

DECISION MAKING PROCESS OF MEDIATION GROUPS: THE CASE OF
DISPUTE SETTLEMENT COMMITTEES
IN IRAN

by
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ABSTRACT

DECISION MAKING PROCESS OF MEDIATION GROUPS: THE CASE OF DISPUTE SETTLEMENT COMMITTEES IN IRAN

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Alternative Dispute Resolution (ADR); Mediation; Group Decision Making; Afghan Refugees in Iran; United Nations High Commissionaire for Refugees (UNHCR)

Starting with May 2004 seven Dispute Settlement Committees (DSCs) were established in different cities of Iran in order to settle disputes among the Afghan refugees or between the Afghan refugees and Iranian nationals. These committees emerged out of a joint initiative of three parties: the governments of Afghanistan and Iran, and an international organization, the United Nations High Commissionaire for Refugees (UNHCR). This thesis is the first descriptive and analytical study about the activities of this joint initiative.

For this thesis a field study was done, focusing on one DSC based in Mashhad, Khorasan Province. The field study was made up of participant observations in the DSC sessions and interviews with the DSC members. The thesis, first, compares the mediation techniques used in the DSC and those used in the Western community mediation. Secondly, using the models of group decision making provided by Hermann et al (2001), the thesis analyzes the dynamics of the group decision making process in the DSC. One of the main findings of this thesis in this regard is noticing DSC members' lack of motivation and interest both in actively participating in the decision making process and also in shaping the outcome of this process. The thesis suggests a

modification in the Hermann et al's model by including the factor of motivation as an additional key contingency in group decision making processes. It suggests that the factor of motivation is very important for the quality of final outcome of the group decision making process. Finally, in order to be tested in further studies, the thesis suggests some policy suggestions for the better functioning of the DSC.

ÖZ

ARABULUCU GRUPLARDA KARAR ALMA SÜRECİ: İRAN'DAKİ UYUŞMAZLIK ÇÖZÜMÜ KOMİTELERİ

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Yüksek Lisans, Uyuşmazlık Analizi Ve Çözümü

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*Uyuşmazlıkların Mahkeme Dışı Çözümü; Arabuluculuk; Grup Karar Alma Süreci;
İran'daki Afgan Mülteciler; Birleşmiş Milletler Mülteciler Yüksek Komiserliği*

Mayıs 2004 yılından itibaren Afgan mülteciler arasındaki veya Afgan mülteciler ve İran vatandaşları arasındaki uyuşmazlıkları çözme amacı ile İran'ın farklı şehirlerinde yedi Uyuşmazlık Çözümü Komitesi (DSC) kuruldu. Bu Komiteler, İran ve Afganistan devletleri, ve uluslararası bir kurum olan Birleşmiş Milletler Mülteciler Yüksek Komiserliği'nin (UNHCR) ortak girişimi sonucunda ortaya çıkmıştır. Bu tez bu ortak girişim hakkındaki ilk tanımlayıcı ve analitik çalışmadır.

Bu tez için Horasan eyaletindeki Meşhed şehrinde Horasan ilindeki Komite üzerine yoğunlaşarak bir alan çalışması yapılmıştır. Bu alan çalışması Komite toplantılarında katılımcı gözlem ve Komite üyeleri ile röportajdan oluşmuştur. Bu tez, öncelikle, Komite'de kullanılan arabuluculuk tekniklerini Batı'da kullanılan arabuluculuk teknikleri ile karşılaştırmaktadır. İkinci olarak, tez, Hermann ve diğerleri (2001) tarafından grup karar alma süreci için sunulan modelleri kullanarak, Komite'nin

karar alma sürecini incelemektedir. Bu husustan, tezin en önemli bulguların biri Komite üyelerinin, hem karar alma sürecine katılımı sırasında hem de bu sürecin sonucunu etkileme sürecinde motivasyon ve ilgi eksikliğidir. Motivasyon faktörünün grup karar alma sürecinin sonucunun (alınan kararın) kalitesini belirlemede önemli olduğu önerilmektedir. Son olarak, sonraki çalışmalarda test edilmek üzere, komitenin daha iyi işlemesi için öneriler sunulmaktadır.

*To Riza, whose brotherhood has been
the most beautiful coincidence of my life!*

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CHAPTER 1

INTRODUCTION

Between one and two million Afghan refugees live in different parts of Iran¹. Among many problems and difficulties they have had, lack of accessibility to the dispute resolution mechanisms has been a significant one. The refugees' lack of legal status, their fear of being treated unfairly by the host country's legal system, their unfamiliarity with the official legal procedures; and the cost of the courts are among the reasons impeding the refugees from using courts in order to solve their problems (Keyhanlou, 2003). Some non-professional, informal dispute resolution mechanisms are existent within the refugee community such as *alims*² and *sayyids*³. However, they would not be suitable if the other party would not be from the same cultural context, i.e. he/she would be an Iranian.

Mashhad, hosting the shrine of the eighth Imam of Shiites, is a religious city of Iran. The majority of the Iranian population is Shiite Muslims, as the majority of the Afghan refugees in Iran. This might raise a critique to my abovementioned claim about unsuitability of *alims* and *sayyids* as the sources for community dispute settlement. The critique would suggest that as the majority of both Afghan refugees and Iranian population is Shiites, and *alims* and *sayyids* are important sources of dispute settlement in Shiite sect, so why are they unsuitable in this specific context? The answer lies in the

¹ The statistics regarding the population of the refugees in Iran is quite controversial, because, first, there is a large number of illegal Afghan refugees without any residence documents, and second, there is a high rate of cross-border flow of the refugees, of which the exact number has never been measured.

² *Alims* (the knowledgeable) are religious authorities who know Islamic law well.

³ *Sayyids* are the descendants of the prophet. They are well respected in the Islamic and especially in the Shiite context.

power disparity between the disputing parties when they are from different national backgrounds. When there is a dispute between an Afghan refugee and an Iranian citizen, Afghan *alims* and *sayyids* are not powerful enough to invite the Iranian side in order to settle the dispute. Furthermore, the Iranian side does not accept the legitimacy of an *Afghan* third party. On the other hand, an Afghan refugee does not usually trust to Iranian third parties. This can be explained simply in the refugees' humiliation by various sections (both religious and non-religious) sections of Iranian citizens. Secondly, an Afghan refugee who feels weak in a dispute with an Iranian counterpart would feel even weaker when a third party is also an Iranian.

In such an environment, the Dispute Settlement Committees (DSCs), established in May 2004, have become the source of the new hopes for the refugees to solve their legal problems, especially when one side of the dispute is not an Iranian citizen.

A. Significance:

This study will be the first exploration of the DSCs, which form a unique combination of different actors for the sake of resolving intra- and inter-communal disputes. There are members representing official entities, either national (BAFIA⁴) or international (UNHCR)⁵, and members representing a community (the Afghan elder). Therefore, this study will reveal the degree of success of the participation of different organizations in resolving communal disputes. The environment of the disputes has its own peculiarity as well: the refugees living in a foreign country, lacking both will and capacity to pursue their legal cases in the official courts. Another uniqueness of the DSCs are their being a mediating *group*, which is very different from the Western context, where the mediator(s) are made up of one or rarely two people.

⁴ Bureau of Aliens and Foreign Immigrants Affairs. BAFIA is also a very important organization in Iran, working under the Ministry of Interior of Iran, dealing with all issues regarding the alien residents

⁵ The United Nations High Commissionaire for Refugees (UNHCR).

This study has four main contributions: first, it is the only description of this important DSC. Second, it will compare and contrast the mediation techniques of the DSC members with those used in the Western context. Third, it will look at the decision making process within the dispute settlement group. This will be based on Hermann et al's (2001) model of group decision making. The important contribution here is testing the model in a completely different context. The purpose of looking at the decision making process within the DSC is to examine the functioning of a complex dispute settlement mechanism composed of various actors and their interactions.

Fourth, this study is unique in examining an ADR mechanism in a group; since ADR mechanisms involve usually only one or sometimes two people as third party. The DSC has four members who cooperate with each other in order to settle the dispute of the parties. Finally, it will suggest proposals for practical suggestions to the DSC in order to be more effective. These proposals need to be tested and strengthened in further studies on this topic.

B. Method:

B.1. Scope of the Research:

In order to collect the data, I conducted a field study in February 2005 in which I did participant observation and interviewed a number of people. Field study was the most appropriate and only possible way to reveal the basic facts about the DSCs, because of nearly nonexistence of written sources about the works of these DSCs. I chose to do my field study in Mashhad⁶ in the Khorosan Province mainly because this city has the highest concentration of the Afghan refugee community.

⁶ Two main reasons for the concentration of the Afghan refugees in this province are 1) its proximity to Afghanistan; and 2) its being a holy city for the Shiites and hence being attractive for the Shiite Afghans.

B.2. Research Approach:

The best way to find all the necessary data was a field study, including a participatory observation. Observation was supplemented by interviews with the DSC members. The interviews were semi-structured asking the members to answer questions regarding the role of each member in the DSC, degree of harmony among the members, and the ways they resolve the disputes among themselves. I observed four sessions of the Mashhad's DSC, which took place subsequently in one day. Here, however, it should be mentioned that because of research limitations, only a limited number of observations have been done. Therefore, this thesis is a preliminary study of this topic.

In my observation of the cases and the interviews I made with the DSC members, I tried to find answers to the following questions:

A. Questions regarding the nature of the DSC:

1. Who were the members of the DSC? Were they changing in different cases?
2. How were the cases brought to the DSC? How did the members get information about the cases?
3. Did the DSC function as a mediator or an arbitrator? (Were the decisions binding?)

B- Questions regarding the processes of decision making?

1. Does any person lead the sessions?
2. Do all the members have/use equal rights to speak and participate?
3. Were there any decision rules (e.g. unanimity, majority)?
4. Do the members *discuss* different options before they make a decision?

5. In case a conflict emerges between the members, is there anyone who would play the role of a broker in the DSC? How do the members deal with their internal conflicts?

B.3. Organization of the Study:

This study is conducted inductively. Chapter 2 is reviewing the literature on ADR and group decision making. In Chapter 3 and 4, I present the empirical data extracted from the participation in four cases of the DSC and the interviews with the DSC members will be analyzed. In Chapter 3, the mediation techniques of the DSC will be compared with the Western community mediation techniques. In Chapter 4, the decision making process of the DSC will be analyzed. Chapter 5 is the conclusion of the dissertation. In this final chapter, findings from chapter 3 and 4 will be collated in order to provide proposals for better functioning of the DSC.

C. Dispute Settlement Committees (DSCs):

C.1. Background:

The DSCs were established in line with the Tri-partite Agreement between the Afghanistan's hitherto Interim Government, the Islamic Republic of Afghanistan, and the United Nations High Commission for Refugees (UNHCR) in June 2003, aimed to facilitate the Afghan refugees' repatriation from Iran.

Following the Tripartite Agreement of June 2003, a series of ad-hoc Tripartite Commission Meetings took place with the participation of the representatives of Iran, Afghanistan and UNHCR. In the third of these meetings, the parties agreed to a number of measures to enhance the voluntary repatriation of Afghans living in Iran.

One of these measures was the opening of the DSCs throughout Iran. UNHCR and BAFIA opened seven DSCs in the centers of seven provinces of Mashhad, Zahedan, Kerman, Isfahan, Qom, Shiraz, and Tehran. The task of these DSCs would be to help Afghan refugees in Iran wishing to resolve their legal disputes, such as problems with landlords or employers before they leave Iran. In this study, I will describe one of these DSCs, which is located in Mashhad.

C.2. Members:

According to the “Terms of Reference for DSCs⁷, each DSC has four members:

- 1- A competent judge, appointed by the provincial BAFIA office;
- 2- A provincial BAFIA representative with legal knowledge;
- 3- An Afghan representative, as far as possible familiar with Afghan and Iranian legal systems, appointed jointly by UNHCR and BAFIA; and
- 4- A competent attorney at law to be appointed by UNHCR.

In the Mashhad DSC, all the members were professionals in law. The Chairman was an experienced judge. The BAFIA and UNHCR representatives were lawyers as well. The Afghan elder was an experienced prosecutor in Afghanistan. The Chairman and the representatives of BAFIA and UNHCR were Iranian nationals. Three members of the DSC were male. The female member of the DSC was the UNHCR representative, who was an Iranian national.

The DSC has also a Secretariat, headed by a Secretary, appointed by BAFIA. The Secretary has a seat in the BAFIA office of Mashhad. Although, the duty of the Secretary is, in addition to heading the Secretariat, attending the hearing sessions of the DSCs to prepare its “Minutes of Meetings⁸,” the Secretary in Mashhad did not attend

⁷ These Terms of Reference were agreed by UNHCR and BAFIA on April 9, 2004, in order to facilitate the implementation of the Tri-partite Agreement.

⁸ “Rules of Procedures for Dispute Settlement Committees,” which were agreed upon by BAFIA and UNHCR on April 9, 2004

the hearing sessions and minutes of meetings were prepared by one of the DSC members before it is signed by all the members. The three members of the DSC have not been changed, with only one exception. Instead of previous judge who has been a clergyman at the same time, a new judge has been appointed.

C.3. Procedures:

Claimants raise their claims through direct application to the Secretariat of the DSC. Furthermore, some cases of the refugees who ask UNHCR for legal assistance may be evaluated as suitable to be directed to the DSCs. However, again the application is made to the Secretariat.

A list of the cases applied through the Secretariat is provided to the Chairman of the DSC, who checks whether or not the cases are within the scope of the DSC activities. Criminal cases are outside the scope of the activities. If the cases fall within the scope of the capacity of the DSC, he asks the Secretariat to set a date for the hearing session.

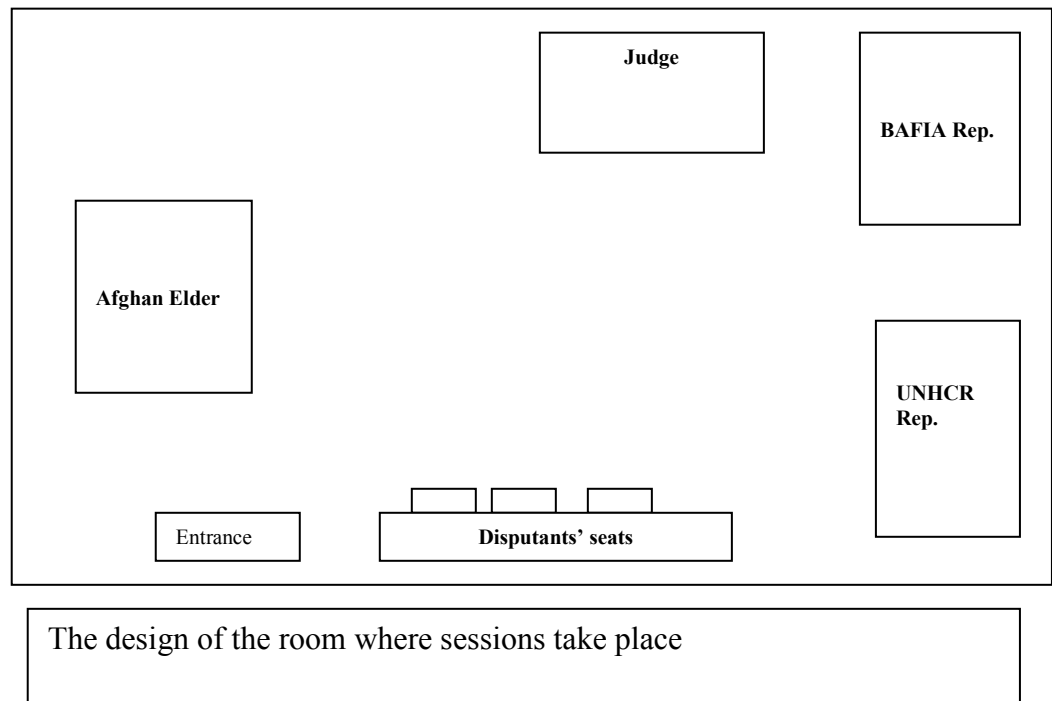
The Secretariat sends a convocation letter to the respondent of the case. According to the Rules of Procedures, the DSC members must receive a report on each case to be considered in the next DSC session, including information about the full names of both parties and their witnesses (if there are any) and a summary of the request of the claimant.

If the respondent does not show up at the hearing session, the Secretariat calls him/her to ask him/her to attend the session. If this does not work, during the succeeding week the Secretary contacts the respondent via mail or phone in order to convince him to attend the hearing session. If there are some persuasive reasons for incapability of the respondent to attend the session on the appointed date, then the Secretariat may use its initiative to set another suitable date for the hearing session. If the Secretariat is convinced that the respondent is not willing to attend the session at all, then the case will be referred to the court. In this case, the claimant usually receives

legal assistance before litigation by the UNHCR. However, this legal assistance is beyond the scope of the DSC's activities.

