Restorative Justice Approaches in Intercultural Conflict Settings – Findings of a Survey and Implications for Practice

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This article is written in the framework of a European research project called “ALTERNATIVE: Developing alternative understandings of security and justice through restorative justice approaches in intercultural settings within democratic societies”. After explaining the role culture may play in conflict and conflict resolution, the part of the research presented in this article examines different understandings of the intercultural aspect related to conflicts as well as its implications for restorative justice practice. Presenting results of a survey mapping existing restorative justice practices in intercultural conflict settings in Europe, the paper draws a picture on European realities in the field.

Key words: restorative justice, intercultural conflict settings, practice.

Introduction

Within the well-developed field of restorative justice (RJ) in Europe, some areas, such as the cultural aspect of restorative practices have not yet been sufficiently explored. This article is written within the framework of a four year European research project, entitled “ALTERNATIVE – Developing alternative

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understandings of security and justice through restorative justice approaches in intercultural settings within democratic societies, funded by the European Commission’s 7th Framework Programme. One of the main questions of the ALTERNATIVE project is whether RJ has the potential, both theoretically and practically, to address conflicts in intercultural settings. The project focuses both on the phenomenon of conflict and RJ approaches to conflict in intercultural settings, especially where differences in ethnicity, religion, language, nationality, traditions and life-styles are present. The project in four action research sites addresses various levels of conflicts ranging from the micro-level (conflicts at an interpersonal level), meso-level (conflicts at a local community level), and macro-level (conflicts involving the whole society or occurring between larger groups). Combining theoretical research on justice and security with empirical outcomes from these local action researches, the project aims to open up the scope of RJ beyond the formal criminal justice sphere and to include a wider set of practices within restorative justice approaches than its most prominent practice models used. Within this large-scale project, a small-scale survey study was done to map existing practices of mediation services in Europe in using restorative justice in intercultural settings. After presenting the role culture may play in conflict situations and its implications for restorative justice practices, the paper presents the most important outcomes of this survey.

**How culture plays a role in conflict situations**

The need for reflection on the relation of culture and restorative conflict resolution is not new. In her article on mediation and multiculturalism, LeBaron (1998: 1) reveals that there is a lack of cultural awareness in theory and practice development of mediation in North America. According to her, when a conflict is interrelated with culture, every dimension of analysis and intervention is affected, such as what constitutes a conflict, the identity of the parties, the appropriate approach for the conflict and for the process of intervention and resolution. She refutes the monolithic understanding of culture, highlighting that each individual has multiple identities. As she and Zumeta formulate in another article: “All of us have multicultural identities in the sense

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1 More information on the project ALTERNATIVE is available at: www.alternativeproject.eu.
that we belong to various groups connected by generation, socioeconomic class, race, sexual orientation, ability and disability, political and religious affiliation, language, gender, and discipline or work role” (LeBaron, Zumeta, 2003: 464). According to LeBaron (1998), a culturally appropriate process design for conflict resolution invites these multiple dimensions of meaning into the forum and can “address significant power imbalances and traumatic histories that contributed to a focus on particular aspects of cultural identity” (LeBaron, 1998: 5). Frameworks of cultural differences in communication and conflict style such as individualist/collectivist cultures (LeBaron, 1998; Wright 2000; Hammer 2005), traditional/modern societies (LeBaron 1998), high context and low context cultural perspectives (LeBaron 1998; Hammer 2005) or emotionally expressive and restraint conflict styles (Hammer, 2005) are useful tools to frame implications of cultural differences in general to the differences in the understandings of conflicts, communication and conflict resolution methods. While these frameworks can help to assess the possible differences between conflicting parties and design RJ processes, they do not guide the actual conflict resolution practice in the individual case, taking into consideration the existing multiple identities of the parties as well as the fact that intra-group differences are also present (LeBaron, 1998). Therefore, all types of conflict resolution processes need to be designed according to the different cultures and the different persons involved. As LeBaron and Crocker (2000: 58) state: “In this case, one size definitely does not fit all.”

