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# Kluwer Mediation Blog

## The Cultural Factor And Universal Business Practice

Antonietta Marsaglia (The Italy China Business Mediation Centre) · Thursday, October 4th, 2018

A recent experience as co-mediator for the [Italy China Business Mediation Centre](#) (a mediation centre jointly run by the Milan Chamber of Arbitration and CCPIT Mediation Centre) with a CCPIT (The China Council for the Promotion of International Trade) mediator from China in a commercial dispute between a Chinese company and an Italian company, has led me to consider the value of co-mediation guided by mediators belonging to the different cultures of the parties and the role of cultural characteristics versus universal business language and values in cross-cultural commercial mediation.

Whenever the topic of cross-cultural mediation comes up, an underlined aspect is the need that the mediator should be aware of the cultural characteristics of both parties and of the negotiation styles practiced in the parties' countries of origin. It is generally accepted that if the mediator can identify and deal with the different cultural backgrounds, the mediator will be in a position to follow fruitfully the development of the negotiations pursued by each party, explain to each party the cultural characteristics of the other and awake that sense of empathy towards the other that leads to the step forward from 'yearning to win' to 'yearning to resolve'.

When mediating cross-cultural commercial disputes I have applied these principles with good results, but my recent co-mediation experience has convinced me that enormous added value can be found in practicing co-mediation. This added value was not given by the fact that the presence of two mediators made up for insufficient knowledge of the other culture by one or the other of the mediators, (in this specific case both mediators were fully equipped with skills and techniques necessary to follow a cross cultural mediation) but by the structure which co mediation offered to the parties.

Co-mediation offers the parties two communication channels that interact adding value to the cultural knowledge and mediation skills of the single mediator. The participation of a mediator of their own culture makes the parties feel comfortable and at ease, leads them to opening up and trusting the proceedings. The mediators optimise the facilitation of negotiations by relying on the specific cultural insight of their partner and contributing their own, in this way they create a bridge along which each party can easily reach the other. In the co-mediation I followed this was achieved by structuring the mediation with an opening plenary session followed by a brief planning meeting between the mediators, followed by caucuses held first by the mediator of each culture with the party of her own culture and then by each party with then with the mediator of the other culture and both mediators with interim meetings just between the mediators followed by plenary sessions where the parties negotiated directly to reach an agreement. The opening session gave everybody

the opportunity to listen to each other and gave the mediators the opportunity to identify parties' characteristics and differences. The caucuses were structured in order to build confidence and trust in the proceedings, examine with each party the other side's point of view, and identify with each party proposals. In this way the parties arrived at negotiation with an understanding of the motivations that moved the other side, their priorities and a range of proposals to put on the table. The presence of a mediator from their own culture and the first caucus made the parties feel they "were playing at home", led them to open up to the mediator and opened a way to overcome the lack of trust that the parties manifested during the opening meeting and the lack of confidence that was expressed in an aggressive stance by one of the parties. The caucus with the mediator of the other culture was dedicated mainly to the understanding of the other side's characteristics, interests and priorities, and the third caucus was used to explain and introduce to each party a common code of behaviour to be used in negotiation and to build proposals. The mediators used interim meetings to plan the development of the caucuses providing for the development of confidence in the parties, the introduction of a common code of behaviour that would allow positive negotiation and due consideration of the other side's interests, taking into account the cultural differences and the parties characteristics. In this way the burden of confrontation with "the difference" was taken away from the parties and dealt with by the mediators that were able to create an environment where cross cultural differences did not have a role and the parties found themselves negotiating on common ground.

So this is my first consideration: in cross-cultural commercial mediation the fact that the mediator has knowledge of both cultures represented in mediation is not always sufficient to offer a truly cross-cultural environment to develop negotiations, better results can be achieved with co-mediation. Where there is a single mediator the parties have to deal with the cross cultural differences and despite the mediator's information and support they might not have the ability to do this, whereas in co-mediation the cross cultural differences are in fact dealt with by the mediators who have specific training and knowledge to do so.

Co-mediation up to now has not found many followers because it requires the development of specific techniques and skills that can only be achieved with long lasting co-operation between the mediators. The added value of co-mediation lies in the opportunity to bring to the table different approaches, understandings, and styles that must, however, find an agreed path along which the mediation can develop. To achieve this it is necessary for the mediators to program the mediation (and therefore agree on a map for the mediation, with a preliminary examination of the file and intermediate meetings between the mediators), create an agenda for their caucuses (so that the information collected can be usefully compared and used according to the wishes of the parties), fix common goals at the various stages of the mediation (so that their interventions are coherent). There can be no real co-mediation unless both mediators appreciate each other and are willing to adapt their style so that it can be integrated into a common action with the other mediator without prevailing.

The second consideration is that in cross-cultural commercial mediation there are major factors that drive the negotiation and do not belong to specific cultures. They are principles, priorities and motivations that can be defined as universally belonging to the world of business and are common to both parties, such as economic needs (a creditor is often in need of cash as soon as possible, the debtor wants a discount and wants to avoid judicial proceedings), fear of competition (a company wants to avoid termination of an agency agreement for fear that the agent will take its client to a competitor, the agent wants better conditions), need for retaliation (one of the parties feels offended and wants to prevail), desire to develop future business (the parties are in disagreement

over certain deliveries, but they want to continue business together). These factors operate in the mediation whatever might be the level of understanding and the cultural differences between the parties, by setting the parties' targets which, if they are not mutually compatible, may leave no room for productive negotiation.

In cross cultural commercial mediation, the different cultural origins should be considered an aspect that requires the attention of the mediator, or better of co-mediators, to create an environment where cultural differences are understood and accepted thus enabling the parties to engage in a positive negotiation. However, what will determine the outcome of the negotiation will not be so much the successful addressing of cultural barriers but the fulfilment of the interests of the parties, and these interests belong to the universal culture of business and speak a universal language. In this China-Italy mediation, for instance, the work done by the mediators to create understanding and acceptance of the cultural difference enabled the parties to play a positive role in negotiation, but the confrontation between the parties was driven by the need to receive payment as soon as possible on one side and by the evaluation of the advantage of closing the dispute on the other, aspects that were governed by universal business consideration.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of stylized human figures, with one figure in the center being magnified by a magnifying glass. The background is accented with horizontal lines in blue and green.

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