Chapter 17

Mediation and Difficult Conflicts

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INTRODUCTION

By focusing on difficult conflicts, this chapter starts at the end, rather than at the beginning, of the excellent comprehensive model advanced by Herman, Hollett, and Gale in their introductory chapter. In other words, I am concerned with conflicts that do not typically end up in T₀ or T₂ with a constructive resolution in which the parties involved all feel satisfied with their outcomes. I shall consider several types of difficult conflicts, ranging from those in which mediation would appear to be impossible to those in which mediation is possible but difficult and not usually successful. The purpose of this discussion will be to identify some of the major factors which obstruct or facilitate the successful mediation of conflict. My discussion is abstract and not focused on understanding the details of specific cases of difficult conflicts. As Kenneth Kressel (2000: 524) has wisely stated: "Mediation is not a magic bullet for resolving any and all conflicts."

Four types of conflict will be discussed:

1. A conflict between a terrorist group and a state. In the conflict that I examine, none of the factors considered in the first time period (T₀) of the model is conducive to the acceptance of mediation by the parties in conflict. As a consequence, one can expect the conflict to persist until one side or the other is defeated or until social, economic, and political changes make the conflict passé.

2. A hostage situation where the hostage-taker is surrounded by the police. Here, the factors listed under T₀ are often more ambiguous. It is often up to the hostage negotiator (who in reality is frequently a mediator between the hostage-taker and such public authorities as the chief of police or the mayor) to mold all of the factors listed under T₀ to make them more favorable to mediation. In addition, the intense time pressure and, often, the emotional instability of the hostage-taker require special sensitivity and skills of the negotiator-mediator if there is to be a successful resolution of the hostage situation (T₀ and T₁ of the model).
A conflict between deeply held moral values or worldviews is often difficult to resolve because prior conflicts have often made the factors at \( T_9 \) not conducive to contact and mediation. In addition, untutored dialog between the parties often has negative rather than positive outcomes. In my consideration of such conflicts, I discuss a form of dialog ("transcendent eloquence") which a mediator can facilitate that may provide more favorable outcomes. This action has some relevance to \( T_{90} \) and \( T_{92} \) of the model.

A competitive conflict, involving opposed interests, which is not already embittered. Here, I consider two types of win-lose conflict: one in which there is little possibility or desire to transform this type of conflict into a win-win conflict and one in which such a possibility exists. In the former type, I discuss the importance of the institutional context in making the win-lose conflict a regulated competition, which in various ways limits and controls the destructiveness of the conflict. Here I consider the questions: What are the conditions necessary for the institutionalization and regulation of the conflict? What are the conditions that make it likely that the regulations will be adhered to by the conflicting parties? This part of my chapter elaborates in some detail some factors which might be considered under the heading "Institutional Context" in the \( T_{90} \) phase of the model presented in chapter 2. In my discussion of the transformation of "win-lose" to "win-win" conflicts, I consider not only some of the characteristics of the parties in conflict and the institutional context which affect the possibility of conflict transformation (\( T_{92} \) of the model), but also the skills required of the mediator in facilitating such a transformation (also \( T_{92} \) as well as \( T_{94} \) phases of the model).

**Conflict Between a Terrorist Group and a State**

The term "terrorist group" has often been used by those who control an oppressive state to refer to any group that employs armed force and violence to overthrow those who control the government. Such groups rarely consider themselves to be terrorists. They are more apt to view themselves as "freedom fighters," "rebels," or "revolutionaries." There are many instances — as, for example, in the American Revolution — when colonial powers had to yield to such groups and negotiate a withdrawal from control over the population which they had dominated. Similarly, there are instances in which such groups — as, for example, in South Africa — have forced an oppressive minority government to negotiate a transfer of power over the government from the dominating minority to the representatives of an oppressed majority of the population. There are more instances in which a change in power relations has occurred only after extensive violence, I believe, than instances which such changes have occurred after successful, peaceful negotiations with the assistance of third parties.\(^1\) Why is this so?

I know of no historical research which would shed light on this question, and I believe it would be very useful to do such research. While I am not a historian, I would like to examine, in the abstract, an extreme case to see what light it can shed on why successful, peaceful negotiations rarely occur between states and terrorist groups. The terrorist group is Al Qaeda, led by Osama Bin Laden, and the state is the United States, the leading military and economic power in the world.

It seems somewhat absurd to ask the following question because the answer seems so obvious: Why has not anyone proposed that the US government and the Bin Laden group mediate their conflict? The obvious answer is that no one believes that a successful mediation is possible. Nor do they believe that either the US government or Al Qaeda would be willing to negotiate about their conflict. Nor can either side or any third party compel such negotiation. Moreover, it is not clear what the conflict is about apart from each side's intent to destroy the other's power to inflict harm and, also, to attain its objectives.

The United States certainly wants to destroy Al Qaeda's capability to engage in all of its forms of violence and especially its abhorrent terrorist violence against civilians and civil targets. It also seeks to undermine the support that Al Qaeda receives from many Muslims worldwide. The world who see the United States as a "Great Satan" that flouts and harms Muslim religious values and political-economic interests. As I see Al Qaeda's aims, they are to weaken the "Great Satan" so that they can pursue their objective of installing theocratic, Islamic states in areas populated mainly by Muslims. They may also aim to extend Islamic influence over non-Islamic populations.

