Transforming Landscapes: Forging New ODR Systems with a Human Face

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This paper challenges the current paradigms used for development of on-line dispute resolution (ODR) and its application to regions in Asia that lack telecommunications infrastructure. The next generation of on-line dispute resolution systems will need to reflect both the diversity of cultures and the unique sociopolitical structures of the Global South and address issues related to peace building and conflict transformation using technologies already in use in the region, such as mobile telephony and community Internet radio.

The endeavor to envision new generations of ODR systems must begin with the evolution of ODR in the Global North, its applications in the Global South, the resulting gaps between theory and practice, and finally the ways in which such systems can build local capacities for the nonviolent resolution of disputes. This article attempts to capture the recurring themes in current debates on ODR systems that are designed to respond to challenges unique to the Global South and, in doing so, propose frameworks that will benefit the practice and theory of ODR globally.

Current Theories and Experience of ODR

Discussions on on-line dispute resolution (ODR) most often concentrate on its use in e-commerce applications and domain name dispute resolution mechanisms, or as the virtual or on-line extension of alternative dispute resolution (ADR) systems (Choi, 2003). ODR's traditional emphasis on dispute resolution, as opposed to the examination of the underlying structural

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causes of conflict, has been useful in solving many e-commerce disputes through Web-based services such as Square Trade (www.squaretrade.com), The Claim Room (http://www.theclaimroom.com), and The Mediation Room (http://adr.themediationroom.com) (Katsh, 2002).

ODR has been developed in and championed by countries, organizations, and individuals in the Global North—countries that have benefited from sophisticated and pervasive Internet services and infrastructure, low-cost access, and the ubiquity of personal computers (PCs) and that also have legal frameworks that have evolved over time to incorporate ODR applications in dispute resolution. Authors such as Ethan Katsh and Janet Rifkin (2001) have identified several generations of ODR, underscoring its maturity and eschewing the notion that it is an underdeveloped technology and services framework that is ill suited to the tasks many of its proponents assign to it. From simple e-mail-based systems to the increasing sophistication of Web sites that offer a range of ODR services, from static Web pages that give information on ADR and traditional justice mechanisms for redress to portals and dynamic Web sites that offer the user a range of services tailored to individual disputes, the technology used by ODR has undergone massive growth in recent years (Conley Tyler and Bretherton, 2003), with a consonant increase in its use by participants familiar with ADR and those who have bypassed ADR and gone straight to ODR. As of July 2004, at least 115 ODR services had been launched worldwide, settling more than 1.5 million disputes (Conley Tyler, 2005).

Problems with ODR in the Global South

Contrary to the ideas of technological determinism that have swept the Global North, such as Thomas Friedman's recent (2005) suggestion that the Internet has helped erase all sociopolitical differences between nations with the advent of global knowledge markets, this article argues that the development of ODR in the Global South is following different trends and is informed by different dynamics. While not irrelevant in the North (Birdsall, 2000; Wahab, 2004), the digital divide (the inequitable distribution of technology to social elites and the gap between these elites and the millions who do not have access to that knowledge and power) underpins the context of ODR in developing countries (Parlade, 2003; Wahab, 2004). Countries in the Global South have skewed information technology frameworks, poorly designed e-government initiatives, high cost of access to electronic communication, vast regions with no

electricity, and little or no human resources to support sophisticated ODR mechanisms.

Thus the benefit of ODR is not a given in contexts where protracted ethnopolitical conflict, corruption, disease and humanitarian emergencies, inept governance, and other social ills deny people the opportunities for societal advancement that are taken for granted in the Global North. In this article I outline a new generation of ODR technologies and frameworks that go beyond the confines of current ODR theories and their application. In doing so, I argue that ODR has great utility for countries in the Global South, including as a mechanism for peacemaking. However, the expansion of ODR systems will require expansion of ODR theory. The emphasis here is on a transition from conflict resolution to conflict transformation, from an understanding of ODR that excludes structural issues to an appreciation that any ODR mechanism is an inextricable part of the social fabric in the context in which it is applied.

Beyond Resolution: ODR and Conflict Transformation

Using ODR systems for conflict transformation or peace building requires a shift from theories that concentrate on dispute resolution to frameworks that engage with conflict and mitigate violence. Conflict transformation is "a process of engaging with and transforming relationships, interests, discourses and, if necessary, the very constitution of society that supports the continuation of violent conflict" (Miall, 2003, p. 3).

The one-text procedure is a systematic process to determine the underlying interests and needs of parties in a dispute, to provide a mechanism to jointly explore and develop options, and to decide on one of those options. Frameworks such as the one-text procedure recognize that the "resolution" of protracted ethnopolitical conflict is untenable and the best mediation can hope to do is to bring about a transformation of the value systems of disputants that in turn leads to a de-escalation of violence and empowers communities to manage differences peacefully. As such, ODR systems are located *within* the conflict itself and must use culturally acceptable ways to build existing capacities to help communities transform violence.

