

**OFFICIAL LAUNCH OF
*AN ASIAN PERSPECTIVE ON MEDIATION***

THURSDAY, 4 JUNE 2009

BY THE HONOURABLE THE CHIEF JUSTICE CHAN SEK KEONG

President Martti Ahtisaari, former President of the Republic of Finland
and 2008 Nobel Peace Prize Winner

The Honourable Justice Andrew Ang, Chairman of the Singapore
Mediation Centre

Her Excellency Satu Mattila, Ambassador of Finland to Singapore

The Honourable Attorney-General Professor Walter Woon

Distinguished guests

Ladies and gentlemen

1. I am delighted to be here today to launch a wonderful little book for mediators called *An Asian Perspective on Mediation*. This book, published by **Academy Publishing**, brings to fruition a project by the Singapore Mediation Centre (the “SMC”) to put on record its experience in providing mediation services to the people of Singapore for more than a decade. The cover of the book has a zen-like quality about it: it depicts two cups of Chinese

tea with tea leaves against a misty background of bamboo. I believe it is intended to convey the essence of mediation: Let's "*yum cha*" (drink tea) and talk things over. I certainly hope that it is not the authors suggesting that mediation from an Asian perspective is akin to reading tea leaves.

2. This book is written for dispute resolution professionals who want a practical yet considered approach to managing differences in the Asian context through mediation. Mediators and others who are interested in dispute resolution generally will have much to find and to learn from in this book. I believe that this is one of the few books that provides a detailed comparative study of Western and Asian perspectives and practices on mediation. Whether one model is more successful than the other is probably a meaningless question because we are not comparing apples with apples. We are really comparing apples with lychees. Both are just as good in their own cultural environment. The success of any mediation model must take into account the cultural sensitivities not only of the subject matter of the dispute but also those of the parties involved.

3. Much has been written about the difference between the way Westerners and Asians think and the norms and values which have influenced their cultures over the many millennia. The Greeks focused on individual identity and personal agency as the basis of its civilisation whereas the Chinese focused on social relationships and harmony as the basis of its civilisation. Greek thinking emphasises logic and therefore Western thinking is largely linear (in spite of de Bono's lateral thinking). Chinese thinking goes beyond logic and sees things in the context of relationships. This, of course, is a very general simplification of these two contrasting ways of philosophical thinking.¹

4. In 1998, [our local guru,] Professor Kishore Mahbubani, wrote a thought-provoking essay entitled "*Can Asians Think?*" This essay was later published in a collection of essays with the same title. It led to much mind-searching among concerned Asians about whether and why they think they think differently from their Western counterparts. I assume that the title of the essay was rhetorical to highlight the fact that Asians do think, but in different ways and also in different directions. So, even today, whilst Western,

¹ Readers who are interested in the subject should read Richard E Nisbett's THE GEOGRAPHY OF THOUGHT – How Asians and Westerners Think Differently ...and Why (Free Press 2004 ed).

especially European, thinking is focused on individual rights in the general context of human rights, Chinese thinking is focused on the building of a harmonious society. Will these two lines of thinking ever converge in some areas of human endeavour? I think Kishore might have provided the answer or at least the direction towards convergence: in May 2009, he published a short “Think-Tank” piece in the Straits Times extolling the most wonderful weapon developed by mankind, viz., logic, which he uses effectively to demolish the inconsistent positions of some states on the right of big states to invade small states, for whatever reasons. He, however, acknowledged that in some areas of life, there are no easy solutions. The unstated message is that while logic may expose contradictions, it does not necessarily provide the solutions².

5. This brings me back to this book on mediation, which promises solutions to disputes that are by their nature capable of being resolved by the philosophy of give and take, rather than through a “winner-take-all” or even a “winner-take-most” approach.

² Kishore Mahbubani, “The Virtues of Secularism”, The Straits Times (20 May 2009).

6. In his Foreword to the book, [our other local guru,] Ambassador Tommy Koh, has written:

Discussions of cultural issues affecting dispute resolution are sometimes dismissed as unnecessary on the basis that they should be handled with “common sense”. But “common sense” is too vague.

The editors of this book agree with that sentiment. Mediators need a suite of tried and tested tools based on sound principles to respond to cultural dynamics if they are to lead the parties to a successful resolution. The difference between common sense *per se* and a set of distilled principles and processes premised on common sense is the difference between a blunt tool and a precision tool. Anecdotes and stories, to be sure, serve useful purposes. One of the most famous of such stories is that of a Chinese farmer whose only horse ran away, but which later brought back a wild horse, etc. The story expresses the Asian idea that life is full of contradictions, and resolution cannot be found in logic alone. However, for practising mediators, method is more important than inspiration, and the craft of mediation deserves precision tools. I share the hope of the SMC, and all those who are involved in the book project, that

this book will sharpen the tools of mediators and raise the sophistication and standard of mediation practice in Singapore.