Thus, the conflict between Al Qaeda and the United States is non-negotiable for the following reasons: (a) each side considers itself to be in a zero-sum or win-lose competitive conflict with the other: the more one side gains, the more the other loses; (b) each side believes that the other side's deeply held worldviews are fundamentally different, evil, and irreconcilable with its own; (c) they perceive that they have few or no common interests; (d) neither side believes that the conflict is negotiable and each believes that the other has no interest in negotiation; and (e) there is no third party which could persuade or compel both sides to such a negotiated settlement in their conflict.

Conflicts of this sort can be ended by: (a) defeat or destruction of one side by the other, as has occurred in various revolutions (e.g., the American, French, and Russian revolutions); (b) the development of hurting stalemates which erode one or both sides' motivation or ability to engage in the conflict (as in the conflicts in South Africa, East Timor, Northern Ireland); or (c) social-political-economic-cultural-historical changes which reduce or eliminate the bases for the conflict in the parties, or changes in their milieu which make the conflict irrelevant or relatively unimportant. There are some unlikely possibilities under (c). For instance, a catastrophic event (for example a large meteor striking the earth, producing drastic changes in the climate and geological formations) might make the conflict relatively unimportant and irrelevant to other issues of personal, familial, tribal, and national survival. Or, over an extended period of time, there might be sufficient political, economic, cultural, social, and educational change in the United States and in Islamic nations among Muslims so that the animus toward the United States would largely disappear, as would the support for the terrorist activities of Al Qaeda.
 Professionals in the field of conflict resolution would, I believe, distinguish between a short-term and a long-term perspective in dealing with terrorism (Welsh & Coleman 2002). The short-term perspective places its emphasis on reducing terrorism primarily on military, economic, and political actions against the terrorists and their terrorist organizations. A long-term perspective places its emphasis on bringing about the social, political, economic, educational, and cultural changes which would reduce the conditions which breed terrorism and which enable terrorists to have easy access to weapons and political targets. As is true for most destructive conflict, there is a need for both a short- and a long-term perspective: a short-term perspective to reduce the destruction and a long-term perspective to alter the conditions which give rise to the destructive conflict.

**HOSTAGE NEGOCIATION**

Unlike the conflict between Al Qaeda and the United States, most hostage situations are short-term crisis situations in which the goal of the hostage-taker is not to kill the hostages but rather to satisfy some specific or nebulous demand. Similarly, the goal of the public authority (the police or military who surround the hostage-taker) is not to kill the hostage-taker but, rather, to free the hostages and to have the hostage-taker surrender. Negotiation in such situations is often possible because the authority doesn’t want the hostages harmed and because the hostage-taker doesn’t want to be killed (and he or she knows that the authority has the capability of doing this) or has some need which the authority can fulfill (for example making a public statement that is broadcast).

In a very interesting discussion among hostage negotiators (from present and former members of the New York City Police Department Hostage Negotiation Team as well as from a crisis negotiator for the FBI), I learned that the basic concepts underlying the practice of hostage negotiations are similar to those generally underlying the successful practice of negotiation and mediation. The key differences relate to the degree of emotional tension involved for all of the participants, the intense time pressure, and the necessity of dealing with great sensitivity with the potential for emotional instability in the hostage-taker, the hostages, and other concerned parties. The hostage negotiator is often negotiating not only with the hostage-taker but also with the chief or authority who determines if and when to use force to overcome the hostage-taker, as well as what can be offered to the hostage-taker to encourage the good treatment and safe release of the hostages.

What are the basic concepts employed by the hostage negotiator?

1. **Lower tension.** Take the time to allow the situation to cool down, to allow the drunken hostage-taker to sober up, to permit the emotionally upset to calm down. Encourage them to talk and to continue to talk by active listening which shows understanding and by putting questions and eliciting responses which keep the conversation going. Explain why things take time, why responses to demands cannot be immediate. Speak in a voice that is calm and responsible, considerate, and respectful.

2. **Establish credibility.** As an experienced hostage negotiator stated:

One of the things we do, or try to do, when we have a dialog, is to start off by asking a simple question. That is “Do you want me to lie to you?” That is what the negotiator starts off with, after giving his name. As crazy as hostage-takers can be (and they can be very, very crazy), I’ve never had any of them ever say yes, please lie to me.” So one of the things we do early on is to make a contract with them – we are not going to lie to them; they understand that by our not lying to them, we might say some things to them that may upset them, but we are going to work our way through that. There is an agreement on both sides: “You are not going to lie to me, I may get upset by some of the things you are going to say, and you will be with me the whole time and we will work this out.” (Cambria, De Filippo, Louden & McGowen 2002: 357)

3. **Establish a relationship** by treating the hostage-taker with dignity and respect and insisting on similar treatment in return. Help the hostage-taker retain self-esteem and “face” by employing terms like “coming out” rather than “surrender.”

