

Cross Cultural Skills in International Negotiations: Technology as a Catalyst and Barrier in the Internet Age

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Introduction

In 1803, James Monroe and Robert Livingston began negotiations with the government of France on a deal that would literally change the face of the United States: The Louisiana Purchase. Assuming they were going to Paris to negotiate for the “Isle of Orleans” (now New Orleans) and West Florida, the U. S. negotiators were sent with instructions to expend as much as two million dollars to make the purchase. As is common in negotiations, they were presented with several surprises.

The first surprise was that West Florida was off the table. The second surprise was that Napoleon I’s chief negotiator, Charles Maurice de Talleyrand, offered an “all or nothing” deal for the Louisiana Territory. In what must be one of the all time great exhibitions of negotiator *chutzpah*, Monroe and Livingston negotiated a deal that settled the purchase price (\$15 million), payment terms, interest rate, and transfer of liability for outstanding claims, all in the space of less than a month. For good measure, they also negotiated a twelve-year tariff agreement. Then they got on a sailing ship and headed back to tell “the home office” what they had done.¹

Although this example of international/intercultural negotiation is more than 200 years old, there are a number of elements faced by Monroe and Livingston that have remained constant over the centuries, and which are affected by the development and application of technology:

- There were developments at the table unanticipated by the negotiators or the parties giving instructions to the negotiators.
- There were opportunities presented at the table that were not consistent with the limits set for the negotiators.
- There were multiple languages used in the negotiations and in drawing up the final agreement.
- There was a communication lag between the negotiators and their clients back in Washington.

¹ There are many good histories of the Louisiana Purchase, including Thomas Fleming’s [The Louisiana Purchase](#) (John Wiley and Sons, 2003), and The History Channel’s 2005 publication, [The Louisiana Purchase](#). For quick reference see Francis Coughlin’s article in the Negotiator Magazine <<http://www.negotiatormagazine.com/outstanding.shtml>>, or the Questia entry at <http://www.questia.com/library/encyclopedia/louisiana_purchase.jsp>.

- There were multiple influences and interested parties away from the table, spread across a wide geographical area, all of whom had to be taken into consideration and brought in to agree on the final deal.

It goes without saying that Monroe and Livingston would face a much different negotiating environment if they were working today. Information and communication technology (ICT) has changed the way people around the world communicate generally, and it has radically changed the environment in which international/intercultural negotiations take place.²

In the early 1960's, J. C. R. Licklider, an MIT professor and the first director of the Advanced Research Projects Agency (ARPA), Information Processing Techniques Office (IPTO), conceived of what he called the "Galactic Network."³ Today, Licklider's name for his idea is a bit reminiscent of Star Trek, but a series of articles by Licklider and work by scientists across the United States eventually led to the creation of the Internet. Today the idea of "the Internet in space" is being pursued by a number of researchers, so we may soon have Licklider's Galactic Network, after all.⁴

What matters to negotiators, however, are the concrete changes that ICT has wrought here on this planet. Negotiations are ultimately exercises in communication, and, generally speaking, ICT has changed the way we communicate (including the way we communicate across cultural boundaries) in some significant ways.

As a rule, it is fair to say that all of the intercultural barriers and problems associated with international/intercultural negotiations remain when technology becomes part of the negotiation environment. There are some direct intercultural

² Throughout this chapter I will use ICT to refer to a wide range of communication technologies including telephonic and mobile telephonic communication, as well as e-mail, text messaging, and other Internet based communication platforms.

³ David Clark and Vinton Cerf, et al., "A Brief History of the Internet," Reston, VA: The Internet Society, August 4th, 2000. (Available from <<http://www.isoc.org>>); Also, "MIT and the Galactic Network," Retrieved 7 July 2008 <<http://ecommerce.hostip.info/pages/741/Mit-Galactic-Network.html> >.

