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PERSPECTIVE

Cross-border conflicts: mediating across cultures

By Sukhsimran Singh

Culture is defined differently by different scholars. Generally, culture is a fabric that connects us, but also a space that can distance us. Culture can be a system of thinking that belongs to a group of people, based on a code of conduct or rules that are implicit in nature and followed over time. See, Sukhsimranjit Singh, "Beyond Foreign Policy: A Fresh Look at Cross-Cultural Negotiations and Dispute Resolution Based on the India-United States Nuclear Test Ban Negotiations," 14 *Cardozo J. Conflict Resol.* 105 (2012).

Working across cultures creates unique challenges and can be perceived as a task that is impossible to manage. Cultural differences can create negative perceptions that can lead to misunderstandings or cause parties to overlook real issues. The pandemic unearthed hidden cultural differences as they apply to dispute resolution practices. Sukhsimranjit Singh, "In the Shadow of the Pandemic: Unearthing Unequal Access to Justice Vis-à-Vis Dispute Resolution," *Wash. U. J.L. & Pol'y*; Volume 68, Issue 1, 2022; "New Directions in Dispute Resolution and Clinical Education in Response to the COVID-19 Pandemic," 95-107.

Cross-border disputes inevitably include matters that involve cross-cultural elements. Dispute resolvers can, however, take several steps to be better equipped to address the challenges that arise in such circumstances. This piece will discuss some tips from practice.

Cross-cultural communication

Dispute resolvers connect with others via communication. However, communicating across cultures can be difficult. One needs more understanding, patience and flexibility to understand the other, but mediators or dispute resolvers communicate in a culture of their own growth, which is part of our system or patterned way of thinking. People from high-context cultures, for example, communicate more via body language. They are implicit in their messaging and value honor and respect highly. Alternatively, individuals from low-context cultures communicate more directly, are explicit in their messaging and value clearly delivered communications. See, Edward T. Hall, "*Beyond Culture*," Anchor Books, 1977.

To be trained across these cultural languages requires fluidity in both low-context and high-context cultures, regardless of comfort.

A good rule of thumb in learning to communicate across cultures is to spend some time in pre-mediation meetings to understand the way in which a client communicates. Investment of time leads to the beginning of an understanding of one's thinking. Communication is embedded in a patterned way of thinking; it is the way people talk. However, in cross-border conflicts, a mediator's first comfort zone of communication is often broken when realizing that people talk differently, especially in a cross-border matter. Mediation across borders leads practitioners to be better equipped to handle local cultural expectations. For example, in Brazil, it is perfectly normal for two friends to argue to build on a conversation,

whereas in India, arguing to build a conversation is not acceptable, especially when an elder or superior is part of the conversation.

Eye contact is another important way in which we communicate. In the West, we are expected to look people directly in the eye when speaking, which is counterintuitive to cultures with high power distance. In societies where power is unequally distributed and less powerful organizational members accept and expect unequal power, sustained eye contact can be seen as an invitation to competitively bargain, disrespectful or even counterproductive to building trust. Eye contact can create different perspectives and can often be misunderstood. See, Shota Uono and Jari K. Heitanen, "Eye Contact Perception in the West and East: A Cross-Cultural Study," *PLoS One*, 2015; 10(2): e0118094; available at 10.1371/journal.pone.0118094.

Worldview and decision-making

Research in the field of cross-border negotiations has asserted that decision making across cultures is influenced by cultural coding, or a programmed way of thinking. J. Frank Yates and Stephanie de Oliveira, "Culture and decision making," *Organ Behav Hum Decis Process*, 2016 Sep; 136: 106-118. Factors that contribute to decision-making include value systems, nurturing, societal roles and the influence of individualist versus collectivist cultures.

In collectivist cultures, decision-making is influenced by group values and pressures. An important event in life - such as purchasing

or selling a business or getting married or divorced - will often place internal pressure on individuals to consult with family to reach a collective decision. Individualist cultures value autonomy and independence, and individual decision-making is developed from a young age so parties can more easily say, "I accept this offer" or "I reject this offer." A collectivist individual may need to call a family member, which may trigger the misperception that they do not have the authority to decide. This core cultural interest in involving members of the group in decision-making can also cause delays and feelings of untrustworthiness in the other party in a conflict.

Decision-making is also centered on a litigant's concept of fairness.

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What is “fair” is subject to cultural conditioning. For example, in universalist cultures, preference is given to treating everyone equally over treating people differently. It is usually the norm. In particularist cultures, communication and information sharing rules are often different for in-family and out-of-family members. This is how a particularist society functions, and no one questions it. In addition, fairness across cultures differs. For original work on the dimensions of universalism and particularism. See, Fons Trompenaars, *“Riding the Waves of Culture: Understanding Cultural Diversity in Business,”* Economist Books, 1993. For example, someone in a collectivist culture could believe in substantive fairness, while someone in an individualist culture could prefer procedural fairness. This cultural interest, if ignored, can lead to an impasse.

Cultural interests

Interests motivate people. Interests are numerous in nature, and dispute resolvers look for parties’ interests to learn about the conflict and understand parties’ motivations in mediation. Interests take time to explore and learn. Cultural interests are influenced by a party’s culture. They can be difficult to understand if a mediator approaches a problem from their worldview only, missing out on interests that are not easily discernible.

This could bring us to the conclusion that one can never be fully trained in all cultures and hence never be prepared to mediate across borders. While it is true that working across borders and cultures is not easy, it is not possible to be fully trained to recognize all cultural differences at play. There are ways to be prepared to engage cultural differences that may be standing in the way of resolution.

The best way to manage cross-border situations is to prepare well in advance by involving litigants and seeking information that can direct the mediator toward an understanding of the impact of cultural orientations on the litigants.

Key takeaways

Be confident. Be confident in your research and preparation, and what you’ve learned from the people you’ve met in your life. However, do it with a sense of humility and awareness that across cultures, we cannot apply the same theory to all individuals; people are different and unique.

Listen. Listening is the easiest concession you can give to people in a mediation and provides a path to connect across cultures. However, listen with both heart and mind, as well as with an intent to learn the cultural interests of the parties.

Prepare and be present. Bring wisdom, engagement and respect for the people by meeting with them where they are. Preparation, as discussed above, is key to respecting cultures.

Challenge yourself. Challenge your status quo. Travel and live by the standards of local cultures to learn about them. Involve local mediators and/or consult with them to prepare for cross-border matters.

Be wise. Learn from both Eastern and Western wisdom. Practice persuasion through compassion, respect and understanding. Seek to understand diverse perspectives, create empathetic connections and accept different values and timelines.