

Participatory Approaches to Dealing with Community Conflicts and Disputes. Part 2. – Participatory Processes for Complex Cases

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This chapter can be taken as the second part of the paper written by the same author on ADR (Alternative Dispute Resolution) terminology. In the first paper, basic ADR approaches were analysed. The common characteristic of ADR methods is that all operate with the inclusion and active participation of all stakeholders involved in a conflict situation. As such, they are participatory methodologies – they establish a special group of participatory processes.

In order to build up a basic understanding of conflict resolution, it was useful to first take a look at simple cases of local conflicts and at the ADR methods in their generic form. The entry point, in the first of these twin chapters, was a discussion of simple cases. I used the term ‘simple cases’ for cases that had two characteristics: one is that they relatively clearly fit in with the generic situation in relation to rational interest conflict or norm-breaching; the other was that they are episodic in the sense that the context may not reproduce them on a regular basis (or they can at least be isolated) and they may be dealt with in a relatively short time, as separate cases.

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/individuals who are parties to an encounter or within socio-political-economic structures can play a big role in conflict escalation. This condition can limit short-term and episode-focused interventions as regards impact. For example, in cases when regularly repeated earlier offenses or cultural differences of groups lead to increasing frustration, and finally to a violent clash, even for a limited intervention a more complicated process is needed than the simple process discussed in the first part of the paper. (Cordell-Wolff 2010) When relations among groups sharing a place is asymmetrical, it can easily happen that parties see the same event in a different way (e.g. the arrest of a minority member for a petty crime), for they embed it in different ‘stories’. In such conflicts, without an apt third party’s intervention, they often do not have any opportunity, trust or the capacity to share these stories; and it is the role of the facilitator to design a process that creates a safe place where parties can reveal where they are ‘operating from’ and assist the process via which their points of reference can be at least understood – and from where reconciliation may come. Or, in a regulatory conflict (e.g. land use or the use of symbols), where in a diverse environment the source of conflict is a difference in the values and identities of constituent groups, it would be misleading to simplify the case as a rational interest problem; in such cases interests and utility are part of the conflict, though identities and histories also play an important role. (Forester 2009)

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 recognized and respected. They are non-tradable. Our values and our identities develop through a process of

complex interplay with a context. We cannot negotiate or change these easily.¹ 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 antagonize some parties.

The professional entering into such situations is faced with a difficult question: is it possible to deal with the episode while isolating it from relations? Or does the process have to enter into the complex domain of relations so as to get a stable outcome? If the second option is selected, creative solutions and longer dialogue are often necessary to explore the encounter and arrive at a solution. These are transformative conflict-resolution processes, 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-specific deprivation has created the background to the conflict, that is, when elements of the socio-economic-political context produce a situation where conflict is recurrent. In such cases an equally legitimate question (as in the cases mentioned beforehand) is whether conflict episodes might be isolated and resolved as episodes - or whether transformation of the generating social-economic-political structure on its own might bring 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. With such conflicts we have already left the domain of conflict resolution, and we enter into a different domain, that of conflict transformation.

Conflict transformation

For a discussion of complex urban conflicts a clear distinction between conflict resolution and conflict transformation can help the development of a precise language and a clear conceptual framework. 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 a constructive change process for the wider structure. One of its founders expresses this in the following way: “the key to transformation is a proactive bias toward seeing conflict as a potential catalyst for growth.” (Lederach 2003:15)

The role of the transformative professional is to analyze not only the immediate situation but to look at it as a particular conflict episode that is embedded in underlying patterns, developing “a conceptual framework that holds these perspectives together, one that permits us to connect presented problems with the deeper relational patterns. Such a framework can provide an overall understanding of the conflict, while creating a platform to address both the presented issues and the changes needed at the level of deeper relational patterns.” (Lederach 2003:11)