The hearing sessions are held in a room within the area of BAFIA's Mashhad office. A single building formed of several rooms is allocated for the DSC. One of two adherent rooms in this building is occupied by the Secretariat, where the secretary organizes the files in order to bring them to the DSC members before the sessions and keep them after the sessions. In the other room, there are four tables for the four members of the DSC. The table prearranged for the Judge who is also the chairman of the DSC, is a little bit higher than the other tables. The tables of the three Iranian members of the DSC, the judge, the BAFIA representative, and the UNHCR representative are close to each other and that of the Afghan elder is in a farther corner.

Figure 1.1.



Once the parties attend the hearing session, they are asked to explain their side of the case. The DSC members address questions to the parties for further clarification. Then, despite the Rules of Procedures (D/7), which foresees the DSC members to ask

the parties leave the room, the parties are present while the members are talking about the case.

In principle, all the members have equal rights to discuss the case and propose suggestions. In practice, however, in asking the parties about the cases and offering suggestions the judge, the BAFIA and the UNHCR representatives are more active. The Afghan representative participates very rarely in the discussions and proposition of suggestions. A detailed explanation for the difference among the members' degrees of the participation in the discussions will be provided in Chapter 4.

The DSC presents a "suggestion/recommendation" for an "amicable settlement" to the parties. If the DSC members can not make a decision on what to suggest, then discussions will be postponed for the next session. If still the disagreement is maintained, the Chairman will have a "casting vote." However this casting vote has never been used⁹. If the proposed recommendation is accepted by the parties, then the agreement will be signed by the parties and the DSC members.

There are a number of situations where the DSC fails to be effective. In fact, these situations of failures are typical characteristics of the Alternative Dispute Resolution in the West. One is in the criminal cases, which are directly referred to the regular court system. A second situation of failure may happen in convincing the respondent to attend the hearing session. As mentioned above, here the claimant is supported legally by the UNHCR in order to litigate in the court. A third one is the disagreement of one or both of the parties with the recommendation offered by the DSC. In this case, the parties are advised on how to pursue their cases in the court. Finally, sometimes the parties agree with the proposed recommendation, however, the respondent may not act according to the agreement s/he has signed. In this last situation, again the claimant benefits the support of legal assistance provided by the UNHCR to sue the respondent in the case.

⁹ It was never used in the cases observed, nor in any other cases according to the information I have got through interviews.

CHAPTER 2

LITERATURE REVIEW

In this chapter I will review and explain the basic concepts I use in this thesis. This chapter is divided into two main sections. The first section reviews and explains the concepts regarding conflict resolution and Alternative Dispute Resolution (ADR). The second section focuses on concepts regarding group decision making.

A. Conflict Resolution and ADR

A.1. Clarifications of Some Concepts:

ADR is the origin of modern conflict resolution studies. Burton defines ADR as, “a phrase that emerged in the 1970s to describe mediated out-of-court or before-court interactions between parties to a dispute or conflict. Some judges in the United States require such processes to be followed before appearance in their courts” (1996:15). He adds however that ADR does not make any distinction between “disputes” and “conflicts” (Burton, 1996:15). However, several scholars use dispute and conflict for different situation and made a clear distinction between the two.

For example, Burton does not refer to manifestation of incompatibility of objectives as well. He defines conflict as “struggle over resources, ideas, values, wishes, and deep-seated needs” (1996:21). Conflict, unlike dispute, might involve some nonmalleable behaviors, “requiring analysis of sources and remedies that address the behavioral institutional problem” (Burton, 1996:27).

Burton sees a sharp distinction between dispute and conflict: “Conflicts are struggles between opposing forces, struggles with institutions, that involve inherent human needs in respect of which there can be limited or no compliance,” while compliance in disputes are possible. Therefore, the main distinction between conflict and dispute is over the reasons for their emergence. While dispute emerges because of material problems which are negotiable and can be solved through legal procedures, negotiation, and compromise; conflict emerges because of *basic human needs* (Burton, 1990), which are not negotiable.

On the other hand, for Kriesberg, conflict exists “when two or more persons or groups manifest the belief that they have incompatible objectives” (1998:2). A different definition is provided by Pruitt and Kim, saying that conflict means “*perceived divergence of interest*, a belief that the parties' current aspirations are incompatible” (2004:7-8, the emphasis is original). Here, Pruitt and Kim do not refer to the *manifestation* of the “perceived divergence of interest”.

The concept of ADR should be studied keeping in mind this conceptual discussion. As it can be understood from the short discussion above, Burton prefers the usage of “settlement” instead of “resolution” for the processes of ADR (1996:15), because resolution has a broader meaning. *Resolution* means that “all parties to the conflict freely agree once they have redefined and repercieved relationships... once they have examined all the relevant elements of relationships”. Whereas *settlement* is defined as behavioral change when two disputing sides find a way to reach an agreement (1996: 40; Rubin, 1997:6).

Conflict resolution (CR), on the other hand, is an interdisciplinary field, with its own theoretical framework, research agenda, and various practical applications at different levels. CR studies conflicts at all levels, trying to find the sources of conflict, develop processes to resolve the conflict, and even deals with the post-conflict processes.

In this study, I will use the abovementioned Pruitt and Kim’s (2004) definition of conflict, that is “perceived divergence of interests”, rather than its Burtonian definition; because Burton narrows down the concept and applies it only to basic human needs-

based struggle. Therefore, in this study I will use the terms dispute and conflict interchangeably.

The term settlement will be used as it is defined by Burton. However, I don't adopt Burton's reduction of the term, saying "[c]onflict resolution avoids the term [settlement.]" In fact, mediation, and other techniques of ADR, which are associated with the concept *settlement* are the backbone of the CR studies¹⁰.

In this thesis the process of ADR will be reviewed because the function of DSCs has many similarities to the ADR mechanisms in the West. Furthermore, since the DSCs are in a very different cultural context than the original context of ADR, namely the West, a review of the studies of ADR in different cultural contexts will be provided in the next session.

A.2. ADR and its Historical Background

ADR is one of the human relations and intergroup relations movements after the Second World War in the United States. Abu-Nimer lists these movements, which altogether formed the field of Conflict Resolution, as: 1) the industrial and labor management based on the work of Shepard and Mouton (1964) which emerged from the organizational relations in the 1960s; 2) the problem-solving workshops and mediation which was introduced in international relations; 3) religious figures redirected their work in peace-related endeavors to an emphasis on "peace-making"; 4) lawyers and the court system were criticized by the general public which resulted in what is known today as alternative dispute resolution (ADR); and 5) the interpersonal and family disputes practices emerged as another level of conflict resolution derived from human relations practices (Abu-Nimer, 1996b).

¹⁰ There is a disagreement among different scholars of Conflict Resolution about the definition of concepts. For example, while Avruch sees mediation as the backbone of the Conflict Resolution because of its noncoercive nature, he does define the other forms of third party intervention such as arbitration as conflict settlement; i.e. Avruch sees mediation as a form of conflict resolution and arbitration as conflict settlement (see Avruch, 1998), Burton sees all forms of ADR as dispute/conflict settlement.

The main rationale for the existence of ADR, which emerged in late 1960s and 1970s, was reaction to the inefficiency of the official legal system in the American society. The courts had to deal with too many cases, therefore litigation would consume a lot of time and money. Alternative Dispute Resolution includes techniques, processes, and institutions of conflict management or settlement which are *alternative* to normal way of litigation in the courts. Therefore, movement toward ADR is sometimes referred to as “delegalization” or “informal justice” (Abel, 1982 cited in Avruch and Black, 1996:47).

After World War II the American legal system started to become the target of many criticisms. In the 1960s, legal courts have been attacked for their bias in their dealing with the lower class and minorities and their failure to address inequalities in the society. In response to these increasing criticisms, the American Bar Association sponsored a National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice in 1976. The Conference recommended that alternative forms of dispute resolution, especially mediation and arbitration, would minimize material and time costs. Furthermore, it recommended the establishment of “neighborhood justice centers” (NJC) and community mediation centers (CMC) in order to solve the community-based disputes.

According to Hurrington and Merry (1988:507-9 cited in Scimecca, 1998:31), community mediation developed along three ideological lines: 1) Delivery of dispute resolution services: a possible reallocation of judicial resources; 2) Social transformation: community empowerment through self-governance and decentralized judicial making; 3) Personal growth and development: mediation offers a more humane response to individual needs than does the courts

Avruch and Black (1996) see ADR as a part of ongoing reforms history of the American judicial system, including the rise of arbitration in commercial disputes, the small-claims court movement, and the establishment of juvenile, and the family, court system. The origins of ADR, according to some people, lie in the turmoil of the 1960s. The Civil Rights Act (1964) established a community relations service, the Federal Mediation and Conciliation Service (FMCS), to help communities settle racial and ethnic disputes. Though FMCS has its based in the Department of Justice, most of its activities took place outside the court, involving mediation-focused interventions.

By the 1970s many large foundations and members of judicial elite emphasized the necessity and importance of reform. Many conferences and panels were arranged to discuss the topic.

Despite the fact that ADR movement with all its techniques and processes has been on the agenda for about three decades, there is not yet an agreement among scholars on its meaning. According to the 1981 *Ad Hoc Panel of Dispute Resolution and Public Policy*, ADR processes are listed as below:

Adjudication; Arbitration; Court-Annexed Arbitration; Conciliation; Facilitation; Med-Arb; Mediation; Mini-trial; Negotiation; Ombudsman (cited in Scimecca, 1998: 29). Scimecca finds this definition too broad, including nearly everything in the field of CR. Alternatively she provides a less ambitious, but more intelligible definition, referring to ADR as “those alternatives to the legal system that use a third party intervenor in a noncoercive manner” (p.30). However, according to Avruch and Black (1996), ADR includes both “adjunctive-like” (authoritative third parties, including all forms of arbitration) and “mediation-like” (nonauthoritative third parties) processes and practices (p.48). The variety of techniques, processes, and institutions of ADR are all alternatives to litigation in formal courts of law. Among the abovementioned processes of ADR, mediation, arbitration, and negotiation are the most commonly used conflict resolution practices.

A.3. Institutionalization of ADR:

ADR has been best institutionalized in the US. In the 1980s, ADR became a full-scale social movement (Adler 1987 cited in Avruch and Black, 1996: 49). Today, ADR is well established in the state court systems. In 1992, twenty seven states have incorporated ADR into their systems (Filner and Shaw 1993:36 cited in Avruch and Black, 1996:49). In these states, the courts use the ADR process to reduce the caseload of the court, or in an attempt to provide a better method for mediation.

Some important steps have been taken since the mid-1970s towards the institutionalization of ADR. Here is a list of a few of these important developments: In 1976, the San Francisco Community Boards were established to provide citizens with

an alternative to the traditional models of resolving neighborhood disputes. In 1985, National Association for Community Justice, consisted of hundreds of local mediation centers, was established. In 1998, Alternative Dispute Resolution Act was issued: All federal district courts are required to adopt local rulers creating voluntary dispute resolution procedures. It also asked for creation for mediation program in all federal courts.

The institutionalization of ADR is not limited to the USA. Other western countries like Israel, Canada, and Australia have many mediation and arbitration centers that are either attached to the legal courts or independent. In 1975, the Family Court was established in Australia to mediate between the parties of family disputes. In 1980, the Community Justice Centers were established in Sydney in order to resolve the community-based disputes.

A.4. Critiques of ADR:

ADR had emerged as a result of the criticisms directed towards the adversarial legal processes. However, ADR itself has been subject to criticisms as well. One important criticism to ADR is that it has lost sight of its original purpose in time, i.e. its concern for the poor, for all those who did not have access to the law (Scimecca, 1998:32). According to Nader (1998), prime focus of ADR is organizational expansion, and creating profitable jobs for new “professionals”. She claims that the American Bar Association’s interest in ADR has less done in providing alternatives to the law than in providing new sources of income for lawyers.

There are more fundamental criticisms to ADR from the structuralist camp. These critiques claim that concentrating on individual remedies, it neglects macro-structural questions of power and equality. Nader (1998) evaluates ADR as a form of “harmony ideology” in the 1970s and 1980s, which were used to control and tune down the ambitious demands for the civil rights in issues regarding race, sex, etc., which previously in the 1960s were sought through the adversarial law (p.44).

A final criticism is put forward by Rubenstein (2003) concerning the scope of ADR. According to him, ADR can be useful only for “consensual disputes”, i.e. the

interest-based disputes “within the limits set by the rules, values, and vision of social reality accepted by the parties”. They are not useful in the “dissensual disputes”, where the parties don’t agree on the rules and values of the existing social system (p.170-172).

A.5. DSCs and ADR

DSCs in Iran facilitate problem solving among the conflicting parties. As mentioned in Chapter 1, the DSCs have no coercive power and their decisions are not binding. Furthermore, there is a need for both parties’ consensus to conduct a dispute settlement session that is very similar to mediation, an ADR technique. And most importantly, DSCs are also providing an out-of-court mechanism for the settlement of the disputes. These three aspects of the DSCs show that the DSCs’ function is very similar to Western-style mediation.

Cases are referred to courts of law when one party does not want to participate in the DSC sessions; or when the proposed solution by the DSC is not accepted by one or both of the parties. Therefore, both its non-coercive nature and its purpose that is to solve the disputes outside the normal legal system demonstrate extreme similarities with the nature and purpose of ADR in the West. One of the goals of this dissertation is to look at the DSCs from an ADR perspective and will reveal the similarities and differences between ADR, especially mediation techniques, in the West and in this specific non-Western context.

A.6. Mediation

Mediation, as one of the ADR techniques, is an intervention in a negotiation process by a third party who is acceptable to the conflicting parties. Its goal is to help the conflicting parties reach a voluntary agreement (Avruch, 1998:81; Pruitt and Kim, 2004:232; Moore, 1996:15).

Moore (1996) elaborates more on the three aspects of this definition. Third party can be a person, or a group of people, who are not directly involved in the dispute. The

other aspect is the acceptability of the third party to the disputing parties. The disputing parties should be willing to allow the third party to assist them in finding a solution. The last aspect of the definition is intervention (pp.15-6). The negotiator enters the dispute environment as a third party; this mere existence has some influence on the nature of negotiation between the disputing parties (Rubin and Brown,1975, cited in Moore, 1996:16). Furthermore, the mediator is able to alter the power and social dynamics of the conflict relationship by influencing the beliefs and the behaviors of individual parties, by providing knowledge or information, or by using a more effective negotiation process and thereby helping the disputing parties to settle their contested issues (Moore, 1996:16).

According to Bercovitch (1997), any mediation situation comprises “(a) parties in conflict, (b) a mediator, (c) a process of mediation, and (d) the context of mediation”. All these settlements are important in mediation, determining mediation’s nature, quality, and effectiveness, as well as why some mediations succeed while others fail (p.130).

A.7. Culture and ADR

People in different cultural contexts may have different approaches toward conflict and conflict resolution. Avruch and Black, the scholars who have significant contributions to the studies of culture and conflict resolution, see it very important to pay attention to the indigenous understandings of being and action which people use in the production and interpretation of social action, in order to understand conflict behavior. (1993:132). Since ADR is a Western-oriented movement, the theories and practices developed are concentrated on Western styles of conflict and conflict resolution¹¹.

However, there are some studies on ADR in non-Western contexts; for example, about mediation in Thailand (Callister and Wall, 2004), Malaysia (Callister and Wal,

¹¹ Irani and Funk (2000) complain about the approach of Western professionals in Conflict Resolution who want to export the Western techniques of CR to non-Western cultural contexts, without taking into consideration the indigenous rituals and processes.

1999), China (Wall and Blum, 1991), Japan (Callister and Wall, 1997), and Arab countries (Salem, 1997; Abu-Nimer, 1996; Irani, 1999; Irani and Funk, 2000). Some of these studies adopt an indigenous way of looking at the conflict resolution methods in different cultural contexts, while the others compare and contrast between the methods of ADR in the Western and in non-Western context. The former approach is called emic approach, while the latter is called etic approach. A systematic distinction between these two different approaches to the study of culture is provided by Augsburger (1992).

The “emic” approach describes a cultural phenomenon in terms of its own units (Augsburger, 1992:35). Avruch defines it shortly as “actor-oriented, thickly described, and context-rich” ways of looking at culture (1998:57). The “etic” approach, however, imposes categories that are external to the phenomenon. Again Avruch’s short definition of etic is “analyst centered, ‘objective’, and transcultural” way of looking at culture (1998:57).

One of the aims of this study is to show the differences between the mediation techniques used in DSCs, which is in a non-Western cultural context, with those applied in the West. Therefore I will adopt an etic approach in my analysis of the cases.

