Conflict Ripeness, Conflict Readiness, and Online Dispute Resolution

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- In International Conflict Resolution (ICR), time is generally not of the essence: the parties can and do wait for weeks, months, years and even decades until they are ready to negotiate!
- Hence, ICR researchers have spent much effort discussing when the appropriate time to commence the negotiation of International disputes is.
- Zartman (2000) claims that there are essentially two approaches to the study and practice of negotiation:
- The notion that the key to a successful resolution of conflict lies in the substance of the proposals for a solution.
- Parties resolve their conflict by finding an acceptable agreement—more or less a midpoint— between their positions

Zartman's approach to ripeness in negotiation

- The other holds that the key to successful conflict resolution lies in the timing of efforts for resolution.
- Parties resolve their conflict only when they are ready to do so—when alternative, usually unilateral, means of achieving a satisfactory result are blocked and the parties find themselves in an uncomfortable and costly predicament.
- At that point, they grab on to proposals that usually have been in the air for a long time and that only now appears attractive.
- He argues that: *If the (two) parties to a conflict (i) perceive they are in a hurting stalemate and (ii) perceive the possibility of a negotiated solution*, then the conflict is ripe for resolution.

Pruitt and readiness theory

- Pruitt (2007) discusses the notion of readiness theory.
- Readiness is a characteristic of an organization (a “party”) reflecting the thinking of its top leaders with regard to a conflict with another organization (the “adversary”).
- Readiness has two components, which combine multiplicatively:
- Motivation (that is, a goal) to end the conflict, which is fed by a sense that the conflict is unwinnable or poses unacceptable costs or risks and/or pressure from powerful third parties such as allies.
- Optimism about the outcome of conciliation and negotiation.

ODR and Readiness

- Most of the writing on ODR has highlighted its advantages, largely focusing on functional and economical features: ODR saves time, economic cost, environmental costs, coordination efforts, etc.
- This writing has demonstrated ODR's efficacy, and its advantages over litigation or face-to-face ADR mechanisms.
- However, much of this has been based on an assumption that – other than some pesky issues related online communication – the theoretical basis for dispute resolution generally hold true.
- This power of this theoretical assumption is clearly reflected in ODR practice, which sees most providers offering online emulations of face-to-face practice.
- To put it somewhat bluntly, though, ODR's relationship to basic issues in conflict resolution theory has not been widely discussed, far less put to the test.
- Much ODR has tried to emulate face-to-face ADR rather than use the additional facilities offered by the development of the World Wide Web.
- For example, Thomson (2011) explains how the Australian Online Family Dispute Resolution emulates the services provided by Dispute Resolution practitioners based at 65 Family Relationship Centres.

ODR and Readiness

- The designers assumed that traditional face-to-face mediation would work best in the online environment.
- Little thought was given to when and where users would interact with the system.
- Because of this and even though there are substantial delays in receiving a mediation at a Family Relationship Centre, and no delay using the online system, there has been minimal uptake of the online system.
- Examples of incorporating other potential of the online environment to provide different, perhaps better, services than offered face-to-face, might include involving technological platforms providing advice on trade-offs and optimal solutions, and systems that calculate
- With an eye to developing optimal processes rather than emulating existing ones, one can envision other important background information being offered via the internet.
- These might be of a general nature (*e.g.*, textbooks and videos outlining the mediation process) or specific to a conflict context (e.g., in family disputes a system might provide background information or tutorials on child psychology and the welfare of children as well as model parenting plans, incorporating case-specific input regarding the childrens age, gender, locale, tendencies, hobbies, etc.)
- This poses a double challenge: Identifying areas of conflict resolution theory that apply to ODR, and developing independent theory for other areas.
- In this presntation, we focus on the first of these challenges, by exploring the applicability of established conflict resolution theory – ripeness and readiness theory – in ODR contexts

Applying conflict theory to ODR

- We suggest that in the process of taking up this first challenge, of applying conflict resolution theory to ODR contexts, authors could illustrate the relationship between ODR and fundamental conflict theories on one, or both, of two levels.
- The first would explore whether ODR mechanisms are capable of supporting processes that are soundly grounded in particular elements of conflict resolution theory, and do not do customers a disservice by glossing over such elements theory simply because they are inconvenient to apply at-a-distance.
- This would help to identify areas in which traditional conflict resolution theory applies.
- The second level would go beyond this somewhat defensive or apologetic stance, and demonstrate ways in which ODR processes can implement principles of conflict theory to a degree that traditional, face-to-face, conflict resolution processes cannot, or - focusing on practice - simply do not
- There are two areas of conflict resolution theory that have somewhat been addressed on both:
  - *The search for integrative agreements*
  - *Good communication for good processes*

