

Kluwer Mediation Blog

“I am what I am” – Don’t Stereotype

Andrea Maia (Mediar360 – Dispute Resolution) · Tuesday, March 25th, 2014

It is not an April Fool’s Day hoax. On April first 2014, Brazil will effectively become the 79th country to adopt the United Nations’ Convention on Contracts for the International Sale of Goods (also known as CISG(*)). Although Brazil already adopts several principles of the Convention, this is, no doubt, a great step forward, as CISG signatories are responsible for a large proportion of the world’s trade of goods and the recognition and adoption of an internationally accepted legal framework will help the country to be seen with “different eyes” by the international trading community.

As I was trying to further understand the real impact for Brazil as a formal CISG signatory member and the implications on us, mediators, I decided to dedicate this month’s post to the challenges of cross-cultural commercial mediations, as cultural differences, no doubt, play a vital role in the way we all act and behave and on the outcome of several mediation cases.

Edward Hall, a leading anthropologist and researcher in the field of intercultural relations and communications, viewed culture as a “kind of language that parties need, in addition to the language they actually speak, in order to reach a genuine understanding among themselves”. Taking it further, culture can be viewed as the socially transmitted behavior patterns, attitudes, norms and values of a group. It has a direct influence on the way people think, act, communicate and behave, in both personal and business settings.

The need to rapidly recognize the presence of cultural element in the case before trying to overcome the problem may in fact be one of the main tasks of mediators when facing cross-cultural challenges, which are not an exclusive issue of international disputes, as domestic mediators are also constantly involved in situations where regional differences create barriers between the parties.

In this broad sense, mediators must find ways to not only identify and evaluate the most sensitive cultural elements involved in a case, but also try to find common cultural aspects that could be used to their advantage. Although apparently total apart, sometimes I am amazed at the similarities that I find in completely different cultures.

Overall, cross-cultural differences can be present in a number of ways. It is impossible to discuss all (or most) of them in just one post, but there are three points which I consider highly relevant to pay attention :

(1) Communication style

Edward T. Hall (above mentioned) has a very interesting “low-context” to “high-context” communication concept where, in a low-context culture, people tend to say exactly what they mean rather than to suggest or imply. The spoken words carry most of the meaning.

On the other hand, in a high-context culture, people are more likely to suggest and imply than say things directly. Words are not necessarily needed to carry the message, as a gesture is sufficient to communicate meaning.

Recognizing their existence and striking a balance between these two forms of communications is essential to a cross cultural mediation setting.

(2) **Negotiation style**

Before the actual mediation starts, it is very important to try to understand, the cultural negotiation environment in order to obtain a 360 degree perspective of the problem in hand, as different cultures behave differently in a negotiation process, regardless of the situation involved (business or personal).

Among others, the level of formality needed in the mediation process (formal or informal), their timing sensitivity of the parties (in a hurry or taking it slow), their risk sensitivity (loss averse or risk taking) and their emotional involvement levels (high or low), are just some cultural characteristics that we need to be fully aware in order to bridge the cultural gap between the parties and obtain a favorable outcome for the cases.

(3) **Don't stereotype**

Jeswald W. Salacuse's [The Global Negotiator](#) book also provide an extremely important advice in order to avoid one of the most common mistakes on international negotiations (which can also be used by Mediators): Don't stereotype – “if rule number one is know the other side culture, rule number two is avoid reliance on that knowledge”.

In this sense, mediators involved in cross cultural proceeding must be careful not to allow their pre-conceived stereotype conception to mislead their interpretations. To clearly understand the most important cultural elements present in the case, as well as the current tendencies of the cultures involved, can not only help ourselves to facilitate communication, but also effectively deal with several other important issues present in a mediation setting.

Continuing on stereotype, as in fact it is a fascinating mediation topic, I am now wondering how many Brazilian stereotypes I represent? What if I include the women element in the question? No doubt many people stereotype in one way or another . The first step to change is to realize when it occurs . If we manage to slowly recognize it, the rest becomes “relatively” easy.

Finally, my own answer to the last paragraph questions are: Although I am part of a cultural group that has several similarities ”I am what I am”, as the old lyrics say “my own special creation”, a unique individual, with my own personality, strengths and weaknesses and in the cross cultural mediation setting, to understand the uniqueness of each party and to adapt to that reality is one of the key elements to success, while stereotyping is the shortest route to failure.

(*) More about CISG Brazil can be found on non-government related website www.cisg-brasil.net/ and www.cisg.law.pace.edu/

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

This entry was posted on Tuesday, March 25th, 2014 at 10:26 pm and is filed under [Commercial Mediation](#), [Communication](#), [Cross-cultural](#)

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