

Conflict management and dispute resolution



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Conflict can be defined as a struggle which is emanates from different ideas, values and beliefs. Most of the time, misunderstanding and miscommunication among people cause conflict. Furthermore, conflict lies not in objective reality, but in people's minds (Fisher, 1981). Disputes, on the other hand, are such issues that are less deep than conflict but still very important.

As human beings evolve and their technology grows through time, their awareness expands and they take more responsibility for making their own decisions. This is especially true of personal decisions. Humans want to be the ones that drive decisions in their lives; they do not want anyone else to decide on their behalf. Thus, conflicts arise.

Often, conflicts occur because people differ in their ways of thinking.

Because of this, conflicts can make people look at problems and issues not only from their perspectives but from others' as well. Consequently, conflicts are not always negative; they can also bring about new ideas. These new ideas can help people to change, which is useful because everything in nature is changing in every moment.

Conflict shows itself in every part of our lives. One of them can be the commercial activities that play an important role in today's world. For example, conflict can arise in commercial contracts. When this happens, the possibility of dispute arising is much higher.

In this essay, we will discuss the conflict and dispute in commercial contracts and explain that whether or not they are inevitable. In addition, we will compare and contrast the different methods for resolutions of dispute in

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commercial contracts. Finally, we will present an example of dispute and explain how to solve it.

Section A – Are conflicts and disputes inevitable on commercial projects?

Conflict and dispute definitions

Before we can determine whether or not conflict and disputes must be avoided, we must first define both terms and determine the differences between the two. Conflict and dispute are two common terms. Although sometimes they are interpreted as equal types, there are some differences that will be mentioned.

Conflict

First, we will discuss the definition of conflict. There exist many definitions of conflict (Foss, 1979; Gelles, 1978; Straus, 1978) cited by Straus (1979). Mary Parker (1925) states that we can summarize conflict in one word: difference. A more comprehensive definition by Straus's (1979) suggests three distinctions: conflict of interest, conflict, and hostility.

Conflict of interest

A conflict of interest means that each member of the group prefers to seek their own interest, which is often different from other people. In other words, they want to live out their own lives from others. According to Straus (1979), the relationship between the amount of conflict (conflict of interest) and the well being of the group is curve linear. It means that existence of conflict can have a positive impact on the well being of group. However, if it exceeds more than the optimum point, it would be detrimental.

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Conflict

“ Coser (1956) uses conflict to refer to the means or behavior used to pursue one’s interest rather than conflict of interest, itself” Straus (1979). According to Straus (1979), conflict means tactics which are used by a person in the response to the conflict of interests.

Hostility

Hostility occurs when feeling of dislike takes a place of sympathy among the members of the group. Often this fact is also named as conflict but in paradox of this idea, there exists some conflict theories that believe that hostility will not appear if conflict exists. This is because it can protect people from getting hostile in a way that can express their point of views and interests and do not let anyone to force them. Consequently, the author considers hostility as a negative fact in groups.

Conflict exists in every part of our lives such as commercial activities.

Contrary to popular belief, commercial conflict is important to a country’s economy. Dorussen (2006) concluded that trade in some commodities will have a strong impact on conflict in comparing with other goods. The reason for this fact is that some commodities have much more significant important on the security of states than others. Recently oil industries as well as high tech ones, have the importance impact though. And also (Park, 1976; Abolfathi, 1976; Ward, 1976; Polachek, 1980) cited by Dorussen (2006) have reached to the conclusion that when the amount of trading oil increases, the exporting country will become more hostile toward oil importers.

There exists three ways of dealing with conflict: domination, compromise and integration (Parker, 1925). First, domination arises from victory of one party to another one. Second, compromise means to get along with each other to settle peace. In this case, one side loses something and gets something in order to agree to end up the conflict. According to Parker (1925), " compromise is the basis of trade union tactics, in collective bargaining, the trade unionist asks for more than he expects to get, allows for what is going to be lopped off in the conference. Thus we often do not know what he really thinks he should have, and this ignorance is a great barrier to dealing with conflict fruitfully." Third, integration is when two parts decide to integrate with each other. This is the most efficient way of dealing with conflict. There is no need to sacrifice, and both parties will benefit from each other and become satisfied.

Dispute

The distinction that is made by Burton (1993) cited by Fenn (2006) between conflict and dispute, is based on two parameters: time and content. He considers disputes as short term disagreements which can be solved easily. On the other hand, conflicts are deep-rooted, long term problems which need much effort to be solved. These types of disagreements can occur independently and, in some cases, dispute can exist inside the long term conflict.

Are conflict and dispute inevitable?

Considering the evidence presented above, conflict and dispute differ from each other. They both can occur and deserve our consideration. In this

section, we will discuss how conflicts are inevitable and how disputes can be avoided.

According to Parker (1925), conflict exists in the world which we are living. Instead of ignoring its existence, it is better to find a way to embrace it. We can change the unpleasant situation in a way that benefit from. Conflict is one of the issues that is better to be accepted and get advantage of it. In some cases, dispute can exist inside the long term conflict Burton (1993).