4. **Reframe the situation.** The hostage negotiator seeks to reframe the situation from a purely adversarial relation to a situation where “We are in this together,” and where together they have to work out a solution that will be acceptable to the hostage-taker as well as to the authority. The hostage-taker is given the opportunity or is empowered to participate in a cooperative solution to the difficult situation that he, the hostages, and the authority are in. For this to occur, the hostage negotiator “must display an empathetic posture” (Cambria et al. 2002: 339) and communicate a sincere desire for the hostage-taker to come out of this situation safely, for the situation to be resolved peacefully with no one getting hurt. This is a key aspect of the negotiation process and very difficult to do, not only because of the resistance from the hostage-taker which needs to be overcome, but also because of the attitudes among the “hardliners” in authority who are inclined to use force to resolve the situation. They view negotiation as “coddling” the hostage-taker, more appropriate to sympathetic social workers and sob sisters than the police.

5. **Getting to yes.** Through subtle suggestions, the negotiator will seek to get the hostage-taker to make a demand which the authority will be able to say yes. This requires careful listening for the expressed and also implicit interests of the hostage-taker to find an acceptable demand that he or she can be subtly encouraged to make.

I do not know if there are any statistics indicating what percentage of hostage negotiations turn out to be successful. Success appears to be most likely if the negotiator has a good deal of experience (and employs the five concepts listed above); if the negotiation has continued over an extended period of time without the use of violence on either side; if the hostage-taker prefers survival with incarceration to a violent death, and is not a member of a fundamentalist terrorist group. Apparently hostage-takers who are criminals (e.g., surrounded in the course of robbing a bank) or who are emotionally unstable or mentally ill are more apt to accept the encouragement of the negotiator to make a demand that is acceptable than is a committed member of a terrorist group.
Intractable Conflict between Deeply Held Moral Values or Worldviews

In this section, I discuss intractable conflict. Sometimes such conflicts arise from differences in deeply held moral values or worldviews. Other times they develop about specific issues, such as who shall control a given piece of land. As a specific conflict endures and becomes intractable, it commonly becomes "moralized." That is, the conflicting parties enmesh their specific positions and claims in larger moral values which justify and provide what they believe to be, and emotionally feel as, the moral superiority of their position and claims. Thus, in this section, I first consider an approach to intractable moral conflicts. Such an approach is, I believe, implicit in other approaches to intractable conflicts: problem-solving workshops dealing with intractable conflicts between or within nations, divorce mediation, and family therapy. However, as I have pointed out elsewhere (Deutsch 1988), internal conflicts within a party involved in an external conflict often contribute to or promote "intractability" because the internal conflict generates a need to maintain the external conflict. I shall not here deal with the important issue of therapy or other methods of reducing the internal conflict.

As Pearce and Littlejohn (1997: 153) have pointed out:

Intractable moral conflicts are not easily resolved and, in many cases, may not be resolvable. Indeed, many such conflicts should not be resolved, but they can be argued in more humane, enlightening, and respectful ways... Needed is a format or setting in which trust can be built between conflicting parties, a forum in which and an atmosphere in which beliefs are put at risk of change, not by influence from the other party but by self-reflection.

Pearce and Littlejohn (1997: 157-167) describe the characteristics of the discourse (termed "transcendental eloquence") which enable a change in the dynamics of the relationship between the two parties and a change in the sense of identity by one or both sides in the conflict. As Northrup's (1989) analysis of intractable conflict suggests, frozen conflict can begin to thaw when the foregoing two types of change occur. Pearce and Littlejohn identify five general characteristics of transcendental eloquence:

1. **Philosophical.** This attempts to uncover the knowledge, being, and values that lie behind the positions in conflict. It attempts to move discussion from intractable struggle over issues to a more fundamental level at which the parties must pause and reflect.

2. **Comparative.** This attempts to create categories and a language that enable comprehension between two otherwise incommensurate systems. In essence, this involves a shift from experiencing the conflict within one's moral order to viewing it from an outside, more inclusive and objective point of view. The creation of such higher-level categories can provide new ideas and a common reference for reconsidering the statements and actions of both sides.

3. **Dialog.** This attempts to move the discussion from statements meant to convince to statements designed to explore. It seeks to create an open-minded, respectful conversation between moral people with moral differences, and to construct an overarching truth that is acceptable within the larger human community within which the moral conflict exists.

4. **Critical.** Transcendental eloquence aims to help each side recognize its own fallibility as well as the fallibility of the other so that moral choices are made, critically, by comparing the weaknesses and strengths of each side's views from the perceptions of a more inclusive, objective point of view.

5. **Transformation.** This seeks to change the context of the conflict so that it is not about "good" versus "evil," about "winning" or "losing." It aims to transform it to one of mutual understanding and mutual respect so that interactions are enabled that are mutually beneficial as well as beneficial to the larger moral community to which both sides belong.

Transcendental eloquence is a form of a constructive discourse and interaction among parties in conflict which is desirable but often difficult to achieve. It seems more achievable when the conflict is between individuals rather than between groups. It appears to be less achievable when the conflict is not exclusively a moral/worldview conflict but also a conflict over the power to dominate, to control, or to eliminate those whose moral standpoint or worldview are in conflict with one's own views.