⁴ Glasner, Joanna, "Pushing the Internet Into Space," WIRED Magazine, 14 March 2006. Retrieved 7 July 2008 <www.wired.com/science/discoveries/news/2006/03/70377 >; Also, "Net Reaches Out to Final Frontier," BBC News Online, 13 April, 2007. Retrieved 7 July 2008 <<http://news.bbc.co.uk/2/hi/technology/6551807.stm> >.

effects of the use of technology (some enhancing intercultural communication and others impeding intercultural communication), but for the most part technology serves as a channel for communication, not as a substitute for the communication that must occur in order for negotiations to be successful. The technology tools discussed in this chapter should be seen as elements of the *process* of negotiation, not as elements of the *substance* of negotiation, and as such may amplify or diminish intercultural aspects of negotiation, but not eliminate them.⁵

The goal for this chapter, as given by the editors, is not to focus solely on culture and technology, but also to present a snapshot of some of the ICT platforms available to negotiators and to discuss possible uses of that technology.

How has ICT radically changed the way we communicate? The most obvious radical change is that communication is now near-instantaneous. Even fast clipper ships in the mid-1800's took two weeks or more to cross the Atlantic, so Monroe and Livingston could have expected, at the very best, for it to take more than a month to get a reply to any message. ICT makes it possible to talk in real time, to conference multiple parties into the conversation, and to share documents and images so that the discussion is not limited to oral summaries of proposals or related material. Further, ICT makes it possible to have the conversations with full audio and video, synchronously, or with text, audio, and/or video asynchronously.

ICT is being used around the world for a variety of dispute resolution and negotiation efforts that suggest how flexible and rapid communication has become since Monroe and Livingston's day.

Through its Ombudsman, ICANN (the Internet Corporation for Assigned Names and Numbers) uses e-mail to resolve disputes about assigned Internet addresses arising from all over the world.⁶ The U. S. National Mediation Board uses web video to conduct arbitration hearings and uses online asynchronous workspaces to manage ongoing labor-management negotiations in the airline and railroad industries.⁷ The

⁵ For an extended discussion of the impact of technology on culture, see Daniel Rainey and Alma Abdul-Hadi Jadallah, "The Culture in the Code," in the proceedings of the Fourth International Online Dispute Resolution Forum, Cairo, Egypt, 2006.

⁶ Retrieved 7 July 2008 < <http://www.icann.org> >

⁷ Retrieved 7 July 2008 < <http://www.nmb.gov> >

American Arbitration Association (AAA) has teamed with CyberSettle to use blind bidding “smart” software to manage arbitration cases around the world.⁸ The Camera Arbitrale Nazionale e Internazionale di Milano has created an online dispute resolution service for commercial disputes in Italy and the E.U.⁹ ICT4Peace has created a network of web-based platforms to further the cause of peace and stability in Sri Lanka and other nations in strife.¹⁰ In all of these cases, ICT facilitates communication between and among parties with diverse cultural, national, and linguistic backgrounds.

What Tools Have Been Developed For Negotiation?

Until comparatively recently the technology used by international negotiators changed little from the technology used by Monroe and Livingston: oral briefings, written instructions, handwritten and/or edited agreement drafts, and written communication with the clients very much out of sync with the actual pace of negotiations. The advent of basic telecommunications technology added telegraph, telex, telephone, and fax to the technology arsenal, but still the pace of negotiations routinely outstripped the ability of the negotiators to communicate in a reasonable time frame with clients or interested parties in another geographic locations. Developments in global communications, particularly in digital media, have recently produced a host of new tools¹¹ to tackle this problem.

For purposes of this discussion, consider information and communication technology (ICT) grouped into five categories: Basic Communication Technology, Synchronous Video and Audio, Virtual Table Platforms, Function-Related Applications, and “Smart” Software.

