

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter mainly provides conclusions and recommendations based on the findings discussed in previous chapter. Recommendations have been given as practical measures to overcome the barriers towards effective negotiation outcomes in the Sri Lankan construction industry. In addition, the limitations of the research and the further research directions are discussed within this chapter.

5.2 Conclusion

The aim of this study was to determine the effectiveness of negotiation as an ADR method in the Sri Lankan construction industry. Having focused on such aim, three objectives were formulated. The first objective was successfully achieved through literature review. The second objective was achieved by analysing the data obtained via the questionnaire survey. Not only the results obtained by analysing the data obtained in questionnaire survey but also the discussions with some of the participants of the survey, review of literature and experience of the researcher in the Sri Lankan construction industry were useful to achieve the third objective.

During the literature review seven taxonomies of negotiation outcomes were identified. Problem solving, relationship maintained and conflict reduction were found as three effective outcome taxonomies. On contrary inaction, conflict escalation, relationship deterioration and further disagreement were found as four ineffective negotiation outcome taxonomies. Using the identified negotiation taxonomies a framework was developed to determine the effectiveness of negotiation.

A questionnaire survey was conducted to collect the views of professionals who had direct exposure to disputes. The analysis was carried out using responses obtained from thirty three professionals.

As per the findings negotiation is widely used in Sri Lanka as initial ADR method before going for initial ADR method specified in the conditions of contract. Hence the result confirms the previous studies. Negotiation is also used as second ADR method after adjudication, DAB or dispute board but before going for arbitration as specified in conditions. Further, negotiations are carried out as amicable settlement attempts promoted during arbitration and also even after the arbitration award when one party challenges the award. The result indicates that negotiation is widely used at various stages of the dispute resolution process irrespective of the contractual provisions. There is possibility of achieving resolution via negotiation at any stage. However the possibility of resolution of dispute is higher when it is used as the initial method than using after failure to resolve via other ADR methods. Accordingly negotiation can be recommended as the most suitable ADR method for initial attempt of dispute resolution.

All the seven negotiation taxonomies found out in literature review, were identified as possible outcomes in construction dispute negotiations in Sri Lanka. However relationship maintained, conflict reduction and inaction were identified as common outcome taxonomies. Relationship deterioration, conflict escalation, problem solving and further disagreement were identified as less possible negotiation outcome taxonomies.

Effective outcomes such as relationship maintained and conflict reduction could be identified as most common outcomes. Hence negotiation could be identified as an ADR method suitable when the preservation of relationship is important. Further, even the dispute is of very complex nature at least some of the issues could be solved via the negotiation. It will ultimately lead to savings of cost and time that may have to incur if the dispute was directly referred to other ADR method. Accordingly, even for the disputes of complex nature negotiation can be recommended as the most suitable method.

Inaction is a common ineffective outcome in construction dispute negotiations in Sri Lanka. The postponing of the disputed issue was identified as a common factor. Among the barriers to effective dispute negotiation outcome, use of negotiation as a

time passing tactic was found as common practice in the industry. Although Ren et al., (2003) identified adopting a time consuming strategy as common in construction dispute negotiations, the practice in Sri Lankan construction industry is severe. Such practice would prevent both parties from time savings expected by using ADR methods.

Other ineffective outcome taxonomies such as relationship deterioration, conflict escalation, and further disagreement were found to be less common outcomes. This result shows effect of cultural values of the country upon construction dispute negotiations. Further it highlights the importance of studying the construction dispute negotiation practices of individual countries which may vary according to cultural and other aspects.

As per the overall results, total weighted mean score of effective outcome taxonomies is higher than the ineffective outcome taxonomies. Hence based on the developed framework, negotiation could be identified as an effective ADR method in the Sri Lankan construction industry.

The total weighted mean score of effective outcome taxonomies is higher due to the higher weighted mean score values obtained by relationship maintained and conflict reduction. However above outcomes could be considered only as additional benefits from dispute resolution and the most desired outcome from an ADR method is problem solving. The possibility of achieving problem solving outcome in Sri Lankan construction industry is not satisfactory. Hence it is of vital importance to focus attention to the reasons that prevent achieving problem solving outcome.