Without describing it as such, a number of social scientists and social practitioners have attempted to create a discourse and interaction between parties involved in an intractable conflict which could be characterized as similar to transcendental eloquence. Ronald Fisher (1997), in his excellent book, *Interactive Conflict Resolution*, describes the work of such pioneers as Burton, Kelman, Doob, Azar, Wedge, Mitchell, Volkan, Saunders, Montville, Kriesberg, Bar-on, Bargal, and many others as well as his own work, all of whom have created workshops that seek to develop constructive dialog and interaction between parties in an intractable conflict. In my paper "Negotiating the Noa-Negotiable" (Deutsch 1988), I have described a therapeutic approach to a married couple involved in an intractable conflict about the nature of their marriage.

Below, I characterize what, I posit, are the conditions necessary to establish a constructive interaction and problem-solving orientation to an intractable conflict. These conditions, I believe, are common to the various approaches indicated above.

1. A hurting stalemate (see Zartman 2000 for a full discussion of this condition).
2. Recognition that one cannot impose a solution which may be acceptable or satisfactory to oneself (or one's group) upon the other, and that a solution requires the agreement of the other.
3. Belief that the other has also recognized that a solution has to be mutually acceptable.
4. Hope that a mutually acceptable agreement can be found.
Confidence that if a mutually acceptable agreement is concluded both sides will abide by it. If the other is viewed as unstable, lacking internal control of oppositional forces, or untrustworthy, it will be difficult to have confidence in the viability of an agreement unless one has confidence that third parties are able to guarantee the integrity of the agreement.

The conditions listed above are essential to begin the process of constructive dialog to search for or to create a mutually acceptable agreement and to build the mutual confidence and trust that, if an agreement is reached, it will be adhered to by both sides. To develop a process of constructive dialog other conditions also appear to be necessary. They include:


2. The establishment of a safe, supportive, secure, and comfortable environment which encourages constructive dialog. This involves creating rules and procedures which provide to the conflicting parties mutual security from physical harm, humiliation, or damage both during their own interactions and in their relations with others who are not directly involved in the discussions.

3. The humanization of the other. During bitter conflict each side tends to dehumanize the other and develop images of the other as an evil enemy. Opportunities must be created for the participants— who have developed their views as a result of their experiences in their family, their school, and their neighborhood— to place their viewpoints in a personal context. They also should be provided with opportunities for learning how similar, as well as different, their experiences have been in their roles as parents, spouses, professionals, supervisors, subordinates, neighbors, etc. Further, they should have occasions in which they can interact with one another informally in a friendly manner about common interests and around topics not directly related to the issues in conflict—for example pictures of children, health, food, sports, TV, movies, and education.

If the foregoing conditions of constructive dialog have been created, the possibility of transcendental eloquence and creative cooperative problem-solving has emerged. Their full development will depend on the skills of the third party facilitator, the capabilities of the conflicting parties, and their abilities to plan for foreseeable problems such as new, emerging conflicts between the conflicting parties and oppositional tendencies to agreement within each of the parties.

It is important to recognize that even if a tentative reconciliation has begun between the former bitter adversaries, new conflicts will inevitably occur. Beforehand, one should plan for and develop the fair rules, procedures, experts, institutions, and other resources for managing such conflicts constructively and justly. Otherwise, a conflict managed poorly is apt to reignite mutual hostility and distrust.

Among the conflicts that often occur are those stimulated by the extremists on one or both sides. During a protracted and bitter conflict, each side tends to produce extremists committed to the processes of destructive conflict as well as to its continuation. Attaining some of their initial goals may be less satisfactory than continuing to inflict damage on the other. Both sides need to cooperate in curbing extremism and in restraining actions by extremists that stimulate and justify a vicious circle of mutually reinforcing extremism on both sides.

Finally, it is vital to understand the fragility of transcendental eloquence and cooperative problem-solving in their early stages. It takes repeated experiences of successful, varied, mutually beneficial cooperation to develop a solid basis for mutual trust between former enemies. In the early stages of reconciliation, when trust is required for cooperation, the former enemies may be willing to trust a third party (who agrees to serve as a monitor, inspector, or guarantor of any cooperative agreement) but not yet willing to trust one another. In the early stages, it is especially important that cooperative endeavors be successful. This requires careful selection of the opportunities and tasks for cooperation so that they are clearly achievable as well as meaningful and significant.

When the conflict is between individuals or between small groups all of whom are able to participate in the kind of constructive dialog described in the preceding pages, then a stable and acceptable agreement may be reached between the conflicting parties. Such an agreement will often involve a lowering of the initial levels of aspiration of both sides which is based on the recognition that the realities of each side and of the situations in which they are immersed do not permit the realization of their full hopes. However, as Coleman, Hacking, Steven, and Fisher-Yoshida (2003) have pointed out, most disputes involve more than the conflicting dyad (individual or group) that is directly involved in the dialog. In many conflicts, there are multiple individuals and groups who have interests in the conflict and its outcomes. This is often the case even for an interpersonal conflict as, for example, between a husband and wife in which children, in-laws, and the extended family may have considerable relevance to and involvement in the conflict.

