Negotiation as a Tool for Dispute Resolution and Conflict Management in a Changing World

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Abstract:
This article examines strictly negotiation as an Alternative Dispute Resolution (ADR) mechanism in managing and resolving conflicts in the present age. Conflict which is a neutral phenomenon and an unavoidable consequence of human interaction in any society is inevitable. Rather than going through the rigorous proceedings of litigation or court, this article brings to mind the existence of other liberal methods of resolving disputes. Relevant international and local conflicts are examined in the bid of depicting negotiation as an effective tool of resolving them.

Keywords: Negotiation, Conflicts, Alternative Dispute Resolution (ADR), Dispute Management

1. Introduction

According to Stuart Hampshire[1] (1914-2004) *"we should look in society not for consensus, but for ineliminable and acceptable conflicts, and for rationally controlled hostilities, as the normal condition for mankind…Harmony and inner consensus come with death."*[2] Conflict is inevitable in a social order. Human beings have the ability to think rationally, hence resulting into having different ideas, beliefs, values, needs, goals etc. It is based on these differences that conflicts springs from. Ultimately, it is impossible for people from different background to work together, make decisions without having conflict. John Burton is of the view that conflict is a generic phenomenon that knows no system boundaries.[3] Whether we are dealing with interpersonal, community, ethnic, or international relations, we are dealing with the same ontological needs of people, requiring the same analytical processes of conflict resolution.

Notably, conflicts can have negative effects both on disputing parties and their immediate society or organization. It undermines decision quality, fuels aggression, destroys lives and property when it involves inter-ethnic or religious conflicts etc. However, where conflicts are managed and resolved, it can lead to positive outcomes such as innovation, trust, high performance among organizational teams etc. Dean Tjosvold[4] asserts that *"managing conflict for mutual benefit moves people away from assuming that co-workers are arrogant and untrustworthy to seeing them as reliable colleagues"*[5].

It is pertinent to note that there are various levels of conflicts which include: intrapersonal, interpersonal, intergroup and intragroup conflicts[6]. Be that as it may, owing to the ever dynamic nature of the world and the continued growth and sophistication in commercial activities and transactions such as banking and finance, oil and gas, energy, development projects, construction, transportation, trade

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[1] A British philosopher

[2] Stuart Hampshire (1991): Innocence and experience, review by: Jerome Neu Ethics; Vol. 102, No.1 pp. 155-158; The University of Chicago Press http://www.jstor.org/stable/2381729 accessed July 10, 2014

[3] John W. Burton, Conflict resolution as a political theory
http://cardata.gmu.edu/docs/teaching/TEACHING%20PLATFORM/course%20501/UNIT%203/Burton%20-
%20Conflict%20Resolution%20as%20a%20Political%20Philosophy%20copy.pdf accessed 21st July 2014

[4] A United States of America Pyschologist

[5] Dean Tjosvold, Mary M. Tjosvold (1995):Psychology for leaders: using motivation, conflict and power to manage more effectively, New York: John Wiley & Sons Publishers

[6] Managing conflict and Negotiation http://www.sagepub.com/upm-data/58510_Nahavandi_Chapter_11_proof.pdf Accessed July 10, 2014

and commerce, aviation etc, conflicts have become abound and there has being the increasing requirement for a more fairer, speedier and cost effective means of managing and resolving disputes.

The traditional method of resolving conflict is through litigation. However owing to the following demerits, undue delay in the dispensation of justice, complicated procedural formalities, high cost of litigation etc. disputants explored for other ways of resolving their disputes. These other ways are known as Alternative Dispute Resolution (ADR) processes which are at times called Alternative Dispute Settlement (ADS) include:

- Arbitration
- Negotiation
- Mediation
- Conciliation
- Neutral Evaluation
- Mini Trial
- Adjudication
- Hybrid Process (Med-Arb and Arb-Med).[7]
- Rent a judge
- Multi-Door Court House

Without further ado, this paper seeks to elucidate on *negotiation* alone as a means of managing and resolving conflict in our world today. It further aims at bringing to the light the fact that negotiation has become a viable tool for bringing world peace and stability in conflicts that might escalate in the total annihilation of the human race.

