

# **Skills Development for Conflict Transformation**

**A training manual on understanding conflict, negotiation and mediation**

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# CONFLICT

## NATURE OF CONFLICT

Conflict is a natural and necessary part of our lives

Whether at home with our families, at work with colleagues or in negotiations between governments, conflict pervades our relationships. The paradox of conflict is that it is both the force that can tear relationships apart and the force that binds them together. This dual nature of conflict makes it an important concept to study and understand.

Conflict is an inevitable and necessary feature of domestic and international relations. The challenge facing governments is not the elimination of conflict, but rather, how to effectively address conflict when it arises. While most government officials in Africa are not frequently confronted by large-scale violence or humanitarian crises, they are often involved in lesser but nevertheless serious conflicts over trade, refugees, borders, water, defence, etc. Their government may be party to the conflict or called on to serve as mediator. In either case, they require particular skills and techniques to tackle the issues in a constructive fashion. Conflict can be managed negatively through avoidance at one extreme and the use or threat of force at the other. Alternatively, conflict can be managed positively through negotiation, joint problem-solving and consensus-building. These options help build and sustain constructive bilateral and multi-lateral relations.

### **Good conflict management is both a science and an art**

We have all learned responses to confrontation, threats, anger and unfair treatment. Some of our learned responses are constructive, but others can escalate conflict and raise the level of danger. How we choose to handle a confrontation is largely based upon our past experience in dealing with conflict and our confidence in addressing it. One [can start to change destructive responses to conflict by learning to assess the total impact of negative responses and acquiring confidence in using the tools and techniques of professional peacemakers.](#)

Constructive conflict management is as much a science as an art. It is based on a substantial body of theory, skills and techniques developed from decades of experience in international peacekeeping, peacemaking and peacebuilding. Acquiring a better understanding of the conceptual tools and skills professional conflict managers use can help us gain confidence in addressing conflict in a manner which resolves the issues and maintains or even strengthens relationships. While we may not all go on to become professional peacemakers, these skills and knowledge can help us in any social setting. These tools can help for example, government officials, address disputes more quickly and effectively, preventing them from growing into domestic or international crises.

### **Peace**

The distinction is sometimes made between 'negative peace' and 'positive peace' (e.g. Galtung 1996). Negative peace refers to the absence of violence. When, for example, a ceasefire is enacted, a negative peace will ensue. It is negative because something undesirable stopped happening (e.g. the violence stopped, the oppression ended). Positive peace is filled with positive content such as the restoration of relationships, the creation of social systems that serve the needs of the whole population and the constructive resolution of conflict.

Peace does not mean the total absence of any conflict. It means the absence of *violence* in all its forms and the [unfolding](#) of conflict in a constructive way. Peace therefore exists

where people are interacting non-violently and are managing their conflict positively - with respectful attention to the legitimate needs and interests of all concerned.

## Reconciliation

Reconciliation becomes necessary when negative conflict has occurred and relationships have been damaged. Reconciliation is especially important in situations of high interdependence where a complete physical or emotional barrier between parties in a conflict cannot be maintained. Reconciliation therefore refers to the restoration of relationships to a level where co-operation and trust become possible again. Lederach (1995) stated that reconciliation deals with three specific paradoxes:

- Reconciliation promotes an encounter between the open expression of the painful past and the search for the articulation of a long-term, interdependent future;
- Reconciliation provides a place for truth and mercy to meet; where concern for exposing what happened and letting go in favour of a renewed relationship are validated and embraced;
- Reconciliation recognises the need to give time and place to justice and peace, where redressing the wrong is held together with the vision of a common, connected future.

## Does conflict have to be destructive?

We all know how destructive conflict can be. Whether from personal experience or media accounts, we can all note examples of the negative aspects of conflict. On the other hand, conflict can have a positive side, one that builds relationships, creates coalitions, fosters communication, strengthens institutions, and creates new ideas, rules and laws. These are the *functions* of conflict. Our understanding of how conflict can benefit us, is an important part of the foundation of constructive conflict management.