The existence of multiple stakeholders in a conflict presents an important issue to the convener-facilitator or mediator or therapist who is seeking to aid the conflicting parties to resolve or manage their conflicts constructively. The issue is: who should be directly involved or represented in the conflict resolution process—whether it be a mediation, workshop, or a therapeutic intervention? Divorce mediators (e.g., Kessel) and family therapists (e.g., Minuchin) in the United States, who generally deal with a nuclear family structure, indicate that the children should be involved or represented (when they are not old enough to be able to represent their own interests) as well as the parents. In conflicts within extended families, one could assume that it would be appropriate to have the key decision-makers as well as the conflicting parties directly involved. To have an impact on the conflict as a result of participating in an interactive problem-solving workshop for a conflict between or within nations, it appears that participants should be “influential” (i.e., people who can influence the public and/or decision-makers) or informal policy advisors to the decision-makers (see Fisher 1997: 193).
Understandably, it is very difficult to do rigorous, systematic research to assess the effectiveness of the problem-solving workshops, divorce mediations, and family therapy dealing with intractable conflicts. There are often no "control groups," the criteria for different degrees of success are not clear; there are few case studies and even fewer have had systematic data collection about the potential effects on whom and what over a period of time. Nevertheless, there is reason for some degree of optimism (see Kressel & Pruitt 1989). Kressel (2000), in his discussion of the effects of divorce mediation, indicates that divorce mediation produces greater satisfaction with the agreements and fewer future court challenges to the agreements reached than agreements reached through a legal process only. Similarly, Fisher (1997: 194–195) in his analysis of the reported outcomes of 76 problem-solving workshops involving conflicts within or between nations, reports the following findings:

1. In almost all of the interventions, there was increased understanding and improved attitudes. Only 13 percent of the workshops had no direct or indirect effect on the peace process.
2. In 41 percent of the cases, it was reported by either the workshop participants or the workshop facilitators that the improved understanding and improved attitudes had an indirect but positive influence on the peace process.
3. In 17 percent of the cases, there emerged from the workshop documents, plans, or initiatives that were contributions to the peace process.
4. In situations where negotiations were ongoing between the conflicting parties, 26 percent of the workshops appear to have made direct contributions to the negotiations by analysis of resistances, formulations of issues, and the creation of frameworks for agreement.

Although some degree of optimism is warranted from these results, there is also the harsh reality that many of the workshops dealt with conflicts that are still festering (e.g. the Israeli–Palestinian conflict, the Catholic-Protestant conflict in Northern Ireland, and the Greek–Turkish Cypriot conflict).

It is a truism that the best way to manage destructive, intractable conflicts is to prevent them. In a paper published a decade ago (Deutsch 1994), I outlined a utopian and ambitious program for the prevention of destructive conflict. It suggested what the different institutions – political, economic, educational, religious, and cultural – could do to prevent destructive conflict, and David Hamburg (2002) has summarized the extensive work done by the Carnegie Commission on Preventing Deadly Conflict under his leadership. This book contains the most comprehensive discussion of the many issues involved in preventing deadly conflict. It draws upon the work of many distinguished scholars from varied disciplines to indicate how the conditions favoring prevention can be developed. Hamburg makes it clear that the human and economic costs of destructive conflicts are so high (as is also the case for such physical diseases as polio) that the major effort should be directed at their prevention rather than at their treatment once they have become virulent.

A COMPETITIVE CONFLICT INVOLVING OPPOSED INTERESTS

In the three prior sections I have discussed conflicts which, typically, are not only perceived to be competitive, win-lose conflicts by the parties involved, but also are ones in which deep distrust and hostility as well as strongly entrenched negative beliefs and attitudes between the parties often exist based upon a history of negative interactions between the parties in conflict. These competitive conflicts are difficult to resolve because of the negative feelings, attitudes, beliefs, and history in which such conflicts are embedded.

When win-lose conflicts are not embedded in embittered relations they are often much easier to manage. There are two types of such conflicts that I consider below: a regulated, win-lose conflict which ends with a winner and loser, the winner defeating the loser in a contest conducted under agreed-upon rules, and a win-lose conflict which is transformed into a win-win conflict through negotiation.

Regulated Competition

Regulated competition is a pervasive form of dealing with win-lose conflicts. It exists in sports, games, a true free-market economy, in judicial and arbitration systems, among academic departments competing for the opportunity to hire new faculty, in collective bargaining, among job-seekers, between adversaries in a duel of honor, among suitors for an exclusive relation with a potential mate, and so on.

It is evident that competitive conflicts can be limited and controlled by institutional forms (e.g. collective bargaining, the judicial system), social roles (mediators, conciliators, referees, judges, policemen), social norms (fairness, justice, equality, nonviolence, integrity of communication), rules for conducting negotiations (when to initiate and terminate negotiations, how to set an agenda, how to present demands), and specific procedures (hinting versus explicit communication, public versus private sessions). These societal forms may be aimed at regulating how force may be employed, as in the code of a duel of honor or in certain rules of warfare; or it may be an attempt to ascertain the basic power relations of the disputants without resort to a power struggle, as is often the case in the negotiations of collective bargaining and international relations; or it may be oriented toward removing power as the basis for determining the outcome of conflict, as is often the case in judicial processes.