At present, there are few ODR systems designed for peace building: Info Share in Sri Lanka (www.info-share.org) and Cultures of Peace News Network (CPNN) (www.cpnn.org) stand out as examples. Few ODR systems recognize the difference between dispute resolution and conflict transformation, which necessitates a brief exploration of the terms

(Hattotuwa, 2005). What is possible in countries experiencing, or coming out of, violent conflict is often determined by interlinkages between traditional seats of power and new societal forces. Mapping these forces in order to design holistic interventions for peace building is not an easy task. Third parties who are asked to mediate the conflict, with the mutual acceptance of the warring factions, often become scapegoats when the process gets bogged down by the inability or unwillingness of stakeholders to change themselves and their actions.

Social discrimination and marginalization, exacerbated by exclusion from those equipped with the technology and knowledge skills to use ODR systems, can severely undermine dispute resolution (alternative or on-line) in fragile states with complex political emergencies, protracted ethnic conflict, gross underdevelopment, or social inequality. To be successful, technologies and frameworks must be resonant to demands from the grassroots, be sustainable, and empower communities by taking ODR to the people instead of making the people come to technology hubs. They must also create architectures that can enable ODR to take place from such locations as paddy fields, the post office, or the village chieftain's residence.

The challenge for ODR systems in conflict transformation is to strengthen existing capacities, technologies, and social networks to facilitate both the wider use of ODR—spreading its benefits in contexts where ADR is used through viral networks (social networks that use technology)—and to take ODR to communities that are unfamiliar with ADR and ODR. This means fully incorporating two technologies with high penetration in almost all regions in the Global South—mobile telephony and community radio—into the creation of ODR solutions that are better able to address the challenges of peace building and conflict transformation.

Appropriate Technologies: ODR with a Human Face

Given its history as an outgrowth of ADR in the Global North, existing ODR frameworks and technologies are ill suited for anything other than interesting but short-term experimental projects in the Global South. This is because much of what is taken for granted in the North—PCs, the low cost of access to electronic communication, human resources, technical skills, the low costs of maintenance of communication systems, ubiquitous Internet access via a very high penetration of broadband services—are absent in many contexts in countries in South Asia.

Realizing the potential for the widespread use of ODR in the Global South requires a shift in thinking. It requires emphasis on the process as opposed to the technology, on what is achieved and sustained through ODR as opposed to what the technology is capable of in ideal environments. The ideas here take ODR beyond its comfort zone in the Global North as the "fourth party" in dispute resolution (Katsh, 2003) to a place as facilitator of inter- and intraparty dialogues that are inextricably entwined with peace processes, social empowerment, sustainable development, and other complex and volatile societal processes that most often define countries and regions in the Global South. The opposition to this revision is palpable, ranging from those who say that ODR was never designed or conceptualized to address or resolve problems of this nature to those who say that such hybrid frameworks, which use mobile telephony, radio, and the Internet, are beyond what is actually possible. An interesting discussion of this can be found at http://katsh.org/cyberweek2005/viewtopic.php?t=21.

Mobile phone use is increasing rapidly in the Global South. Mobile networks, even in countries that have undergone protracted ethnopolitical conflict, see massive year-to-year growth. In Sri Lanka alone, the number of mobile phone subscribers on all networks grows by tens of thousands every quarter.[1] Mobile phones have a long and varied history that stretches back to the early 1970s in some countries in the Global North, though their use has been widespread only since the mid-1980s. Due to the decreasing cost of mobile phones, vast improvements in their technical sophistication and reliability, and the ability for rapid deployment, mobile phone networks have quickly spread throughout the world, outstripping the growth of fixed telephony.

Larger communities that have access to mobile phones evidence innovative social development initiatives such as the Grameen Phone System in Bangladesh (http://www.digitaldividend.org/case/case_grameen.htm), which features vernacular text messaging, also known as short messaging service (SMS); and a service available on digital global system for mobile communication (GSM) networks allowing text messages of up to 160 characters to be sent to a mobile phone via the network operator's message center or from the Internet. Other innovations include the use of language-independent multimedia services (MMS) (a store-and-forward method of transmitting graphics, video clips, sound files, and short text messages over wireless networks, similar to SMS), push-to-talk technology, and the growing use of phones that can record sound, images, and video.

ODR frameworks that exploit technologies already in the hands of grassroots communities are better able to ensure their long-term sustainability and use by giving ODR a human face with experiences and interfaces that are far more user friendly than are PC-based systems. The architectonics of these systems must ensure the highest quality of experience for individuals, based on their access method, their location, the way in which they connect to the system, and the cultural and sociopolitical context in which the system is presented.