## FUNCTIONS OF CONFLICT

What positive things have happened to you as a result of conflict? Here are some of the positive aspects noted by Coser (1956):

- *Conflict helps establish our identity and independence.* Conflicts, especially at earlier stages of your life, help you assert your personal identity as separate from the aspirations, beliefs and behaviours of those around you.
- *Intensity of conflict demonstrates the closeness and importance of relationships.* Intimate relationships require us to express opposing feelings such as love and anger. The coexistence of these emotions in a relationship create a sharpness when conflicts arise. While the intensity of emotions can threaten the relationship, if they are dealt with constructively, they also help us measure the depth and importance of the relationship.
- *Conflict can build new relationships.* At times, conflict brings together people who did not have a previous relationship. During the process of conflict and its resolution, these parties may find out that they have common interests and then work to maintain an ongoing relationship.

- *Conflict can create coalitions.* Similar to building relationships, sometimes adversaries come together to build coalitions to achieve common goals or fend off a common threat. During the conflict, previous antagonism is suppressed to work towards these greater goals.
- *Conflict serves as a safety-valve mechanism which helps to sustain relationships.* Relationships which repress disagreement or conflict grow rigid over time, making them brittle. Exchanges of conflict, at times through the assistance of a third-party, allows people to vent pent-up hostility and reduce tension in a relationship.
- *Conflict helps parties assess each other's power and can work to redistribute power in a system of conflict.* Because there are few ways to truly measure the power of the other party, conflicts sometimes arise to allow parties to assess one another's strength. In cases where there is an imbalance of power, a party may seek ways to increase its internal power. This process can often change the nature of power within the conflict system.
- *Conflict establishes and maintains group identities.* Groups in conflict tend to create clearer boundaries which help members determine who is part of the "in-group" and who is part of the "out-group". In this way, conflict can help individuals understand how they are part of a certain group and mobilise them to take action to defend the group's interests.
- *Conflicts enhance group cohesion through issue and belief clarification.* When a group is threatened, its members pull together in solidarity. As they clarify issues and beliefs, renegades and dissenters are weeded out of the group, creating a more sharply defined ideology on which all members agree.
- *Conflict creates or modifies rules, norms, laws and institutions.* It is through the raising of issues that rules, norms, laws and institutions are changed or created. Problems or frustrations left unexpressed result in the maintaining of the status quo.

## CONFLICT RESOLUTION: TERMS AND DEFINITIONS

**Cooperative problem-solving** is an unassisted procedure which includes formal or informal discussions between individuals or groups. With this process parties work jointly to determine the nature of their differences and look for creative alternatives which will allow them to meet their needs, desires or concerns. Parties using cooperative problem-solving do not need to have an especially strong relationship but they must acknowledge a need to collaborate with one another to resolve their differences (CDR, 1997).

**Negotiation** refers to either competitive processes (positional negotiation) or cooperative efforts (interest-based negotiation). In *positional negotiation*, parties make offers and counter-offers which they feel will resolve the conflict. These exchanges of offers typically start to converge on a solution which both parties find acceptable. Success at positional negotiation is based on a party's ability to bluff the other party about its positions of strength and weakness in order to gain an outcome which is in their favor. *Interest-based negotiation* is designed for parties who have a need to create or maintain healthy relationships. In this type of process, parties discuss the issues which face them and express the interests, values and needs that they bring to the table. Instead of focusing on competitive measures and winning the negotiation, parties collaborate by looking to create solutions which maximise the meeting of their interests, values and needs (Ibid.).

**Mediation** refers to a process through which a third party provides procedural assistance to help individuals or groups in conflict to resolve their differences. Mediation processes vary throughout the world in form and underlying philosophy. In many Western countries, the mediator is usually an independent, impartial person who has no decision-making authority. In other societies, it may be more important that the mediator is known and trusted by the parties rather than being seen as impartial. Mediation is a voluntary process and its success is linked to the vesting of decision-making authority in the parties involved in the dispute. The mediator structures the process in a way which creates a safe environment for parties to discuss the conflict and find solutions which will meet their interests.

**Facilitation** is an **assisted** process which is similar to mediation in its objectives; however, facilitated processes typically do not adhere to a tightly defined procedure. In this type of proceeding, the facilitator works with parties to increase the effectiveness of their communication and problem-solving abilities. The facilitator may be either a third party or a person within one of the groups who is able to provide procedural assistance and to refrain from entering into the substance of the discussion.