There are different taxonomies in the etic approach for comparing the different cultural contexts. The most popular ones are Hall’s (1989) high context-low context distinction and Triandis (1994) individualism-collectivism distinction. These two distinctions will be elaborated more because they are relevant to the distinctions between Western and the Middle Eastern cultures, though the taxonomies are not limited by these two¹².

¹² See Hofstede (1991; 2001) for dimensional and categorical frames and Douglas (1996) for her grid-group theory.

A.7.1. High Context vs. Low Context

Hall's (1989) distinction between high context and low context is concerned with language differences. High-context cultures are paralinguistically rich while the low-context cultures are paralinguistically impoverished. In high context, what you hear is rarely the final objective of the one who talks; in low context, people are direct and they say what they mean.

Table 2.1. A Summary of Basic Characteristics of Low Context Culture and High Context Culture

Key Questions	Low Context Conflict	High Context Conflicts
Why	<ul style="list-style-type: none"> - Analytic, linear, logic - Instrumental-oriented 	<ul style="list-style-type: none"> - Synthetic, spiral logic - Expressive oriented
When	<ul style="list-style-type: none"> - Dichotomy between conflict and conflict parties - Individual oriented 	<ul style="list-style-type: none"> - Integration of conflict and conflict parties - Group-oriented
What	<ul style="list-style-type: none"> - Low collective normative expectations - Violation of individual expectations create conflict potentials 	<ul style="list-style-type: none"> - High-collective normative expectations - Violations of collective expectations create conflict potentials
How	<ul style="list-style-type: none"> - Concealment - Direct confrontation attitude - Action and solution oriented 	<ul style="list-style-type: none"> - Concealment - Indirect confrontational attitude - Face and relationship oriented - Implicit communication

	<ul style="list-style-type: none"> - Explicit communication codes - Line-logic style: rational factual rhetoric - Open, direct strategies 	<ul style="list-style-type: none"> codes - Point-logic style: intuitive, affective rhetoric - Ambiguous, indirect strategies
<p>Source: Ting-Toomy 1985, cited in Kose, 2002: 35-6.</p>		

In high context communication, language is instrumental; but in low context it is expressive. Hall is aware of the fact that styles may differ within a social group. For example, all other conditions being the same, communication within a family or a group of close passionate friends tends to be toward high context, while the communication in the task-groups tends to be toward low context. Still, Hall assigns them to entire cultures saying that the American culture is low context, while the Japanese is a high context (1989: 113). In the table above (Table 2.1), a comparison between the basic characteristics of low context and those of high context cultures is illustrated.

A.7.2. Individualism vs. Collectivism

Triandis (1994) makes distinctions between individualist and collectivist cultures. People in individualist cultures focus on their individual goals and interests, even if those goals contradict with the goals of the groups of which they are members. On the other hand, people in collectivist cultures focus on the goals of their groups more than their individual goals. In-group norms determine the behaviors of individuals in collectivist cultures; while in individualist cultures, the determining factor for individuals' behavior is their likes and dislikes (p.165).

At this point it should be emphasized that the focus of this study is on the behaviors of the DSC members, rather than the disputing parties. The cultural context, in which the DSC functions, is useful to explain because it influences the interactions of the DSC members while they are trying to reach a decision. Iran and Afghanistan, the countries of origin for the DSC members, can be categorized in the wider Middle Eastern Islamic context, which is a highly collectivist culture¹³. In the next chapter, the empirical data from the field will be analyzed, and hence the differences and similarities in the techniques used by the Western mediators and the DSC members will be explored.

B. Decision Making Groups

B.1. DSCs as Decision Making Group

The DSCs are groups of four who make decisions for different cases. The decisions they make are not binding; but this fact does not invalidate the fact that the

¹³ Triandis (1994) find individualism very high in the US and in the English speaking countries, while collectivism is high in much of Africa and Asia (p.165). The studies on Middle East culture demonstrate the importance of group and group norms more than individual and individual interests in the Middle East (e.g. see Abu-Nimer, 1996).

group *makes a decision*. The disputes of the parties might not be solved in the DSC. However, the group stills makes decisions in every case. It is the parties, if both are present, to decide if they agree with the decisions made by the DSC or not. Even if they don't agree, the DSC still can either prolong the session in order to get more evidences mainly through witnesses or refer the conflicting parties directly to the court. In any case, we see the DSC as a group, making a decision through a certain process.

The literature on ADR is important to evaluate and compare the techniques used in this special context and those in the Western context. However, it is not sufficient to cover and analyze all aspects of the DSCs activities; because these DSCs are at the same time groups, having certain way of interactions, which is worth examining. The literature on group decision making is important in order to analyze the process in which the members of the DSC interact with each other to make a decision. After all, the suggestion provided to the conflicting parties is a conclusion of the whole process of decision making in the DSCs.

It is very natural that in a group of four, there might be different and conflicting views on some issues. Therefore, it is also very important to look how these group members solve the conflicts within the group in order to make a decision. So, the quality of the mediation does not depend only on the mediation techniques used in the DSC, but also on how successful the interaction of the DSC members in order to solve the intragroup conflicts in the process of decision making is. Furthermore, it is important to look at the decisions made to either prolong the process with the unsettled cases or refer them to the court; because if the members decide to refer a case to the court, that implies that there is nothing to be done for that case in the DSC. Therefore, it is significant to look at the process of making such a decision in order to realize if the decision has been the best available option.

B.2. Group Decision Making Process

In post World War II era, studies on group dynamics increased, showing the importance of group cooperation and group decisions in productivity (see Lewin, 1947; 1952; Coch and French, 1948). Effective problem solving was an important aspect of

these studies. However, some other scholars concentrated on the negative aspects of groups and the ineffectiveness of group decision making (e.g. see Gunderson, 1950; Parkinson, 1957).

In the following decades, many studies were conducted on group decision making. Some of them provided quantitative schemes, relating the positions of the group members with the final group output, i.e. decision (Davis, 1973; Kerr, 1981; Stasser et al., 1989). A number of studies focused on the defects of group decision making (e.g. Janis's, 1972; 1982; Allison, 1971; Halperin, 1974; Stern and Verbeek, 1998).

In this study, I will use the models provided by Hermann (Hermann, 1993; Hermann et al, 2001) on group conflict management. The authors provide a useful and broad work on all possibilities of conflict management in a decision making group. One of the most significant aspects of their study is their concentration on the *process* of decision making and its effects on the quality of outcome.

One limitation for the usage of the models provided by Hermann et al might be the fact that by a decision making group, they mean an authoritative decision unit, which is defined as group “with the ability to commit the resources of the society and, when faced with a problem, the authority to make a decision that cannot be readily reversed” (Hermann, 2001: 48). What is proposed in this thesis is the fact that their model can not be limited to only “authoritative decision units;” because the theories, for example groupthink, on which they establish their models put no such limitations¹⁴. There seems no reason not to include different decision making groups. Groups such as the DSC, which are not authoritative, but make advisory decisions can also be inside the sphere of the models provided for the group decision making by Hermann, et. al (2001).

In any case for a group to decide, the group members may have different, conflicting ideas. In case of such conflicts, the members may choose to avoid, resolve, or accept the conflicts which are designated in three models:

- i. Concurrence (producing a tendency to *avoid* group conflict)
- ii. Unanimity (producing a tendency to *resolve* group conflict)

¹⁴ In fact, the theory has been examined in any kind of groups, form therapy groups (Janis, 1982) to organizational work teams (Manz and Sims, 1982).

- iii. Plurality (producing a tendency to *accept* group conflict) (Hermann et al 2001: 138)

Concurrence occurs when all group members avoid disagreements. This model is usually associated with groupthink (Janis, 1972; 1982), emphasizing the suppression of disagreement to preserve the well-being of the decision group. The unanimity and plurality models, on the other hand, can be associated with bureaucratic politics (See Huntington, 1960; Allison 1971; Halperin, 1974; Stern and Verbeek, 1998). Conflict in groups, in the unanimity and plurality models is common.

At the heart of the bureaucratic politics stands the struggle among group members advocating the preferences of their respective agencies. The outcome in bureaucratic politics depends on the existence of established group norms or rules, the absence of which will lead to deadlock. If there are some established norms or formal decision rules, then the outcomes can be different according to the quality of the norms/rules, which may either propose a system in which the decision of the majority of the members will be accepted as the group decision, or require the consent of each member in the group. In the former case, group accepts the conflict within members. This is described as “plurality model.” The latter case, in which group members try to solve the conflict among themselves, is described as “unanimity model” (Hermann et al:2001: 139). Below, a more detailed description of each model is provided.

B.2.1. Concurrence Model:

Concurrence emerges when group members avoid conflict among themselves. This is what Janis (1972; 1982) calls as “groupthink”. It is very natural that group members might have different views with each other over different topics, especially if they have different values, experiences and/or political and administrative responsibilities. However, individuals have usually difficulty in distinguishing between another person's critic of their position or idea and an attack on their personality

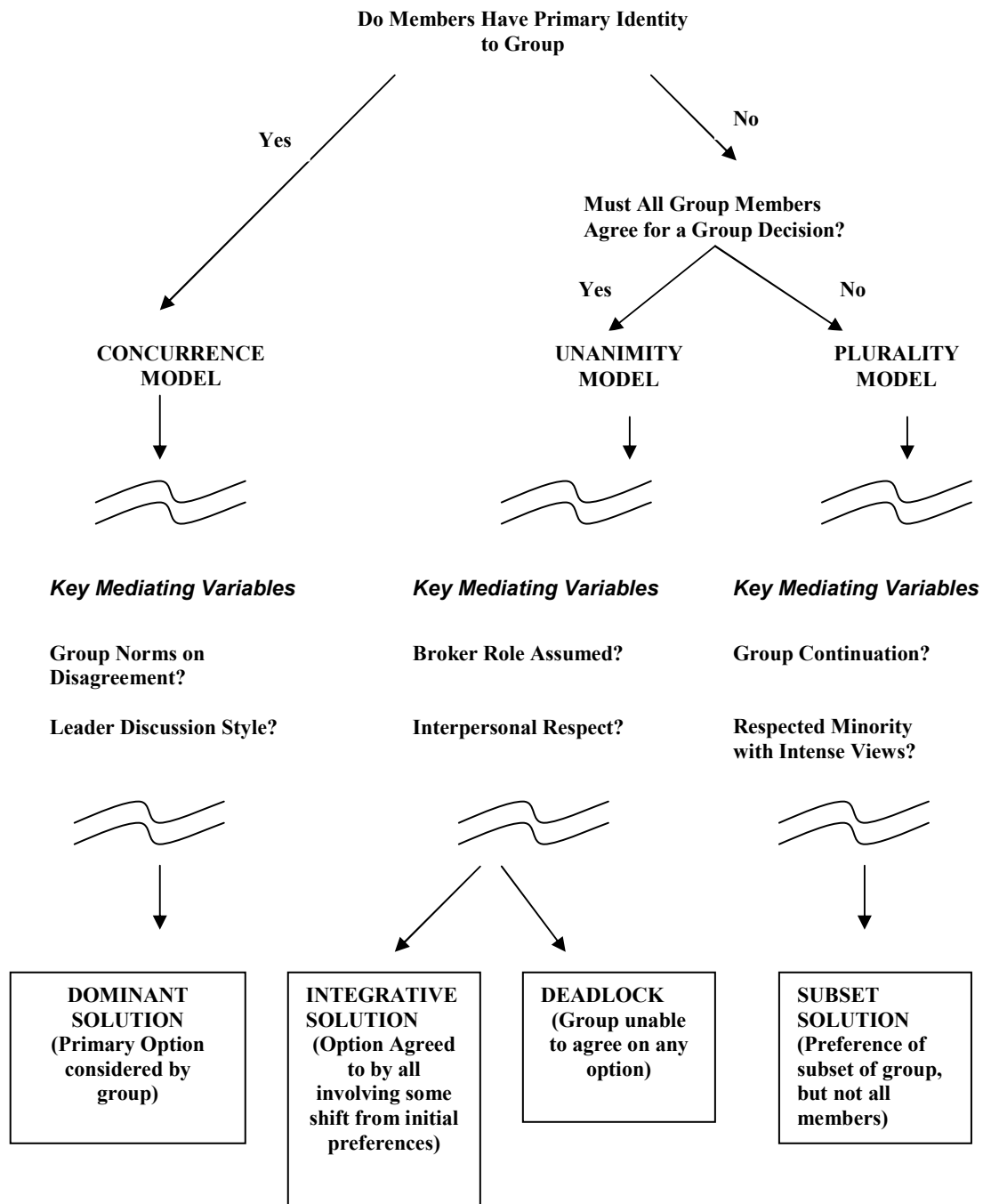
(Hermann et al: 2001: 140). This is even more usual in the Middle Eastern context¹⁵ than in the Western context.

If the group members value their group, they try to minimize their disagreements in order to maintain harmony in the group and to safeguard its continuity. Smooth and tranquil interpersonal relationship can also be praised in different cultures. However, there may be a negative side effect of maintenance of this harmony, which is “premature closure.” Premature closure refers to a decision made by the group before thinking thoroughly and discussing all the dimensions by the group members. The premature closure happens when a group member presents an option early in its deliberations without considering seriously the potential limitations, or comparing it carefully with any other alternatives (Hermann et al:2001: 141).

Figure below illustrates the most important mediating variables of each model and how each model is associated with a certain outcome. In Chapter 4, figures 2.1. and 2.2. will be referred much.

¹⁵ In the Middle East Islamic culture, relational issues such as restoring harmony and solidarity and restoring the dignity and prestige of the individuals and groups are very important (Irani and Funk, 2000)

Figure 2.1.



Concurrence, Unanimity, and Plurality models with their most important mediating variables reinforcing or deflecting the most likely outcomes (Source: Hermann, et. al. 144).

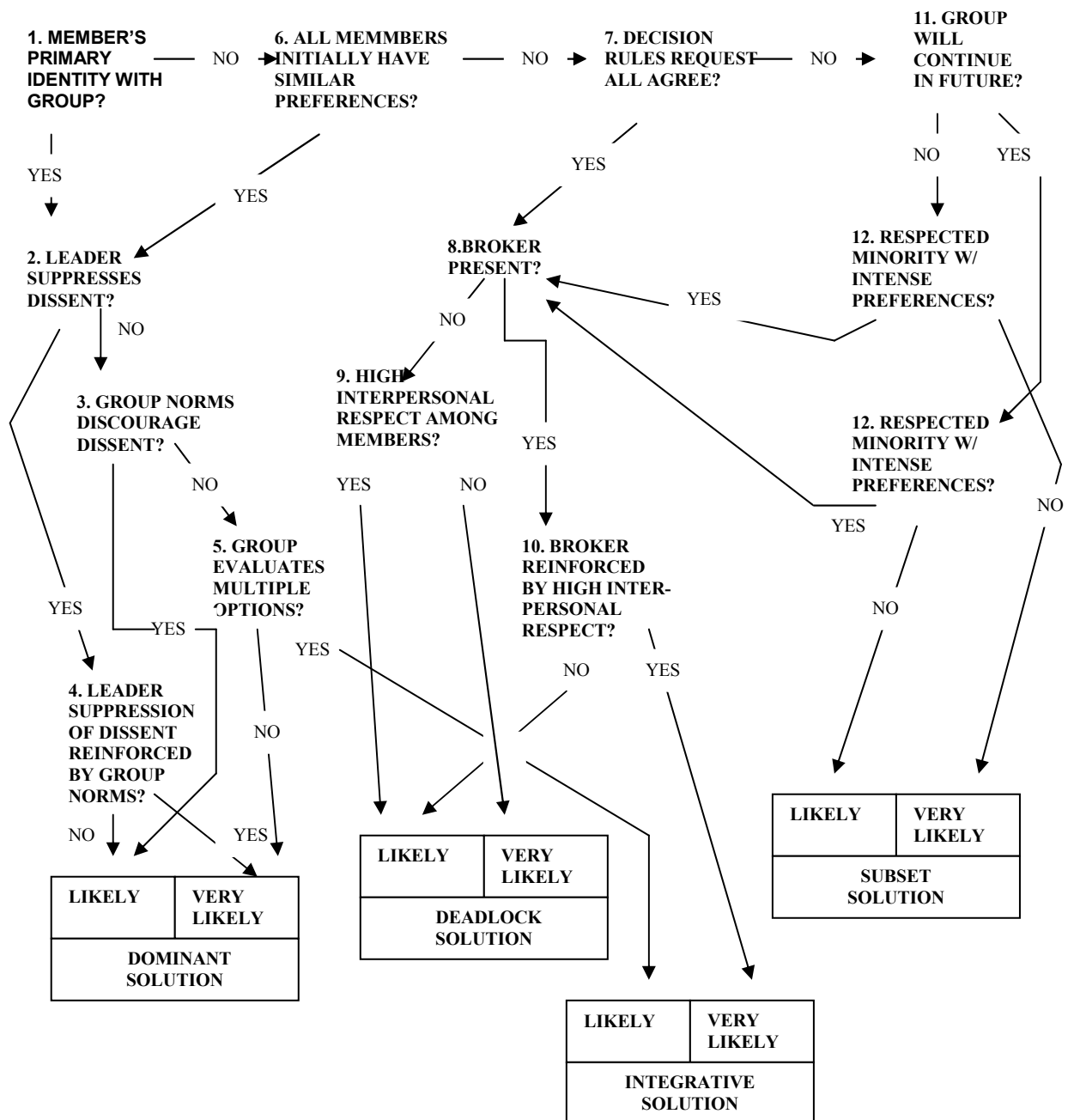
B.2.1.1. Primary Group Identity:

For groupthink, the primary necessary antecedent is group cohesiveness, which is defined as “members’ positive valuation of the group and their motivation to continue to belong to it” (Janis, 1982:4) or as the resultant of all forces that hold group members together (Deutsch and Krauss, 1965: 55-6).

