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CHAPTER THREE

Mediation and Methods of Conflict Resolution Nnaemeka, Obidike Francis, PhD

Introduction

What are the ways people, communities, organization and others deal with conflict? How do they effectively find solution to their disagreements, differences and defeat of their interests and expectations? The purpose of this chapter is to look at the various approaches adopted in resolving conflicts. Whereas other chapters may have addressed in reasonable details the nature, characteristics, reasons and effects of conflict, this chapter dwells on the concept of conflict resolution, methods of conflict resolution, reason and advantages of conflict resolution and a conclusion.

What is conflict resolution? Conflict resolution is the process of bringing disputes to an end and removing the identified causes or triggers of conflicts and their forms of expression. The fundamental aim of conflict resolution is the achievement of peace between parties to disputes. Peace is a situation or period in which there is no violence or war, the state of being calm, being in friendship and understanding. Peace connotes the idea of harmony, conciliation, justice and good will among peoples and individuals at all levels. It is a political condition that ensures justice and social stability through formed and informed institutions, practices and norms, the absence of war, fear, conflict, anxiety, suffering and violence. It is primarily concerned with creating and maintaining a just order in the society and the resolution of conflict by non-violent means (Wikipedia, 2019, Hutcheson, 2006).

Conflict on the other hand is a situation where people, groups or countries are involved in serious disagreement or argument or friction a violent situation or period of fighting and opposition to ideas, opinions, wishes and interests. Scholars and theorist (Hobbies, St. Augustine, Frend Gallig, 1990, Collier 2002, Morgenthau 1973, Niebuhr 1953) say that conflict is innate in all social interactions and among humans, that the root of conflict or imperfection in the world are in the forces inherent in human nature. They hold that human nature is selfish, individualistic and naturally conflictive even as individuals, groups and societies pursue their interests which come in conflict with the interest of others as they are driven by a natural instinct to self-presentation and will to power, to seek power and personal security and survival at the expense of others around them. They also see conflict as coming from the economic structures and social systems created and run by different societies especially the capitalist societies where there is class domination, exploitation and irregular divisions and access to resources. Falath (2006) identified systemic factors that lead to conflict to include changes to peoples material comfort stemming from environmental degradation that reduces access to sources of livelihood, uncontrolled population growth especially in urban centers, resources scarcity and its allocation through lopsided political processes and competition, the negative effects of colonialism and cold war legacies, breakdown of cherished values and traditions that play social control functions, widespread poverty in the midst of plenty, the domination and marginalization of minority groups by those in the majority and ethnicity.

Levels of Conflict

Conflicts can occur at different levels. These levels can be grouped into five.

Chapter Three

Introduction to Peace and Conflict: A Comprehensive and Multi-perspective Exploration

MEDIATION AND METHODS OF CONFLICT RESOLUTION

Nnaemeka Obidike Francis, PhD

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Levels of Conflict

Conflicts can occur at different levels. These levels can be grouped into five.

1. Intra-personal conflict
2. Inter-personal conflict
3. Group conflict
4. Intra-state conflict
5. Inter-national conflict

Intra-personal conflict occurs at the individual level, within a person. It may be as a result of discrepancy between goals, expectations and realities, inability to achieve objectives set by self and for self. This failure might lead to frustrations and inner conflicts expressed in subtle aggressive ways.

Inter-personal conflict occurs between different persons as a result of disagreement, misperceptions as non-alignment of declared interests. Inter-personal conflict mars relationships between persons known closely to each other and effects a chain of behaviour that may expand and negatively affect others.

Group conflict refers to disputes among sets of people with common interests and aims within organizations, communities or societies. Examples here include labour unions within an organization, cult groups in campuses and communities, religious groups, town unions etc. These may be seen in forms of student unrest, workers' strike, and unhealthy group competitions.

Intra-state conflict deals with clash of interests, agitation and fights for resources or positions among different constituent of a country especially along ethnic, tribal or racial lines. In Nigeria, the various nations that make up the country are locked in up-ending struggle for share of the proverbial national cake; coups of 1966, 1967, June 12, Rwanda & Burundi. In the United States,

the white supremacists push for control and resist integration while the African-Americans fight against discrimination and stereotyping.

Inter-national conflict occur between nations or countries; between Nigeria and Cameroon, between United States and North Korea, between India and Pakistan etc. International conflicts lead to world wars and years of conflict management. For example the First and the Second World Wars.