Within the framework of the ALTERNATIVE project, restorative justice approaches are understood as any method which offers a facilitated dialogue between conflicting parties (within and beyond criminal justice) based on restorative values and principles, such as non-domination, voluntariness, respect, empowerment and restoration. Although these values seem to be universal and humanistic, Brigg (2003) argues that mediation – the most prominent practice model of RJ – as a conflict resolution method is based on a Western understanding of concepts of power, conflict and selfhood, operating in favour of those who accept or share these understandings, therefore not responding ethically to cultural differences. He does not claim that the use of mediation is inadequate in intercultural settings, but suggests that awareness of this power operation as well as further research and analysis of practice are important to ethically value cultural difference in mediation (Brigg, 2003: 23). Concerning cultural appropriateness of dialogue in restorative processes, suggestions from Umbreit and Armour are in line with LeBaron
To repair or restore relationships, personal or communal, damaged by criminal or delinquent acts is a challenging goal in any circumstance. When participants – including victims, offenders, family members, support people, and program staff – are of differing cultures, typical patterns of communicating and expressing values can lead to confusion if not complete disruption of the process. In order to arrive at a just and healing response to the crime by those most directly affected by it, the views of all involved parties need to be considered. However, the likelihood of repair and restoration of relationships is increased by the extent to which facilitators take the time to know and understand the differing communication styles and worldviews of the participating individuals” (Umbreit, Armour, 2010: 274).

**RJ and intercultural conflict settings**

Pali (2014) analysed the rather scarce literature on cultural issues related to RJ and identified the most important topics present in the RJ literature as (1) the inspiring roots of RJ in different cultural and religious traditions, (2) the application of restorative justice in cases of ‘hate crime’, interracial violence and conflicts, (3) the application of RJ to cases involving immigrants and refugees and, finally, (4) the cultural responsiveness of restorative justice. This paper concentrates mostly on the last topic. After giving an explanation of the term intercultural setting, it brings together recommendations from the literature on application of restorative practices within intercultural settings.

The ALTERNATIVE project consciously and deliberately decided to conceptualise its scope as the application of restorative justice approaches in conflicts in *intercultural settings* rather than using the formulation ‘intercultural conflicts’. According to Foss et al. (2012: 24) “‘Intercultural settings’ is the broader concept – it includes conflicts around issues other than those pertaining to ‘culture’, and does not presuppose that difference in ‘culture’ is a primary problem in itself.” They state that “ideas about ‘culture’ are often mobilised during the escalation of a conflict between people from different backgrounds and perceived as a representative of ‘cultural differences’, whereas the root of the conflicts may not have anything to do with differences in culture in itself” (Foss et al., 2012: 24). Although people in conflict may frame their conflict as intercultural, in reality the conflict may have very different roots, like differences in gender, class, generation, economic situation, values etc.
Restorative justice approaches are usually needed when the conflict escalates to a level at which parties are unable to resolve their own conflict with dialogue anymore. As Foss et al. (2012: 34-35) explain: “A further escalation of conflict normally implies that the dialogue between the parties ends at a certain level, hence the need of a neutral third party facilitator/mediator. Further up the ‘conflict escalator’, polarisation and enemy images come into play, legitimising violence and destruction of ‘the other’. Here ‘culture’, religion, ethnicity and other identity markers are mobilised as legitimising means in physical, psychical, cultural or structural violence. People mobilised into a polarised conflict on a higher conflict level may be unaware of the former ‘root-conflict’, hence adopting the enemy images and concerns of the conflicting groups”. In these cases a restorative dialogue might help to reveal and resolve the root conflict of the parties. Going through a restorative process might enable parties to realise that their root conflict is independent from the perceived cultural differences.

Some practical implications of using RJ approaches in intercultural conflict settings