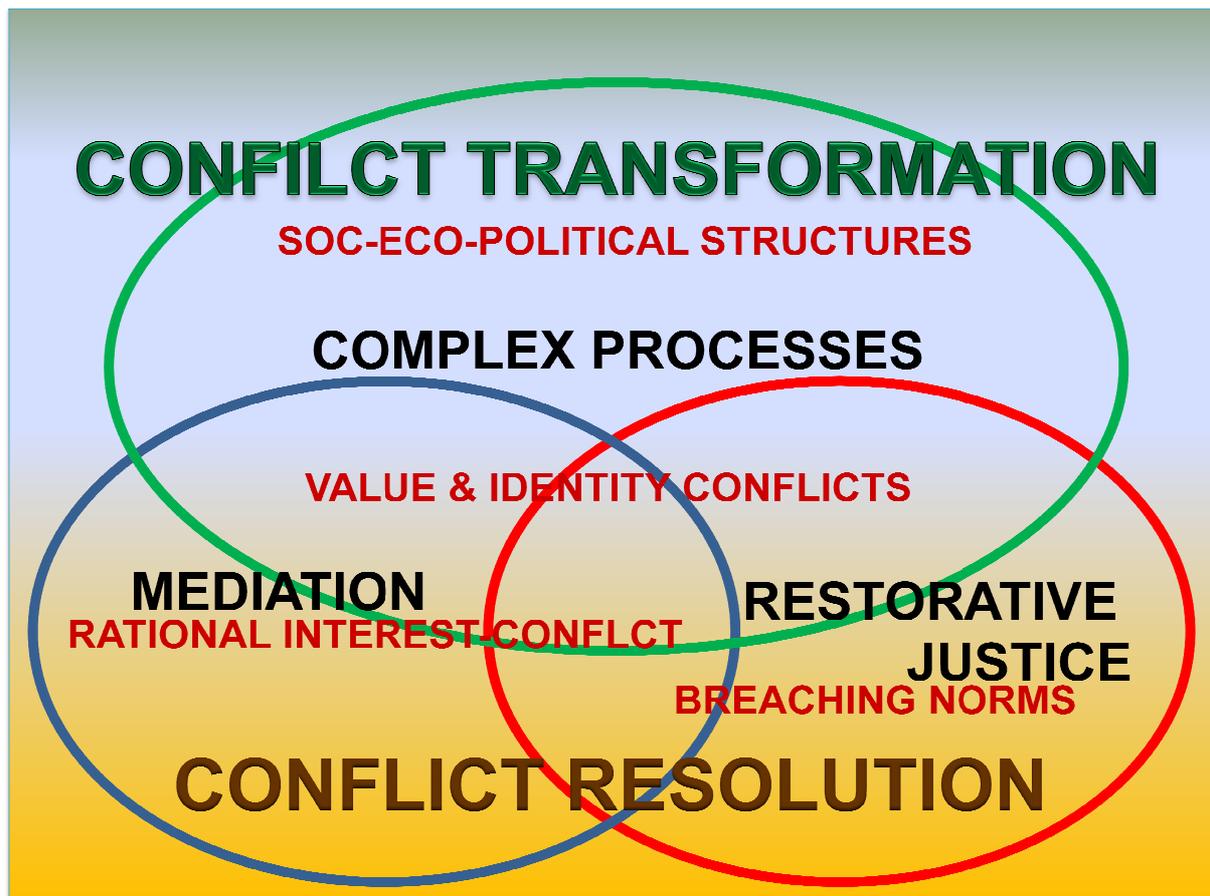
¹ This statement and the explanation that follows are based on a social constructivist concept of identity - not only because this is the most prevalent conceptualization of identity formation in state-of-the-art identity policy but also because an essentialist concept would not leave room for such discussion, or, indeed, any transformative intervention at all.