⁸ Retrieved 7 July 2008 < <http://www.adr.org> >

⁹ Retrieved 7 July 2008 < <http://www.camera-arbitrale.com> >

¹⁰ Retrieved 7 July 2008 < <http://www.ict4peace.org> >

¹¹ There are literally hundreds, perhaps thousands, of ICT applications and platforms available for use in negotiation. In this chapter I will mention a number of them, but the nature of technology development suggests that by the time this goes to press there will be more than there are as this is written, and that some of the ones available as this is written will not be available upon publication. The applications and platforms cited here are purely for the purpose of reference and example: mention in this chapter does not guarantee that the specific applications and platforms will be available, nor does mention here suggest endorsement or recommendation

Everyone currently involved in negotiations is familiar with the options offered by basic communication technology, and it is highly unlikely that any successful negotiator today can avoid using mobile phones, e-mail, scanned documents, and fax machines. Monroe and Livingston had to rely on the prescience of the Congress when they were instructed to negotiate with Talleyrand. If the Congress had foreseen every opportunity and every twist in the negotiations, and if their negotiators had adequately understood and accepted their instructions, there would have been no surprises. Faced with changes, Monroe and Livingston were left to react in what they thought was a reasonable manner, hoping that they could sell their reasonable actions to the President and the Congress well after the fact.

In a modern negotiating environment it is possible to wake the client in the middle of her or his night's sleep with a mobile phone call, or to send an e-mail with the expectation of a rapid response, or to send a text message with the expectation of an immediate response. Fax and e-mail allow for transmission of documents and make multiple rounds of editing possible in very little time. For contemporary negotiators working at a table far removed from the client, crying, "help, give me some guidance," is now possible, and even easy. Basic communication technology has opened the process of negotiation and made it possible for far-flung parties to have a "presence" at the table in a way that was not possible when there was a pronounced time lag in communications.

Still, the use of basic communication technology does not change the fundamental nature of the negotiation process. Input is obtained more quickly, and it is possible to use phone teleconferencing to engage in synchronous negotiations with parties in remote geographic locations, but the give-and-take of the process remains essentially the same as in Monroe and Livingston's time. More advanced communication technology and Internet-based applications have the ability to subtly change the nature of the negotiations process.

Perhaps the first step beyond basic communication technology to affect the negotiating environment was the development of synchronous video and audio meeting technology. At its inception, video teleconferencing technology was expensive, tied to fixed locations, and of dubious quality. Current web video teleconferencing technology is inexpensive, not tied to a fixed location, and has increasingly high fidelity. In addition, much of the currently available video teleconferencing technology incorporates document sharing and single text editing capabilities.

The accessibility and quality of web video systems notwithstanding, the best systems in terms of picture quality are those using IP and ISDN (Internet Protocol and Integrated System Digital Network) technology. These systems are not cheap to install, they demand equal installations on both the send and receive ends, and they are tied to fixed locations, but the picture and sound quality rivals digital cable television. Some even are arranged to exactly duplicate the size and location of meeting rooms at distant locations so that all those involved in the meeting from multiple sites actually appear to be in the same room, at the same table.

Web-based video and audio systems offer a cheaper and much more flexible online environment. Systems like WebEx¹¹ are very inexpensive, and they make up for a loss of picture quality with other significant advantages. First, they are accessible from any Internet-capable computer anywhere in the world. Second, they generally offer a choice of VOIP (Voice Over Internet Protocol), commercial teleconference, or telephone-to-telephone audio. Third, they generally incorporate easy-to-use document sharing and editing capabilities as part of their basic service. This author has, on many occasions, been able to hold meetings online with participants on different continents, using a “laser pointer” or highlighter to discuss documents, and single text editing to allow all participants to edit final draft documents.

Finally, there are a number of free services, such as Skype¹², that offer good quality audio and video conferencing without the document sharing and single text editing features. Most laptops now come with built in wireless connections and built in cameras and microphones that automatically operate with Skype and other services, making a high level of computer skills for the negotiator unnecessary.

If Monroe and Livingston were negotiating in Paris in 2008, they would have some interesting choices. When Talleyrand completely changed the terms of the negotiation with no warning, they would have been able to promise a response based on input from the principals by the following morning.