Group cohesiveness, or “solidarity, *esprit de corps*, team spirit, morale” is “the way it ‘hangs out’ as tightly knit, self-contained entity characterized by uniformity of conduct and mutual support between members (Hogg and Vaughan, 2002: 284-6). According to Kurt Lewin, group cohesiveness is the “members’ positive valuation of the group and their motivation to continue to belong to it (cited in Janis, 1982:4).

Hermann et al (2001) see group cohesion as an important variable for groupthink, but not sufficient to account for the idea of *relative* attraction, which occurs “when individuals are simultaneously in several groups or organizations dealing with the *same* policy problem” (p. 141, emphasis is original). It is not sufficient for the group members to have positive feelings towards the group, but they should value the group more than other relevant identities. This identification is called as primary group identity. If the members have primary identity with the group, in order to preserve the well-being of the group, “members will tend to avoid disagreements over the substantive problems they are addressing” (Hermann et al, 2001: 142). In such cases the premature closure, which is discussed in groupthink, is highly possible. In the concurrence model, however, there are mediating variables as well that could prevent or facilitate groupthink; such as the leader’s discussion style and group norms on disagreement.

Figure 2.2.



The affects of key mediating variables on group decision outputs (Source: Hermann et al, 2001:146)

B.2.2. Unanimity Model

At the center of the bureaucratic politics lies the recognition of the existence of substantive disagreements among group members (Allison, 1971). Unlike the concurrence model, the primary identity of the group members in bureaucratic politics is not to the group itself, but elsewhere. This can be bureaus, agencies, etc. that they represent. It is very likely that it is home bureau that pays the salary and determines the promotion of the group members. This means that the primary identification of the group members is not inside, but outside of the group. “This outside identity reduces their concerns with group harmony and makes likely their willingness to express disagreement when the preferences of that outside entity are not being served” (Hermann et al: 2001: 148).

In addition, for the unanimity model, it is required that *all* members have to agree before a position becomes the group decision, so that each member can veto any one else's proposal. There are other additional mediating variables in this model as well that facilitates a decision and the management of conflicts. One is the existence of a “broker role¹⁶” and the other is the degree of interpersonal respect among the group members (Hermann et al: 2001, 150).

B.2.3. Plurality Model:

Plurality model recognizes the reality that it might not be possible to reach an agreement acceptable to each member of the group. The decision can be made when a certain proportion of the group members agree upon an option. The main variables for the plurality model are outside identification and not having the necessity for *all* members to agree for a group decision. Still there are some mediating variables which have important influence on the outcome of the decision making process. Two of these

¹⁶ Broker refers to a third part *in* the group.

are: the distribution and intensity of preferences among members and the continuity of the group.

CHAPTER 3

ADR TECHNIQUES OF THE DSC'S

The empirical part of the thesis is dealt in Chapter 3 and Chapter 4. The data for this study were collected in four cases observed in the Mashhad DSC. The data were supported by interviews conducted with four DSC members as well as with the Secretariat of the DSC. Because of time and resource constraints, the number of the cases observed is limited. Therefore, in order to strengthen the findings of this thesis, further studies are needed.

This chapter will look at the DSC members' mediation roles and techniques in the sessions observed. Then a comparison between those mediation techniques and the techniques used in the Western context will be undertaken. But before going to these main sections, it is necessary to have a description of the cases.

A. Description of the Cases

A.1. Case 1: Trade and Debt

Wais¹⁷, an Afghan merchant refugee, has sold a number of sheep to Jamshid, an Iranian citizen, while Jamshid refuses to pay all the price of the sheep to Wais. Jamshid says he has a business partner, Hassan, who should pay the other half of the money. But

¹⁷ In the description of the cases, I will use pseudonymous names, like Wais, Qayyum, Miqdad, and Maqsud for Afghan refugees and Jamshid, Houshang, Cirus, and Kianoush, and Hassan for Iranian citizens.

there is a document proving the fact that Jamshid has guaranteed the payment of all of the money to Wais. Hassan has escaped and Jamshid is unwilling to pay the share that should be paid by Hassan.

The case was raised by Wais to the DSC in Mashhad. The secretariat invited Jamshid to the hearing session. He accepted. Both of them are present in the hearing session. The DSC members listen to both of them, and want them to make an agreement. This case was not successfully resolved in the DSC and the DSC finally decided to refer the case to the court of law.

A.2. Case 2: Unpaid Cheque:

Houshang, instead of paying his debt to Qayyumin cash, has given him a cheque of 6 million Rials; so that Qayyum would be able to get his money from bank after a certain period of time. Meanwhile, Houshang had to pay the money to the bank; otherwise Qayyum would not be able to get his money. This is exactly what happened. When Qayyum applies to the bank to get his money, he realizes that Houshang has not paid and the account is empty. Therefore, Qayyum could not take his money.

Qayyum raises the case to the DSC. The secretariat invites Houshang for several times. Houshang responds to none of the invitations and never appears in the hearing session. This was a known case by the members, because they have waited Houshang in the previous weeks also.

The Secretary brought the case to the UNHCR representative. She dealt with the problem and unilaterally made the decision to refer the case to the court. The others did not question her decision. She asked Qayyum to come to the UNHCR legal assistance office in order to help him in raising his case in the court.

A.3. Case 3: Tenant and Proprietor

Miqdad has rented Cirus's house. Miqdad has paid a deposit of 10 million Rials to Cirus¹⁸. The duration of contract is finished. Miqdad wants to go back to Afghanistan and asks Cirus to pay him the deposit money back. Cirus refuses to pay the money back because of financial problems.

Miqdad raised the case to the DSC and the secretariat invited Cirus. Cirus accepted the invitation and attended the hearing session. The DSC members listened to them and helped them to find an agreement. When the disputing parties failed to find a solution, the DSC members proposed some suggestions to the parties that were adopted as the final decision of the DSC. The decision was that Cirus should pay half of the money in two weeks time and the other half will be discussed upon later.

A.4. Case 4: Worker's Wage

Maqsud has been hired by Kianoush. After the work was finished, Kianoush refused to pay Maqsud's wage, that was totally 6.3 million Rials. The case was raised by Maqsud to the DSC. Similar to the second case, the Secretariat invited Kianoush to the hearing session for several times. However, Kianoush refused to attend the session each time.

The case was known to the DSC members because of its emergence in the sessions for several weeks. The file was brought directly to the BAFIA representative. He made the decision to refer the case to the court. The UNHCR representative asks Maqsud to

¹⁸ In house-rental contradictions there is a concept called *rahn*, according to which the tenant pays a amount of deposit to the proprietor so that the tenant would pay no or small amount of rent to the proprietor. The same amount of deposit given to the proprietor will be paid back to the tenant at the end of the period determined in the contract, which is usually one year.

come to the UNHCR legal assistance office to assist him in pursuing his case in the court.

B. Mediation in the DSC

In this section, I will look at the mediating techniques used by the DSC members and compare with those used in the Western context. I observed four cases in the DSC. However, to analyze the mediation process, I should reduce them to two, because in two of the cases (Cases 2 and 4) only one disputing party was present. Therefore, no mediation took place. The decision was to be made by the DSC members in order to prolong the process, or refer the cases to the court. These two cases will be analyzed in the next session, while discussing the decision making process within the DSC. However, in this section, I will deal with only two cases (Cases 1 and 3), in which there is a process of mediation.

B.1. Mediation Techniques

There are different mediation techniques used in different cultural contexts. One classification system of mediation techniques is promoted by Pruitt et al (1989) for the Western context. However, it has been improved and modified to other cultural contexts as well. Kim et al (1993) studied the mediation techniques in South Korea, Wall and Blum (1991) in China, Callister and Wall (1997) in Japan, Wall and Callister (1999) in Malaysia, and Callister and Wall (2004) in Thailand. Unfortunately, there are not systematic studies of mediation techniques in the Middle East context¹⁹. I will use the

¹⁹ There are a number of studies on conflict resolution in the Middle East; for example, Salem, 1997; Abu-Nimer 1996, 2000; Irani, 1999; Irani and Funk, 2000; Kose, 2002. They develop some useful concepts which should be taken into consideration for conflict resolution professionals who are willing to work in a Western context. Unfortunately, however, they are far from generating a comprehensive schema for the mediation techniques for the Middle Easter context in general, and even for individual national contexts. They concentrate rather on general differences in conflict resolution

classification system developed by Pruitt et al (1989) in order to code the techniques used in the DSC. To compare and contrast the mediation techniques, I will use the data from the DSC and compare them with the techniques used in the US²⁰.

The classification system includes 38 techniques used in the Western context, added with additional techniques used by the DSC members. In Table 3.1., I inserted the original form of the classification system with its definition. I added 6 additional rows (techniques 39-44), each representing a technique used in the DSC. In the right column, I wrote the number of the case(s), in which that specific technique has been used. For example, the numbers 1,3 in the row starting with “2. Meet together with disputants” mean that this technique has been used in both Case1 and Case3.

Table 3.1.
Mediation Techniques in Cases 1 & 3

TECHNIQUE	DESCRIPTION	Cases
1. Meet separately with each party	Mediator meets with each disputant separately	
2. Meet Together with Disputants	Mediator has disputants state their points	1,3
3. Put disputants together	The Mediator brings the disputants together for a meeting that otherwise would not take place	1,3
4. Listen to disputant’s side	Mediation has disputants state their points	1,3
5. Being vague	Mediator is intentionally vague when describing the situation or asking for concessions	
6. Gather information	Mediator collects or asks for information from the disputants or others and does research to obtain information	1,3
7. Gather information	Information, opinion, and advice obtained from third party	

approaches in the Middle Eastern and the Western contexts. On the other hand, the studies done by Wall and his colleagues try to encompass all the mediation techniques used in a special cultural context (being the US, Malaysia, Thailand, etc).

²⁰ The researcher does not claim to present a general, comprehensive comparison between the mediation techniques in the West and in Iranian-Afghan context. Because, a study of two mediation processes in a very special atmosphere can not be generated to a cultural context as whole. Therefore, this study should be taken as pilot study.

from third party		
8. Analyze the disputants	Mediator analyzes disputants and grasps each disputant's characteristics	
9. Educate	Mediator educates, persuades, or advises one disputant as to how he or she should think and act	1
10. Moral	Mediator points out a specific moral obligation or societal norm	1
11. Praise disputants	Mediator praises the disputant who is being addressed	
12. Have third party criticize	Mediator has third party criticize a disputant's person, attitude, or behavior	
13. Have third party educate	Mediator has a third party educate, persuade, or advise one or both disputants on how they should act or think	
14. Quote law or rule	Mediator quotes a specific law or rule that is relevant to dispute	
15. Example	Mediator cites example or similar case	
16. Provide logical explanation	Mediator backs up any technique with logic	
17. Cite dependency	Mediator expresses similarities or interdependence in disputants' goals, fates, and needs (includes mentioning personal costs of disagreement and benefits of agreement)	
18. Have third party argue for concessions	Mediator has a third party argue for or propose a specific concession or agreement	
19. State other's point of view	Mediator presents or argues the other disputant's point of view and asks a disputant to see the other's point of view	1,3
20. Meet with third party present	Mediator brings additional third party to meeting	
21. Have third party assist	Mediator offers or gets third party's assistance for the disputants or the mediator	
22. Mediator assist	Mediator personally offers or gives assistance and takes a specific action	
23. Reconcile	Mediator negotiates a general compromise (or proposes an option)	1,3
24. Apologize	Mediator has one disputant apologize or acknowledge his or her fault	
25. Obtain forgiveness	Mediator asks one disputant to tolerate or forgive the other	
26. Relax	Mediator makes specific statements to calm the disputants	

27. Pray	Mediator prays alone or with one or both disputants	
28. Have drink with disputants	Mediator has a drink with the disputants prior to agreement	
29. Break time	Mediator stops the quarrelling and has disputants rest	
30. Separate disputants	Mediator separates the disputants	
31. Mediator's data	Mediator provides objective data about the dispute or the environment	1
32. Threat	Any threat from the mediator	3
33. Note cost to third party	Mediator points out costs of disputes to others, cites an obligation not to dispute (includes noting benefits of agreement to others)	1
34. Get grasp of situation	Mediator grasps the cause (analyze situation)	
35. Criticize	Mediator criticizes a disputant's person, attitude, and behavior or uses a specific label	1
36. Call for empathy	Mediator enhances the other disputants of calls for respect of the other; mediator puts a positive face on the other disputant	3
37. Formalization	Mediator caps the agreement with techniques other than a drink	
38. Written agreement	Mediator has disputants sign a quasi-legal written agreement governing their future behavior	3
39. Meet separately with only one party	Mediator meets separately only with one of the parties	1
40. Have the parties swear	Mediator has disputant(s) to swear on Qoran to prove his/her/their position	1
41. Take side with a party	Mediator takes side with one party against the other	1,3
42. Note harm to collective pride	Mediator threatens a party that his/her position may harm the collective identity (family, community, etc)	1
43. Fait accompli	Mediator presents one party with a fait accompli about the solution	1
44. Inform the parties of their capabilities	Mediator informs or recalls the parties about their capabilities to solve the problem	3

B.2. Analysis of the Cases:

A general look at the findings from the cases suggests a more frequent usage of “manipulation or directive” strategies by the DSC members (Bercovitch, 1993 cited in Kose, 2002:75). Bercovitch (1993) summarizes the manipulation or directive strategies of mediation as:

- change the parties' expectations
- take responsibility for concessions
- make substantive suggestions and proposals
- make the parties aware of the costs of nonagreement
- supply and filter information
- suggest concessions that the parties can make
- help negotiators undo a commitment
- reward the parties' concessions
- help devise a framework for acceptable outcomes
- change expectations
- press the parties to show flexibility
- promise resources or threaten withdrawal
- offer to verify compliance with agreement

Many characteristics of manipulative mediation are seen easily in the Cases 1 and 3. In Case 1, the DSC members made substantive suggestions and proposals several times. For example, the BAFIA representative asked Jamshid “How do you plan to pay the rest of your debt so that it will be finished?” This statement was done to demonstrate Jamshid that they are convinced that Wais was right. They were suggesting Jamshid strongly to pay back Wais's money. In another movement, the BAFIA representative, even proposed a framework for Jamshid, asking him “Are you ready to pay 1,000,000 Rials per month in order to finish your debt?” The DSC members made the parties

aware of the costs of nonagreements. For example, the Judge told Jamshid that in case of nonagreement, “Wais can apply to the court and hire a lawyer. You will have to pay all the expenses, including the amount paid for the lawyer.” In another part, the Judge told Jamshid that nonagreement will have very bad influence on the reputation of his family and especially his brother, who was a well-known and respected man.

In Case 3, we confront with several substantive suggestions and proposals for the solution to the dispute. UNHCR officer told Cirus to “[g]ive the money of this man [the tenant, Miqdad] who wants to go back [to Afghanistan.] The UNHCR officer took a severer position toward Cirus, saying “I give you two weeks of respite.” The Judge makes another suggestion, asking Cirus to bring *some* of the money. After a certain period of deliberation, the DSC members start drawing the framework in which the proprietor can pay the money back and, hence, the problem will be solved. The Afghan Elder, told Cirus “You bring half of this money in two weeks. Then you will come so that we will decide about the payment of the rest of the money. Now, you bring 5,000,000 Rials.”

Callister and Wall (2004)²¹ evaluate the techniques of threatening (technique 32), criticizing (technique 35), reconciling (technique 23), and putting the parties together as assertive techniques. These techniques were used in both cases (Table 3.1.) Wall associates the usage of these assertive techniques with the power of the mediators. These techniques are not widely used in the community mediation in the US. The reason is simply that the mediators in the US lack that power to use assertive techniques. Even if they have that power, the disputants do not let them utilize it. (p.591).