Expanding the Possible

The vision of radically new ODR architectonics builds on the work of earlier thinkers; for example, Claro Parlade writes, "Simple communications functions for the ODR process may therefore rely on mobile phones, while moving intelligent functions (such as software-aided negotiations, videoconferencing, extensive real-time or asynchronous communications, case management) into selected public access points" (Parlade, 2003, p. 14). Some of these pioneers are starting to put their ideas into practice. For example Claro Parlade has launched Philippine ODR (www.disputeresolution.ph) using mobile messaging technology.

Given the high incidence of land disputes in Sri Lanka, it would be useful to explore ways in which ODR systems can augment existing ADR initiatives, not only making them more pervasive and user-centered, but also using technology to take mediation to the site of conflict rather than expecting disputants to travel to "centers of resolution."

ODR systems in the field (for instance, large, virtual, single-text, negotiations platforms) must be consonant with the unique and changing demands placed on them by the processes of peace negotiations, spoiler dynamics, grassroots mobilization, and conflict transformation.

Eschewing the tendency for PC-based ODR systems to impose top-down hierarchies and sometimes exacerbate the digital divide in the Global South, technologies that use mobile telephony and radio assume that communities are more comfortable using what is familiar than what is not. To this end, ODR systems must identify and develop existing local grassroots capacities. For example, in Sri Lanka this would involve capitalizing on the very high literacy rate (91 percent), the ubiquity of radios, easy and low-cost access to batteries, existing ADR mechanisms with supporting legislation, thousands of trained mediators, multiple village-level peace networks,

and the exponential growth of mobile subscribers and related services (Hattotuwa, 2004).

The ODR processes thus envisaged (note the plural, since I believe in the importance of a variety of such systems, operating concurrently on multiple levels with seamless data exchange using industry standards) range from grassroots stakeholders to those involved in official peace negotiations. These systems can provide ODR solutions to entire villages, districts, and provinces, creating links within and between them, as well as links to international ODR experts and mechanisms. Such regional and international ODR systems need to be based on PC architectures, which remain the devices with the greatest capacity for storage and computing power.

While mobile telephony in particular can be used as either first-mile access or last-mile delivery systems, and community Internet radio can be a very effective support mechanism for ADR and ODR processes, I do not mean to belittle the importance of PCs in powering the databases and knowledge repositories that underlie these hybrid systems. With their large screens, sophisticated operating systems, complex databases, vast amounts of storage, and well-established place in data management, hybrid ODR systems that use mobile telephony and radio cannot ignore the use of PCs.

Challenges

ODR systems for peace building present many challenges, not just in systems design, but also in the ways in which the technology is used, who is using it, and the wider social implications of the introduction of ODR.

Systems Architecture. Given that ODR systems for the Global South need to work with technologies that have not previously been used with ODR, a period of experimentation and the proliferation of standards, possibly incompatible with each other, will be followed by a period of consolidation and standardization. In this interim period, systems architecture must deal with the problems and challenges associated with data exchange, input, and dissemination within and between widely disparate systems with a broad spectrum of users.

Mobile Telephony. The use of mobile telephony in the Global South, despite its rapid growth, is by no means a given. Large areas of land are not covered by major mobile telephony providers, creating or exacerbating

existing digital divides (Wahab, 2004). Furthermore, mobile telephony, though robust, still is not sophisticated enough to handle mission-critical ODR processes, such as those meant to quell violent conflict. For areas without local mobile telephone service, the high cost of access may prohibit widespread use of such systems, especially if funding mechanisms are unsustainable in the long term.

Legal and Political Context. The volatile political context of nascent peace processes and the very nature of peace building itself can undermine the processes engendered by even the best ODR frameworks. A lack of enabling and supportive legal frameworks can undermine the trust in ODR systems, or at worst create the perception that such frameworks cannot ensure compliance and are a waste of time. Collaboration with stakeholders in a post-conflict region also requires a knowledge of the culture of politics and its practice. ODR systems that strengthen the problematic status quo might, in the long term, be as ineffective as real-world processes that are partisan and biased. On the other hand, ODR systems that are not designed to address these local dynamics might be ineffective because they operate with the assumption of a culture of participation that is nonexistent. As such, hybrid ODR systems must attend to and, at the same time, transform the interactions of the stakeholders by engendering processes of mutual benefit that are based on knowledge-sharing on multiple levels.

Resistance from **L'ancienne Régime.** Many of the old guard in ODR are suspicious of efforts to broaden its services, expand its theories, explore new applications, and create systems for problems that do not lend themselves to resolution. Those who have invested millions of dollars in years of research and development for PC-based systems have an interest in the promotion of PCs as the central component of ODR systems. Theorists and practitioners of ODR in the Global North, and sometimes those who have fought hard to establish ODR frameworks in the Global South, are often blinded to the possibilities of alternative technologies that can support their work in ways that are far better than the technologies they presently employ. Conflict transformation is a concept and a body of theory that is alien to many lawyers. Given that ODR has evolved from a tradition of law, mediation, and arbitration, its transition to nonlegal frameworks and contexts will inevitably be challenged as a dilution of core principles of ODR by early adopters.