Miller (2005) sees conflict resolution as a variety of approaches aimed at terminating conflicts through the constructive solving of problems, distinct from management or transformation of conflict. It is believed to be the final bus stage in resolving conflicts. Conflict resolution follows defined methods to bring about non-violent end to disputes and achieve peace. Conflict resolution involves the final termination of a dispute and satisfaction of the disputants with the outcome of the settlements which prevents a quick relapse to pre-resolution situations. Best (2012) citing Mitchell & Banks (1996) delineated two aspects of conflicts resolution;

1. An outcome in which the issues in an existing conflict are satisfactorily dealt with through a solution that is mutually acceptable to the parties, self-sustaining in the long run and productive of new positive relationships between parties that were previously hostile adversaries.
2. Any process or procedure by which such an outcome is achieved.

There is the argument that conflict resolution is utopian, almost unachievable. Conflict is seen here as pervasive, endemic, and part of human existence and social reality and not entirely devoid of positive outcomes. For instance, according to the Hegelian model of Thesis-Antithesis-Synthesis, conflicts and contradictions do lead to tensions and resolutions which bring about social

changes that result in higher levels of development. Based on this perspective, emphasis is often laid on conflict management as a process of reducing the negative and destructive capacity of conflict through a number of measures and by working with and through parties involved in that conflict (Best, 2012). It is also a long-term arrangement involving institutionalized provisions and regulatory procedures for dealing with conflicts whenever they occur (Otite, 2004). Conflict transformation, according to Lederach (1997), represent a comprehensive set of lenses for discerning how conflict emerges and evolves within and brings about changes in the personal, relational, structural and cultural dimensions and for developing creative responses that promote peaceful change within those dimensions through non-violent mechanisms. It deals with change in the conflict situation when the parties to the conflict, their relationship and communication patterns are transformed for the better. Conflict resolution methods are applied at different levels; individual, family, groups, community, international.

Also to be noted is the idea of conflict suppression where usually stronger parties in a conflict use instruments of power or force to suppress issues of conflict and antagonisms with the consequence that conflict is neither effectively managed nor resolved. Conflict suppression is counterproductive.

What are the Methods of Conflict Resolution?

There are no universally adopted and applied methods of conflict resolution. Responses to and resolution of one and the same conflict would differ from person to person, from group to group and from culture to culture. In other words, how a person responds to or deals finally with a conflict depends on several factors and interests. Various factors are responsible for the success or lack of it or how a particular conflict is resolved. Whatever the case, there are approaches that allow

greater chances of success in resolving disputes among different parties. One such method recognizes the needs of the disputing parties and is non-confrontational and removes feelings of bitterness in the process of settling disputes between individuals, groups or nations (Faleti, 2006).

Methods of conflict resolution can be broadly categorized into two: **proactive and reactive**. Proactive methods deal with preventing occurrence of conflict while reactive refers to responses to conflict situations.

a. Proactive

1. Good governance
2. Trust and confidence building
3. Communication
4. Inter-party collaboration

b. Reactive

1. Mediation
2. Negotiation
3. Conciliation
4. Arbitration
5. Mini-trials
6. Litigation
7. Crisis management or law enforcement
8. Expert determination

It is worthy of the note that the Constitution of the Federal Republic of Nigeria (CFRN) 1999 in Section 19(d) recognizes and provides for the settlement of conflicts through arbitration, mediation, conciliation and adjudication.

1. Negotiation

Negotiation as a dispute resolution is when parties to the dispute handle the settlement of the conflict without resorting to hiring third parties. In others words, in a bid to reach understanding and not allow difference to escalate to violence, the persons concerned themselves open channels of communication, use dialogue or take actions that would lead to the resolution of their conflict. Best (2006) sees negotiation as a direct process of dialogue and discussion taking place between at least two parties who are faced with a conflict situation or a dispute, both parties come to a realization that they have a problem and both are aware that by talking to each other, they can find a solution to the problem. The benefits of compromised solution, it is believed, outweigh the losses arising from refusal to negotiate. Through negotiation, people involved in conflict get a chance to identify their areas of disagreements, exchange ideas, look at possible solutions and make a commitment to reach an agreement. A third party is usually not involved in a negotiation. However, sometimes someone may be agreed upon by the parties in the dispute in order to clear the path for dialogue between the disputants, he helps the parties to begin negotiations between themselves and reach a bargain on their own accord. Thus, negotiation is a consensual bargaining between the disputant, no third parties but a dialoging between them to reach a beneficial outcome. It is a bargaining relationship between disagreeing parties to reach an agreement. It can be formal (commercial or large dispute when third parties represent and have authorities) or informal (where parties work out their negotiation privately and unstructured manner).

The basic conditions on which negotiation can be effective include.