The abovementioned four assertive techniques are used by the party members in both Cases 1 and 3. This can be explained by the power of the DSC which comes both from their organizations and professional backgrounds. UNHCR is a very important international organization. UNHCR also has legal assistance office for the refugees. When a refugee’s problems are not solved in the DSC, the UNHCR representative

²¹ Callister and Wall (2004) provide the first empirically based report on US community mediators who do not have mediation training. For comparing the Committee mediation techniques and the Western techniques, I will use Callister and Wall’s data on the US context and compare it with the data I have obtained through observation of the Committee sessions.

suggests him/her to go the UNHCR office to seek for legal assistance. So this is also a source of power for UNHCR in order to put influence on the parties. BAFIA is also very important organization in Iran, working under the Ministry of Interior of Iran, dealing with all issues regarding the alien residents.

Furthermore, the DSC members were professionals in law. The disputants know that if they do not reach an agreement, the minutes of the session can be used in the court²². This is also a source of power for the DSC members, because their views can be reflected in the session minutes, which in turn can be used as evidence in the court.

A number of techniques are about mediator's use of additional third parties. These techniques are: gather information from third party; have third party criticize; have third party educate; have third party argue for concessions; meet with third party present; and have third party assist. These techniques are highly used in collectivist societies where there is interdependence between individuals and groups (Callister and Wall, 2004: 592). The DSC, however, did not use any techniques involving additional third parties. This may show a contradiction with Wall's proposition²³. The explanation for DSC's non-usage of the third parties would be the members' reluctance to put extra effort that such techniques require. The DSC members were not willing to use extra effort²⁴. In fact the same reason explains the non-existence of another technique, namely meeting separately with each party (technique 1).

Some techniques are referred to as "face maintenance" techniques by Callister and Wall (2004: 582). They are namely forgiveness (technique 25), apology (technique 24), cite dependency (technique 17), and call for empathy (technique 36). These techniques are used highly in the cultures putting high values on harmony and face maintenance.

²² Interview with the UNHCR representative

²³ In fact, Wall's findings do not suggest usage of third party by the Thai mediators either, that is different from his initial proposition. However, he explains that in addition to the fact these techniques cause additional effort to the mediators, the Thai mediators, as Buddhists, feel a strong responsibility for establishing harmony in the collective and conclude that calling on others would be somewhat discordant for these parties (2004:592).

²⁴ For example, In the first case, they even did not ask Riza to bring the witnesses he was talking about, in order to get further information about the case.

Since the US culture does not have those values, the mediators use these techniques minimally (Callister and Wall, 2004:591).

Interestingly, the findings from the observations in the DSC show minimal usage of these techniques. Only the technique of asking for empathy is used in one Case. This finding is interesting because there seems again a contradiction with Callister and Wall (2004)'s proposition. The mediators in the Middle Eastern Islamic context emphasize the need to restore "harmony" and "solidarity" (Irani and Funk, 2000:30). Therefore, it is expected that the face-maintenance techniques be used intensively. There is no one general explanation for the non-usage of the three out of four face-maintenance techniques. Limited number of observations can be a reason for not seeing the usage of these techniques. However, there are also some special reasons and conditions for the DSC in general and for the cases I observed in particular.

Asking for apology or forgiveness, if done in a joint session, might cause humiliation for the party who should be forgiven or who should apologize. In the Islamic context, the process of *sulh*, by which forgiveness and harmony is aimed, is done not directly and through some steps. The forgiveness is shown indirectly by offering coffee to the victim side (Irani and Funk, 2000:28). The mediations in the DSCs, however, were done in a very short period of time and they were consisted of only joint sessions. Therefore, despite the existence of value of harmony, and asking for apology and forgiveness as techniques in the Middle Eastern Islamic context, the situations were convenient for the application of these techniques.

The DSC members did not cite interdependence of the members because in both Cases 1 and 3, the disputes were not of relational nature. The possibility of a future interaction between the parties of each dispute is very low. Therefore, practically, such citation would be useless.

There are some other techniques not used because of special conditions of the cases I have observed. The disputes in both cases were not very emotional. The sessions never witnessed hot and sensitive discussions between the disputants. Therefore, there was no need to relax (technique 26) and separate the disputants (technique 30).

Furthermore, the sessions last for short periods of time²⁵. Hence, there was no need for a break (technique 29).

B.2.1. Impartiality and Neutrality

Impartiality and neutrality are very important determinants for the success of a mediator in the Western context. “When disputants believe that a mediator is biased against them, they are likely to be less receptive to mediation” (Rubin, Pruitt, and Kim, 1994: pp. 200-201). Impartiality is defined as absence of bias or preference in favor of one or more negotiators, their interests, or the specific solutions that they are advocating. Neutrality is referred to the relationship or behavior between intervener and disputants (Moore, 1996:52).

The DSC, however, demonstrates a very different approach from the Western approach in terms of impartiality and neutrality. First of all, the composition of the DSC members is a very important aspect of the DSC. Involvement of both Iranian and Afghan members on one hand, and both international and national organizations on the other, makes the DSC a neutral source of dispute settlement for both Afghan and Iranian disputing parties, overcoming the problems mentioned above about the traditional sources of dispute settlement.

Secondly, in the process of mediating, the DSC members were neutral, having no special relationship with the disputants, but they were not unbiased in favor of a disputant.

The DSC members, in both Cases 1 and 3, after getting informed in the hearing sessions about the cases, started to take an apparent position in favor of one party against the other. In Case 1, the DSC members took Wais’s side. A consensus among the members emerged that Wais was right so that Jamshid has to pay all the money to

²⁵ The two cases were finished in about one and half hour. This period includes reading the files and getting information about the cases, hearing the disputants about their cases, writing the minutes of the sessions, and dealing with other two cases which lacked one of the parties and hence could not form mediation session.

Wais. An important portion of techniques used in this case was to favor Wais against Jamshid. It was *Jamshid* who was told about the negative results of nonagreement (technique 33) and the process of the case in the court (technique 31). It was *Jamshid* who criticized for not paying the money of Wais (technique 35). Again, it was *Jamshid* who was told that nonagreement would harm the honor of his brother (technique 42). Even questions like “Are you ready to pay 1,000,000 Rials per month?” were asked, before Jamshid accepted that he *had to* pay the money (technique 43).

In Case 3, the DSC took obviously side with Miqdad, the tenant, against Cirus, the proprietor. In this case, the members asked Cirus to establish empathy with Miqdad, who was going back to Afghanistan, and therefore, it was important for Miqdad to take his money back as soon as possible (technique 36). The members, even tried to convince Cirus about his financial capability of paying the money back (technique 44). As it is seen, a significant number of the DSC members’ techniques were used in favor of one party against another during the process. This is a significant deviation from the Western mediation style.

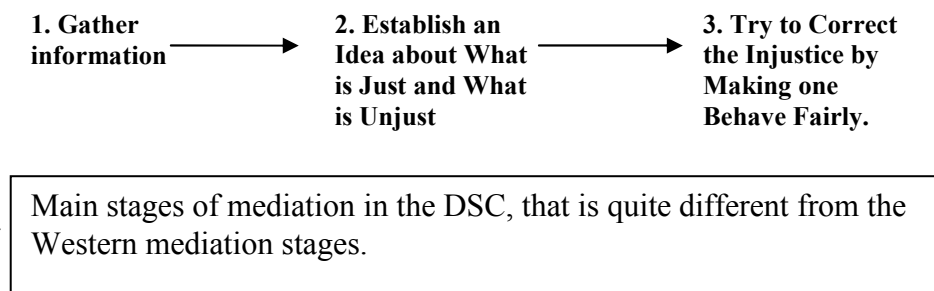
B.2.2 Mediation Stages

Another important difference between the Western mediation style and that of the DSC is in the mediation stages. Moore (1996) shows 12 stages of mediation that can be summarized mainly as: a) getting information; b) developing a strategy for mediation; and c) assisting the disputing parties to find their solutions.

The first stage of the DSC is similar to that proposed by Moore. However, the second stage of the DSC mediation is not to develop a strategy for mediation; rather it is to form an idea about the rightness or wrongness of the parties (Figure 3.1.). In Case 1, the DSC members came to the belief that Wais was right and Jamshid had to pay the money back to Wais. When Jamshid said I am not indebted, the Judge replied “You *are* indebted.” Similarly, in Case 3, the DSC members came to the idea that the proprietor (Cirus) was guilty in not paying the tenant’s money and that Cirus should pay the money as soon as possible.

In the last stage, the DSC members try to convince the party that they think is wrong to behave fairly, instead of persuading and assisting them to find their *own* solutions. In Case 1, the DSC members tried to persuade *Jamshid* to pay all the money back to Wais. They were trying to influence him through different ways, such as showing the bad influence of nonagreement on himself and the bad influence of nonagreement on the social reputation of his brother. In Case 3, for example, the UNHCR representative said apparently to Cirus “Give the money of this man who wants to go back [to Afghanistan.]” And when Cirus tried to say that he does not have that money now, the DSC members asked him about his properties. He told that he has 10 real estates. The DSC members tried to convince him that with this amount of property, it should be very easy for him to pay the money of Miqdad. UNHCR: “A person with 10 houses has sufficient credit in the market to find 10,000,000 Rials.”

Figure 3.1.



C. Conclusion

The analysis of data helps us make a comparison between the US community mediation as an example in the Western context and the DSC’s mediation, as an example of Islamic, Middle Eastern community mediation, in terms of their techniques, approaches, and stages. Some pieces of data can not be used for making a comparison between the Western community mediation and the DSC mediation, because those pieces of data are about the special conditions of the DSC and some of are special pieces of data about the cases I have observed. Therefore, they can be generalized and labeled as the “DSC’s mediation”. I used these pieces of data, however, to evaluate the

special condition of the DSC, and the factors that influenced usage or non-usage of some techniques.

Looking at the techniques of mediation, the main difference between the mediation of DSC and the American community mediation is that the DSC members use more assertive techniques than their American counterparts. This can be attributed to the power and respect that the DSC members have vis-à-vis the disputants²⁶.

There is also an important difference between the Western approach to mediation and the way the DSC approaches. The Western mediation is based on the principle of impartiality and neutrality, while the DSC members preferred to take side with one of the disputants. This difference takes us to next comparison about the main stages. Furthermore, the neutrality role that the DSC plays because of its composition (both Iranian and Afghan members as well as both national and international organizations) is a very important and unique aspect of the DSC.

The main stages in the Western mediation includes getting information, designing a plan to mediate, and facilitating the negotiation of the disputing parties and assisting them to find their own solutions. The DSC followed a different way. They started with gathering information. They continued, however, with deciding who is right and who is wrong. In the last stage, they tried to convince the “guilty” party to behave fairly.

Some of the techniques were not used because of lack of time and motivation²⁷ of the members. Non-usage of third party assistance can be explained in this way. Lack of time and motivation might also contribute to the DSC’s not having separate meeting with the disputants.

Non-usage of face-maintenance techniques can be associated with the limited number of cases observed. The special conditions of the cases I have observed and the DSC have also impact on non-usage of face-maintenance techniques as well. Having

²⁶ This is also very parallel with the community mediation used in other Middle Eastern countries (see Irani, 1999; Irani and Funk, 2000; Abu-Nimer 1996; Salem, 1997).

²⁷ In fact, sometimes, there was not institutional time limitation for the Committee members. They could ask, for example, for the extra information from the witnesses. However, they refused to do it. After all, they were not accountable neither for the process nor for the outcome of the Committee’s mediation. Why they should have prolonged the process by asking the involvement of additional third parties?

only joint meetings with the disputants was an impediment for usage of those techniques, because they might cause even further humiliation in the party who was asked to “apologize” or “be forgiven”. “Cite dependency”, on the other hand, is relevant for the case where further relationships are high possibility, which was not the case for the sessions I observed.

In this chapter, I evaluated the data from the Cases 1 and 3 to analyze the techniques, approaches, and stages of mediation in the DSC; and furthermore, to compare with those of the US community mediation. The findings are useful partially because of generalizations that can be made about the differences/similarities between the Western and Middle Eastern community mediations; and partially because they reveal specific conditions of the DSC and the cases I have observed, which can not be generalized as the Middle Eastern community mediation. Examining both general, cultural characteristics and specific situations of the DSC is useful for the next chapter, which is about the decision making process of the DSCs.

CHAPTER 4

GROUP DECISION MAKING IN THE DSC'S

This chapter analyzes the decision making process in the DSC, using Hermann et al's (2001) model. As mentioned before, it is not only the mediation techniques that influence the quality of the propositions offered to the conflicting parties; the way that the DSC members deal with the conflicts among themselves in order to reach a decision is also crucial. This chapter will look at the behaviors and performances of the members in the group; so that strong and weak points of the DSC's process of decision making, and whether or not the decision making process in the DSC is an effective one, will be explored.

The data that will be used are obtained through participant observation in the DSC meetings and also through the interviews with the DSC members. My units of analysis will be each decision made in the sessions. Unlike the previous chapter, I will look at all four of the cases, rather than only two; because in all four cases there are decisions made by the DSC members, which are useful for the analysis of the decision making process. In some cases the DSC members make decisions suggesting some propositions to the disputing parties. If they accept the propositions suggested to them, an agreement is written and the file is closed. If the disputing parties do not agree with the propositions made, or if one of the disputing parties do not show up in the hearing session, then the DSC members should make decisions either to continue with the case in other sessions or to close the case and refer it to the court.

A. Group Decision in the DSC²⁸

By “group decision,” I do not mean only the “final” decision of the DSC. In each case, there is a final decision; however, there are other occasions for decision in the process of mediation to *suggest* some solutions for the disputants. This is very different from other examples of studies on decision-making. Those studies generally focus on the “final” output of the decision making group, which is *one* decision made for each case (e.g. see Çuhadar and Özkeçeci, 2004; see also examples given by Hermann et al, 2001). In this thesis, however, there might be *some* occasions for decision instead of only one decision in each case. The main function of the DSC is, however, to make decisions on different solutions to be provided to the disputants.

In Cases 2 and 4, the decision is made only concerning whether or not to refer the case to the court. In Cases 1 and 3, on the other hand, the DSC decided on some suggestions to be offered to the disputant parties in order to settle their disputes. The decisions made in the DSC are as follows:

1. Case 1:

- The DSC members decided to suggest Jamshid to swear on Qoran to prove his position.
- The DSC members, later on, decided to suggest Wais to refuse Jamshid’s swearing.
- The DSC members decided to suggest Jamshid to pay 1000,000 Rials each month to finish his debt to Wais.

²⁸ I should clarify that since the number of cases observed are limited, I don’t intend to generalize the findings to the whole process of the Committee since its foundation. In contrary, I focus on the decision making process in the cases observed. The generalizations are proposed to be studied further in other studies.

- The DSC members decided to send the case to the court.

2. Case 2:

- The DSC decided to refer the case to the court.

3. Case 3:

- The DSC decided to ask Ciruz to bring *half* of his debt in two weeks.
- The DSC decided to put a sanction on Cirus, telling him he would pay 20 percent of fine in case of failure to pay half of the money back in two weeks.

4. Case 4:

- The DSC decided to refer the case to the court.

In each occasion, the decision of the DSC is in fact the opinion of one of the members. If a member suggests a solution to the disputing parties, that suggestion is immediately adopted as the decision of the group. The group members adopt the suggestion made by one of its members without any questioning or debating. What happens in the DSC subsequently is other members' effort to support the suggestion made by one of their colleagues. In the process of mediation, any member continued from the place his/her colleague left. For example if a member suggests that the respondent should bring the money in *two* weeks, other members do not question this suggestion and immediately adopt it as the group decision. What the others do is to complement the suggestion made to the respondent; telling him to bring *some* and not all of the money. The other member suggests that the respondent should bring *half* of the money in two weeks, which is immediately adopted as the group decision.

B. Hermann et al's Model:

In order to analyze the decision making process of the DSC theoretically, I will use Hermann et al's (2001) model. They focus on "group choices among one or more options lacking any perceived common underlying structure" (p.136). The DSC's decisions, in this respect, can be evaluated as unstructured solutions, too. The focus here is not on conflicts which might lead to the mathematically best solutions; however, the focus is how the group members solve their internal conflicts. There is no right answer in the policy problems in the model of Hermann et al, so is the case in this thesis.

Hermann et al (2001) propose four possibilities concerning the outcome of a decision making process: deadlock, dominant solution, subset solution, and integrative solution (Figure 2.1.) Deadlock is a situation of stalemate in which group members reach no decision on how to resolve their differences. Dominant or prevalent solution is a situation in which the group selects one option that has been discussed from the beginning; they demonstrate concurrence around a particular option. Here, the choice is between that option and doing nothing. This situation happens when it is perceived that there are no other suitable options, when the norms in the group prevent suggesting an alternative to the option suggested by another (authoritative) member, or when there is collective belief about what is suitable in a certain context.