When offering RJ approaches in intercultural conflict settings, one question is whether any special method or approach is needed or a general restorative approach is convenient. Albrecht (2008) presents research conducted in Norway and Finland by interviewing mediators about their experiences mediating cases involving immigrant or refugee parties. In general, mediators agreed that mediation is an effective means of conflict resolution in intercultural cases. In line with Foss et al. (2012) this research found that interpretations of concepts such as justice, guilt, shame, reconciliation and forgiveness, as well as the grade of significance of these, does differ according to different cultural backgrounds of disputants. Albrecht argues that restorative justice might be an appropriate tool for conflict resolution for immigrants or refugees in contrast with legal procedures for more reasons. First, in some cases it is closer to the traditional conflict resolution methods of some cultures when compared to the traditional legal process. Second, mediation is more understandable and flexible than legal conflict resolution possibilities. Third, it aims to balance differences in power.
Concerning cases when cultural difference itself appeared to be a cause of conflict, Albrecht (2008: 73) mentions cases when the participants had motivation to resolve their specific conflict, in spite of ongoing or historical violent conflicts between their nations or countries of origin (e.g. between Serbs and Albanians, or between Kurds and Iraqis). It appears that individual motivation of the parties to resolve the conflict had an important role in successfully mediated cases.

As we have presented above, LeBaron (1998) also supports the idea of the need for a specific approach. Writing about how cultural differences influence the practice of mediation, she points out that mediation practiced without attention to the cultural values of the parties will unconsciously reflect the values of the system from which it is conceived. She argues that parties’ values are more than just interests, they are complex worldviews. Furthermore, she suggests that the exploration of these values should be a legitimate part of the mediation process as in this way “they become part of the discourse out of which a solution comes rather than an invisible part of the fabric subject to delegitimation by those who have the most resources or those who can fit their narrative best into a culturally-bounded mediation process” (LeBaron 1998: 11). She advocates for effective multicultural mediation practice, which consists of flexible models and also practitioners who are responsive, creative, innovative, and who have a deep awareness of culture (both of the self and of others). Brigg (2003: 20) suggests some divergences from standard facilitative mediation to fit better intercultural contexts, such as eliminating technical and analytical language, reflecting on the importance of poetic, affective, metaphorical and non-linear understandings and stories, integration of emotional and spiritual spheres in the mediation, inclusion of “external” political and social contexts into the mediation process, omitting the expectation that parties will act during the whole process consistently and disputes have to be finalised, and transcend the traditional neutrality principle.

There are also some implications for the third party – mediator or facilitator – when dealing with conflicts within intercultural settings. First, mediators/facilitators have to be aware of their own cultural lenses through which they look, as well as they need to develop a special awareness to the needs of different cultural identities they deal with (LeBaron, Zumeta 2003: 465-466). It implies the need for appropriate training, preferably having culture as an integral topic rather than a stand-alone module. Reflection on cultural aspects at mediators’ internal dialogue with colleagues is equally necessary.
Many scholars argue (e.g. Gunning 1995; Izumi 2010: 136; Mason, Kassam 2011) that the model of co-mediation (when two mediators work together as a team during the restorative process) is also helpful to avoid biases, especially in intercultural conflict settings. According to Gunning (1995: 89) “the diverse mediation team by having mediators who have shared some personal experiences increase the likelihood that the mediators will possess a broader range of both negative and, more importantly, positive interpretive frameworks about the identity groups involved from which to choose in understanding the parties’ narratives”. The practice of race-matching co-mediation, when mediators mirror the cultural background of the parties involved, is, however, critisised based on empirical findings about its effectiveness, on reference to existing biases within groups and for implying reductionist assumptions about individuals (Izumi, 2010: 137-139).

The above is not independent from one of the most important characterisics of a mediator or facilitator, namely being ‘impartial’ and ‘neutral’. Neutrality means that the mediator does not give advice, does not take any decision, and does not judge the parties or the case itself. Impartiality means that the mediator has to be objective, unbiased and cannot have a stake in the conflict itself. Practices where the mediator has a hierarchical or other power-based relationship with any of the disputants in a conflict are criticised as not being impartial. Being neutral does not exclude that the mediator seeks to balance between the parties in the case power or communication imbalances appear between them. This is the reason why the concept of impartiality/neutrality is challenged and many suggest to omit it (see for example Astor, 2007 or Bagshaw, 2001: 21). One suggestion is to use the approach of multi(directed)-partiality (Boszormenyi-Nagy, Krasner, 1986) or equidistance instead. In the field of conflict resolution, multi-partiality differs from impartiality in that the mediator ‘favours all’ instead of ‘favouring none’ by tending to diverse needs, so that all stories may be told and trust may be built first between the parties and the mediator. This implies Cobb and Rifkin (1991) concluded their analysis on third-party neutrality of dispute resolution cases stating that multi-partiality or equidistance might be a more appropriate standard for third parties than neutrality.