1. The parties are willing to cooperate and communicate to meet their goals.
2. The parties can mutually benefit or avoid harm by influencing each other.
3. The parties know they have time constraints.
4. The parties know that any other procedure will not provide desired outcome.
5. The parties can identify what issues require to be sorted out.
6. The parties agree that their interests are not incompatible with each other.
7. The parties know that it is preferable to participate in private cooperative process rather than go through severe external constraints such as loss of reputation, excessive cost and possibility of adversarial decision. Negotiation as a conflict resolution is voluntary and when successful gives mutual satisfaction. It is a good first step in the process of settling disagreements

2. Conciliation

Conciliation is the settlement of conflicts by consensus of those concerned through the involvement of a third party called a conciliator. The conciliator enables the disputants to resolve and look at the causes of the conflict and engender voluntary participation and discussion as steps to conflict resolution. Miller (2003) defines conciliation as the voluntary referral of a conflict to a neutral external party (in the form of an unofficial commission) who either suggests a non-binding settlement or conducts explorations to facilitate more structures or techniques of conflict resolution. The latter can include confidential discussions with the disputants or assistance during a pre-negotiation phase. All parties to dispute must accept conciliation for it to be effective. Furthermore, the conciliator can be appointed by any of the parties to the dispute but will be acceptable to both. The conciliator may proceed in a fair way to ask the disputant to relate their

understanding of the issues in writing or other ways; he may jointly or separately meet with the parties and eventually evaluate the facts and circumstances of the cases, fashion terms of agreements and bring the parties to assess and agree. If and when the disputants agree and sign the terms of settlement as drawn up by the conciliator, it becomes binding on them. Conciliation however, does not require a prior agreement. Any agreement is the outcome of the conciliation process. Conciliation is a close relative of mediation.

3. Mediation

Mediation is a third-party intervention process that aims at helping the parties to a dispute reconcile their difference, reach a compromise and attain settlement of their conflict. In mediation, a neutral third party tries to help disputants resolve disagreements and negotiate settlement. Mediation focuses on the interests, needs and rights of the parties to the conflict. The mediator manages the interaction between the parties and facilitates open communication and dialogue. Usually, parties to a conflict accept that they have a conflict situation and are willing and committed to resolving it. The mediator then enters to provide assistance and create an enabling environment for parties to the dispute to iron out their differences. Mediators in conflict reconciliation have certain characteristic and roles.

Characteristics of a Mediator

1. He must be experienced in the negotiation process and techniques.
2. He exhibits the tendency to be fair, objective, neutral and balanced in his judgments and style of handling the conflict.
3. He possesses critical questioning skills that enables him to draw out facts maintain communication and throw light on hidden or neglected areas in the dispute.

4. He possesses reasonable level of knowledge and understanding of the area of a particular conflict whether it is family, land, organizational or international.
5. He has confidence, shows authority and inspires parties to the conflict to common ground.

The role of the mediator, as seen by Galtung (2000) include;

1. To map the conflict formation (parties, goals, contradictions)
2. To assess legitimacy or not of all goals
3. To bridge legitimate goals by a creative hump, imagining a new reality with contradictions transcended and conflicts transformed.

Furthermore, the mediator creates the enabling environment for the parties to carry out dialogue sessions leading to the resolution of conflicts, pollinates by working on common themes and drawing attention to neglected points, helps parties to identify and arrive at common grounds with a view to overcoming their fears and satisfying their real need (Best, 2006).

Mediation is a voluntary process. The mediator does not impose any resolution on the disputants but he makes what is called a **mediator's proposal** which may be accepted, modified or rejected. Mediation facilitates resolution of conflicts through opening avenues for reconciliation by neutral third party.

Advantages of Mediation

Mediation has the following advantages;

1. It helps to clarify the real issues in the conflict.
2. It enables agreement to be reached on most or all the points of disagreement.
3. It allows resolution of some or all the issues.

4. It identifies and ensures that the need and interest of all parties are met.
5. It delivers respect and offers opportunity for disputants to preserve and continue in their relationship.

4. **Expert determination**

As a conflict resolution method, expert determination refers to a voluntary process in which parties to a dispute refer their conflict to a neutral third party who possesses expert knowledge in the field of dispute. For instance, a dispute between an oil company and a community on oil spillage and environmental destruction can be referred to expert determination. This is because it is a specialized area and only some experts can effectively navigate the technical concerns of all disputants. In expert determination, the expert gives a binding determination. That is to say, after listening to all parties, receiving evidence and positions, evaluating the materials before him, the expert proceeds to set out his solutions to the dispute which the disputants may not challenge easily. The decision of the expert can only be disputed on limited grounds. The principle here is that individuals involved in disagreement acknowledge that they have limited knowledge in the areas of conflict and that the expert knows better and has greater experiences. They therefore surrender to the expert's expertise in expectation of fairness, objectively and equity in assessment and decision. However the decision of the expert is not final and parties to the dispute may seek alternative dispute resolution channels. Oftentimes, expert determination ensures that all parties are carried along through openness and education of all on the technicalities and the bases for the decisions that would lead to the conflict resolution.

