needs and interests of the parties, the mediator will help to identify more potential solutions. It is the duty of the mediator to establish a “safe place” for negotiations.

This means maintaining mutual respect among the parties whilst leading the process in constructive communication that allows effective problem-solving till an agreed solution is achieved.

The playing field that is not level

Certain wrongdoings that breach community norms or laws can also be treated as community conflicts. Examples include:

- *The case of a teenager who breaks into a house to rob it and comes up against the home owner³.*
- *A conflict between the community and a rowdy gang of unemployed youth or a group harming community assets⁴.*

In these cases, the parties are not on a symmetrical moral playing field because one party causes harm by breaching laws and/or norms, while the other party is a victim of an offence. If such a case is handled by the judicial system, it is judged according to penal law and the offender faces punishment; **yet when a case goes through a restorative justice procedure, the focus shifts from retribution to the needs of the stakeholder.**

² NIMBY is the acronym for “Not In My Backyard” types of urban problem. These are conflicts when most stakeholders accept the need for intervention or implementation of a project (eg a road or incinerator), but none of them wants such a thing to be built close to his/her property.

³ The Clint Eastwood movie, *Grand Torino*, beautifully depicts such a case and the follow-up restoration process; or the short movie *The Woolf Within* provides a record of restorative justice treatment within such a case. <http://www.youtube.com/watch?v=A1s6wKeGLQk>

⁴ The documentary *Burning Bridges* covers a restorative process initiated after such community asset damage. <http://www.youtube.com/watch?v=QaeRwOJQng>

In this case, reconciliation is more important and beneficial both for the persons involved and the community. The victim(s) (individual, community group or even the whole community) needs healing, empowerment and restitution, and the offender needs re-integration into the community.

A necessary condition for re-integration is that the offender takes responsibility for his/her wrongdoing. This gives an opportunity for (a) healing and restitution for the victim and (b) reintegration for the offender. The role of the facilitator in this case is to create a safe space where victim(s) and offender(s) can:

- *Engage in a dialogue that personalises the event.*
- *Create mutual empathy and understanding.*
- *Help the offender to realize the impact of the offence and take responsibility.*

This approach of restorative justice creates the conditions for reconciliation and healing.

While mediation is a negotiation between parties to find a mutually agreeable solution, the restorative process is a deeper, more complex, and often moving dialogue between the parties through which they are able to look at experiences, feelings and identities. **To promote a dialogue, facilitation is essential; to promote successful negotiation, proposals for action must be mediated.**

The process

Step 1

The first duty of a mediator / facilitator who is involved in the conflict is to make an **assessment**. This often starts with interviews to gather information about the case, determining whether intervention is both needed and feasible, and what type of process should be initiated.

The main questions in this phase are:

- *What is the nature of the conflict?*
- *Do the parties need support?*
- *Are the parties willing to participate? Are they capable of constructive participation?*
- *Can the risk of causing more trouble or harm be minimized?*
- *Can the mediator / facilitator use these first steps to build a relationship with stakeholders and create trust by creating a safe environment?*

Step 2

The next step is to prepare the parties for their involvement by explaining the process and its rules, and to convene a meeting of parties. When the parties are groups, it has to be determined whether everybody will take part or some form of representation should be organised.

Step 3

The next phase is the actual process: the mediation or restorative dialogue. During such a meeting, the role of the mediator / facilitator is to create a safe environment where the parties can respect each other and listen to the others' messages, claims, feelings and ideas. Thus, learning and understanding can be built up among the stakeholders.

The other duty of the mediator / facilitator is to achieve a successful working process by assisting the parties in their navigation towards exploring, learning and agreement. He/she has to keep an eye on:

- ✓ ***Creative possibilities and practical propositions raised during the dialogue which satisfy the other party's interest(s).***
- ✓ ***Mutually beneficial options and possible agreements.***

Different roles of mediator and facilitator

Beyond this initial common role, the mediator and facilitator have slightly different roles.

The **purpose of mediation** is to negotiate an interest-based solution. Mediators focus not only on interests but on exploring parties' differences in priorities as well, because such differences may be able to maximise the joint benefits and lead to win-win outcomes.

The **purpose of facilitation** in a restorative process is to bring about reconciliation. For this, facilitators need to focus on how the process can personalise harm and understanding, and note when signals of taking responsibility, support, reconciliation and healing appear.

When the parties arrive at an agreement, the mediator / facilitator can help formulate such an agreement and assist in organising the monitoring of its implementation.

The mediator / facilitator may give different emphasis to particular stages of the process. Depending on the circumstances, they may decide to focus more on evaluation, facilitation or transformation. The latter focus aims particularly to strengthen the parties' capacity for self-determination and responsiveness

These three points of emphasis create a clear continuum according to the level of involvement of the mediator / facilitator in the conflict.

EVALUATION

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FACILITATION

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TRANSFORMATION

At one end stands the evaluation approach, with its possible involvement in decisions; the facilitation approach is in the centre, maintaining a distance from direct involvement in decision-making; and at the other end is the transformation approach that stipulates a degree of withdrawal from involvement and a shift in focus from content to relationship.

In some cases, the mediator/facilitator may seek to enhance the parties' understanding of the whole situation, as the wider picture may help the parties to shape creative and mutually rewarding, longer-term and also more substantial solutions.

Actual practice in local government

In the field of local governance, most conflicts are complex and recurrent. They have many different facets and are often inseparable from the context generating them. **The histories of groups and individuals who are parties to a conflict can play a big role in conflict escalation.**

For example, there are cases when regularly repeated offences or the cultural differences between groups lead to increasing frustration and finally to violence. For mediation / facilitation to work, a more complicated approach may be needed.