Another possible approach offered by Mason and Kassam (2011) is the culturally balanced co-mediation. In this model – based on experiences with religion motivated political conflicts – two mediators, both close to one of the conflicting parties co-mediate. “The cultural proximity of the mediators to the
parties allows for deeper understanding between the parties and the mediators” (Mason, Kassam 2011: 69). They argue that it is almost impossible for a mediator to be equally close or equally impartial to all conflict sides, therefore the culturally balanced co-mediation creates this balance on the level of the mediator teams, while allowing for greater acceptability by the parties based on cultural proximity.

Even if the mediator was aware of the above described multiple layers of influence of culture, the question of explicitly addressing the topic of cultural difference during the restorative dialogue remains. While LeBaron (1998) argues for including dialogue on possible differences of values in the restorative justice processes, Albrecht (2008: 75) mentions some arguments against it: “(...) interviewees at the mediation offices agreed that it would be wrong to make cultural differences a matter of discussion since all people are supposed to be equal in the mediation, regardless of their cultural background”. Interviewed mediators saw it as a potential danger of emphasising ‘otherness’ and possibly creating a wider gap between participants. On the contrary, in the context of hate motivated conflicts, Walters and Hoyle (2011: 16) see the discussion of the causes and effects of prejudice as crucial both for repairing the harms as well as for generating more tolerant attitudes.

Existing practices in Europe – outcomes of a survey in the ALTERNATIVE project

In order to explore existing RJ approaches to conflicts in intercultural settings, within the framework of the ALTERNATIVE project, the European Forum for Restorative Justice (EFRJ), in cooperation with KU Leuven, distributed a survey to mediation services and restorative justice related organisations, mostly within Europe. The aim of the survey was to map existing experiences and opinions about applying restorative justice approaches in intercultural conflict settings in Europe. In the survey, we included a general and broad definition of restorative justice in order to explain the term to the respondents:

“Restorative justice is mainly considered to be a way of responding to crime/conflict/harm, by bringing together – whenever possible – all stakeholders (victim, offender and/or members of the community). Affected persons in a conflict are invited to meet voluntarily in a neutral forum offered by a
mediator(s) (or facilitator(s)), in the form of mediation, conferencing, or peacemaking circle. During this meeting, there is a great focus on dialogue, on the empowerment of the participants, on the reparation of the harm towards the victim, on the restoration of balance in relationships and on the reintegration of the offender into the community”.

The survey addressed 131 restorative justice organisations and practitioners, mostly in Europe, but also beyond. The core of the addressed group consisted of the membership of the EFRJ. Through this survey, we could collect 33 responses (25% response rate) from RJ organisations in 18 different countries. Compared to the response rate for recent questionnaires by the EFRJ addressing European RJ practitioners, there did not seem to be a very large interest towards the topic of intercultural conflict settings and RJ from the organisations we have contacted. In the meanwhile, it might be because there is not a well-developed practice for intercultural cases that people had the feeling they could not answer the questionnaire. The answer rate might have been higher had we addressed professionals and services dealing with intercultural issues and not necessarily RJ organisations, but that was not the intention of the survey in this specific project. Through this part of the research, we aimed to map the engagement of RJ and mediation services in Europe with intercultural issues, as well as to learn more about specific methods or techniques that are used to resolve conflicts with an intercultural dimension.

Nevertheless, our sample was not limited to RJ applied in criminal cases. A large variety of settings were identified where respondents use RJ practices, such as the field of criminal justice, schools, neighbourhood, family or workplace. A large number of respondents are active not only in using RJ approaches for conflict resolution, but also in offering trainings, consultancy or doing research in RJ.

To help respondents reflect on the issue, as well as to know how they understand the term conflict in an intercultural context, first, we asked respondents to indicate conflicts that have an intercultural aspect (e.g. differences in ethnicity, religion, language, nationality, traditions, life-styles, etc.) in their neighbourhoods, city, region or country. The answers do not show a common understanding or uniformity: the conflicts mentioned vary from micro- to meso-levels and relate mostly to differences in nationality, religion, ethnicity or language. Racism, immigration, life-styles and traditions were also mentioned as potential reasons for conflict. Looking at the conflict examples given
by the respondents, the term intercultural was mainly understood as interethnic or international.