The school of western thought believes that: “ conflict is part of dynamic capitalism and an integral part of commercialism” (Fenn, 2006). If conflict cannot be managed properly, dispute may rise. In other words, in contrast with conflict, dispute can be avoided. Therefore these two areas should be considered: First, conflict management or dispute avoidance; and second, dispute resolutions.

Some conflict theorists believed that conflict is an inevitable part of human beings life and without the changes which are caused by conflict, the risk of collapse among the social groups such as academic departments, or family will get higher (Adams, 1965; Coser, 1956; Dahrendorf, 1959; Scanzoni, 1972; Simmel, 1955; Sprey, 1969) cited by Straus (1979). If conflict fades away, there will be no hope to adapt to changed circumstances and therefore hostility will arise. Conflict is defined as a process that arises when group of people or a person believes that other groups or other people are thinking frustrating (McKenna, 2006) and Fisher (1981) has defined that everybody has different perception and different way of thinking. By

analyzing these two theories, we can understand that conflict is inevitable; because people are different.

Suggestions to prevent dispute

Regarding to this section, we can conclude that conflict is inevitable. If we cannot manage conflict properly, dispute will arise. Disputes are caused by conflicts and sometimes they exist inside long term conflicts. (Burton 1993) the same story exists in commercial contracts and because they are important facts, there are some suggestion on how to manage conflict and consequently avoid disputes.

By reviewing dispute resolution guidance published by office of government (United Kingdom) commerce (OGC, 2002) we can understand that contractual disputes can destroy the relationships between the client and supplier. In some cases, they have been spends lots of time to build it. Thus, this kind of dispute is time consuming and expensive.

One of the roles of government is to emphasize on the importance of the good relationships between both parties of a commercial trade or the client and suppliers. There are three facts that are advised by OGC (2002) to prevent dispute in commercial contracts:

1. Stating the expectations and intentions at the beginning of the contract. Everything must be clear. Besides, dispute resolutions which both parties agree to provide in the time of dispute, should be mentioned.
2. Managing the contract is one of the most important facts that should be paid attention during having the contract. Both parties should be aware of

any kind of disputes that may occur. Try to find the sign of dispute before it arises.

3. Considering the importance of managing the contract which is near to be expired, is one of the significant things that both parties must learn.

Section B – Compare and contrast of dispute resolution techniques

Dispute resolution methods

It has been concluded that conflict is inevitable but dispute can be avoided in commercial contracts. Although it can be avoided, there still some probability of happening. Therefore here are dispute resolution methods which can be used in commercial contracts.

ADR is an alternative dispute resolutions . It does not mean the same to all the people. In Europe and much of the rest of the world it connects to those resolutions that exclude arbitration and litigation. On the other hand, in the Unites States, ADR conclude arbitration (Moses , 2008).

Negotiation

Negotiation is a common way of dispute resolution which both parties try to solve their problems without the need of others (OGC, 2002).

Mediation

Mediation is a nonbinding and confidential process (Moses, 2008). In this kind of resolution, the third party will meet each party privately and express their point of views to each other. Mediation sometimes known as an interest based procedure whereas arbitration is the right based procedure.

Adjudication

“ Adjudication is a quick and relatively inexpensive way of resolving a dispute, whereby an impartial third party adjudicator decides the issues between the parties. It will almost certainly be quicker and less expensive than arbitration or litigation.” “ Section 108 of the Housing Grants, Construction and Regeneration Act (1996) gives the right to parties to virtually all construction contracts to refer any dispute arising under the contract to adjudication at any time. If the contract does not contain any adjudication procedure, or it does but the procedure does not comply with the Act, then before you can refer a dispute to adjudication you need to make sure that the contract is a ‘ construction contract ‘ as defined by the Act;(Construction Umbrella Bodies Adjudication Task Group, 2003).

Litigation:

Litigation is a formal process which is a binding and non confidential procedure, which is held in the civil courts (Moses, 2008).

Arbitration:

Arbitration is a formal and nonbinding (sometimes binding) dispute resolution . where the third party exists to make the final decision for two other parties (Moses, 2008).

Choosing a resolution method

By comparing the dispute resolutions that discussed before:

- Mediation is not a binding resolution.

-litigation is not a confidential resolution.

- Adjudication is a resolution that has some limitations. (Not being useful for all kinds of contracts as discussed in the previous part).

These days, in many commercial contracts, parties choose arbitration as the default dispute resolution. As they got clear vision about the courts and their actions, they preferred to rely on the courts to solve their commercial disputes; Because of its confidentiality, and also in some case the need to continue their relationships. (Fenn, 2006). In Mentschikoff (1961) idea, the reasons that why we use arbitration in commercial groups are: speed, lower expense, more expert decision, and greater privacy.

According Moses (2008), there exist two main reasons that why commercial parties choose arbitration as a dispute resolution. First, the forum is neutral. it means that it is possible to stay out of the other party's court. Second, the parties which are included in 140 countries that are under the control of New York convention must obey the award that comes out of the arbitration and that is the reason that we mentioned before that arbitration is sometimes a binding process.