When relations between groups in conflict are asymmetrical, it is possible that the parties **see the same event in a different way** (eg the arrest of an ethnic minority member for a petty crime), for they embed it in different 'stories'. In such conflicts, without a competent third party intervention, they often do not have the opportunity, trust or the capacity to share these stories.

It is the role of the mediator to design a process that creates a safe space where parties can reveal where they are 'coming from' and assist the process through which **the different points of reference** can be understood. This is where reconciliation may come from.

In a regulatory conflict (eg land use or the use of symbols), where the source of conflict is a difference in the values and identities of the groups, it would be misleading to simplify the case as a problem of 'rational interest'; in such cases, identities and histories play an important role.

Values and interests are very different elements of a conflict: while interests can be satisfied, negotiated or even traded, deeply felt values, identities or injustices need to be recognised and respected. They are non-tradable.

Our values and identities develop through a process of complex interplay with a context. We cannot negotiate or change these easily. If some of our deeply-felt ways of operating need to be sacrificed, they need to be **mourned** before being released. In such situations, if an insensitive mediator pushes a simple interest-based trading process, it may antagonise some parties.

The mediator is faced with a difficult question:

- *Is it possible to deal with the event while isolating it from the context?*
- or**
- *Does the process have to enter into the complex domain of relations so as to achieve a stable outcome?*

If the second option is selected, creative solutions and longer dialogue are often necessary to explore the event and arrive at a solution. This is a process of **transformation**, where relations between groups (through their histories, values or identities) are a key component of conflict resolution; yet in most cases, we can still see them as particular conflicts with identifiable boundaries.

An even more difficult situation is when segregation, exclusion, unjust treatment or group deprivation has created the background to the conflict. In such cases, an equally legitimate question is:

- ***Can the event causing conflict be isolated and resolved as episodes - or whether the transformation of the underlying structures is necessary to bring about lasting change?***

The difference between the two situations is that, besides personal relations, the structures framing the context also play an important role in generating the conflict. Underlying structures may need to be changed for a lasting solution to be achieved. This is **conflict transformation**.

Conflict transformation

Conflict resolution is a process focusing on the content of, and a possible solution to, an existing crisis, while conflict transformation is a more complex approach, framing the conflict as a situation engendered by underlying socio-economic and political structures. It aims at constructive change that includes, and goes beyond, resolving specific problems.

Conflict transformation reverses the focus of conflict resolution: it sees conflict not as the job, but as an entry point to changing the wider structure. It looks at the conflict not just as a problem but as an **opportunity**.

	CONFLICT RESOLUTION	CONFLICT TRANSFORMATION
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THE KEY QUESTION	How do we end something not desired?	How do we end something destructive and build something desired?
FOCUS	Content-centered.	Relationship-centered.
PURPOSE	Achieve an agreement and solution to the conflict.	Promote constructive change, inclusive of immediate solutions.
PROCESS	Built around the immediacy of the relationship where the symptoms of conflict appear.	Envisions the conflict as an opportunity both for response to symptoms and re-assessment of structures within which relationships are embedded.
TIME FRAME	Short-term relief to pain, anxiety and difficulties.	Mid/long-term and is intentionally crisis-responsive rather than crisis-driven.
VIEW OF CONFLICT	Envisions the need to de-escalate conflict.	Envisions conflict as dynamic with both de-escalation and even escalation to pursue constructive change.

Table 1: A Brief Comparison of Perspectives of Conflict Resolution and Conflict Transformation
(source: Lederach, 2003: 33)

Conflict transformation and local governance

Conflict transformation aims to initiate transformation between stakeholders in the ways their social, political, economic and cultural relationships are structured. This has much to do with **local governance**.

In situations of segregation, exclusion and deprivation – the basis for many urban conflicts – the underlying structure plays a key role. **Usually, parties to a conflict do not have the power to change the structure by themselves.**

There are therefore two crucial challenges:

- 1. Resolving the conflict has to deal with the imbalance of power among the parties.*
- 2. A crucial component is intervening in the structure.*

This means that the mediator / facilitator has to establish democratic processes in which (a) all parties can speak freely and (b) each party respects the diversity of the context and the differences between the parties. This means recognising the different values, interests and power relations and anticipating the in-built biases related to ethnicity, culture, class, gender and any other differences.

The mediator / facilitator should explore how structures affect the situation and where boundaries to the conflict might be established. This awareness is the starting point for creating the **safe space** where claims and feelings - even negative feelings and anger - can be expressed.

At the same time, the mediator / facilitator needs to recognise that he/she may well share such biases; these have to be acknowledged and suppressed. He/she may not be seen as the neutral third party that he/she would like.

For any lasting solution, a transformation has to be initiated that changes part of the structure that generates the conflict. This might mean that the municipality may have to give extra attention to, for example, policies for business support, more jobs and better housing that begin to overcome discrimination in the community.

To achieve this, the municipal leadership must be ready to work across traditional boundaries, especially those between its various service departments and between the municipality itself and organisations in the community.

The challenge

Most local conflicts are not isolated episodes that escalate once – and, if solved, will never occur again; nor are they cases where the underlying social, economic and political structures produce a regular outburst of conflict. Most cases are in-between. The connections between the structure and a specific conflict are different in each case.

When the episode breaks through the tolerance threshold of community members, it makes stakeholders realise that they do not want to live with it. Usually, such an episode is not an accident; it arises from a complex web of underlying relations.

How the mediator / facilitator frames the conflict in any given context is the challenge. It is often not a free decision; the possibilities may be very limited. Limitations may derive from the condition of the stakeholders:

- 1. What is their starting point? How much are they willing to make sacrifices for possible improvements?***
- 2. What are the possibilities? What do the stakeholders have the power to change and what is beyond them?***

This is why the municipality has such an important role to play in working with the mediator / facilitator to examine those underlying conditions and take the right action.