In Monroe’s Paris hotel room (equipped, naturally, with wireless Internet access), or in an Internet café where they could work while having an espresso, Monroe and

¹¹ WebEx is one of many web-based video conferencing systems available commercially. < <http://www.webex.com> >.

¹² Skype is a free service, owned by eBay, that provides high quality VOIP and video from any Internet-capable computer. < <http://www.skype.com> > .

Livingston could log on to an easily accessible web-based video conferencing application with VOIP, through which they could have a real-time meeting with President Jefferson. In a secure online environment they could present the new negotiation terms, share the opening document from the French, and work out a new negotiation strategy with new instructions in time for the next morning's meeting. If they were particularly well equipped with technology, they would be able to receive instructions even faster by using a mobile device, like the iPhone, to conduct the conference and share documents with President Jefferson while caucusing in the hallway as Talleyrand waited inside the meeting room.

The Internet has not yet been able to eliminate the influence of time zones, but it has made it possible to negotiate in real time with participants spread across vast geographical distances, with costs that range from free to nominal, sometimes with no travel involved at all. Still, this type of technology does not necessarily change the essential nature of negotiations: it just makes it possible to share information faster and bring more people to the table.

The term Virtual Table refers to programs that attempt to offer all of the functions that are basic to the negotiation process in an online, generally asynchronous, environment. Telephone, text messaging, and video and audio conferencing technology are based generally on synchronous communication, with the parties engaged simultaneously. Virtual Table Platforms, like The Mediation Room¹³ or Juripax,¹⁴ offer the possibility of conducting negotiations asynchronously, using text-based communication, without ever meeting face-to-face or synchronously.¹⁵ Because these platforms are designed around a standard negotiating process, they offer the option of a soup-to-nuts approach online. It is possible to convene the session, establish the parties who will have access to the system, set rights and security parameters,

¹³ The Mediation Room servers are based in the UK. The platform is in use around the world in a variety of contexts and offers the basic ability to convene, set agendas, conduct discussions, offer options, and develop agreements in a secure asynchronous environment. < <http://www.themediationroom.com> >.

¹⁴ Juripax servers are based in the Netherlands and Germany and offer basically the same services as The Mediation Room. < <http://www.juripax.com> >.

¹⁵ Many participants use the virtual table platforms to conduct part, but not all, of the negotiation process. For example, it is possible to use the asynchronous platform to set agendas and/or share information before a face-to-face meeting, or to use the document sharing capabilities to hammer out final agreements after face-to-face sessions.

develop positions, discuss and adjust positions, develop draft agreements, and finalize agreements, using asynchronous text-based communication throughout.

Even though virtual table platforms have the capability to replace face-to-face interaction in negotiations, they rarely do so. More often, virtual table platforms are used to accomplish tasks associated with various phases of negotiation. Another way to augment face-to-face negotiations with technology is to use any of the myriad Function Related Applications available free or for very low cost on the Web. Function Related Applications offer the ability to perform one or more essential functions of the negotiation process, such as scheduling, generating agendas, information sharing, brainstorming, or document preparation. Applications like GoogleDocs¹⁶, MindMeister¹⁷, or Central Desktop¹⁸ allow negotiators to share information easily and engage in discussions from any Internet-capable computer anywhere in the world, either as a substitute for face-to-face negotiations or as an adjunct to face-to-face discussions.

The University of Massachusetts at Amherst, in conjunction with The National Mediation Board, has been awarded two National Science Foundation research grants to investigate the impact of technology on dispute resolution and negotiation. Part of the research process necessitated the development of a function-related application called STORM, which is being used to study ways in which online technology can actually change the negotiation process. For example, it is possible to use the Internet to conduct anonymous brainstorming and discuss option generation. Having anonymous input in multi-party negotiations obviously changes the dynamic of the discussion, and allows for a type of information sharing discussion that is not possible in face-to-face discussions. One of the things that the research team learned early in the research process was that it is not possible to simply recreate a face-to-face negotiation environment online. Putting the process online actually changes the process by adding

¹⁶ GoogleDocs is a free application available through Google that allows posting of documents for review or editing by invited participants. < <http://docs.google.com> >.