Classifying negotiation domains

- Zeleznikow examines whether concepts that are valuable in ICR can be transferred to micro-disputes such as family mediation.
- He focuses on the Israel-Palestinian conflict.
- Zeleznikow claims that family disputes are very different from the Middle-East dispute because:
- (a) Family disputes are micro-disputes whereas the Middle East dispute is a macro one;
- (b) Volume — there are a very large number of family disputes, whereas the Middle East dispute is unique;
- (c) Number of players — family disputes are primarily two party conflicts whereas the Middle East dispute is a multiparty conflict;
- (d) Dispute resolution process — in Australian Family Law there is a well-known transparent mediation process. This is definitely not the case for the Middle East Dispute.
- (e) Use of agents — in family mediations the parties represent themselves. In the Middle East dispute, the conflict is often conducted by intermediaries.
- In this research, we examine whether ICR concepts such as readiness and ripeness to negotiate can be transferred to the family domain, and in particular how one can assist warring parents to be both ready and ripe for family mediation. In particular, we focus on the role of parent education

Readiness in Australian Family Dispute Resolution

- In family mediation, there is no corresponding notion of readiness or ripeness.
- The reason for this is that parties have little choice regarding when to negotiate as one party will commence the family dispute resolution process, generally without reference to the other party. If the other party refuses to participate in the process, court proceedings may commence. It might be a good idea for anger to subside prior to commencing the family dispute resolution process. This allows parents to focus on the children's best interests rather than haggling about relationship issues.
- Perhaps the unique factor underlying many family disputes (and this certainly the case in Australia) is that such disputes are not totally or even primarily about the goals of the parents: they should be about the needs of the children.
- This leads to very non-traditional negotiation processes (although very well known in the family domain). And indeed, the process in Australia is known as Family Dispute Resolution and not Family Mediation.

PROCESSES FOR MEASURING READINESS FOR FAMILY DISPUTE RESOLUTION

- RELATE UK enables parents to become ‘mediation ready’ by removing practical and attitudinal barriers to formal mediation
- ‘Emotional readiness’ of parents for their capacity to both absorb legal information and their resilience to undergo processes of mediation or litigation is vital.
- Should we not go ahead with family dispute resolution if abuse or violence has previously occurred.
- How should the FDR community react to a history of domestic violence during a relationship?
- Whilst members of a family we might be prepared to overlook past history, they are naturally concerned about the possibility of future violence.
- Children and parents are worried about the risk of further abuse and violence from previous perpetrators.

FDR & DV – importantly there are many forms

Form of abuse	Characteristics of behaviour
Physical abuse	Threatening or physically engaging in assaults, including punching, choking, hitting, pushing and shoving, throwing objects, smashing objects, damaging property, assaulting children and injuring pets
Sexual abuse	Any unwanted sexual contact, including rape
Psychological abuse	Emotional and verbal abuse such as humiliation, threats, insults, swearing, harassment or constant criticism and put downs
Social abuse	Isolating partner from friends and/or family, denying partner access to the telephone, controlling and restricting partner's movements when going out
Economic abuse	Exerting control over household or family income by preventing the other person's access to finances and financial independence
Spiritual abuse	Denying or manipulating religious beliefs of practices to force victims into subordinate roles or to justify other forms of abuse

READINESS FOR FDR IN AUSTRALIA

- Relationships Australia Victoria uses the Family Law DOORS (Detection of Overall Risk Screen) project.
- It is a 3-part screening framework to assist identification, evaluation, and response to safety and well-being risks in separated families.
- Uniquely, the Family Law DOORS screens for victimization and perpetration risks and appraises infant and child developmental risk.
- Other tools have the following limitations:

- are not specific to separating couples,
- appraise subjective experience rather than behaviourally specific indices of abuse,
- do not address surrounding comorbidities (e.g., mental illness, drug and alcohol abuse) or surrounding precipitants (e.g., religious significance of separation, lack of social support),
- are not designed for universal use, and
- screen either victims/potential victims or perpetrators rather than both.
- None address developmental risk for infants or children, and none are designed for use by both legal and social science professionals in the family law system.

DOORS

- The Family Law DOORS is a three-part framework designed to aid cross-disciplinary detection of and response to well-being and safety risks in client families of the family law system.
- The DOORS framework defines *risk* as the potential for physical and psychological harm to self and other family members and includes developmental harm to infants and children.
- The tool screens for risks of both victimization and perpetration.
- Screening begins with Level 1 DOORS, a self-report comprising 10 domains. Practitioners select the domains relevant to their client.
- The full screen takes 15–20 min to complete using either software or pen and paper or longer if by interview administration.
- A Level 2 follow-up report is generated for the professional (hard copy or software-generated), highlighting risk indices and giving prompts for follow-up enquiry and response planning.
- Level 3 resources provide specialist assessment tools and literature on risk etiology.

CONCLUSION

- Whilst there are well-developed theories as to when to try to mediate international conflicts, there is little similar research regarding family disputes.
- Further, the time dimension in family mediation can mean that mediators do not have the flexibility to wait for the appropriate moment for dispute resolution.
- Some suggestions include:
- It might not be wise to conduct the FDR immediately after partners separate as it can be useful for the parties to receive some counselling.
- It is useful to have the parties separate financial and children's issues and to sort out their finances before FDR commences.
- The FDR process tends to be more successful once the initial anger has dissipated.
- Most importantly mediations tend to be more successful once power imbalances have been addressed.
- This process may involve shuttle mediation and should only occur if no safety issues are present.