**Arbitration** is a form of dispute resolution where a third party makes the decision on the outcome of dispute. Typically, the parties appoint the arbitrator to render this decision. The arbitrator's decision is either binding or non-binding on the parties depending on the arrangement made prior to entering the arbitration process. Non-binding arbitration is frequently used to assist parties who are deadlocked on a certain issue. While there is no obligation for parties to accept the outcome, the weight of the arbitrator's decision may provide the impetus for parties to reconsider their settlement options (Ibid.).

## WHAT CAUSES DISPUTES AND CONFLICT?

Part of developing an effective intervention strategy is knowing the general categories of causes of conflict. One model (see Moore, 1996) identifies five sources of conflict:

1. *Data or information conflict*, which involves lack of information and misinformation, as well as differing views on what data are relevant, the interpretation of that data and how the assessment is performed.
2. *Relationship conflict*, which results from strong emotions, stereotypes, miscommunication and repetitive negative behaviour. It is this type of conflict

which often provides fuel for disputes and can promote destructive conflict even when the conditions to resolve the other sources of conflict can be met.

3. *Value conflict*, which arises over ideological differences or differing standards on evaluation of ideas or behaviours. The actual or perceived differences in values do not necessarily lead to conflict. It is only when values are imposed on groups or groups are prevented from upholding their value systems that conflict arises.
4. *Structural conflict*, which is caused by unequal or unfair distributions of power and resources. Time constraints, destructive patterns of interaction and uncondusive geographical or environmental factors contribute to structural conflict.
5. *Interest conflict*, which involves actual or perceived competition over interests, such as resources, the way a dispute is to be resolved, or perceptions of trust and fairness.

An analysis of the different types of conflict the parties are dealing with helps the intervenor determine strategies for effective handling of the disputes.

## THE CIRCLE OF CONFLICT

The Circle of Conflict is a useful analytical tool for examining disputes and uncovering the root cause of conflict behaviour. By examining a conflict and evaluating it according to the five categories — relationship, data, interest, structure and value — we can begin to determine what causes the dispute, identify what sector is primary, and assess whether the cause is a genuine incompatibility of interests or [perceptual problems of involved parties](#). These insights can assist us in designing a resolution strategy that will have a higher probability of success than an approach which is exclusively trial-and-error (Moore, 1986).