¹⁷ MindMeister is a free mind-mapping application that allows invited participants to brainstorm, categorize information, and develop options asynchronously online. < <http://www.mindmeister.com> >.

¹⁸ Central Desktop is an inexpensive group workspace with full encryption and password protection that allows invited participants to share documents, engage in discussions and jointly edit documents online. < <http://www.centraldesktop.com> >.

elements that did not exist, like the ability to get anonymous input, and by adding dimensions to elements of the face-to-face process.

Even more radical changes to the negotiating environment are created by “Smart” Software, like SmartSettle¹⁹ or CyberSettle.²⁰ The essence of smart software is that the negotiation process can be broken into identifiable units, and behavior among participants can, to some degree, be predicted. Using algorithms incorporated into a blind bidding process, smart software can guide participants to a negotiated settlement without any of the time-consuming steps involved in face-to-face negotiation.

What is the Impact of Technology as a Catalyst for and a Barrier to International Negotiations?

Negotiators Monroe and Livingston would have a wide range of options available if they were negotiating today. In addition to the ability to conduct the rapid conferencing that has already been discussed, they could craft a number of strategies to change the negotiating dynamic.

To prepare for the negotiation, they could have set up an online workspace that would let them get input from the President and Congress. The worksite could have stayed up for the entire negotiation, updated constantly to make all the information available to the team in Paris available to the clients, no matter where they were or when they wanted to check on progress. They could have used document sharing and single text editing to present the draft agreement for comment, and to prepare the final offer. They could have used e-signatures to ratify the contract and enact the agreement before leaving the bargaining room.

It is easy to fall into the trap of thinking of technology as a catalyst and as a positive influence on the negotiation process, but there are some cautionary notes to

¹⁹ SmartSettle is an algorithm-driven application that uses blind bidding and other techniques to encourage settlement, and which claims to result in better outcomes than either party could achieve in traditional face-to-face negotiations. < <http://www.smartsettle.com> >.

²⁰ CyberSettle is a very successful platform that has operated in the insurance industry for several years. It is currently the platform being used by the American Arbitration Association (AAA) to augment online arbitration and case handling for cases in a wide variety of venues. CyberSettle uses a patented blind bidding process to encourage settlement with no human intervention. < <http://www.cybersettle.com> >.

sound. For example, technology could have made the negotiation process easier for Monroe and Livingston, but it's just as likely that an immediate conference with the interested parties in the U.S. would have resulted in this kind of instruction: "Are you nuts? Fifteen million? That's more than seven times what we told you to spend, and anyway who wants all that empty space out west? Get on a boat and come home today!"

There are, however, some advantages to using technology in a broad range of dispute resolution efforts, including contract negotiations.

Technology as a Catalyst

Some of the catalytic effects of ICT have already been mentioned, but for review here are a few of the most obvious:

- Technology provides for instant communication and sharing of information. Whether by voice, text, or video, negotiators can get up-to-the-minute information and instructions, or bring remote parties into the discussion with no time lag.
- With the use of technology, geographic barriers are minimized. In a negotiation session in the U.S., one party was reviewing documents on a hand-held mobile device in a parking lot in Florida while using his cell phone to conference and discuss the documents with parties in San Francisco and Chicago. Given the parties' willingness to be up late or early, depending on time zones, participants in negotiations can be anywhere in the world.
- With the use of technology, information processing is faster. This is not the same as making it easy and quick to talk to remote parties. Keeping electronic notes for all to see via a computer projector, ideas can be recorded, edited, approved, and sent to writing committees or counsel in text form, with little work other than the formatting needed to turn the notes into agreements. In a round of contract negotiations over several months in which a text program was used to compile notes and agreements, the parties indicated that they had saved approximately one work-day per week over the course of the negotiations due solely to the use of e-notes.
- One of the most discussed aspects of online technology, the loss of non-verbal cues, turns out not to always be a bad thing. Particularly in the opening stages of proposal-based negotiations it is common for parties to "posture" and engage in confrontational behavior to establish boundaries. This is not always negative, but it can set a combative tone for the negotiations. Using either synchronous or

asynchronous technology seems, by experience and research, to produce less confrontational environments.²¹