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

	Conflict Resolution Perspective	Conflict Transformation Perspective
THE KEY QUESTION	How do we end something not desired?	How do we end something destructive and build something desired?
THE FOCUS	It is content-centered.	It is relationship-centered.
THE PURPOSE	To achieve an agreement and solution to the presented problem creating the crisis.	To promote constructive change processes, inclusive of, but not limited to, immediate solutions.
THE PROCESS	It is embedded and built around the immediacy of the relationship where the symptoms of disruptions appear.	It envisions the presenting problem as an opportunity for response to symptoms and engagement of systems within which relationships are embedded.
TIME FRAME	The horizon is short-term relief to pain, anxiety and difficulties	The horizon is mid-to-long-range and is intentionally crisis-responsive rather than crisis-driven.
VIEW OF CONFLICT	It envisions the need to de-escalate conflict processes.	It envisions conflict as an ecology that is relationally dynamic with ebb (conflict de-escalation to pursue constructive change) and flow (conflict escalation to pursue constructive change)

The transformationist approaches to conflict resolution (already mentioned) and this approach are similar in that conflict is rooted in the quality of the relationship of the parties. The key difference between the two approaches is that in the conflict transformation concept the “relations have two dimensions: our face-to face interactions and the ways we structure our social, political, economic and cultural relationships.” (Lederach 2003: 21) The second dimension of power relations is what makes the difference: conceptualization of the conflict goes beyond the interpersonal level and includes the structural dimensions of the wider context.

Figure 3: Conflicts and approaches



Conflict transformation and local governance

Conflict transformation aims to initiate transformation for both the interactions of parties and the ways their social, political, economic and cultural relationships are structured –this second part goes beyond conflict resolution and greatly overlaps with the domain of local governance.

Since Giddens’ theory local government professionals initiating stakeholder-based, collaborative processes recognise that the underlying structure and the personal relations of parties involved in a conflict exist in a mutually constitutive relationship. Yet we must also see that in the situations mentioned above (segregation, exclusion, deprivation) and in most urban conflicts structure plays a key role - the power of the structure is often far beyond the agency power of the parties; it also has an asymmetrical effect on the different parties’ powers. Thus, stakeholder-based processes need to face up to two crucial challenges: one is that process design and management has to somehow deal with the positional asymmetry of the parties involved, while the second is that a crucial component in conflict transformation is aimed at structural intervention. This second challenge leads us beyond ADR processes to local policies and local governance structures² – to the study of those social and political structures where the context of interpersonal and inter-group encounters is generated.

² It leads beyond local governance, too.

Not only ADR experts but local policy professionals also use the “transformative term”³ for transformative processes and policies. Transformative policies aim at correcting problems and inequitable outcomes by analyzing and correcting the underlying generative framework (i.e. the structures and earlier policies that have generated them). This transformative policy process needs to be coordinated with conflict resolution activities in order to create a conflict transformation result.

The professional’s role in complex cases

In complex cases the distinction between mediation and restorative processes is useless. The professional leading the process must possess the skills of both. Lawrence Susskind, a guru of multi-stakeholder urban processes, calls such professionals “facilitative leaders”. (Susskind, 2006) Their job is to establish deliberative democratic processes that recognize and respect plurality and difference. (Forester, 2009) During such processes professionals need to recognize different values, interests and power relations, and to often anticipate structured biases related to ethnicity, culture, class, gender and any other differences that may play a role. They should also explore how structures effect situations and where problem or conflict boundaries might be established. They can then achieve a safe place where claims and feelings - even negative feelings and anger - can be expressed only on the basis of having this awareness.

Most commentators agree that in a complex situation, where values and identities also play a role, the oft-mentioned neutrality of the third party is a fiction (Forester, 2009: 35) Forester, after examining the work of many professionals working in diverse environments, states that “they make few claims to neutrality, but many to serving all parties in a non-partisan way. ‘Facilitative leaders’ work proactively to enable well-informed decisions by parties may level the playing field of pre-existing inequalities of information and access to relevant expertise, and more.” (Forester, 2009: 5) They are “committed not to specific outcomes or parties but to the generative quality of the deliberative process and mutually crafted agreements.” (Forester, 2009)

In some complex cases, as noted above, the conflict boundary goes beyond the actual conflict situation. For any lasting solution a transformative process has to be initiated that changes part of the structure generating the conflicts. This is an interdisciplinary form of work: part of it can be facilitated within the framework of a deliberative process, while other parts may come from the results of work from other supporting local governance professions and/or political decisions. The “transformative professionals” who can lead the design and implementation of such transformative processes need to have expertise in both the ADR and local governance fields and to have the competence to bring together routes involved in the overall transformative process.