2. Conflict

Conflict is the disagreement or clash between ideas, principle or people.[8] It is the disagreement through which two or more parties perceive a threat to their interests, needs or concern. According to Michael Nicholson "a conflict exists when two people wish to carry out acts which are mutually inconsistent. They may both want to do the same thing such as eat the same apple, or they may want to do different things were different things are mutually incompatible, such as when they both want to stay together but one wants to go to the cinema and the other to stay at home. A conflict is resolved when some mutually compatible set of actions is worked out. The definition of conflict can be extended from individuals to groups (such as states or nations), and more than two parties can be involved in the conflict. The principle remains the same."[9] However, Christopher Mitchell sees conflict as a structure consisting of attitudes, behaviour and situations.[10] This definition has being largely argued to be less encompassing owing to the fact that there is more complex relationship between humans that brings about conflict. Moreover Peter Wallensteen sees conflict as a situation in which two or more parties strives to achieve the same scarce resources at the same time.[11] Consequently, Wallensteen is trying to make us understand that conflict arises when we human want to achieve things like power, money, land etc. all at once. This definition however begs the question whether resources are of relevance to human conflict or what really matters are our perceptions on conflict. It is imperative to assert that conflict can escalate either destructively or constructively. Conflict escalating into destruction is also known as *'dysfunctional conflict'*[12], where the root cause of the conflict is cast aside and disputants tilted towards harming each other. Dysfunctional conflicts often time becomes intractable, as it promotes inequality, oppression and distrust. On the other hand constructive conflict otherwise known as *'functional conflict*[13]*'* is such where there is a win-win situation for the parties in conflict. It strengthens the relationships of the parties and the contentious issues are resolved. It can also lead to new alternatives and ideas.[14]

3. Sources of Conflict

Conflict which is a part of the sum total of human experience emanates from various sources this may include the following:

- Conflict over resources acquisition: This is the conflict that emanates from the need to acquire and control certain scarce resources like oil and gas, land etc. Problems arise when the realization of a person's need, will result into the sacrifice of another.

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[7] The Lagos Multi-Door Courthouse (LMDC) Workshop, Introduction to the Law and Practice of Arbitration in Nigeria; ADR awareness workshop organized for law students of Babcock University Iperu-Remo Ogun state March 24, 2011

[8] Encarta Dictionaries 2009

[9] Michael Nicholson (1992): Rationality and the Analysis of International Conflict, Cambridge Studies in International Relations

[10] Mitchel C.R. (1981): The Structure of International Conflict, London: Macmillan, pg. 55.

[11] Peter Wallensteen (2002): Understanding Conflict Resolution War, Peace and The Global System, London: Sage Publishing, pg. 16

[12] Managing conflict and negotiating
http://www.cengagesites.com/academic/assets/sites/4004/1285565649_Managing%20Conflict%20and%20Negotiating%20lo.pdf
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[13] Ibid

[14] Pondy L.R. (1992): 'Reflections on Organizational conflict, Journal of Organizational Behaviour', Vol. 13 Issue 3 pp. 257-261

- Change: Change is not possible without conflict. The mere fact that an organization changes its indoor management or a government changes its policies or laws, conflict is bound to happen. A clear example was the government's move to remove fuel subsidy in January 2012 which resulted into a serious conflict between the populace and the Nigerian government.
- Conflict over beliefs, norms and values: We humans have different beliefs, ideas or values in the bid of achieving our common goal. However owing to these differences, conflicts springs up. The way a Christian will react to a particular situation will be totally different from the reaction of a pagan, hence bringing about conflict in beliefs.
- Personality Conflict: This is also known as interpersonal conflict. Often times when there is a team or group to work with, interpersonal conflict usually arise from factors such as motivation, aspirations etc.
- Religious beliefs and ideologies: This is closely associated to conflict over ordinary beliefs and values. However, on religious basis, conflict stems from theory and practices. This source of conflict may escalate into another dimension that may attract national security. For instance the *Boko Harram* situation in Nigeria was a religious conflict but it is however metamorphosing into terrorism.
- Communication: Improper dissemination of information and communication can lead to conflict. It creates uncertainties and lack of innovation or ideas when it involves the corporate world. Where people are able to rub minds and analyze their thoughts, conflicts become manageable.