Technology as a Barrier

Obviously, not all of the influences of technology are positive. As ICT becomes more and more an integral part of international negotiations, there are a number of things about which negotiators should be aware:

- With technology, control is an illusion. When negotiations are held face-to-face, and when basic ICT, like mobile phones, are involved, it is possible, within limits, to keep information at the table and in the control of relatively few directly involved individuals. Three examples will demonstrate how technology changes the negotiating environment and how it makes control of the negotiating environment more tentative. At a labor-management negotiation session the parties broke for lunch almost, but not quite, at a tentative agreement on a contract clause. The parties had agreed to keep all discussion private until agreements were announced, so the mediator was surprised when he was informed, before he had time to order his lunch, that the not-yet-agreed-to language had already been posted on one of the parties' web sites. In another case, parties were asked to use an online asynchronous brainstorm tool to generate options related to a certain issue. The parties, after generating over 200 options, were then asked to use an online polling tool to rate and rank the options. At a subsequent face-to-face session, one of the parties at the table revealed that she had used a telephone conference to involve more than a dozen other people, not directly involved in the issue, to guide her judgments regarding which options were acceptable or desirable. At a recent meeting of the Association of Labor Relations Agencies (ALRA), an FMCS mediator reported that when he first entered the room in a labor negotiation there were five members of one of the negotiating teams, all of whom had identical laptop computers, all of which were streaming live video and audio from the bargaining table. While it is possible for parties to share information and bring in outside influences using oral reports and paper copies, technology makes the process much easier.
- Security concerns take on new importance with the use of technology. Keeping tentative agreements and information related to the negotiations secure from theft and out of the hands of potential competitors is a primary consideration. Introducing laptop computers, online communication tools, and web sites offers a wide range of ways for information to be compromised. Again, information can be

²¹ See Jaime Tan, et al., "Negotiating Online," The University of Melbourne, 2005.

compromised orally or by the distribution of paper copies, but security in an ICT environment takes on much more significance. From misplacing jump drives or computers, to hackers invading sites, electronic data is inherently somewhat insecure. Ironically, the ICT that most negotiators use and are comfortable with (e-mail and mobile phones) are probably the *least* inherently secure of all technologies. The use of hosted software with SSL encryption and password protection is much safer, and in the end just as flexible as basic ICT.

- When negotiators are sitting across a real table, in a room together, there may be some questions of identity or authority, but there is a real person with whom one interacts. Online, identity concerns are legitimate concerns. How do I know you are who you say you are? How do I know who is being allowed to see the information I'm sending or posting? Even the use of passwords does not remove this concern. One of the participants on a very sensitive online discussion site thought it was perfectly safe to save his password and user name on a yellow sticky note on his computer monitor. Anyone passing by could have written down the information and posed as him online.
- Questions of venue or authority exist in any international negotiation, but can be exacerbated by the use of technology. eBay is the classic example of this problem: a buyer in Calcutta and a seller in San Diego may not meet, in fact may not be able to meet, and yet they engage in a transaction that can cause a dispute. Which venue rules – Calcutta or San Diego? eBay solved the problem by creating a user agreement that makes eBay's dispute resolution program the controlling venue, no matter where the parties are physically located, but this is a solution that is not available to most international negotiators. InternetBar.org (IBO)²² is one of the leading bodies attempting to address the issues of venue, trust, and enforceability in cyberlaw.
- Using technology, it is possible to suffer from the "too many cooks" syndrome. It is easy to bring participants into the discussions, and to make the principals an active part of the negotiations, but that brings along the possibility that the judgment of the negotiator and the natural ebb and flow of negotiations can be disrupted and that agreements can be harder to reach. Just remember the possibility that Monroe and Livingston could have been told to take a boat home instead of pursuing an interesting possibility.

