

Abstract of Intercultural Mediation

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Throughout times, intercultural mediation in China has become the preferred method for dispute resolution, besides preserving social peace in a country with huge extensions and diverse orography, and with a population of various ethnic origins. This article introduces the cultural diversity and mediation characteristic in China, describes the situation in the Argentine Republic, and finally proposes alternatives to implement intercultural mediation mechanism as part of the dispute resolution system in Argentina.

China has more than 5000 years of documented history without substantial breakups. Such civilization has been enriched by the contribution of populations of very diverse origins. Even though the Han ethnic group comprises 91.5% of the 1,350 million inhabitants of the present China, there are 55 more ethnics that have been contributing to the cultural variety and richness. Therefore, the 21st century China is multifaceted, in regards that different systems of values, psychologies, beliefs and traditions model and condition the behavior of its inhabitants. These ethnic minority groups have their distinctive language, recognizable natal territory, own customs and sense of self identity. All ethnics in China hold equity under the law. The State protects their rights and legitimate interests, and applies principles of equality, unity, mutual help and prosperity common to the management of relationship of relationships among the different ethnics. Chinese government aims to accomplish harmony and social stability, detect and solve conflicts at the stage of latency and prevent the outcome of rebellion in regions far away from large cities. Mediation has long been adopted as a way to solve civil disagreements and to influence court procedures. It shows as a valid alternative for solving disputes in a society fond of ceremony and caring about interpersonal relationships.

Mediation has been used in China for more than 2000 years. There was a strong bias against bringing lawsuits and a preference for mediation throughout the history of Imperial China. After establishment of People's Republic of China in 1949, the legal system and the mediation system developed together. The foundation of mediation in China today is based on both Confucian philosophy and Maoist thought. Confucian principles include the preference for resolving disputes privately, the duty to preserve natural social harmony, the value of "compromising" in resolving disputes, and the value of self-criticism. Mao used these Confucian values and mediation process to stabilize the government's control and to promote social harmony. On August 28th 2010, a new Mediation Regulation was promulgated to encourage parties involved in disputes to use mediation. The law suspends pending lawsuits to give parties a chance to resolve them through mediation and the mediated settlement agreements are enforceable as contracts in court.

There are two categories of mediation in modern China: Community Mediation as a part of the Alternative Dispute Resolution system; Court-Performed Mediation as a part of the Justice system. Community Mediation can also be called People's Mediation Committees which are set up in villages, townships, work units and in regional or professional organizations to handle disputes. Each committee is composed of individuals from the community who are

believed to be fair and impartial. Generally they are elected to a 3-year-term and paid a small stipend by the government for providing mediation services as well as education the public about legal issues. There is no cost to conflicting parties to use the service. The mediation process is flexible, and may use one mediator or a panel of mediators. Community Mediation proves to be a very successful method to resolve conflicts and is reckoned by the government as “the first line of defense to guarantee social stability”. Court Mediation is part of Civil Procedure of China’s court system. Judges assigned to the cases will conduct the mediation. There is additional cost to the parties (not free service) as part of litigation process. There is an evaluative element to the process, in that the Judge-Mediator may point out weakness, apply cultural or legal values to facilitate settlement, or may suggest settlement proposals and emphasize the economic or social benefit of the settlement. Although it is considered a voluntary process, some critics believe there is coercive element to the mediation. Once a settlement is reached, the court drafts a Mediation Statement which is to be signed by all parties and has the effect of court judgment. Given the vast territory populated by different ethnic groups, there also arises a variety of conflict sources. Chinese learned from their history and use intercultural mediation as a tool to preserve harmony in every population nuclei, without distinction of ethnicity, in order to promptly detect any event that might require control from the central power.

Similarly, the Argentine Republic is constituted by diverse human groups who have diverse precedence and culture, and thus diverse needs, beliefs, perceptions and philosophies. The population in Argentina is a real sampler of heterogeneity. The author argues that there is a need of public policy for social integration. Argentina needs to design a guidance or roadmap that allows harmony building between different groups. The intercultural mediator can serve as an external entity to control that both the conflicting parties participating in the communication employ a unified protocol to ensure every message sent is correctly interpreted by the receiver. A qualified intercultural mediator should accomplish five basic principles: flexibility, tolerance, hope, respect and inquisitiveness. Besides, intercultural mediator should have the knowledge in techniques of reality analysis, social intervention process planning and group working techniques. When setting up a mediation committee, the group has to have sexual diversity, diverse political and cultural background, knowledge of wide range of subjects (such as social and cultural anthropology, ethnology, history, pedagogy, religion, psychology and sociology, etc), diverse living experience and language resources.

In conclusion, given Argentine Republic’s various social groups of diverse origin and culture, intercultural mediation will be an efficient tool as complementary mechanism for conflict prevention and resolution.

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