In light of the above, accurately pinpointing the source of conflict will help in managing and resolving it. A tool for managing and resolving these conflicts is through negotiation.

4. Negotiation

Chambers English Dictionary defines negotiation as "to bargain, to confer for the purpose of mutual agreement or to arrange for by agreement"[15]. Roger Fisher defines it broadly as "including all cases in which two or more parties are communicating, each for the purpose of influencing the other's decision. Nothing seems to be gained by limiting the concept of formal negotiation taking place at a table, and much to be gained by defining the subject broadly."[16] It is a process where two or more parties make offers, counteroffers and concessions in order to reach an agreement.[17]

We negotiate everyday without even realizing it. Buying or selling of whatever item or commodity, working out the lease on an apartment or the closing terms for purchasing a house, dealing with contractors working on a building etc. are examples of everyday negotiations. Negotiation act as a tool for structural commercial agreement, resolving conflicts, managing operational problems as well as social relationships. It well established that the traditional method of resolving conflict is through the court process, but attention is not given to the relationship of the parties in disputes. The conflict may be resolved but the parties will be left with resentments towards each other, thereby barring any form of future dealings which may be beneficial to the both of them. Negotiation on the other hand, which is an Alternative Dispute Resolution (ADR) process, employs skills and strategies that would maintain the status quo between the parties. Former United States President John Fitzgerald Kennedy (1914-1963) asserts that *"Let us never negotiate out of fear, but let us never fear to negotiate"[18]*.

In the process of commencing negotiation, there are skills and strategies a negotiator should acquainted with. These strategies include:

- Distributive or Competitive
- Integrative or Problem-solving

4.1. Integrative or Problem-Solving Approach

This is an approach adopted when the parties in dispute have tendency of engaging in future dealings. It aims at making the interests of disputants maximized hence setting aside their individual-self from the contentious issue, thus exploring various options to achieve their mutual benefits. This approach has being largely described as the 'win-win' approach because after the conflict has being resolved, conflicting parties do not feel to have lost anything, rather to have achieved something. In addition, a '*fixed pie*' is involved in every dispute, in which a party would like to take a larger share or the whole of it. However the application of the win-win strategy will expand the pie so as to accommodate the interests of disputants.

It is imperative to assert that extreme caution must be taking in the application of a negotiation strategy to a problem. A person who depends on the popular cliché that 'everything is negotiable and everyone is a negotiator' can become complacent where he/she applies an approach not suitable for a conflict. Application of the competitive approach (win-lose) to a conflict in which parties have potentials of having future dealings will result into the distortion of their relationship. The competitive approach which is 'litigation-like' should not in any case be applied in the abovementioned circumstance.

In the bid of maintaining the status quo of the relationship of parties to a conflict, the integrative approach serves as the best bargaining strategy. Fisher and Ury[19] maintains hat to adopt the integrative approach, negotiators should do the following:

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[15] Chambers English Dictionary 7th Ed. Edinburgh, W & R Chambers Ltd, 1990 p.961
[16] Roger Fisher; 'Negotiating Power: Getting and Using Influence' in J.W. Breslin & J.Z. Rubin (eds) Nagotiation Theory and Practice, The Program on Negotiation at Harvard Law School, Cambridge, Massachusetts pp. 127-128
[17] Ibid (n 11)
[18] John F. Kennedy Inaugural address January 20, 1961 http://www.bartleby.com/124/pres56.html accessed July 13 2014
[19] Roger Fisher, Willian Ury and Paton B. (1991): Getting to Yes: Negotiating Agreement Without Giving In, 2nd Ed. New York: Penguin Books

- Separate the people from the problem: Turning a blind eye to interpersonal relationship between conflicting parties and negotiators and focusing on the merit of the problem.
- Focus on interest not positions: There must be proper clarification on the goals and motives of conflicting parties as well as paying much attention on their respective interest rather than on their positions.
- Generate a variety of options i.e. brainstorming to develop new ideas to meet the needs of the conflicting parties.
- Insist that the negotiations be based on some objective standard, that is assess the outcomes against easily ascertainable standard based on objective criteria.