²² Retrieved 8 July 2008 < <http://www.ibo.org> >

All of the barriers to the use of technology can be mitigated or overcome, but they serve to demonstrate that injecting technology into negotiations does change the nature of the process, eliminating some issues and creating others unique to the ICT environment.

Technology as an Intercultural Element in Negotiations

All of the positive and negative aspects of ICT assisted negotiations are at play in intercultural situations. In fact, it may be the case that, depending on one's definition of culture, any negotiation is an intercultural negotiation, with some merely presenting more extreme cultural differences than others.

It would be a mistake to assume that all interactions are fraught with cultural problems, just as it would be a mistake to assume that cultural differences never cause problems. Kevin Avruch has labeled these assumptions Type I and Type II errors.²³ So, how does ICT impact cultural differences in negotiation?

On the most basic level, Rainey and Jadallah argue that ICT applications that are created by programmers and developers from one culture reflect their cultural biases in the software they create.²⁴ For most applications developed in Europe and North America, this means that a tendency toward linear discussions, naming the issue or problem first, creating a level playing field, giving equal weight to input from all parties, and other typical aspects of the "North American Model" are built into the applications. Obviously, not every culture accepts or values this model, and it is incumbent on the negotiator to make adjustments that consider cultural sensitivities.

On the positive side, in cultures where consensus is necessary, and where negotiations are a "social" enterprise, online technology can actually enhance the comfort of the participants. Instead of putting a participant on the spot and forcing discussion, negotiators from cultures where group consensus is important can take online asynchronous information, distill it, discuss it among their social contacts, and then respond with more comfort. Language differences can be addressed by the ability for participants to take more time understanding information, or by the use of translators who can help post in multiple languages.

²³ Kevin Avruch, "Type I and Type II Errors in Culturally Sensitive Conflict Resolution Practice," Conflict Resolution Quarterly, vol. 20, no. 3, Spring 2003, pp. 351-371.

²⁴ Daniel Rainey and Alma Abdul-Hadi Jadallah, "The Culture in the Code."

ICT Assisted Negotiation

Using online video conferencing is a synchronous activity that should be familiar to most, and it is the use of technology that changes the negotiation process the least. The NMB uses web video conferencing for arbitration hearings and discussion sessions with less than an hour's training for the participants and with no changes at all to the processes they use face-to-face.

The following case review reflects the actual use of asynchronous ICT for a contract negotiation process where the parties who meet at the table are scattered across multiple geographic locations and time zones. The case is a merging of several cases in which ICT was used for part of the negotiation process, but all of the uses cited in the example are real and have been used many times. In this example there was a mediator serving as a third party to guide the negotiations, but any of the actions described could be undertaken by one or more of the negotiating team members.

Before the first face-to-face meeting, the mediator created an online workspace for the negotiating team members, allowing them to establish their own passwords and user names. The inexpensive software used to create the workspace is fully SSL encrypted and password protected, and is easy enough to learn to use in an hour or less. Once the workspace was created, the parties had a place to share documents and engage in asynchronous online discussions. During the course of the subsequent negotiation, each member of the negotiating teams was informed by e-mail whenever there was an addition to the workspace or a change in any document in the workspace.

Using an online calendar program that is built into the workspace application, the negotiating teams were able to establish a schedule of meetings over a period of several months. The parties were able to access the calendar program, put in their meeting parameters, and establish a list of common dates without ever having to arrange even a telephone call.