Out of the 33 respondents, 24 said they apply restorative conflict resolution in intercultural settings. What is important to note is that few organisations work explicitly within the framework of ‘intercultural conflicts’, while the absolute majority work within the framework of ‘general conflicts which, due to different backgrounds of stakeholders, might have intercultural aspects’. In fact, out of the 24 respondents, only 3 answered that the focus of their organisation was especially on intercultural conflicts: two deal with international child abduction or other cross-border family cases, and one is specialised in religious as well as immigration related conflicts.

We were curious about what are the most important aspects of conflicts in intercultural settings the respondents deal with (e.g. language, economic aspects, religion, ethnicity, gender, age, profession, way of living, prejudice, stereotypes, etc.). Most pointed to either the barrier of language, or prejudice and stereotypes. The main assumptions are that these kinds of misunderstandings can be closed off through dialogue. For some respondents, the most important aspects of these conflicts were differences related to ways of living or substantial cultural perceptions. It is very interesting that for many respondents, rather than the cultural differences, imbalances of power (like age and gender) or economic differences seem to be more important aspects in a conflict.

Only two respondents explicitly stated that there are some culture-based differences in the way parties take part in restorative processes. They mentioned that, according to their experiences, in some cultures, the offender never confirms guilt explicitly and some cultures are more comfortable in negotiation processes than others.

Out of the main restorative justice practice models used in Europe (such as direct or indirect mediation, conferencing and peacemaking circles) most of the respondents prefer to use direct mediation in intercultural cases. When offering indirect mediation, respondents explain this choice with reasons such as parties not agreeing to meet, high risk of a face-to-face meeting or parties living too far from each other. These reasons are in line with reasons found in literature (Liebmann, 2000: 131; Aertsen et al., 2004: 19; Raye, Roberts 2007: 219) for using indirect mediation in general, so it seems to be unrelated to cultural matters. However, the risk of a face to face meeting is usually assessed by the mediator during the preparation process; therefore mediators’ perceptions can play a role here. The same conclusion can be made with
regards to the model used: using mediation, conferencing or peacemaking circles is not associated with the intercultural element of a conflict. However, five respondents emphasised that they find any direct, face-to-face meeting the most efficient in cases when parties need to sustain their relationship in the future. One respondent also explained that he uses conferencing only when the community is affected by the conflict. In general, respondents seemingly do not take into consideration the specific culture-related needs of parties when deciding about the practice model used.

When inquiring about any special programmes focused on intercultural issues, except for the respondents whose focus is explicitly intercultural, respondents did not report having specific programmes that deal with intercultural aspects. However, most of them included the topic of interculturality in their general training programmes. Some respondents see capacity building of minorities or members of different cultural groups as an important first step to empower them to be able to participate in restorative processes. Those respondents focusing explicitly on intercultural (international) cases stressed working with culturally mixed mediator teams\(^2\). One respondent highlighted that their co-mediation model is bi-national, bi-lingual, bi-gender, bi-professional. While mixed co-mediation teams were mentioned as desirable by other respondents as well, there generally seemed to be a lack of mediators with a special cultural background. In two cases, respondents mentioned the necessity to train mediators from within the community itself, as is the case of the Roma community in the Czech Republic or in Croatia. Others referred to difficulties finding mediators with different cultural backgrounds. In one country, cooperation with other ‘intercultural’ organisations was mentioned as a special practice.