With regard to regulated conflict, it is pertinent to ask two central questions: (1) What are the conditions necessary for the institutionalization and regulation of conflict? (2) What are the conditions that make it likely that the regulations will be adhered to by the parties in conflict? Why would adversaries engage in a duel of honor rather than attempt to kill one another without regard to any rules? In a duel, when would a duelist prefer to die rather than to cheat?

The development of conflict regulation

For conflict regulation to develop, several preconditions seem required. First of all, the conflicting parties must themselves be organized. As Dahrendorf (1959: 226)
has pointed out, "So long as conflicting forces are diffuse, incoherent aggregates, regulation is virtually impossible." Unless each party is sufficiently internally coherent and stable to act as an organized unit so that the actions of its component are controlled and unified in relation to the conflict, it is evident that regulation cannot be effectively developed or maintained. Thus one is not likely to engage in a duel of honor with an opponent who is so unstable and impulsive that his actions are uncontrollable – and it cannot be predicted with confidence that he will follow the rules.

Second, each party to a conflict must be willing to recognize the legitimacy of the other party and be committed to accepting the outcome of the regulated conflict, even if it is considered to be unfavorable to his interests. For example, an employer who is confronted with demands from a number of his workers may feel that those demands do not represent the wants of the majority of his employees and may refuse to recognize them. Under such conditions, it is unlikely that the conflict between the employer and his workers will be limited and regulated by rules and procedures acceptable to both sides. Also, if either an employer or a union makes clear its intention to refuse to accept the outcome of a regulated conflict if it believes the outcome is undesirable, there is little incentive for the other side to submit to being regulated. Similarly, it is hard to have a duel of honor if your opponent is not willing to accept your right to challenge him. Nor are you likely to participate in such a duel if you know that your opponent will attempt to have you injured in some underhanded way of which he is defeated fairly by you.

Third, it should be noted that the conflicts that are regulated are not likely to be the unprecedented ones. A conflict that is recurrent provides a base of experience for developing the procedures, institutions, facilities, and social roles for limiting its destructiveness. It would be reassuring to be able to report some evidence that demonstrates that repeated experience with a given type of conflict leads to more productive management. Unfortunately, I could find no significant research bearing upon this issue.

Finally, and perhaps most importantly, the regulation of conflict is most likely to develop when both sides to a conflict are part of a common community. This is so for several reasons. The community may be adversely affected by an unrestrained conflict and may, hence, exert pressures on the conflicting parties to regulate and limit their conflict and to follow the rules once they have been agreed upon. In addition, as members of a common community having similar values, traditions, and language, it may be easier for the conflicting parties to agree on rules and procedures for regulating the conflict than if they do not have this correspondence of background. Also, a common community is likely to help provide the knowledge, resources, and facilities that can expedite the development of methods of regulating a conflict. Prior experience with similar conflicts may have led the community to develop institutions and procedures for dealing with the type of conflict in which the parties are engaged. A duel of honor presupposes that the duelists have a common code of honor, a code to which all members of a given community will adhere if they want to be esteemed within that community. It also presupposes a set of social roles and procedures that have been carefully articulated within the community and that help to limit and specify the actions that may be taken by the adversaries.

Adherence to the rules

A full examination of the conditions that influence whether rules (norms, agreements, contracts, laws, and the like) are adhered to or violated would lead to a discussion of the different forms of rule violation and social deviance, their genesis and control. Such an undertaking is beyond the scope of this work. However, it seems reasonable to assert that adherence to the rules is more likely when:

1. The rules are known. How accessible is the information about the rules? How much publicity have they been given and through what media of communication? How motivated and able is the individual to acquire and absorb knowledge of the rules?
2. The rules are clear, unambiguous, and consistent. How easy is it to understand the rules, and how clear are their implications? If one conforms to one rule, does this lead to a violation of other rules because the rules are not internally consistent?
3. The rules are not perceived to be biased against one's own interests. How fair are the rules? Do they give the adversary an advantage he or she would not otherwise have?
4. The other adheres to the rules. With how much confidence can one predict that the other side will also follow the rules if one abides by them? If the other violates the rules, will it be out of ignorance or mischief?
5. Violations are quickly known by significant others. If violations of the rules occur, how quickly will they be identified? How much advantage will the violator gain before the violation is detected? Who will know of the violations, and how influential are they?
6. There is significant social approval for adherence and significant social disapproval for violations. How strong are the internalized values of conscience in the conflicting parties? Do important people and groups in the community care about whether the rules are supported or violated? Are esteem and other social benefits granted for adherence to the rules, and are there significant negative sanctions for those who violate them?
7. Adherence to the rules has been rewarding in the past. Have prior experiences with the rules been rewarding or frustrating? Is there a legacy of trust or suspicion with regard to the rules and the way they have been administered in the past?
8. One would like to be able to employ the rules in the future. Do the adversaries envision a future that will be better because they have worked toward the preservation of the current system of rules, or is the outcome of the specific conflict more important to them than the preservation of the system? Is the system of conflict regulation held in such disrepute that the conflict participant is more concerned with destroying the system than with resolving the specific conflict?
The Transformation of Win-Lose to Win-Win Conflicts

Although win-lose conflicts can be regulated so that they are not barbaric struggles, one may ask under what conditions a regulated competitive or win-lose conflict will turn into a win-win conflict. Thus, it is relevant to ask, for example, under what conditions the institutions and procedures of collective bargaining between union and management result in industrial peace rather than in industrial warfare.