Once the meeting dates were set, the mediator used a discussion forum that is built into the workspace to get input about what issues were on the table for discussion, and in what order they should be addressed. The result, done asynchronously whenever any member of one of the teams had time to go online, was an agenda for the first meeting and a list of issues to be discussed at subsequent meetings.

Using the agenda for the first face-to-face meeting as a guide, the mediator established what information was needed for the first meeting and what documents needed to be reviewed in order to start the discussions. Those documents were posted on the workspace, in a read-only status, for all to review before coming to the face-to-face meeting.

All of the preparation for the first face-to-face meeting was done online, asynchronously, without the need for conference calls or side meetings. When the negotiating teams arrived for the first meeting, almost all of the preliminary work had been done, so they were free to start immediately discussing the opening issues.

During the face-to-face meeting the mediator took notes for the group on a computer with a projection screen so that all members of the teams could see the notes and verify their accuracy. Over the course of three days the group established bullet points for agreements on two issues and identified a third issue for which they wanted to brainstorm options. At the end of the first meeting, the mediator immediately posted the notes to the workspace and one member of each team was assigned the task of using the document-editing feature of the workspace to turn the bullet points into an agreement for signing at the next face-to-face meeting.

Between face-to-face sessions the mediator posted a triggering question based on the issue the groups wanted to brainstorm, and opened a discussion forum where the parties could, on their own time, post ideas and read ideas posted by others. Just before the next meeting, the mediator took the full list of ideas generated by the brainstorm and put them into an online polling program that allowed the parties to engage in an anonymous multi-vote process to see which ideas rose to the top as workable. This information and the edited agreements from the first session were presented at the beginning of the second face-to-face meeting.

The groups continued to use the online workspace and other online applications in this way throughout the course of the negotiations, until they had a final deal. They were able to use mobile phones and teleconferences between sessions in addition to the online workspace, but they never had to send their work via e-mail, and they were able to do much of the between session work asynchronously without having to arrange synchronous meetings in person or by phone.

Conclusion

The 21st Century brings with it some exciting possibilities for human communication, enhanced by an ever-expanding array of ICT that makes communication faster and easier around the world, and perhaps even evolving into the Galactic Network that was envisioned almost half a century ago.

There does exist what some have labeled the “digital divide,” but the degree to which even “developing” countries have access to mobile phone and Internet technology is somewhat astounding. According to InternetWorldStats.com, at the end of 2007 there were over 1.3 Billion users of the Internet. Europe, North America, and Australia are all at or over the 50% penetration mark for Internet users, and some sources suggest that China will have the largest number of Internet users within the next 3-5 years. Developing nations have lower penetration rates, but both Africa and the Middle East showed over a 1000% increase in penetration from 2000-2008, and Latin America showed over a 650% increase in penetration in the same time period.²⁵ With the rapid growth of Internet-capable mobile phone technology in the developing world, it will increasingly be the case that ICT tools can be applied, at some level, to negotiations anywhere.

Ultimately, ICT simply offers communication channels that can be exploited poorly or well by parties engaged in negotiations and conflict resolution efforts of all kinds. Many researchers think that using ICT does change us. Decades ago, Marshall McLuhan declared that “the medium is the message²⁶,” and a number of researchers are now suggesting that using the Internet as most of us now do actually changes the way we think and process information.²⁷ Even so, people are still people. It is up to the negotiator to survey the available ICT tools and to determine how best to use ICT in negotiations. After all, ICT is a channel for communication: the parties, the ideas, and the cultures are much the same as they were for Monroe, Livingston, and Talleyrand.

²⁵ Internet World Stats, retrieve 8 July 2008 < <http://www.internetworldstats.com/stats.htm> >.

²⁶ Marshall McLuhan and Quentin Fiore, The Medium is the Message, Bantam Books, 1967.

²⁷ Nicholas Carr, “Is Google Making Us Stupid?,” The Atlantic.com. Retrieved 8 July 2008 < <http://www.theatlantic.com/doc/200807/google> >.