Subset solution refers to a situation in which the option suggested by a faction in the group prevails the others' options, and the decision made in the group reflects only the opinion of only that faction. Finally, an integrative solution reflects the preferences of all members to a degree, however, it also predicts some shifts from the initial position of the group members. This final decision may be made by either a creation of a new option that was not thought about at the outset, or through achieving a mutually acceptable compromise (pp.137-8).

Deadlock is the preference of no group members. The dominant solution is the preference of one or two group members. A subset solution is the preference of a coalition of members. Integrative solution covers the final preferences of all members.

There are certain processes, which are likely to create these outcomes. Although these processes do not determine the quality of decision making, they are somehow related to each other. Now, I prefer to concentrate on these processes and look what process the DSC works through.

A detailed description of the decision making models (see figure 2.1) of Hermann et al (2001) has been provided in Chapter 2. In this chapter, I will look at the empirical data about the functioning of the DSC and look what model explains best the decision making process of the DSC.

Each model, provided by Hermann et al (2001), has a high probability for a certain kind of solution. The concurrence model predicts a dominant solution while the unanimity model foresees either a deadlock or an integrative solution; and the plurality model expects a subset solution (Figure 2.2.). However, these relations between the outcomes and the processes are not deterministic. They only show the likelihood of a solution associated with a model. There are also mediating variables which influence the outcome of the decision making process. For example, integrative solution is very likely in the unanimity model, in which the group members have no primary identity with the group, and there is a requirement for all members to agree in order to make a decision (unanimity model). However, looking at the mediating variables, it can be seen that integrative solution is possible even for the cases in which the group members have primary identity with the group (concurrence model), and also in the cases where the primary identity is outside the group and there is no requirement (plurality model) (see Figure 2.2.). As seen from the example, looking at the primary variables will not show us the nature of the final decision of the DSC. Therefore, we will look at both the primary and mediating variables that exist in the DSC.

There are 8 decisions made by the DSC. However, the members of the DSC, the issues and reasons of disputes (interest-based), the social and cultural context of the decision making process (Islamic-Middle Eastern context), as well as the nature and nationality of disputing parties do not change in any of these occasions. Therefore, I assume there is no change in the process of decision making for each occasion.

B.1. Primary Group Identity

Primary group identity, the most important variable is about individuals who are simultaneously in several groups/organizations dealing with the *same* policy problem (Hermann et al, 2001: 141). The concept of primary group identity is developed by Hermann et al in order to cover the issue of “relative” attraction, which is either putting or not higher values on present decision making group (here the DSC) when a member faces conflicting pressures from entities (here BAFIA, UNHCR, and Judiciary System) with which he/she identifies. These conflicting pressures arise when the entities deal with the same policy problem (Hermann et al, 2001: 141).

None of the abovementioned organizations and institution (namely BAFIA, UNHCR, and the Iranian judiciary System), however, declared a determined position regarding the disputes. They have not mentioned any policy regarding some general or special kinds of disputes. The members are not accountable to their respective organizations for the role they are playing and the decisions they make in the DSC²⁹.

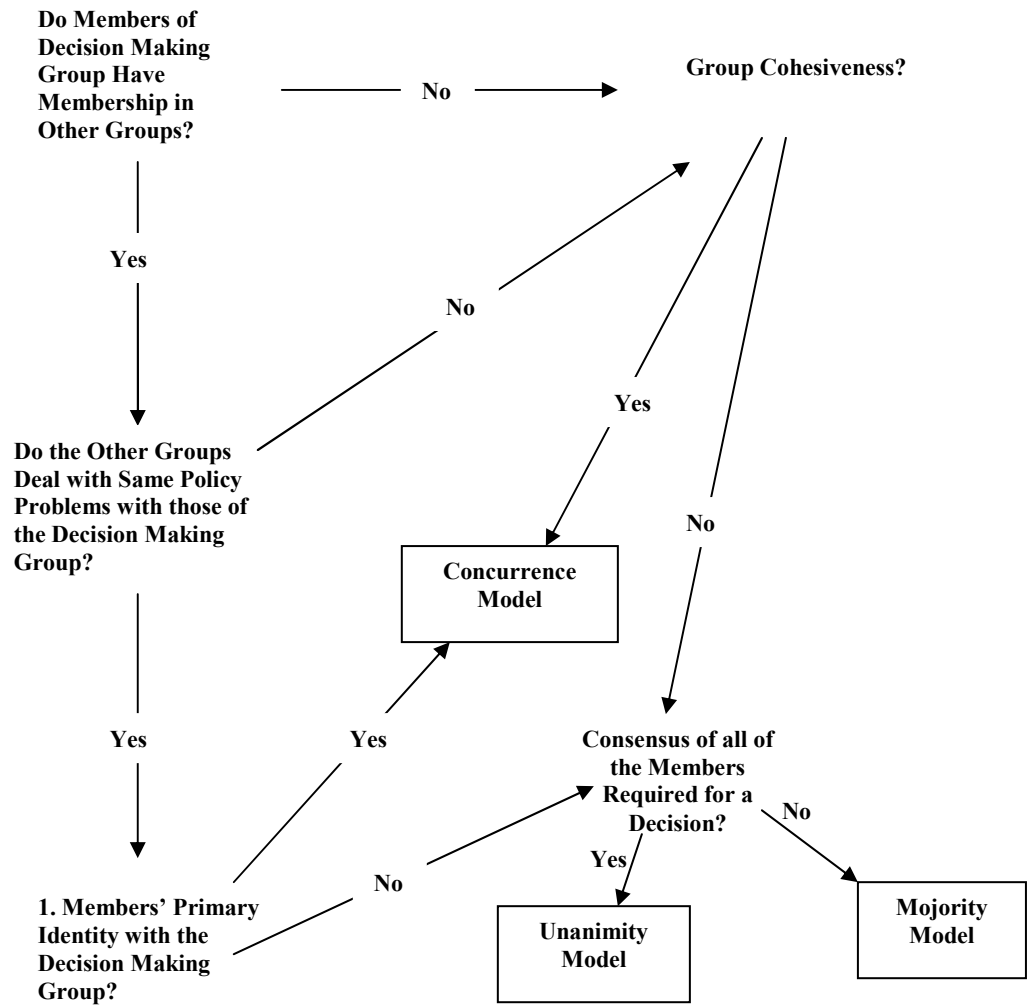
The primary goal of the DSC, however, is to resolve the disputes which may cause delay in the process of repatriation³⁰. Although the DSC members also have membership in other organizations, these entities do not deal with the same problems. Therefore, if cohesiveness emerges within the DSC members, that would be synonymous with the Hermann et al’s (2001) primary identification (Figure 4.1). In other words, if there is group cohesion among the DSC members, the primary variable for the concurrence model is realized. Here, it does not matter if the members put a high(er) value to the organizations rather than the DSC, because simply these organizations do not deal with the same problems. Thus, they do not interfere with the

²⁹ There are not detailed reports about the process of decision making. Even there was not a report available in the Secretariat, which is the responsible office for taking the reports, about the outcomes of the sessions, the percentage of the disputes settled in the Committee, etc.

³⁰ The establishment of this Committee is based upon the Tripartite Agreement on the *Voluntary Repatriation of the Afghan Refugees*.

subject matter. Consequently, the primary question is whether there is group cohesiveness in the DSC. If the answer is positive then the concurrence model should be applied.

Figure 4.1.



Affect of dealing with the same policy problems in case of membership in other groups. This is a complementary figure to Hermann et al's figure in p. 144.

B.1.1. Group Cohesiveness

There are many studies on effects of cohesiveness on concurrence seeking behaviors. Among these studies are the experimental tests³¹ (e.g. Ahlfinger and Esser, 2001; Tjosvold and Field, 2001; Flowers, 1977³²; Courtright, 1978³³; Leana, 1985³⁴; Fodor and Smith, 1982³⁵; Callaway and Esser, 1984³⁶; Turner, et al, 1992³⁷; Callaway, Marriot, and Esser, 1985)³⁸ and descriptive tests (Esser and Lindoerfer, 1989; Esser, 1998; Hensley and Griffin³⁹, 1986; Huseman and Driver, 1979; Kramer, 1998; Manz and Sims, 1982; Moorhead and Montanari, 1986; Moorhead, Ference, and Neck, 1991; Moorhead, Neck, and West, 1998; Peterson, et. al., 1998; Raven, 1974; Smith 1984;

³¹ For a review of experimental studies see Turner and Pratkanis 1998.

³² It is one of the experimental studies which manipulated cohesion and looked for defective decision making. Flowers (1977) varied cohesion by comparing of acquaintances with groups of strangers and found no effects on decision making.

³³ It is another experimental study manipulating cohesion and seeking defective decision making. Courtright (1978) did not find any simple relation between cohesion on decision making. Cohesion leads to groupthink only where rapid concurrence is an explicit group objective.

³⁴ It is another experimental study manipulating cohesion and seeking defective decision making. Leana (1985) found that members of more cohesive groups brought out more of the information originally divided among individual group members – the opposite of the groupthink prediction.

³⁵ They found no relationship between cohesiveness and groupthink.

³⁶ They found that cohesiveness leads to groupthink only where no directions for effective group decision making are given.

³⁷ They found that there is a positive relationship between cohesiveness and groupthink, but only where the group felt threatened by being videotaped.

³⁸ From the experimental tests, which have been conducted so far, Hogg and Hains (1998) conclude that although “the effects of group cohesiveness on groupthink [i.e. concurrence seeking] may depend on how cohesiveness is operationalized and hence conceptualized” (p.325)

³⁹ In their study of 1979 gymnasium controversy at Kent University, they found that each major condition of the theory present in the conflict and that the decision makers were victims of groupthink.

Tetlock et al, 1992; Whyte, 1998; Yetiv, 2003) on the relationship between group cohesiveness and concurrence seeking (groupthink)⁴⁰.

Levine and Moreland (1990) summarize a number of studies on the important factors in producing cohesion (p.604). Simply assembling people in a group is a reason to produce some cohesion (Hogg 1987). The more time the group members spend with each other, the stronger their cohesion becomes (e.g. Manning and Fullerton, 1988). Secondly, cohesion rises in groups whose members like one another (Piper et al, 1983; Stokes, 1983). Therefore, anything producing such good feelings toward one another (e.g. propinquity, competence, real or perceived similarity) can strengthen group cohesion. Thirdly, groups which are perceived by people as rewarding tend to have stronger cohesion (e.g. Ruder and Gill, 1982; Stokes, 1983). A group is perceived as rewarding if people enjoy its activities, approve of its goals, or believe that membership will be useful to them in other contexts. When groups are successful they are naturally more rewarding. However, some groups can preserve cohesion even if they fail (e.g. Brawley et al, 1987). Finally, leaders can strengthen group cohesion by, for example, encouraging feelings of warmth and acceptance among the members (e.g. Piper et al, 1983; Smith, 1983).

The first three of the abovementioned factors exist in the DSC. The group members see each other at least once a week. They have been working together from the beginning of the creation of the DSC, approximately one year before this research was conducted; only the judge has changed, but even he was working for a couple of months with the other members of the group.

It is not very easy to say to what degree the members like each other. However, the similarities among the group members are not negligible. They are all from the same professional background. They are experts in law. There is also another similarity: despite the international nature and orientation of the DSC, the members are predominantly Iranian. The only non-Iranian member is the Afghan elder, who is very passive in the decision making process of the DSC (Table 4.1.)⁴¹.

⁴⁰ For a summary of both experimental and descriptive studies see Esser 1998.

⁴¹ There are two structural reasons for the limited contribution of the Afghan elder. One is the composition of the tables of the Committee. While the Iranian members of the Committee are sitting very close to each other, the Afghan elder is relatively far away

The DSC is highly rewarding for the group members. The members, while continuing their own jobs, earn an income also from participating in the DSC. Furthermore, membership in an international DSC is a source of prestige. Especially, the Afghan elder, who has neither membership to any other organization, nor an official job, benefits much from his membership in the DSC. After all he is a member of a well-respected DSC. Furthermore, he earns from this prestigious job.

Consequently, the primary condition of concurrence seeking, which is cohesiveness, exists in the group, suggesting that decision making process in the DSC falls under the category of concurrence model. However, it can be argued that if the group is cohesive then the members can be more open to each other's criticism and discuss freely their dissent.

Therefore, for the emergence of concurrence there are other important mediating variables (see Figure 2.1.). One is the existence of norms not permitting expression of disagreement. The other key variable is the discussion style of the leadership. If the leader permits disagreement, this might prevent premature closure; even there are norms against expression of disagreements. Therefore, I will analyze whether these two key variables exist in the DSC.

Figure 2.2. provides a more comprehensive and detailed picture of the impact of the mediating variables on the decision outputs in every model. In that figure, the question about cohesiveness (primary group identity) was the first question. The answer is positive. Therefore we move to the second question, asking whether or not the leader suppresses dissent in the group.

from them (see Figure 1.1.) The other one is the language. While the Afghan member speaks Farsi and is familiar with the legal concepts and terms in Afghanistan, he does not know the legal concepts and "writing styles" used by the Iranians. That is why the files are not brought to him and hence the Iranians members take the initiative (Interview with the Afghan elder). Consequently the number of moves by the elder is less than the others.

B.2. Leader Suppresses Dissent?

The DSC had a leader, which was the Judge. However, this was very difficult to observe in the hearing sessions. There was no imposition of thoughts by any of the members, including the leader of the DSC⁴². Looking at the moves⁴³ of each member in the DSC shows this reality as well (Table 4.1.).

Table 4.1. The number of moves by each member in the sessions

	Case 1	Case 2	Case 3	Case 4	Cum. for Member
#Moves by BAFIA	11	0	0	1	12
#Moves by UNHCR	11	2	15	1	29
#Moves by Judge	15	0	12	0	27
#Moves by Elder	0	0	2	0	2
Cumulative for cases	37	2	29	2	70

The moves made by the Judge are not predominantly more than the moves made by other members; for example it is not more than the moves made by the UNHCR lawyer. Although, the data about the number of moves made by each member does not give a comprehensive idea about (non)existence of group suppression of dissent, it helps demonstrating the fact that leadership is not a predominant one.

Some of these moves were new propositions made by the DSC members. The Judge never disagreed with any of these proposition made by any DSC member.

⁴² In the interview with the BAFIA lawyer and the Judge, they told that, although theoretically the Judge has the right to impose his position, in practice, this has never happened.

⁴³ One move means taking the turn once and talking either a few words or some long sentences. Although this does not show the exact amount of the each member's participation, it is useful in demonstrating the number of times each member participated in the cases.

Therefore, the fact that there was not disagreement and dissent in the DSC should be explained with other factors than the suppression of dissent in the DSC by the Judge. So, the answer for the question 2 is negative. Therefore, we look for the subsequent question, that is question 3, which is about the group norms.

B.3. Group Norms Discourage Dissent?

The answer for this question emerged mainly in the interviews with the group members and partially from the observations of the cases. The members of the group put high value on harmony in the group. As a part of the Middle Eastern culture⁴⁴, the DSC members perceive conflict among themselves as something negative. They avoided talking about any conflict that might have emerged in the process of decision making⁴⁵. For them, maintenance of harmony of the DSC was much more important than the amount and the quality of their participation in the whole process⁴⁶.

The decisions made are based on “collaboration of the DSC members” and not as a result of a process of conflict resolution among the members of the DSC. They avoided emergence of conflict among themselves. The BAFIA representative did not remember any conflict in the DSC so that the head of the DSC had to impose his position since the establishment of the DSC⁴⁷.

⁴⁴ See Irani and Funk, 2000; Abu-Nimer, 1996.

⁴⁵ In the interview with the UNHCR member, she referred to some “minor” conflicts with the previous head of the Committee, who has been a judge and a clergyman at the same time; but despite my questions, she did not want to talk about the details of the conflict that she had with the previous head of the Committee.