One of the most extensive studies that attempts to answer this question was carried out under the aegis of a committee, the National Planning Association, that included many of the leading scholars and practitioners of industrial relations in the United States. The results of this investigation were published in 14 monographs, which included case studies of harmonious union-management relations in many different industries and in many different contexts. In the conclusions to their final report (National Planning Association 1953), they list the following basic causes of industrial peace:

1. There is full acceptance by management of the collective bargaining process and of unionism as an institution. The company considers a strong union an asset to management.
2. The union fully accepts private ownership and operation of the industry; it recognizes that the welfare of its members depends upon the successful operation of the business.
3. The union is strong, responsible, and democratic.
4. The company stays out of the union’s internal affairs; it does not seek to alienate the workers’ allegiance to their union.
5. Mutual trust and confidence exist between the parties. There have been few serious ideological incompatibilities.
6. Neither party to bargaining has adopted a legalistic approach to the solution of problems in the relationship.
7. Negotiations are “problem-centered” — more time is spent on day-to-day problems than on defining abstract principles.
8. There is widespread union-management consultation and highly developed information-sharing.
9. Grievances are settled promptly, in the local plant whenever possible. There is flexibility and informality within the procedure.

In brief, negotiations involving conflicts of interest are more likely to have acceptable outcomes for the parties involved to the extent that they take place in a context of cooperative relations. Harmonious relations are less likely to occur if both sides: (a) feel that their existence or their rights are under threat from the other side; (b) think that their survival is endangered by external competition from other firms or from other rival unions; (c) are torn by internal factionalism that gets displaced onto the union-management relationship; (d) have little local autonomy so that agreements cannot be responsive to local conditions; (e) are constantly subjected to changing conditions as a result of such factors as changes in technology, alterations in the market, seasonal variations, and turnover in management or union personnel.

Third parties, such as mediators, can play a critical role in transforming a win-lose into a win-win conflict. As I mentioned in the section on intractable conflicts above, they may help to transform an embittered conflict by encouraging and enabling the conflicting parties to engage in a dialog of transcendent eloquence. When the conflicting parties are not embittered, a third party may find it is less difficult to facilitate the development of a cooperative orientation and problem-solving process to a conflict.

There are three types of skills that are useful for third parties (such as mediators, conciliators, counselors, or therapists), as well as the participants in a conflict, in developing and implementing successfully an effective, cooperative problem-solving process. For convenience, I label them “rapport-building skills,” “conflict resolution skills,” and “group process and decision-making skills.”

First, there are the skills involved in establishing effective working relationships with each of the conflicting parties and between the conflicting parties if you are the mediator; or with the other, if you are a participant. Some of the components of this broad category include such skills as breaking the ice; reducing fears, tensions, and suspicion; overcoming resistance to negotiation; establishing a framework for civil discourse and interaction; and fostering realistic hope and optimism. Thus, before negotiations begin between two individuals or groups perceiving each other as adversaries, it is often useful to have informal social gatherings or meetings in which the adversaries can get to know one another as human beings who share some similar interests and values. Skill in breaking the ice and creating a safe, friendly atmosphere for interaction between the adversaries is helpful in developing the pre-negotiation experiences likely to lead to effective negotiations about the issues in dispute.

A second, related set of skills concerns developing and maintaining a cooperative conflict resolution process among the parties throughout their conflict. These are the skills that are usually emphasized in practicum courses or workshops on conflict resolution. They include identifying the type of conflict in which you are involved; reframing the issues so the conflict is perceived as a mutual problem to be resolved cooperatively; active listening and responsive communication; distinguishing between needs and positions; recognizing and acknowledging the other’s needs as well as your own; encouraging, supporting, and enhancing the other; taking the perspective of the other; identifying shared interests and other similarities in values, experiences, and so on; being alert to cultural differences and the possibilities of misunderstanding arising from them; controlling anger; dealing with difficult conflicts and difficult people; being sensitive to the other’s anxieties and hot buttons and how to avoid pressing them; and being aware of your own anxieties and hot buttons as well as your tendencies to be emotionally upset and misperceiving if they are pressed so that these can be controlled.

A third set of skills is involved in developing a creative and productive group problem-solving and decision-making process. These include skills pertinent to group
process, leadership, and effective group discussion, such as goal- and standard-setting; monitoring progress toward group goals; eliciting, clarifying, coordinating, summarizing, and integrating the contributions of the various participants; and maintaining group cohesion. This third set also includes such problem-solving and decision-making skills as identifying and diagnosing the nature of the problem confronting the group; acquiring the relevant information necessary for developing possible solutions; choosing the criteria for evaluating the alternatives (such as the “effects” on economic costs and benefits, on relations between the conflicting parties, and on third parties); selecting the alternative that optimizes the results on the chosen criteria; and implementing the decision through appropriate action.

As Rubin, Pruitt, and Kim (1994: ch. 10) point out, there are a number of different types of outcomes that may result from a cooperative problem-solving approach to a conflict: a compromise; an agreement on a procedure for deciding who will win; an integrative win-win solution. Clearly, the most desirable outcomes involve the integrative win-win solution.