5. **Arbitration**

Arbitration involves a private judge known as arbiter or arbitrator who is selected by parties to the dispute and who imposes a resolution of the dispute. Arbitration is a third party intervention which can be either voluntary or mandatory. It is mandatory when the arbitration follows a statute or form a contract that is voluntarily entered into in which the parties agree to hold all existing or future disputes to arbitration without necessarily knowing specifically which disputes will occur (Tariq, Aammours, Dina and Quais 2007 in Arinze 2018).

Arbitration demands a valid arbitration agreement between parties to the dispute. This may be in form of clauses in contract, written correspondence which show agreement, claims of agreement not denied by the other party. Where arbitration agreement exists, parties may approach an arbitration tribunal of their choice for the settlement of their dispute. Once the arbitrator has been appointed, that appointment can only be challenged if the arbitrator is seen as partial or lacks proper qualifications as an arbitrator. The decision of the arbiter is called **an award** and it is binding on all parties. In arbitration, parties have little or no control over the processes in the resolution of their conflict. The arbiter, in trying to resolve their case, allows presentation of evidence and arguments and thereafter renders an award. Arbitration is regarded as informal quasi judiciary system as it is close to adjudication which uses the court and litigation processes in conflict resolution. Unlike the courts, arbitration is private rather than public. It is less formal and involves mainly hearing of evidence and examination of documents after which an award is rendered. Disputes that can go to arbitration must be justiciable. They can be tried as civil cases e.g. personal property, contracts, actions in court. Criminal cases cannot go to arbitration. Arbitration has legal backing

6. Litigation

Litigation refers to strict determination of the legal right of parties to a dispute through the courts of law. It is a nonviolent form of conflict resolution where parties take their case to a judge of competent jurisdiction and are represented by lawyers who argue their cases and plead judgment of the court which is binding on the parties and enforceable by law enforcement agencies as state authorities. Litigation or use of the courts to resolve conflicts presents many issues one of which is the fact that the conflict itself may not really have been resolved since the court is a win-lose situation and the aftermath of methods of the process leaves mistrust, bitterness and potentials for eruption of conflicts in the future. This is probably why other forms of alternative dispute resolution are advocated and preferred to litigation. Such other alternatives seek to give a win-win situation, ensure consensus and settlements that offer benefits and meet the interests of all parties to the dispute.

7. Mini-trial

Mini-trial is the conflict resolution step taken by disputants who use lawyers' assistance to assess their positions before deciding whether to pursue litigation in court. Mini-trial is a sort of mediation where the third party is a lawyer or a legal representative that facilitates the exchange of information, provides opportunities for settlement of conflicts while avoiding issues that arise from litigations. Ibe (2018) sees mini-trial as a private, abbreviated process of representation by lawyers to the disputants to help them assess the strengths and weakness of their positions and to help them reach a decision whether or not to proceed to trial. Usually there will be a third party advisor who renders a non-binding opinion about the legal, factual and evidentiary points of the case and what the outcome might be in court. One advantage of mini-trial is the information and insight gained through the procedure which enables the parties to weight their alternatives for best conflict resolution method afterwards.

Multi-Door Courthouse

The multi-door courthouse is method of conflict resolution that integrates other alternative dispute resolution strategies into the formal court system whereby the courts offers different doors through which disputants settle their disagreement. Ordinarily, the court tries a case and gives judgment which is final and binding. However, out of the need to save time and resources for both the courts and litigants, the court elects to channel the incoming court cases to alternative and appropriate methods while maintaining connection to the case. So instead of approaching the court for typical litigation (mono-door), the court offers additional doors for other ways of resolving the disputes (multi-door). Ibe (2018) notes two ways in which a matter can before brought before a multi-door courthouse;

1. By court referral i.e. the court refers the matter to the multi-door court house.
2. By the parties walking into the multi-door courthouse themselves (walk in cases).

Other doors through which conflicts are resolved through court connected multi-door courthouse are early neutral evaluation (where experienced lawyers assess the relative strength and weaknesses of the disputants' position and advises according), mediation, conciliation, arbitration and so on.

Conclusion

This chapter considered the methods of resolving conflict and disagreement among disputant at different levels; family, group, community, national or international. The number of methods considered is not exhaustive. There are other methods such as ombudsman, family group conference, and traditional African arbitration processes, neutral fact-finding where a neutral third party investigates a dispute and makes a formal report or testifies in a corrupt of law. Whichever

approach is adopted in resolving a conflict, an ultimate aim is ensuring that the root causes of the conflict are laid bare, fully acknowledged by all parties and a sincere commitment made to resolve the conflict. Where this is not done and there is a win-lose situation, conflict may still erupt, escalate and turn violent leading to disruptions, dislocations and avoidable crises. Adoption of the methods considered as ADR (alternative dispute resolution) to litigation would create greater chances for de-escalation and resolution of conflicts.

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