³ In the public policy field, “transformative” is antithetical to affirmative policy. Affirmative policies are policies aiming at correcting frustrations felt by groups or inequitable outcomes of earlier policies. They focus on specific policy outcomes and attempt to find some remedy for a given outcome without deeper analysis or intervention into the underlying policy framework that generated the situation. In approach, affirmative policies are similar to short conflict resolution interventions that focus on the immediate conflict episode. Both often lead to specific changes but do not amend more complex situations or the structures that have created them. Transformative policies aim at correcting problems and inequitable outcomes by analyzing and correcting the underlying generative framework. Transformative processes are complex, mid-to-long term processes. Regarding participation, for example, short-term, project-based interventions contrast with institutionalized modes of participation that have a transformative character. (Gaventa, 2008, Pallai, 2010)

The professional 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 and political structure produces a regular outburst of conflict episodes. Most cases one comes across in the field are in between. In different cases the strength of connections between context and a specific episode are different.

Third party professionals are, in most cases, invited to look at the episode, as it is this episode that breaks through the tolerance threshold of community members or decision-makers; it is the episode that makes stakeholders realize that they do not want to live with it. Stakeholders typically tend to frame situations as relatively isolated conflict cases. When we begin to analyze such a situation, in the background we often see that it is not an accident - a more complex web of relations can be sensed and are revealed.

Always a challenge for the mediator/facilitator is how she/he frames the presented problem in the given situation, how deeply he/she attempts to explore it, how she/he frames it for her/his own understanding and how she/he frames it in relation to the process that she/he is to initiate. It is often not a free decision. The possibilities with the context may limit what is the possible farming.

The professional has to adjust the goals and approaches to the possibilities being offered by the local context. Possibilities are limited by two key factors. One is the condition of the stakeholders: what their starting point is and how much are they willing to make sacrifices for possible improvements. The other factor is what is possible at all: what are the components within the leverage power of local stakeholders and what is beyond it. In many cases a major component of the engendering structure is beyond local control. And it is the task of the professional involved to explore or judge how much of the context can be brought into case resolution and to see whether it is wise to undertake the possible intervention.

Given these conditions we should try to do an honest job in supporting the stakeholder, though there are no clear rules for such decisions. It is the responsibility of all professionals to make these decisions for themselves. A wider professional horizon (at least covering the domain captured here) is something that is necessary for the making of such decisions.

Conclusions

In the first part of the twin papers I presented the basic logic of ADR processes and discussed the simplest forms of mediation and restorative justice processes. These processes in their simplest forms can be used for the resolution of relatively isolated conflicts (conflict episodes). In the first part I suggested differentiating the terminology, using mediation/mediator for the interest-based processes and restorative dialogue/facilitator for reconciliation processes related to committed harm and norm-breaching. (Mediator and facilitator are two distinct professional competencies, and often different professionals.) The obvious challenge for decision-makers faced with relatively simple cases is to understand the case and invite professionals who possess the adequate expertise to help.

In the second part of this study I have looked at complex community conflicts as illustrations of more challenging situations. The cases mentioned in the two parts are at the two ends of a scale - from

the simplest to the most complicated. In discussing the complex cases I introduced a distinction between conflict resolution and transformation. Conflict resolution concerning interventions focused on dealing with a presented conflict; while conflict transformation may be used for complex cases where episode and the engendering structure need to be treated together for a sustainable solution. In relation to complex cases, two new terms were introduced for the professional: one was the “facilitative leader” who, according to Susskind, can head a complex deliberative dispute resolution process that may well include interest, value, identity and/or norm conflict; the second was the “transformative professional”, someone who can design and head a complex transformative process where ADR and local governance professionals should work together to gain a sustainable solution.

Discussion of these different types of community dispute and challenges, differentiation of the four types of professional, and the necessary components of their competencies is absolutely necessary if we want to take a key principle of ADR seriously, namely: Do not create more harm!

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