Several barriers that prevent achieving an effective negotiation outcome were identified via the study. Lack of negotiation skills among industry professionals and cultural differences among parties due to differences in professional background & nationalities were found to be the major barriers for achieving effective negotiation outcome at international context. The above are significant barriers prevailing in the Sri Lankan construction industry. In addition several other barriers that prevent effective negotiation outcome were found through the study. The 'attitudes of

consultants, clients and contractors is the major barrier in Sri Lankan construction industry. Further, lack of participation of competent professionals for negotiations, use of negotiation as a time passing tactic, professional discrimination and lack of awareness of the cost effect and consequences of other costly ADR methods were identified as the influential barriers that prevent effective negotiation outcome. Not limited to above influence of stakeholders and top management, government regulations and management structure and age discrimination were found to be less dominant barriers.

Identified barriers highlight the urgent need of attitudinal changes, competency development and improvement of negotiation skills among construction professionals. In addition the importance of amendment of regulations to encourage using negotiation as initial ADR method and proper delegation of responsibilities could be identified.

5.3 Recommendations

Based on the results of the study the followings can be suggested as necessary actions to overcome the barriers to achieve effective negotiation outcome.

The universities that conduct undergraduate and post graduate courses related to construction industry could take very important steps to avoid the barriers described above. The recommended actions are as follows.

- The courses shall comprise the education regarding the ADR methods and education to improve competencies on dispute related areas.
- Implementing proper ethics and correct attitudes among students.

Failure of negotiations due to prevailing barriers is an immense loss in organization perspective. Therefore organizations shall attempt to overcome such barriers through following means.

- Recruit competent professionals required for dispute negotiations.

- If in-house competent professionals are unavailable obtain the service of competent external consultants
- Facilitate further studies or training programmes for in-house professionals to improve competency areas required for negotiations.
- Short term workshops to improve negotiation skills among professionals in the organization.
- Use paper based game of simulation contract negotiation developed by Dudziak & Hendrickson, (1988) and virtual construction negotiation game developed by Yoyuenyong et al., (2005) to refine negotiating skills among professionals.
- Awareness programs on ADR methods to make the professionals aware of the consequences of ADR methods.

The role of government in overcoming the barriers to effective negotiation outcome is very high. The followings can be recommended as necessary measures to be adopted by the government.

- The sub clause 5.4.14 of the NPA (National Procurement Authority) procurement guidelines encourages using arbitration when a dispute arises. It shall be amended in such a way to encourage using negotiation as initial ADR method and to go for arbitration only if negotiation fails. In addition a time limit shall be defined for the negotiation attempts to be carried out.
- The Clause 50 of the Construction Industry Development Act of 2014 encourages mediation and conciliation as ADR methods for settlement of construction disputes. The Clause 51 of the same encourages adjudication. The part – ix (settlement of disputes) of the Act shall be amended to incorporate negotiation as recommended initial ADR method.
- The sub clause 19.2 of the ICTAD (2007) standard bidding document recommends using adjudication as the initial ADR method to resolve construction disputes. The Construction Industry Development Authority could adopt necessary measures amend the dispute resolution clauses in ICTAD (2007) standard bidding document in such way to incorporate

negotiation as the initial ADR method and adjudication as subsequent ADR method.

- Government client organizations related to construction could develop checklist for construction dispute negotiations that enables proper monitoring of the negotiation process. Such checklist would be useful to prevent use of negotiation as time passing method and to maintain accountability and transparency of decisions taken.
- The proper delegation of responsibilities to relevant competent professional within the government organization.

It was found out that some parties apply court to set aside the arbitration award intentionally to delay the settlement of dispute. Government organizations shall set up provisions to obtain advice and recommendation from relevant competent professional (ex; legal officer) within the organization before referring to court for setting aside such award.

The professional bodies could adopt following measures to overcome barriers to effective negotiation outcome.

- Necessary measures to improve and maintain professional ethics.
- Continuous professional development events or short term workshops could be arranged to improve competencies required for negotiation, to improve negotiation skills of the professionals and to improve the knowledge on ADR methods.