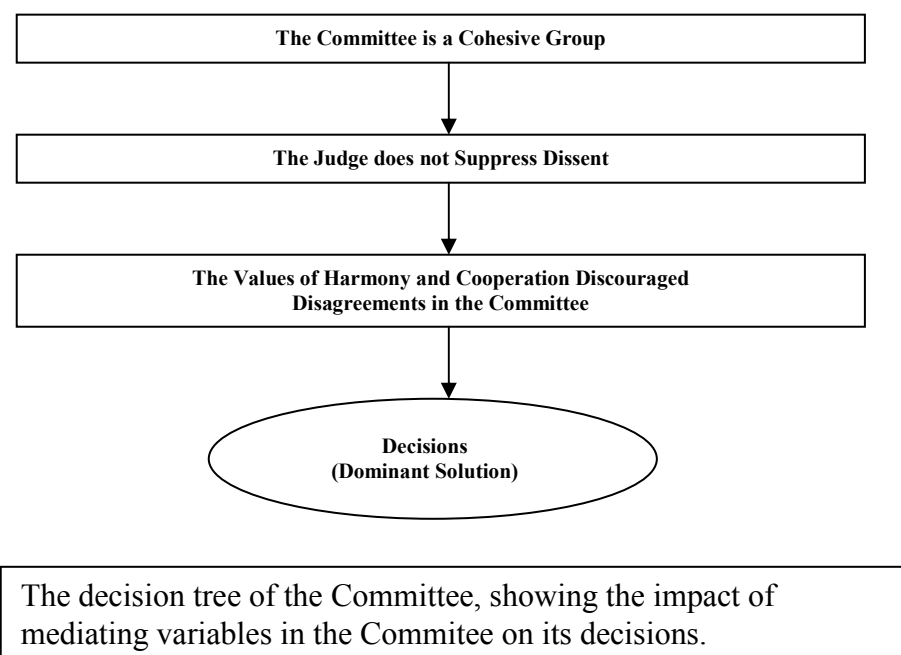
⁴⁶ No files were brought to the Afghan Elder by the Secretary. Had the files brought to the Elder, he would deal with the case and write down the minutes of the Committee. However, he did not even tell the other members about this complaint. He said that it would be “rude” to ask the Secretary to bring a file to him to review. So, in order not to be “rude” to the other members; and consequently not harm the harmony of the Committee, he preferred not to ask for revision of the files.

⁴⁷ Interview with the BAFIA representative.

The DSC members always mentioned that the DSC had cooperative values and nature, and that the members did not have “competition” with each other⁴⁸. The norms of cooperation and harmony prevented emergence of alternative ideas to the idea which had been proposed by one of the DSC members. Therefore, the answer for the question 3 is positive.

We have seen that the DSC has been a cohesive group, not having a leader suppressing dissent, but having norms suppressing dissent. According to Hermann et al’s (2001) model, this sequence of factors makes a dominant solution likely (Figure 4.2). Looking at the lack of elaboration and discussion of different options in the DSC is a sign of concurrence seeking (Janis, 1982). This shows the applicability and accuracy of Hermann et al’s model for the decision making process within the DSC.

Figure 4.2.



⁴⁸ Interview with the UNHCR representative.

C. Proposal for Modification

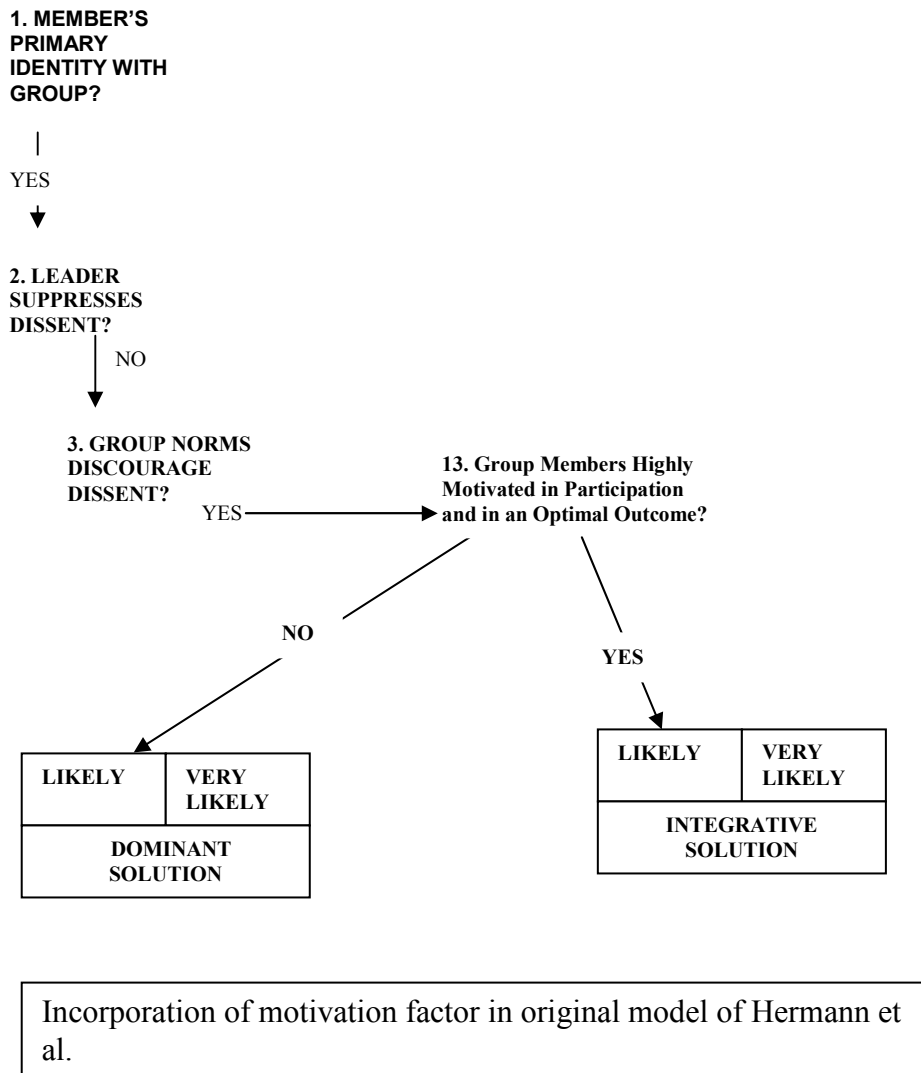
The applicability of the decision making to the DSC, however, does not suggest that the model explains the process of decision making perfectly. While observing the process of decision making in the DSC, and also looking at the reasons for non-usage of some mediation techniques, I realized that the DSC members are not well motivated to participate actively in the process, nor they are well motivated to have the optimal decision.

Hermann et al's (2001) model, however, lacks the factor of members' motivation. Therefore, the model adopts a deterministic nature; so that the existence of norms discouraging disagreement in a cohesive group will lead in a dominant solution. Although Hermann et al (2001) do not claim that this situation *definitely* causes a dominant solution, they do not offer any way out of dominant solution in their model for a cohesive group with norms discouraging disagreement among the group members.

. What I propose here is that members' motivation is a very important variable for the group to have either dominant solution or integrative solution. Therefore, an additional key variable should be added to Hermann et al's (2001) model after a positive answer to the question 3 in their model (Figure 2.2.), which is about the existence of group norms discouraging disagreement among the members

In the modified model (Figure 4.3.) the factor of motivation has been taken into account. It is proposed that a cohesive group with norms discouraging disagreement can have an *integrative solution* if the group members have high motivation in participating in the decision making process of the DSC, and also if they are highly motivated in an optimal decision.

Figure 4.3.



A criticism might emerge about the fact that I claim the applicability of a model in a different context, and at the same time, I propose modification of that original model looking at the data in a different context. My answer to this criticism is that the modification I have proposed is about a factor that might emerge in the authoritative decision units as well. I am careful not to suggest modification of any parts of the original model through analyzing data of different contexts. However, in this specific case, members' motivation has been a topic of study for foreign policy decision making groups as well (see Flippen, 1999).

D. Conclusion

The decision making process of the DSC suffers from concurrence seeking, so that there is self-censorship among the DSC members. No option is discussed and elaborated in detail. The outcome is a dominant solution, i.e. in each occasion for decision the position of only one member has been determining. This member can be any of the four members⁴⁹.

While the leader (the judge) does not impose his position, and does not suppress dissent in the DSC, there are norms which prevent the expression of disagreement among the DSC members. The result is a dominant solution.

Looking at this model, the solution that can be provided by an analyst would be destruction of the norms of harmony and cooperation among the group members. This seems too difficult, because one main reason for the existence of these norms is the cultural context of the DSC.

Hermann et al's (2001) model draws a highly pessimistic picture for the cohesive groups in collectivist cultures, where norms of harmony and cooperation are of high value. The study on the DSC's decision making process, however, shows that there is a way to go out of this pessimism. If we can increase the motivation of the group's members, then integrative solution may be a possibility. Therefore, this important variable should be added to the original model provided by Hermann et al (2001).

⁴⁹ In fact, the Afghan elder participated minimally. The reason for this lack of participation is some changes in the dialects of

CHAPTER 5

CONCLUSION

This thesis has four main contributions. Firstly, it is the first description of the DSCs as well as the first assessment of the mediation techniques and approaches in an Iranian-Afghan context. The mediation techniques and approaches of the DSCs have many similarities as well as differences with the community mediation in the West. Secondly, it looks at the decision making process of the DSC. Since there are four members in the DSC, it is important to look at the process through which they make their decisions. This study shows the applicability of a recent model provided by Hermann et al (2001) in a completely different context. Thirdly, it proposes a modification in the model of Hermann et al (2001). Finally, it provides some practical suggestions for the betterment of the decision making process of the DSC. Below, a more detailed picture of these contributions is provided.

This study has evaluated the techniques used in the DSC and a comparison has been made between the mediation techniques used in the West and those used in this specific context. It has been demonstrated that although (non)usage of certain techniques can be attributed to the cultural differences and the different assumptions and approaches each culture might have, some others are the consequence of specific conditions of the DSC which are not necessarily related to the culture. Especially, time limitation was a main determinant in non-usage of many techniques, such as utilizing an additional third party in the process of the mediation. This study suggests that this time limitation was caused by lack of individual enthusiasm and interest of the DSC members to deal deeply with, and therefore put a lot of effort and time to, the disputes.

There is also a difference in the mediation approaches in the DSC with those in the West. While the mediation in the West puts much emphasis on the principles of

neutrality and impartiality, the DSC's mediation is more manipulative and assertive. This takes us to the next point, which is about the stages of mediation. The Western mediation can be summarized as a) getting information; b) developing a strategy for mediation; and c) assisting the disputing parties to find their solutions. While the DSC mediation starts from the same point as the Western mediation does, it goes toward a different direction, i.e. it starts with gathering information. However, it continues with establishing an Idea about who is right and who is guilty. The last stage of the DSC mediation is to convince the "guilty" party to behave fairly.

The second main contribution of this study demonstrates the applicability of a decision making model, which was originally developed for foreign policy decision making, in a very different type of decision making group. There are two main differences between the DSCs and the groups for which Hermann et al developed their model. First, the DSCs are not groups making decision on foreign policy issues. They are mediating groups for community disputes. Second, the DSCs are not "authoritative" decision units which are defined as decision units "with the ability to commit the resources of the society and, when faced with a problem, the authority to make a decision that cannot be readily reversed" (Hermann et al, 2001: 141). Hermann et al developed their model for authoritative decision units. The decisions of the DSCs were *suggestions* to the disputing parties, and they were not irreversible.

Despite these two differences, this study shows that Hermann et al's (2001) model can be used for the DSC. The importance of this finding is that it suggests that this model is also useful for further studies on decision making in different groups.

The results of the study on the decision-making process of the DSC show a high degree of concurrence seeking tendency among the members. In each decision, the preference of one of the DSC members has been determining. In all of the cases, the initial preference of a member was adopted without any questioning. This concurrence seeking was not a result of leader's suppression of group dissent. However, it was because group norms, emphasizing the importance of cooperation and harmony, that caused concurrence seeking in the DSC.

The third contribution is the theoretical implication of this study. This study suggests that Hermann et al's (2001) model of concurrence lacks a very important

variable. This variable is motivation. It is suggested that if the group members have a high motivation in participation to the DSC's process of decision making, and also if they are highly motivated in the outcome of the process of decision making, then integrative solution will be likely.

The fourth important contribution of this study is practical implications. It provides suggests some proposals for practical ways through which the motivation of the DSC members will increase and therefore an integrative solution will be likely. Since the results are built upon a limited number of cases, these suggestions are only proposals to be tested in further studies.

It is mentioned above that for a cohesive group like the DSC with group norms discouraging disagreements, the way to an integrative solution passes through increasing the motivation of the members in both active participation in the *process* of decision making and in reaching the *optimal decision*. This can be done in a variety of ways:

1. Paying the DSC members according to their working hours: The DSC members are currently not paid more if they deal work two hours instead one hour in a day. Therefore, payment according the working hours will have a positive effect. The members will not hasten to end sessions. Therefore, they will have enough time to use some techniques such as usage of additional third party and have separate meetings.
2. Accountability of members' for their active participation. If each member is taken accountable for active participation in the process of decision making, then more discussions will be expected. Accountability will decrease the impact of the group norms which discourage disagreements; because the members will have to decide either to keep with the group norms or fulfill their professional job, for which they are accountable. In the current situation, the group members do not have such a dichotomy, and hence they easily keep with the existing norms.
3. Rewarding the members for successful outcome. A successful outcome can be defined as a settlement of disputes without referring to the

court. In the current situation, the members send unsettled disputes to the court, saying they do not adjudicate and they do not have the power to implement the decision of the DSC. This referring to the court might happen before consuming all mediation techniques and before sufficient discussions on different options. What is proposed here is not enforcement of any solutions. The DSC will continue to be a mediation group. If the members of this mediation group are rewarded for any settled cases, this will increase their motivation to take into consideration different options. Furthermore, this will cause a shift from negative impacts of group cohesiveness to positive ones. The well-being of the group will be better outcomes of the processes. Therefore, the members of the DSC, which are concerned about the well being of the DSC, will think of different options and express those different options in order to reach the optimal decision, that will maximize the well-being of the DSC. This increases toleration of the expression of disagreements in the DSC. Rewarding, hence, will be an important factor to reconsider each case before referring to the court.

The DSCs in Iran are very important for a variety of reasons. These DSCs help the refugees to settle their disputes without going through the long, formal, legal process of the courts. For the refugees who want to go back to Afghanistan immediately, this is very important.

Secondly, these DSCs are very important alternatives to the courts, where many refugees do not feel comfortable to litigate. There are mainly two reasons for the reluctance of the refugees in applying to the courts. One important reason is the power imbalance in the courts. An Afghan refugee is reluctant to sue an Iranian citizen in court whose judge and staff are Iranian citizens and applying Iranian rules. The other reason is the cost of the courts, which is an important impediment for the refugees to litigate. The DSCs overcome both barriers. The DSC has an Afghan elder. It is also free of charge. Therefore, the refugees can feel very comfortable to apply to the DSCs in case they have disputes with either Iranian citizens or their fellow Afghans.

In this study, the activities of one of these DSCs, the one in Mashhad, was described. An assessment of the its mediation techniques and approaches as well as a

comparison with the Western community mediation was conducted. The decision making process of the DSC was described and analyzed. Finally, in addition to the theoretical implication of this dissertation, practical suggestions for the betterment of the activities of the DSC are provided.

APPENDIX 1

Cases:

i. Case⁵⁰: Trade and Debt

Wais, an Afghan merchant refugee, has sold a number of sheep to Jamshid, while Jamshid refuses to pay all the price of the sheep to Wais. Wais raised the case to the DSC. The Secretariat invited Jamshid to the hearing session and he accepts the invitation. Both Wais and Jamshid are present in the hearing session. Initially the claimant, who speaks more than the respondent, starts to give details of the case and defend his position. He says:

- I sold 19 sheep to this man [demonstrating the respondent]. He said that I buy these sheep, but I will pay half of the money and the other half would be paid by my business partner [Hassan]. I asked him to give me a document showing that you are responsible for half of the money, and the other person for another half. But he [Jamshid] said “It is not problem, I will pay the money.” But now he says that his partner has not paid him the money and has deceived him. He has given me 7,500,000 Rials and he did not take any document from me regarding this 7,500,000 Rials. I say that 10,500,000 Rials is remained. He [Jamshid] does not accept. He says that he owes me only 1,500,000 Rials and the rest should be paid by his partner. The document that I have taken from this man [demonstrating Jamshid] does not write that I should take a half from him and another half from his partner.

⁵⁰ For the sake of confidentiality, instead of the original names of the parties to the disputes, the pseudonymous names are used. Wais, Qayyum, Miqdad, and Maqsud are used for Afghan refugees and Jamshid, Houshang, Cyrus, and Kianoush, and Hassan for Iranian citizens. Furthermore, for the sake of briefness in the dialogues of the cases, instead of BAFIA representative and UNHCR representative I will use BAFIA rep. and UNHCR rep. respectively. Instead of Chairman of the Committee, I will prefer to use “judge”, in order to avoid any misleading of the role he plays in the session; because he is actively leading the sessions.

- Jamshid: I have paid my share.

- BAFIA: You say that you have paid all your debts back to this man [Wais] and it is finished.

Jamshid: Yes. I have paid my share. This man [Wais], himself has signed and given this document to me.

BAFIA: Sir, have you signed this document?

Wais: I have never rejected it. There is written that he has given me 7,500,000 Rials and I accept it.

BAFIA: You [Hassan] have written that [he reads from the text]: “I owe 18,000,000 Rials to Wais in return of 19 sheep. I guarantee this money to be paid to him.” So, it is clear that Wais has trusted you as the guarantor of this money; and that is why he has given the sheep.