How are win-win solutions developed? Rubin, Pruitt, and Kim (1994) describe several different types of integrative solution: expanding the pie, nonspecific compensation, log-rolling, cost-cutting, and bridging. Fisher, Ury, and Patton (1991: ch. 4) have a very helpful discussion of inventing options for mutual gain, as do Lax and Sebenius (1986: ch. 5) in their consideration of the question: “Creating value, or where do joint gains really come from?” Deutsch and Coleman (2000: ch. 17) presents some guidelines for developing a creative approach to conflict. The important points are that win-win solutions to conflict often require a good deal of creative effort, and that creativity can be fostered through the acquisition of certain types of knowledge, attitude, and skills. A central function of a mediator is to help the parties in conflict to develop a creative approach to their conflict. As Betty Reardon, a noted peace educator, once said, “The failure to achieve peace is in essence a failure of imagination” (personal communication).

**Summary and Conclusion**

In this chapter I have discussed four types of difficult conflict in order to consider the conditions under which a constructive negotiation or mediation is apt to occur. From the discussion of the conflict between Al Qaeda and the United States, it is apparent that when the willingness to negotiate is lacking in both sides and there is no third party sufficiently influential or powerful to induce the conflicting parties to negotiate, neither negotiation nor mediation will occur.

In a hostage situation, where the hostage-taker is surrounded, a skillful, sensitive negotiator can sometimes create a successful negotiating situation by establishing his or her credibility, decreasing tension and time pressure, creating a mutually respectful relationship, reframing the conflict as a mutual problem to solve, and by suggesting mutually acceptable solutions. This is harder to do when the hostage-taker is a member of an ideologically or religiously inspired terrorist organization than if the hostage-taker is involved in a criminal act or is mentally disturbed.

Intervention in a protracted, moralized intractable conflict is most apt to be successful after a hurting stalemate has been reached. The objective of the intervention is to create safe conditions under which a mutually respectful, constructive dialog can develop a cooperative problem-solving orientation to this conflict which results in cooperative work to resolve the conflict. The embittered relations, distrustful attitudes, the barabilities committed, the investments in the perpetuation of the conflict, and the historical which has been developed during the protracted conflict often make a more benevolent, constructive relation between the conflicting parties difficult to achieve. Success, if it occurs, is often the result of a long, sustained, and dedicated process from influential third parties as well as from peace-seeking elements within each of the conflicting groups.

The Geneva agreement for the Palestinian-Israeli conflict negotiated by unofficial but influential Palestinians and Israelis illustrates an interesting approach to moving a constructive process forward when the leadership of an influential third party (the Bush administration of the United States) and the leadership of the two conflicting parties (Sharon and Arafat) seem immobilized. The Geneva agreement provides a detailed, practicable, and realistic solution to the conflict which can be used to mobilize external third parties as well as large segments of the Palestinian and Israeli populations to overcome both the resistances to a constructive peace and the immobilization of the current leadership in the United States, Israel, and the Palestinian Authority.

When a conflict is not embedded in a history of embittered and destructive relations it is much easier to manage. In the final section of this chapter I discussed the conditions under which win-lose conflicts can be regulated so that the win-lose competitions between conflicting parties are conducted under fair rules which are adhered to by both the winners and the losers. Then I considered how conflicts which are perceived to be win-lose conflicts by the parties involved can be transformed into win-win conflicts. Basically, the transformation process is a process that one hopes can be employed in all types of conflict, appropriately modified for the different types. However, this chapter suggests that this hope is over-optimistic. As it has indicated, some conflicts are not accessible to the process of negotiation and mediation, and some that are accessible have great difficulty in achieving successful resolution through negotiation and mediation.

It is important to recognize that many of the most difficult conflicts to resolve constructively emerge from aspects of our national and international political, economic, educational, health, and cultural systems (see Deutsch 2002). Many groups and individuals experience systemic injustices (oppression) in all or some of the systems just mentioned. The conflict between those who feel oppressed and humiliated by the status quo and those who feel advantaged by it or threatened by its change are often among the most difficult to resolve. For their constructive resolution, the underlying injustices, as well as the feelings of humiliation of the oppressed and of threat by the advantaged, must be addressed.

One final note. I have not discussed the need for and the possibilities of doing research on the complex issues that I have considered in this chapter. Yet it should be apparent that we have little well-grounded theoretical and practiced knowledge.
in this area, and much research is necessary to develop such knowledge so as to have more frequent, successful interventions in difficult conflicts. While it is beyond the purpose of this chapter to detail the research that is required, it is evident that we need many more well-constructed case studies of successful and unsuccessful interventions. We also need carefully controlled laboratory studies of such limited and specific questions as how to establish a mutually respectful and constructive dialog between people who have an embittered relationship of long standing.

NOTES

1 As I have indicated elsewhere (Deutsch 2002), overthrow of an autocratic government has only rarely led to a new democratic government.

2 This took place at the 2002 Hewlett Theory Centers Conference at the John Jay College of Criminal Justice in New York City in the spring of 2002. See Negotiation Journal (2000) 18(4, October) for a report of this discussion as well as other presentations at the conference.

REFERENCES