5.4 Limitations of the Research

As discussed in chapter 1 this study was limited to the disputes between the contractor and client in a separated contract to avoid complexity. Also, this research study is limited only to the negotiations after arise of dispute and the negotiation attempts carried out prior to arise of dispute is not considered. In addition the results are based on the views obtained via the questionnaire survey and further discussions with the participants. However, in this study the parameter used to determine the

effectiveness is outcome of negotiation. However other parameters such as time and cost are also related to effectiveness.

5.5 Further Research Directions

Followings could be given as suggestions for further research on dispute negotiations in Sri Lankan construction industry, which emerged out of the study carried out.

➤ **A study on how barriers affecting effective negotiation outcome**

Several barriers affecting effective negotiation outcome were found out during the study. Hence a study on how barriers affecting negotiation outcome would be important. In addition studies on above area could be conducted about private sector projects and public sector projects separately.

➤ **A study on competency areas of negotiators required for effective negotiation outcome**

The lack of participation of competent professionals was found to be a major barrier to achieve effective outcome. Hence it is important to carry out a study to identify the competency areas required for negotiators to achieve effective negotiation outcome.

➤ **A study on time effect of construction dispute negotiations**

During the study it was found out about use of negotiation as a time passing mechanism. Hence it is important to study the time effect of construction dispute negotiations.

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Questionnaire

Key words:

Negotiation: This is a process of working out an agreement by direct communication between two or more parties (Pickvance, 2007).

Dispute: This research study is limited only to

* The disputes between Client and Contractor.

* Negotiations after arise of dispute due to dissatisfaction with the Engineer's determination

Please indicate (x) in the relevant box

- 1) Your current organization type :

Consultant	
Contractor	
Client	
Other (Please specify)	

- 2) What position will describe you most:

Quantity Surveyor	
Engineer	
Architect	
Project Manager	
Contracts Manager	
Other (Please specify).	

- 3) Your experience in years

5-10	10-20	20-30	more than 30

- 4) As per your experiences at what stages dispute negotiations were carried out and at what stages the disputes were resolved using negotiation?

No.	Stage	Attempted to do negotiation		Resolved dispute	
		Yes	No	Yes	No
1	Before going for Adjudication or Dispute Board				
2	After Adjudication or Dispute Board but before going for Arbitration				
3	Before going for Arbitration (If no DAB appointed)				
4	Amicable Settlement promoted during Arbitration				
5	After Arbitration award (when one party attempts to set aside via court proceedings)				

- 5) For how many dispute negotiations have you involved during last five years? Please specify number if possible.

less than or equal to 5	more than 5 but less than or equal to 10	more than 10 but less than or equal to 20	more than 20 but less than or equal to 30	more than 30

- 6) Please indicate degree of agreement according to your view on following statements regarding the outcomes in your dispute negotiation experiences.

No.	Reason	1	2	3	4	5
		Strongly Disagree	Disagree	Neither agree nor disagree	Agree	Strongly Agree
1	Problem solving					
1.1	The solution found satisfied the goals and needs of both parties					
1.2	Optimal and creative solution to problem was found.					
2	Relationship maintained					
2.1	Some of each party's needs were satisfied, but not all of them.					
2.2	Relationship between the negotiators was kept in consideration for future interaction.					
3	Conflict reduction					
3.1	Conflict was reduced to some extent and less future disputes were likely made.					
3.2	Conflict was reduced to some extent but it was difficult to reach an agreement .					
4	Inaction					
4.1	The negotiators lost the interest to continue and left the negotiation from a threatening situation (
4.2	The negotiators tried to postpone the issue until a better time					
5	Conflict escalation					
5.1	More task conflict was experienced.					
5.2	The dispute became difficult to resolve because conflict was escalated during negotiation process.					
6	Relationship deterioration					
6.1	Task conflict was turned into relationship conflict.					
6.2	The negotiators ignored the needs and expectations of the other.					
7	Further disagreement					
7.1	There were further disagreements or escalations in conflict.					
7.2	Both sides were talking, but were unable to make any progress toward a solution.					

7) Do you think followings as barriers to achieve effective outcomes from dispute negotiations in the Sri Lankan Construction industry?