4.2. Distributive or Competitive Approach
This approach is really not praised compared to integrative strategy. The distributive approach also known as the 'win-lose' has being likened to the litigation process because one party wins while the other loses. The resultant effect in the application of this strategy is the inabilities of both parties to win but rather parties take positions and attempt in the process of negotiating to get the opposing party to agree to such positions. The bargainer using this strategy tends to be tough, powerful and skillful in maximizing his/her principal self-interest[20]. This approach is a zero-sum negotiation in the sense that one party's gain leads to the loss of another party. In other words, the achievement of a party emanates from the sacrifice of another party. Furthermore, in establishing the meaning and characteristics of this approach, a fixed pie is placed between disputants showing that the party that has more of the pie wins against the other that has less of it.
It is worthy to note that the cons exceed the pros of distributive approach. It is inefficient, unwise agreements are the results of such negotiation, hard bargaining is encouraged, relationships are damaged etc. In addition, owing to the fact that this approach tends to be competitive, it exhibits adversarial traits in the course of its proceedings. Therefore, since there has being agitations from the populace for a more flexible and cost effective means of resolving disputes, the use of distributive strategy should be displaced with by negotiation practitioners.
Incontrovertibly, the initial stage of the negotiation process, parties may be using the distributive approach owing to their aspirations and positions. However, along the line, the integrative model may be adopted when it is realized that some of the aspirations are rather impossible to sustain hence exploring other options that may be beneficial to both conflicting parties.
In light of the above, it is well established that the skills attributed to negotiation process includes the distributive and integrative approach. An astute negotiator will be careful in the application of these skills for the purpose of achieving the desired interests of the conflict parties.

5. Negotiation Process
Negotiation which is a process whereby two or more parties reach an agreement over conflict goes through certain phases before reaching the desired agreement. These phases include:
- Preparation phase
- Presentation or Opening phase
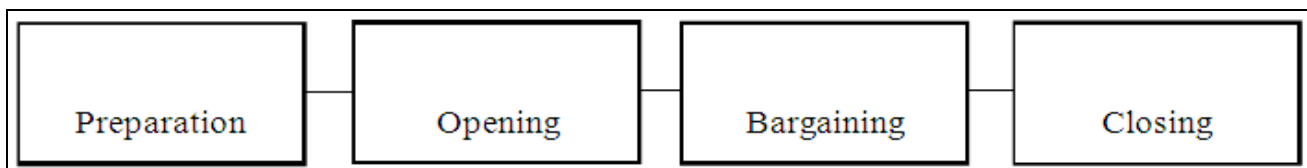- Bargaining phase
- Closing or Agreement phase

Figure 1

5.1. Preparation Phase
Ordinarily, preparation is the act of putting or setting things in order for a future purpose. Hence proper planning and preparation are keys to a successful negotiation. At this stage proper investigation and gathering of factual information concerning disputing parties interests, ideas, values, goals, aspirations etc. This phase simply involves setting out what you hope to achieve and how you hope to achieve it in negotiation. People tend to argue that preparation is not important in negotiating. However, experts have strongly argued that careful and thorough preparation in negotiating is imperative.[21]

5.2. Opening Phase
The phase allows conflicting parties to state his or her case. They are both expected to use this opportunity to highlight what they consider to be the main issues for discussions in the negotiation. There is the need to clearly identify and understand issues for determination so as not to derail the negotiation process. By stating the issues clearly, parties are able to identify areas of agreement

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[20] Henry Brown & Arthur Marriott (2011): ADR: Principles & Practices, London: Sweet and Maxwell
[21] Ibid (n 19)

and separate them from the main issues to be negotiated. Summarily, the opening or presentation phase involves the presentations of offers and demands whether orally or written.