(UNHCR asks the original document and begins to examine it.)

Jamshid: I have not guaranteed the payment of this money.

Judge: But it has written so. Do you mean that it has written without your information and consent?

Jamshid: Yes.

Judge: Mr. Wais! Jamshid says that you have added the paragraph about his guaranteeing the payment without his information and consent. What do you say?

Wais: I don't know what to do. If he accepts to swear on Quran that he has not accepted to guarantee the payment, I will give up and withdraw my claim.

Judge: Mr. Jamshid! Wais is ready to withdraw his claim if you swear on Quran. Do swear?

Jamshid: No!

Judge: If you don't swear, it means that Wais is right.

(Meanwhile, it is revealed that Jamshid's ears don't hear properly)

Judge: Mr. Jamshid! Do you agree that Wais has given the sheep under your guarantee?

Jamshid: No!

Judge: Are you ready to swear?

UNHCR (shouting): Are you ready to swear that you have not guaranteed? Listen to me, father⁵¹! If you don't hear properly, I will shout, I will speak loud. Are you ready to swear?

Jamshid: No!

UNHCR: If you are right, so why don't you swear?

Jamshid: This document...

UNHCR: Forget about the document!

(Meanwhile Wais is speaking.)

UNHCR: By the way, you (Wais) shut up!

She continues: Look, Mr. Jamshid! There are only two situations. You are either right, so that you should be able to swear, or you lie. Decide now, have you guaranteed or not?

Jamshid: No!

UNHCR: Are you ready to swear that you have not guaranteed?

Jamshid: Yes!

UNHCR: Do you swear on Quran that you have not guaranteed?

Jamshid: Yes, I swear on Quran that I have not guaranteed.

UNHCR: Have not you guaranteed?

Jamshid: No!

UNHCR: Is this document written without your consent?

Jamshid: Yes!

UNHCR: Do you swear?

Jamshid: Yes

UNHCR: So he says that he will swear. Go and take *vudzu*⁵²⁵.

⁵¹ In Afghan and Iranian traditions, it is usual to call an old man as father.

(Jamshid goes out to take *vudzu*. Meanwhile, Wais starts to tell another story about Jamshid who has trespassed another person's rights.)

UNHCR: So why do you ask him to swear?

Wais: What else can I do?

(Wais continues to talk about Jamshid. Meanwhile, it is revealed that the brother of Jamshid is a very well-known, well-respected person, whom the members of the DSC (except the Afghan elder) know.)

Wais: If I was a corrupt person, I would not give him a document about the 7,500,000 Rials that he has given me. He did not have any document of it.

Judge: Mr. Jamshid! If Wais would not conciliate, he would not give a document regarding the 7,500,000 Rials that you have paid him. You don't have any witness about it.

Jamshid: I do.

Judge: Even with witness, such a thing can not be proven. There is a document. This guy (Wais) accepts that he has received 7,500,000 Rials. He can go the court, and litigate and ask for the entire money. If you have any document or witness, you can show in the court. Wais can apply to the court and hire a lawyer. You will have to pay all the expenses, including the amount paid for the lawyer if you will be convicted in the court. Are you aware of it? You will see that the amount you will have to pay would be at least 1.5 times the original amount. Furthermore, it is a shame. You are the brother of Mr. Ahmad. It is very shame that this file would go to the court. The people will say that the brother of Mr. Ahmad, has not paid the money of another person. And that person is a *refugee*⁵³⁶, a refugee who wants to go back to his country. This is a shame.

⁵² In Islam, before you pray or read or even touch Quran, a person must perform another ceremony in which he/she will wash some parts of his/her body, including face and arms. This ceremony is called *vudzu* (In Turkish: *abdest*.)

⁵³ Here, the judge uses the word *mohajer* as apposed to a more neutral word of *panahande* that stands for refugee. *Mohajer* has positive meaning in the history and culture of the Muslim societies for its reference to the Prophet and his followers' *hijrat* from Mecca to Medina. There, the Muslims in Medina helped the new comers materially and emotionally to get adopted better to the new conditions. In this particular context, the judge wanted to emphasize the poor and weak position of the claimant who is in need of support, and whose rights need to be protected rather than violated.

Judge continues: Now, just before Jamshid swears, do you, Wais and Jamshid, think that you may conciliate?

Jamshid: This is Quran [touching the Quran on the table of the judge.] I have paid my share. I don't owe him any money.

Judge (giving advice to Wais): You still can prevent him from swearing if you don't trust him. You can follow other ways.

Judge (asking Jamshid): How much have you paid to Wais?

Jamshid: 9,000,000 Rials.

Wais: No, only 7,500,000 Rials.

Judge (looking at the document): Here is written 7,500,000 Rials.

Wais (with anger): I give away this money to you!

Jamshid: I have more than 10 witnesses, which I have not brought.

Wais: There was not even one witness when you gave me this 7,500,000 Rials. I have given a document regarding your payment of this amount because of my own equity, and I accept that I have received this amount.

(Here the BAFIA rep. makes a quick and surprising jump!)

BAFIA: Mr. Jamshid! How do you plan to pay the rest of your debt so that it will be finished?

(Here, it seems that all the members are convinced that Wais is right, however, nobody asks about or discusses it.)

(Meanwhile, the UNHCR rep. is dealing with the second case!)

BAFIA: Mr. Jamshid! This guy [Wais] has given the sheep to his customers, including you and your partner, under your guarantee. Had not he known you, he would not have given the sheep. Now that this guy [Hassan] has fled, you would not be responsible if you had not guaranteed the payment.

Jamshid: No, I have paid my share.

BAFIA: You have paid only 7,500,000 Rials.

Jamshid: 9,000,000 Rials.

BAFIA: Even if you have paid 9,000,000 Rials, the other 9,000,000 Rials still remains.

Jamshid: That is not my share.

(Again the BAFIA rep. makes another quick movement, without asking the other members' opinions. By the way, the UNCR is dealing with the second case; the Afghan elder is out of discussion, being far from the others' tables and not participating in the conversations; and the judge is looking at the file, listening to the conversation between the BAFIA rep. and trying to find a way to fill the file of the first case)

BAFIA (to Jamshid): Are you ready to pay 1,000,000 Rials per month in order to finish your debt so that we will write an agreement accordingly?

Jamshid: What can I give when I don't have?!

BAFIA: Look father! When you give money to somebody you don't know, don't you take a guarantor? Look! Here, you have written that you are guaranteeing the money of this man (Wais).

Jamshid: I don't know what is written here. I have just given my finger print⁵⁴⁷. The part about guaranteeing is written without my information.

Wais: This is not only a matter of documenting. When I wanted to give the sheep, he said that he is the guarantor of the money verbally.

Judge: Mr. Wais! You have taken this document from Jamshid in order to get your money paid by Jamshid instead of the person who has fled.

Jamshid: I have not written such a thing.

(Wais laughs loudly.)

(Judge, here, continues the proposition made by the BAFIA rep.)

Judge: Are you ready to pay 1,000,000 Rials monthly to finish your debt?

Jamshid: Why should I pay anything when I am not indebted?

Judge: You *are* indebted. This man (Wais) can go to the court and ask for his rights with this document. Then this will be a shame for your brother as well.

⁵⁴ Riza is illiterate.

Jamshid: According to Wais I owe him 1,500,000 Rials. Why shouldn't I pay this amount and come here? I would pay if owed it. But I am not.

Judge: It is not 1,500,000 Rials. From the total 18,000,000 Rials, you owe 10,500,000 Rials. Why did you guarantee? You have written that I guarantee Wais's money.

(For the first time, there is a demand from a member of the DSC to another about his ideas)

BAFIA (to the judge): What is your opinion? What should we do?

Judge (to the BAFIA rep.): We should write that this file should be referred to the court.

BAFIA (to Wais): You have to apply to the court. Here, it was not concluded with an agreement.

(After writing the minutes of the meeting, all the members of the DSC sign it. The members are asked to go out of the session room.)

ii. Case 2: Unpaid Cheque

Houshang has given Qayyum a cheque of 6 million Rials. But Houshang has not paid the money to the bank, so that Qayyum has not been able to get his money. However, Houshang, despite several invitations, refused to come to the DSC.

This case was dealt by only the UNHCR representative while the BAFIA representative and the judge were dealing with the first case. The case was brought by the secretary to the UNHCR representative. She looked at the case and decided that the case should be referred to the court. This decision was made unilaterally.

UNHCR: Mr. Qayyum! Come to the UNHCR office tomorrow morning between 8:30 and 11:00 so that I will write your suit, with which you will go to court. The other party (Houshang) is not coming. This is a legal case, with six-month period [six months have passed from the beginning of the case.]

Qayyum: No, it has not been six months!

UNHCR: It *has* been passed. Look at the date. You come tomorrow to the UNHCR office.

(The members signed the minutes of the meeting which was written by the UNHCR rep. and the claimant went out of the session room)

iii. Case3: Tenant and Proprietor

Miqdad has rented Cirus's house. Miqdad had paid a deposit of 10 million Rials to Cirus. Despite the fact that Miqdad is going to leave Iran, and despite the fact that the duration of their contract is over, Cirus refuses to pay the deposit back.

(This case is brought by the secretary to and studied by the judge.)

Judge: Mr. Miqdad! It is you, yes? Are you refugee⁵⁵?

Miqdad: Yes.

Judge: Mr. Cirus?

Cirus: Yes.

Judge: So you could not agree. Can you now talk to and agree with each other?

Cirus: Now, I have empty houses. I suggest them to settle in one of them; but he does not accept.

Judge: A house has been rented to Miqdad. But it has not been owned by Cirus. Now, he is offering another house. Is it the story?

(This judge's question means that the members are not well-informed about the cases before they enter the sessions. Then other members continue asking the parties, meanwhile the judge realizes the true story of the case.)

UNHCR (to Cirus): How much did you take? How much did you take as deposit?

Cirus: 10,000,000 Rials.

UNHCR: Give the money of this man (Miqdad) who wants to go back [to Afghanistan.]

⁵⁵ Again the word *mohajrer* is used, but this time it is to distinguish between the citizenship of the parties; *mohajer* meaning Afghan.

Cirus: I have cheque, which will take some months.

UNHCR: This man has to go back till the end of Esfand [20 of March, 2005.] If you don't give him his money, what will he do?

(The members of the DSC make decisions without discussion with each other)

UNHCR: I give you two weeks of respite.

(Meanwhile, the UNHCR rep. goes out of the session room for some minutes, and the session continues with three other members until she comes back.)

Cirus. Now, I don't have money.

Judge: But you have to pay his money back.

Cirus: I have empty house. I offer him to settle without payment.

UNHCR: Naturally you can not ask him for payment for the delay that you have caused.

Judge: What property do you have?

Cirus: I have many houses and other properties.

Judge: How many houses do you have?

Cirus: Ten houses.

UNHCR: A person who has ten houses has sufficient credit in the market to find 10,000,000 Rials.

(Another new decision without asking other members' opinion)

Judge: You bring some of the money.

Cirus: Where can I find this money from?

(The other member(s) show consistency with the decision made by one member.)

UNHCR: No, we did not say that bring all the money. Bring some of it.

(Another new decision)

UNHCR: We said that bring some of this money in two weeks.

(The Afghan elder participates for the first time. He makes another new decision without asking other members.)

Elder: You bring half of this money in two weeks. Then you will come so that we will decide about the payment of the rest of the money. Now, you bring 5,000,000 Rials.

(Judge is writing the final decision in the file, brought to him by the secretary.)

(Another new decision is made.)

UNHCR: OK, Mr. Cirus! If you don't bring half of the money in two weeks, you will be fined for your delay.

Cirus: It is too heavy!

UNHCR: No, listen carefully! Bring 5,000,000 Rials in two weeks. If you delay, we will determine a fine to compensate it. You have to know it. This is the rule of here!

Cirus: I say that this 12th moth is a very bad month.

UNHCR: This is bad for every one. This is bad also for the man who has 10,000,000 Rials in your hand.

(Here, the judge shows concurrence with the UNHCR rep.'s suggestion of fine. But he does not know how much this fine should be. So the question is shown as it is addressed to Cirus, however, if we look vigilantly at the context, we see that it has, in fact, addressed to the members and especially to the UNHCR rep. in order to learn the exact amount of the fine. The goal seems to hide the lack of idea about a decision from the parties.)

Judge: Mr. Cirus! If you delay in bringing half of the money, do you know how much fine you should pay?

(The assistance coming from the UNHCR rep. is not really helpful.)

UNHCR (to the judge): Write the necessary amount!

(Another new decision about the amount of fine is made.)

Judge: You have to pay 20 percent of fine. [But what? Daily, monthly, or annually?]

UNHCR: Today is the third of the month. You have to bring this 5,000,000 Rials on 18th. [Mathematically wrong, and nobody recognizes it! The sessions are made every Monday. So they will gather two weeks late that means 17th of the month, not the 18th.]

Cirus. I have cheque.

UNHCR: No, we don't accept it. You have bring the money here.

(Another decision)

Judge: After you bring the money in 18th of the month, then if there is an extension of one month in the residence permission of Miqdad, then we will discuss the rest.

UNHCR: Yes, then it will be seen if his residence permission is extended or not.

Cirus: It is too difficult.

Elder: Dear brother (Cirus)! They will not give him a permission of one or two years. They have to go back soon.

Judge: You promise here that you will bring 5,000,000 of this money until 18th of the month. Then the decision about the rest will be made later.

(Cirus signs the agreement reluctantly. Miqdad and the members of the DSC signs the agreement as well. The file is taken to by the secretary and the parties leave the session room)

iv. Case4: Worker's Wage

Maqsud has been hired by Kianoush. After the work is finished, Kianoush refuses to pay the wage, that is 6,3 million Rials. Kianoush has refused to come to the DSC despite he has been invited several times.

The case is brought to the BAFIA representative. The members are familiar with the case. This the fourth time the claimant comes to the DSC.

BAFIA: Mr. Maqsud! The other party has not come despite our invitation for several times. This is fourth week. You should follow your case in the court.

UNHCR: You should come tomorrow morning to the UNHCR office. There I will provide you with legal assistance, showing you the ways you can pursue your case in the court.

(The file is signed by the members and taken by the secretary. Maqsud goes out of the session room.)

APPENDIX 2

Protocol of the Interviews:

Questions to the DSC Secretariat:

- A- Can you tell me a little bit about this DSC? How was it formed? Why was it formed? How does it function?
- B- What kind of activities existed before in order to solve the Afghan refugees' problems? Why did you decide to establish a new dispute settlement mechanism? What are the differences between the previous institutions and this DSC?
- C- How would you describe the UNHCR's role in this DSC? How would you evaluate the role of the UNHCR in this DSC?

Questions to the Members:

- 1- In order to understand the decision-making process, examining the cases is very important for me. Can you tell me about a case that you are recently involved with? Who were the parties? What was the case about? How was the decision made about the case? What kind of problems and challenges did you face when you made the decision?
- 2- How do you get informed about the details of the case? Are there separate copies of the same case distributed to all members? Are there any presentations about the cases to all of the members of the group collectively? (Aim: Are all of them informed equally and completely about the cases?)
- 3- Is there any decision-making rule while you are deciding about a case? In making your decisions, what sources do you use (Iranian law, international law, any other alternative)?
- 4- How do you make decisions in the group? By unanimity or majority vote? (Go to the relevant question below)
- 5- What is the role of the BAFIA officer in the process of decision making?
- 6- What is the role of the Judge in the process of decision making?
- 7- What is the role of the Afghani elder in the process of decision making?

- 8- What is the role of the UNHCR officer in the process of decision making?
- 9- What do you think about the existence of the UNHCR in the whole process? Do you think it is effective?
- 10- Did you have any communication problems? Do you remember any cases in which you had communication problems? Can you explain more?

In case of unanimity → “unit veto model” (after question 4):

- i. Do you remember any case in which you could not reach consensus? How did you manage to overcome that problem? (Aim: Are there well-established norms requiring consensus?)
- ii. How regular is it to have discussions for long periods of time in order to build consensus? (Aim: Is there ‘groupthink’; Are decisions ‘premature closure’; Do they avoid discussing on issues; If so what are the reasons: cultural norms, group continuity, problems out of disagreement, and **identification with the group?**)

In case of majority (after the question 4):

- i. Are all the votes of equal weight?
- ii. Do you remember any case in which you have not reached the majority to make a decision? Can you explain more about the case? What techniques did you use in order to solve the problem? What other ways do you use in the similar cases? (Aim: Are all the members equally active and participant in the process, even if their votes are of the same weight?)
- iii. How regular is it to have discussions for long periods of time in order to build consensus? (Aim: Is there ‘groupthink’; Are decisions ‘premature closure’; Do they avoid discussing on issues; If so what are the reasons: cultural norms, group continuity, problems out of disagreement, and **identification with the group?**)

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