As Charles Newton Hulvey(1929) mentions , there are 2 classification of agreements to arbitrate in commercial disputes. 1: agreements to just submit existing commercial disputes. 2: agreements to submit all commercial disputes including those will may occur in future.

Arbitration has more advantages (Moses, 2008). One of the important advantages of arbitration is its confidentiality. Besides, parties choose arbitration because they can freely choose the arbitrator. Another advantage

is that the discovery fact is less in arbitration therefore it takes shorter to get to the conclusion.

One of the points of arbitration in the past was that it was less expensive in compared with litigation. Many companies do not think that it is the advantage any more.

Buhring-uhle (2005) cited by Moses (2008), mentioned: " more than half (51%) of the respondents thought that the cost advantage did not exist". However with considering all the facts, parties tend to choose arbitration because of its advantages and it still worth the cost.

Besides the advantages, Arbitration has some disadvantages as well. If the advantage of fewer discoveries can be viewed from different point, it would become a disadvantage. Especially for those kind of disputes which need much more discovery and are extended. Fewer discoveries mean here less chance for the claimant.

Moreover, in arbitration there is lack of requesting multiple appeals. This can be considered as a disadvantage when the arbitrator has made a wrong decision it would be frustrating to a party to accept this award with lack of ability to have an appeal.

To wrap up, we got to the conclusion that, although we can prevent dispute in commercial contracts with some methods, it can be take place in some situations. Knowing how to deal with commercial disputes is important and one of the significant methods in dispute resolution is arbitration.

Section C – Example of use

One of the dispute resolution methods is negotiating. Positional bargaining is a negotiation method in which each party only focuses on what they want, and don't pay attention to hidden interests. According to Fisher and Ury (1981), there are three trends through positional bargaining in the conflict resolutions between parties: Hard, Soft, and Principled Negotiation.

Principled negotiation is suggested to parties to get better results more amicably. This method is separated into four parts (Fisher and Ury, 1981):

1. People: separate the people from the problem.
2. Interests: focus on interests not positions.
3. Options: generate a variety of possibilities before deciding what to do.
4. Criteria: insist that the result be based on some objective standards.

In order to understand principled negotiation, we will review a fictional case study below. By reviewing this case, we can understand better how to use the stages of principled negotiation.

Note: The following case study was created based on a true past experience of an employee in a construction company. Some details and events were modified to fit with the goals of this essay. Please note that the case study is written in the first person.

In April 2009, I was working as a civil engineer in one of the building construction companies in Iran. One day something strange happened to me. While I was working in the construction site, a woman came to the site and

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asked me whether I could help her to find the project manager. I showed his room and told her that she was lucky that she came that day, because the project manager was not in a meeting. I brought her in the room and stayed along to introduce her to the project manager. The woman then proceeded to explain that she was one of the customers that had bought one of the apartments in advance. She wondered if she could get her apartment earlier than the specified time. She wanted the project manager to finish her apartment earlier. (It was possible but a somewhat costly). The project manager, instead of listening carefully to her, just said no. She repeated her request once more and the project manager interrupted her and said: "No; it is completely impossible." The woman replied: "You do not even pay attention to me. Why don't you listen to me to solve the problem?" He answered: "Because it is impossible. We have never done such a thing in our projects."

When I saw this, I immediately thought that there was a problem with the project manager's behavior: he didn't separate the people from the problem (Stage 1 of Principled Negotiation). In fact, he was very hard on the woman and did not even spend time to get the problem.

After a 10 minute discussion, he listened completely to her. At last he said: "It is impossible because we cannot finish constructing one apartment completely and then working on other flats; it is too costly for us." When he said this, he forgot that he should have focused on interests instead of positions (Stage 2). It would be better if he listened to her and paid attention and instead of not listening. If he did, he could tell her the issues and also asked her if she had solution to solve the problem.

After few minutes, the client said “ you just say it is impossible. What if I pay all the additional costs?” The project manager just kept saying:” it is impossible and against the rules. We have never done such a thing in construction projects.”

In this stage, the project manager should have known that, he could invent options for mutual gain (Stage 3). He could have thought more about her suggestion and also presented his own suggestions. He also could not reach to the final stage of principled negotiation which is invent options for mutual gain (Stage 4).

The woman got frustrated and without saying good bye went out of the room.

After a week I understood that we should work harder to complete that apartment earlier. It was the order of the board manager. He told the project manager “ she is one of our best clients that we get so many benefits from her. If we keep her satisfied, that would be point for us in future projects”.

The project manager somehow got shamed. Because he did not know how to negotiate properly with her and actually if he had done so, he would have got benefit from the good negotiation by getting the money that the woman has suggested and spent it in the project.

To conclude, as far as the conflict is inevitable, knowing how to negotiate properly is an advantage that only some people have. Principled negotiation is the best way that everybody can use and get benefit from the negotiation and conflict.