5.3. Bargaining Phase

In this phase, the skills previously discussed in this paper i.e. distributive and integrative models, come into play. It may not be out of place to consider this phase as the focal point in the negotiation process. This is predicated on the fact that at this phase the negotiation can proceed to an agreement or to a deadlock. Where there is a deadlock at the bargaining phase, the negotiation can break down and when this happens, immediate action must be taken to prevent the situation from being irretrievable.[22]

The bargaining phase offers the parties the opportunity to debate, rationalize, scrutinize and agree on the issues established at the opening phase. It is the stage where parties persuade the opponent to accept their offers and counter offers. In addition, at this stage communication skills must be utilized effectively. Facilitation of communication between the conflicting parties through the negotiator will yield good negotiation results and limit the damage from a breakdown in negotiation.

5.4. Closing Phase

Otherwise known as the agreement stage, brings to an end the negotiation process thereby putting the mutual agreement in a setting that is acceptable to both conflicting parties. At this stage parties are expected to fine tune the details of the agreement and ensure that all issues necessary for having an enforceable and feasible agreement have been tackled.

It can be succinctly put that there are generally four stages in a negotiation process (preparation, opening, bargaining and closing). It is a continuous process as a party can stop at any phase and demand for a negotiation *de novo* or upon reaching closing phase, negotiations over implementation of the agreement may continue.

6. Negotiation: a Tool in Conflict Management and Resolution

It is imperative to assert that negotiation is the base for all forms of conflict resolution. Over the years and even in our present world, negotiation has showed itself as a viable tool in the management and resolution of conflicts. Perhaps enumeration of examples will serve as evidence for the truth of the above made assertion.

The Cold War period (1945-1991) was regarded as an era when the world was close to witnessing a nuclear war. The United States of America (USA) and the Union of Soviet Socialist Republics (USSR) were held to be the major rivals during this period, as a lot of conflicts arose between these superpowers. Among these conflicts, the Berlin crises (1958-1962) and Cuban Missiles crises (1962) are worthy of recognition based on the role negotiation in managing and resolving it.

The basic contentious issue surrounding the Berlin crisis was that the Western powers (Britain, America and France) constituting Berlin, were in violation of the Potsdam Agreement thereby losing their rights to the Berlin. Thus, the soviet demanded the withdrawal of the Western powers by advancing ultimatums. Nikita Khrushchev, premier of the Soviet Union wanted to 'bury' the United States as well as make USSR the global super power in the world. In addition, his interest was to remove the Allied force from Berlin and spread communism to the western part of the world, thereby preventing the domination of Europe through their western countries and their capitalist movement. However, Dwight Eisenhower and John Fitzgerald Kennedy, maintained their position on never to give up West Berlin to the Soviets as well as preventing the communism epidemic. There was a standoff between the United States of America and the Soviet Unions.

Negotiation was used to manage the Berlin crises rather than resolving it as the '*distributive*' strategy was employed during the negotiation process. Both parties to this crisis did not seek for means in expanding the fixed pie that would both accommodate their interest rather they both stood on their positions, thereby leading to a deadlock which initiated the Cuban Missiles crisis in 1962.

The placing of intermediate-range missiles in Cuba by the Soviet Union was considered as an act of aggression by the United States of America and this brought about intense negotiations for over 13 days. Khrushchev wanted to use this means to remove the Western Powers from Berlin, display the supremacy of USSR, and make the United States of America remove its missiles from Turkey. The United States President J.F. Kennedy however wanted the Soviet to remove those missiles, as Cuba could be considered as the backyard of America and also prevent his country from involving itself in a nuclear war coupled with preventing the wide spread of communism to the Western world. Moreover, Cuba which was the country at the heart of this crisis did not want to be destroyed by the impending nuclear war. Various interests and positions had to be considered during their negotiation process.