7. It has been observed that conflicts are perceived in the West to have positive value under certain circumstances. They are constructive when confrontation focuses on issues, and when they lead to advocacy of a position with debate of the position, allow for free and informed choice, and result in the development of viable alternatives from which the parties may choose from³. [As an example, I quote Walt Whitman⁴:

“Have you learned lessons only of those who admired you, and were tender with you, and stood aside for you?

Have you not learned great lessons from those who brace themselves against you, and disputed the passage with you?”]

³ Siriyupa Roongrengsuke and Daryl Chansuthus, “Conflict Management in Thailand”, in *Conflict Management in the Asia Pacific: Assumptions and Approaches in Diverse Cultures* (Kwok Leung and Dean Tjosvold eds.) (John Wiley & Sons, 1998) 167 at 170, referring to R J Lewicki *et al*, *Experiences in Management and Organizational Behavior* (3rd edition) (John Wiley & Sons, 1988), 212 - 214.

⁴ Quoted in Siriyupa Roongrengsuke and Daryl Chansuthus, “Conflict Management in Thailand”, in *Conflict Management in the Asia Pacific: Assumptions and Approaches in Diverse Cultures* (Kwok Leung and Dean Tjosvold eds.) (John Wiley & Sons, 1998) 167 at 169.

It may be that too little conflict or the suppression of conflict to maintain superficial harmony is often a sign of problems.⁵ Such a perception accounts for why Western mediation paradigms often encourage parties, as part of a constructive process, to come together in joint sessions to share their grievances directly and openly.

8. Many Asian cultures, however, do not share such a view. The emphasis is, instead, quite often on preserving harmony, goodwill and face. There is a preference for “softer” forms of dispute resolution. For example, the Book of Changes, the *I-Ching* (pronounced *yì jīng* (易经)), says this:

“*Song* [pronounced *sòng* (訟)] [or conflict] intimates how, though there is sincerity in one’s contention, he will yet meet with opposition and obstruction; but if he cherish[es] an apprehensive caution, there will be good fortune, while, if he must prosecute the contention to the (bitter) end, there will be evil.”⁶

⁵ Siriyupa Roongrengsuke and Daryl Chansuthus, “Conflict Management in Thailand”, in *Conflict Management in the Asia Pacific: Assumptions and Approaches in Diverse Cultures* (Kwok Leung and Dean Tjosvold eds.) (John Wiley & Sons, 1998) 167 at 170.

⁶ Cited in Albert H Y Chen, “Mediation, Litigation and Justice: Confucian Reflections in a Modern Liberal Society” in *Confucianism for the Modern World* (Daniel A Bell & Hahm Chaibong eds) (Cambridge University Press, 2003) 257, 259-60.

9. That Asian perception of conflicts calls for a different approach. As has been pointed out in the book, the more conservative and reserved nature of the Asian society means that overt disagreement or show of displeasure is avoided. A mediator who attempts to sit the parties down to discuss matters that by convention should be left unspoken would create tension.⁷ It is for the mediator to structure a process that will enable the parties to communicate in ways that are less face-threatening, and in that regard, perhaps call for private sessions with them earlier in the mediation or use such private sessions more extensively.⁸

10. If conflicts are to be managed well, a guide on how conflicts are understood and perceived is useful, if not essential. The proper formulation of strategies can be undertaken only with such an understanding. This book is such a guide. In it, established mediation thinking in the West is not discarded or discounted. Rather, the parts of it which are helpful to and not inconsistent with Asian cultural precepts are assimilated and integrated into the analysis of the mediation process. The book provides one of a number

⁷ Paragraph 3.56 of the book.

⁸ Paragraph 4.61 of the book.

of possible Asian perspectives on mediation, and does not pretend that this perspective holds true across all Asian cultures. Despite the plurality of cultures that can be subsumed under the phrase “Asian culture”, the book is courageously prescriptive, giving concrete and unambiguous advice on mediation approaches and strategies.

11. I make this observation to conclude my conflicting thoughts on this subject - Never mind that Asians may think, or think they think, differently from Westerners. What is important to the SMC is how Singaporeans think, particularly our mediators and parties to the relevant disputes. We may think that we think like other Asians, but is that entirely true? Singaporeans live in a unique physical and social environment in which our cultural roots have been layered over with a veneer of Occidentalism. What does the experience of the SMC in the last 12 years tell us? SMC has tried to capture empirically its experience from the feedback provided by the parties and their lawyers who are requested to complete survey forms set out in Appendices A and B (at pages 219-229) of the book. According to the editors of this book who have analysed this feedback, there is indeed a preferred Asian approach to mediation in Singapore. So this

book should serve as an essential guide for mediators to think Asian when they mediate: otherwise the mediation is bound to be fraught with difficulties.

12. On this note, I extend my warmest congratulations to the SMC, and especially Teh Hwee Hwee and Joel Lee, the General Editors, the chapter contributors, the Academy Publishing and all those who have made this book possible. I now have the pleasure of launching the book *An Asian Perspective on Mediation*.

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