No.		1	2	3	4
	Reason	Strongly Disagree	Disagree	Agree	Strongly Agree
1	Cultural Differences among parties due to differences in professional background and nationalities				
2	Lack of negotiation skills among industry professionals				
3	Lack of awareness of the cost effect and consequences of other dispute resolution methods such as Adjudication and Arbitration.				
4	Attitudes of Consultants, Clients and Contractor				
5	Lack of authority level in participants of negotiation				

8) In addition to the listed above, are there any other barriers ? Please describe.

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Covering Letter

Subject: Request to participate for a Survey on “**Effectiveness of negotiation as a method of alternative dispute resolution in Sri Lankan construction industry.**”

Dear Sir/ Madam,

Dissertation- M.Sc. in Construction Law and Dispute Resolution

I am a student following above course at the Department of Building Economics, University of Moratuwa. In order to fulfill a mandatory requirement of the degree course, I’m engaged in a research study under the topic “**Effectiveness of negotiation as a method of alternative dispute resolution in Sri Lankan construction industry.**”

I would be grateful if you could kindly answer to the attached questionnaire and email me at shiroma1982@yahoo.com before 31st December 2015. The questionnaire may take about 15 minutes to complete. If you have any questions or would like further information, please do not hesitate to contact me.

Any data provided will be treated as confidential and used for the purposes of this research only. The identity of respondents will not be revealed.

Thanking you.

Yours truly,

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Summary of Responses

No.	Outcome factor	Response alternative	Number of responses
1.1	The solution found satisfied the goals and needs of both parties	Strongly Disagree	7
		Disagree	9
		Neither agree nor disagree	7
		Agree	10
		Strongly Agree	0
1.2	Optimal and creative solution to problem was found.	Strongly Disagree	7
		Disagree	7
		Neither agree nor disagree	3
		Agree	14
		Strongly Agree	2
2.1	Some of each party's needs were satisfied, but not all of them.	Strongly Disagree	0
		Disagree	0
		Neither agree nor disagree	7
		Agree	24
		Strongly Agree	2
2.2	Relationship between the negotiators was kept in consideration for future interaction.	Strongly Disagree	1
		Disagree	3
		Neither agree nor disagree	9
		Agree	17
		Strongly Agree	3
3.1	Conflict was reduced to some extent and less future disputes were likely made.	Strongly Disagree	1
		Disagree	7
		Neither agree nor disagree	8
		Agree	14
		Strongly Agree	3
3.2	Conflict was reduced to some extent but it was difficult to reach an agreement .	Strongly Disagree	0
		Disagree	5
		Neither agree nor disagree	8
		Agree	19
		Strongly Agree	1
4.1	The negotiators lost the interest to continue and left the negotiation from a threatening situation (Withdrawal).	Strongly Disagree	5
		Disagree	17
		Neither agree nor disagree	2
		Agree	8
		Strongly Agree	0

No.	Outcome factor	Response alternative	Number of responses
4.2	The negotiators tried to postpone the issue until a better time	Strongly Disagree	0
		Disagree	6
		Neither agree nor disagree	5
		Agree	17
		Strongly Agree	5
5.1	More task conflict was experienced.	Strongly Disagree	0
		Disagree	16
		Neither agree nor disagree	7
		Agree	10
		Strongly Agree	0
5.2	The dispute became difficult to resolve because conflict was escalated during negotiation process.	Strongly Disagree	2
		Disagree	14
		Neither agree nor disagree	10
		Agree	7
		Strongly Agree	0
6.1	Task conflict was turned into relationship conflict.	Strongly Disagree	1
		Disagree	15
		Neither agree nor disagree	15
		Agree	2
		Strongly Agree	0
6.2	The negotiators ignored the needs and expectations of the other.	Strongly Disagree	0
		Disagree	10
		Neither agree nor disagree	14
		Agree	9
		Strongly Agree	0
7.1	There were further disagreements or escalations in conflict.	Strongly Disagree	3
		Disagree	12
		Neither agree nor disagree	12
		Agree	6
		Strongly Agree	0
7.2	Both sides were talking, but were unable to make any progress toward a solution.	Strongly Disagree	0
		Disagree	7
		Neither agree nor disagree	10
		Agree	14
		Strongly Agree	2