The '*integrative*' model in negotiating was employed as a strategy in resolving this conflict. It was unanimously agreed on the October 27-28 1962 that the United States of America will put an end to its interference in Cuba and withdraw its Jupiter missiles in Turkey.[23] On the other hand, the Soviets agreed to dismantle its missiles in Cuba and end it interference in Turkey.[24] This was a win-win situation as both countries retained their national honor and strength without losing face.

Taking account of another case was the Chicago Teacher's strike in 2012. Rahm Emanel former chief of staff to President Barack Obama, took steps that alienated Chicago school teacher such as rescinding a promised pay raise and lobbying the Illinois state legislature for an education-reform that limited the issues the Chicago Teachers Union (CTU) could negotiate and strike over. A failed

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[22] Robert Heller and Tim Hindle (1998): Essential Managers Manual, London, Dorling Kindersley Limited p. 614-615

[23] Lata Hariharan (2008): Negotiation Analysis: Cold War Negotiations http://www.academia.edu/5349409/Negotiation_Analysis_-_Cold_War_Negotiations accessed June 20th 2014

[24] Ibid

contract negotiation resulted into a 10-day strike which drew the nation's attention to issues facing educators, school district and students. They eventually reached an agreement that managed the conflict between the teachers and the government such as annual raises to teachers, lengthen the school day and allowing the teachers to be evaluated, in part, with student test scores.[25] In addition, laid-off teachers with strong ratings will be guided into new job openings in schools.[26]

Leaving the international scene, there is an on-going religious conflict in Nigeria which has metamorphosed into terrorism. A terrorist organization situate in the northeast of Nigeria, called '*Boko Haram*' has being held responsible for the kidnapping of 276 secondary school girls at Chibok, Borno State, and numerous bombings in the northern region. Their main ideology which is '*Western education should be abolished*' has led to the killing of thousand Nigeria. The most recent is the kidnaping as aforementioned which happened on the 14th-15th April 2014.[27] This incident has attracted international debates and aid. To say the least, both emotional and psychology trauma have being suffered by parents whose children has being kidnapped. Reports have showed that the children have being subjected to untold hardship and all sorts of atrocities ranging from forceful reading of the Quran to burying alive for disobedience.[28]

It may be tentatively recommended that, in furtherance of the measures by the Federal Government in ending this insurgency, negotiations should be carried out with these insurgents purely for the recovering of the kidnapped girls. Using force to rescue those children may not be a good strategy owing to the fact that, the children's fate are on a scale in their hands. Any move done by the Nigerian government that appears not to be favorable to the insurgent might result into the killings of the children. These children are the future of Nigeria and it would be a bad precedent in our history to witness the murder of over 200 children.

7. Conclusion

Conflict is the gadfly of thought. It stirs us to observation and memory. It instigates intervention. It shocks us out of sheep-like passivity and set us at noting and contriving. Conflict is a 'sine qua non' of reflection and ingenuity.[29] Conflict and human beings are inseparable. Apparently, conflict will cease to exist only when rapture is upon us. Be that as it may, conflicts has its positive and negative effect but the important thing is devising a means for either managing or resolving or doing both unless there would be no development in every ramification. Negotiation has come to both manage and resolve our conflicts rather than doing it through the rigorous proceedings of our courts. In recent years negotiation has proved itself as a viable tool in dispute resolution and conflict management, thereby making our world habitable irrespective of our differences in ideas, values, beliefs and backgrounds. The apparent situation is, we negotiate to mediate, conciliate and arbitrate even to say the least the totality of the ADR process.

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5. John F. Kennedy Inaugural address January 20, 1961 http://www.bartleby.com/124/pres56.html
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[26] Ibid

[27] Fox News: Nigeria says 219 girls in Boko Haram kidnapping still missing http://www.foxnews.com/world/2014/06/23/nigeria-says-21-girls-in-boko-haram-kidnapping-still-missing/ accessed June 18th 2014.

[28] Ibid

[29] John Dewey http://www.goodreads.com/quotes/92363-conflict-is-the-gadfly-of-thought-it-stirs-us-to accessed July 10 2014

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