Although the literature suggests a need for specific approaches towards intercultural cases, most respondents do not see any differences in the restorative justice practice compared to dealing with conflicts in non-intercultural settings. It seems that most use a generic approach, in combination with a cultural sensitivity or cultural ‘knowhow’. Some respondents consider measures to be taken on a case-by-case basis, based on the needs of the parties – which is a general approach within RJ\(^3\). One respondent tries to involve a


\(^3\) See for example Zernova, Wright (2007: 99) or the UNODC Handbook on Restorative Justice Programmes (2006: 43).
community member as a support person in cases of cultural differences. One respondent emphasised that in his point of view, cases cannot be differentiated according to the intercultural character of the conflict. As he formulated it: “the most important aspects of ALL cases are that they are looked at on an individual basis. We would not assume that these cases would be treated differently from best practice…”

In many cases, the real difficulty in intercultural cases — according to the respondents’ understanding of the term intercultural as international — was considered to be language. The main measure taken to tackle this difficulty was translation, but this slows down the dialogue process and involving a translator was difficult in general. The need for special competences beyond language and translation and knowledge on the restorative process of the translators were also mentioned. One respondent organisation offers specific training for the translators they work with. Looking at the topic of culture as part of the restorative dialogue, respondents affirmed that during the restorative dialogue, the topic of cultural difference is generally not part of the discussion, unless the participants bring it in, or unless it is really the reason or root cause of the conflict.

**Conclusions**

Culture undoubtedly has an influence on conflicts as well as how these conflicts are understood and dealt with. Offering RJ approaches in intercultural conflict settings raises the questions of appropriate and adequate RJ practice and requires reflection from research as well as from RJ practitioners. As the outcomes of this small-scale survey revealed, in Europe we can witness a certain level of awareness towards this issue, but still a lack of self-reflection, as well as elaborated and tested methods within RJ organisations’ practices.

Most of the respondents of the survey presented had some experience in applying RJ in intercultural conflict settings. However, they tended to identify “intercultural” with “international” or “inter-ethnic” cases. Many respondents pointed out that these cases need special approaches and mediators need to know culture-related specificities as well as being clear about their own biases. In this respect specific training modules seemed to be the most used instruments. We could not identify preferences to particularly apply mediation, conferencing, peacemaking circles or other practice models in these cases.
Moreover, through this survey we could not identify any best practices in applying RJ in intercultural conflict cases, although the use of mixed mediator-teams applying co-mediation is an available approach. The difficulty of this type of co-mediation seemed to be the fact that respondent organisations lack diverse teams and it tends to be difficult in general to hire/engage mediators from different cultural backgrounds. As another practical implication for RJ practices, intercultural cases seemed to cause challenges because of different languages spoken by the parties, to which involvement of (trained) translators is the most common answer, even if this slows down the dialogue. Cooperation with organisations having experience in working with people from different cultural backgrounds was also mentioned several times.

Summarising the survey results, we can affirm that although RJ is not yet widely used in case of intercultural conflicts in Europe and specific RJ practice methods for intercultural conflict settings only exist sporadically, the topic is addressed at the level of professional trainings and a general awareness to the topic of interculturality is present in the respondent RJ organisations.

However, literature suggests that a constant reflection on power imbalances and cultural diversity seems to be important to be incorporated from mediation trainings thorough service and process design to mediators’ self-reflection. This kind of awareness seems to be still weak at most of the organisations we contacted for this survey. However, the statement of LeBaron and Zumeta (2003: 471) might be encouraging in a more and more diverse Europe: “As cultural awareness infuses mediation process and practice, the promise of mediation comes within reach. More than a place where problems can be resolved with more speed and efficiency than in a court, mediation offers the ground on which the ideals of a multicultural society can be translated into reality”.

References


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Restorativni pristupi konfliktima u interkulturalnom kontekstu – nalazi istraživanja i njihov značaj za praksu

Ovaj rad je nastao u okviru evropskog istraživačkog projekta „ALTERNATIVE: Razvijanje alternativnog razumevanja bezbednosti i pravde kroz primenu restorativnih pristupa u interkulturalnim kontekstima demokratskih društava“. Nakon razmatranja uloge koju u nastajanju konflikata i njihovom rešavanju ima kultura, predstavljen je deo istraživanja, koji ispituje različito razumevanje interkulturalnog aspekta vezano za konflikte, kao i kakve to ima implikacije na razvijanje praktičnih programa restorativnog karaktera. Kroz predstavljanje rezultata istraživanja, koje je za cilj imalo mapiranje restorativnih praksi u reagovanju na konflikte u interkulturalnim kontekstima u Evropi, ovaj rad nastoji da pruži sliku evropske realnosti u ovom domenu.

Ključne reči: restorativna pravda, konflikti u interkulturalnom kontekstu, praksa.