Culture and Language. At present, ODR systems pay scant regard to the cultures of disputants or the ways in which these cultures help or impede mediation processes (Rao, 2004; Law, 2004). Ethnic conflict and other value-based conflicts are rooted in complex cultural constructs that need to be recognized in the design of ODR systems for peace building. Influencing the selection of technology for service delivery, the study of culture will play a vital role in the creation of ODR systems in the Global South for processes far removed from commercial disputes, domain name resolution, or e-commerce disputes in cyberspace. The ability to access and benefit from ODR systems will also depend on the language of use. Systems that use English exclusively will alienate members of communities who do not speak, read, or write English. From simultaneous translation to multilingual interfaces, new-generation ODR systems need to abandon monolingual approaches and design systems with the flexibility to operate in several languages seamlessly. Some moves toward this have been made in European systems (Conley Tyler, 2005).

The Future of Hybrid Systems

The vision for ODR in peace building and conflict transformation using mobile telephony and radio is based not just on theory, but also on a combination of what is already possible in countries such as Sri Lanka and the need to redesign ODR to deal with the challenges of new systems that are specifically designed for conflict transformation.

These new-generation ODR systems must go beyond the replication of Web-based content for PCs on mobile devices. Rather, ODR systems must treat the smaller size of mobile devices as an advantage, creating experiences that are designed to make use of phone keypads and smaller screens, user-independent standards for data exchange between PC and non-PC devices, expert systems that intelligently manipulate information and deliver it in appropriate ways to users of the system, and systems that use voice and video to facilitate virtual face-to-face (F2F) interactions and Internet radio to promote ADR mechanisms and, most important, augment the capacity of existing ADR providers to engage with the complex sociopolitical issues that result from protracted conflict and peace building. In creating new ODR systems for conflict transformation, the emphasis should be on frameworks that hide the complexities of the technology and present users with a human face for ODR. Such systems will engage communities rather than overwhelm them with sophisticated systems that bear

little or no relation to the problems of their daily lives. Systems that empower communities to resolve conflicts on their own stem from a design perspective that recognizes and acknowledges the needs of communities on the ground, as opposed to imposing high-end systems in a top-down approach. In doing so, the new hybrid ODR systems envisaged in this article address the following needs:

- To define ODR requirements and systems on the basis of needs and priorities that have been expressed by the communities and users themselves and not just articulated by political stakeholders or traditional power centers
- To use state-of-the-art tools to ignite community aspirations and transfer appropriate skills for fostering sustainable development, while at the same time keeping in mind the fragility of sociopolitical relations in the context of on-going peace processes
- To expand a community's social capital through enhanced access to ODR, while rejecting the idea that the prevalence of PCs alone can empower communities
- To embed community-based ODR services in existing economic, governance, and social structures, while at the same time creating opportunities for communities to use ODR systems to transcend regressive sociopolitical structures and create new social contracts
- To infuse enhanced capabilities for information access within and between communities, for purposes of grassroots conflict transformation

Final Thoughts

This article was intended to be not a precise blueprint for the advancement of ODR beyond its current frameworks into peace building and conflict transformation but rather an exploration of how and why such advancement must engage with mobile telephony and community Internet radio. ODR has a rich history that traces its roots to a general dissatisfaction with traditional court-based justice systems. ODR has since developed many systems and theories leading to frameworks that deal with e-commerce, domain name resolution, and other areas.

We must now explore the possibilities of ODR in peace building and conflict transformation. In doing so, we must recognize the rich

possibilities of using mobile telephones and community Internet radio to strengthen our existing work and to push it into areas previously ignored by ODR constructs.

Although beyond the scope of this article to explore in detail, such systems could be used to address issues related to refugees and the resettlement of those who have been internally displaced, disaster relief management, conflict prevention and early warning, resource-based conflicts, peace-support operations, e-government initiatives, youth job creation, and other issues that challenge societies coming out of protracted ethnic conflict.

ODR is at the cusp of a radical departure from its foundations as a PC-based framework to one that takes advantage of the possibilities presented by mobile telephony, "old media" such as radios, and community Internet radio. As Whitney M. Young, a leading U.S. civil rights leader said, "It is better to be prepared for an opportunity and not have one than to have an opportunity and not be prepared."

It behooves ODR to prepare for the mobile revolution today.

Note

1. XML-based industry standards for information exchange between ODR systems is in the early stages of development but shows great promise.

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