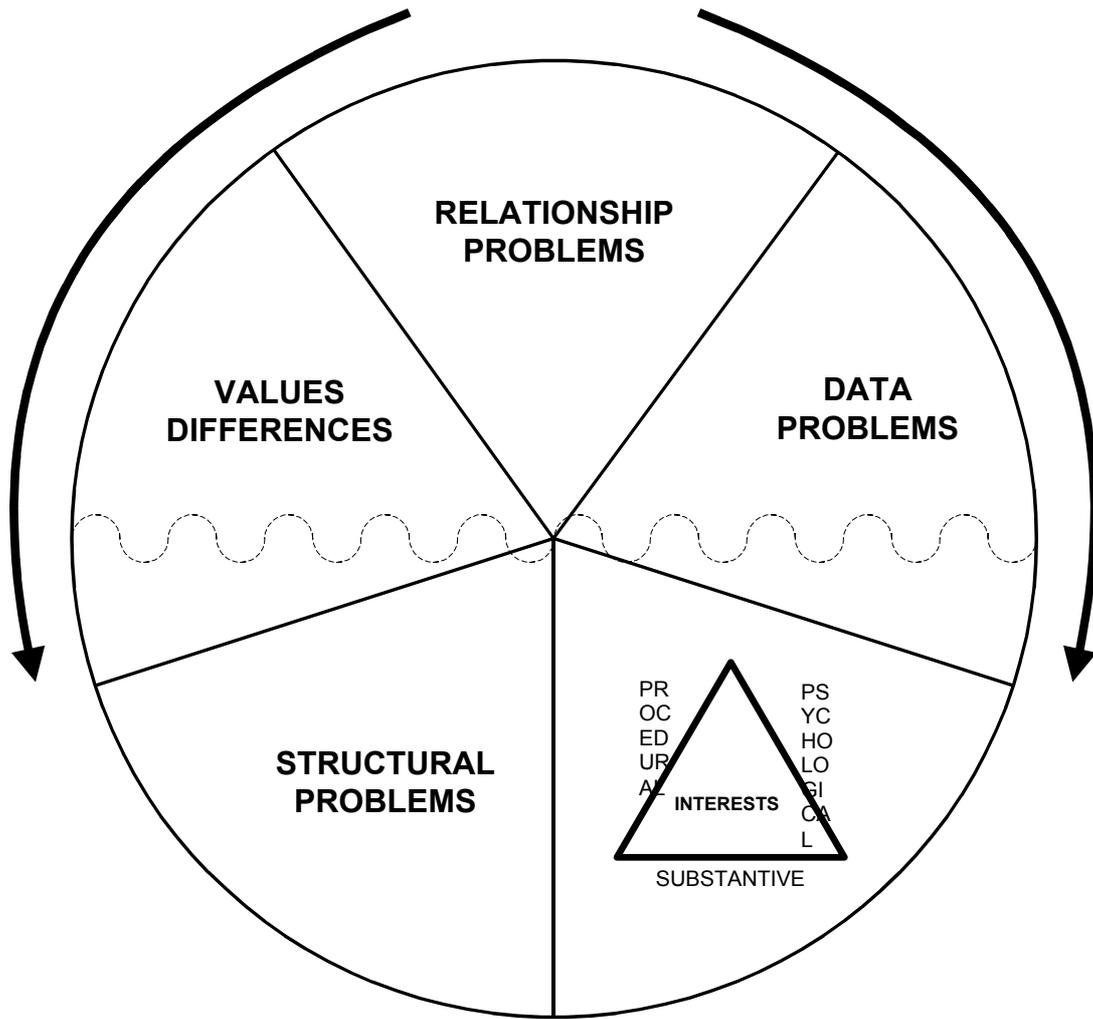


Figure 1: Circle of Conflict (Copyright © 1997 CDR Associates, Boulder, Co.)

# THE RELATIONSHIP BETWEEN CONFLICT AND HUMAN RIGHTS

## Two dimensions of the relationship between conflict and human rights

There is a cause-and-effect relationship between conflict and human rights that consists of two dimensions:

- Gross human rights violations occur as a consequence of (destructive) conflict.
- The (sustained) denial of political, civil, economic, social, cultural, and other human rights is a core cause of destructive conflict.

Thus, destructive conflict may not only result *in* human rights violations (first dimension), but it can also result *from* violations of human rights when such rights are insufficiently respected and protected over a period of time (second dimension). The sustained denial of human rights can create conditions of social and political unrest as it infringes on the dignity and integrity of human beings and undermines their wellbeing, welfare, and participation in public life.

## Challenges to conflict and human rights

The two dimensions of this relationship pose different challenges to human rights and conflict management practitioners and policy makers because the problems they seek to address differ from one dimension to the other. This also applies to the time frame for intervention, the primary activities called for and the desired outcomes, as the figure below shows.

	<b>Dimension 1</b>	<b>Dimension 2</b>
	Gross human rights violations as consequence of destructive conflict	Conflict as a consequence of sustained denial of human rights
<b>Problem to be resolved</b>	Protecting people from human rights violations	Reducing levels of structural conflict by promoting and protecting human rights
<b>Time frame</b>	Short to medium term	Long term
<b>Activities to be undertaken</b>	<ul style="list-style-type: none"> <li>• Dispute resolution</li> <li>• Peacemaking and peacekeeping</li> <li>• Peace-enforcement</li> <li>• Human rights monitoring and investigation</li> </ul>	<ul style="list-style-type: none"> <li>• Peace-building</li> <li>• Development</li> <li>• Institution-building</li> <li>• Reconciliation</li> </ul>
<b>Desired outcomes</b>	<ul style="list-style-type: none"> <li>• Cessation of hostilities</li> <li>• End/prevention of abuses</li> <li>• Negotiated settlement</li> </ul> => NEGATIVE PEACE	<ul style="list-style-type: none"> <li>• Socio-economic and political justice</li> <li>• Constructive conflict-management</li> </ul> => POSITIVE PEACE

## **The two dimensions are interrelated and influence one another**

The two dimensions of the relationship between human rights and conflict are connected to each other in a number of ways:

- Violent confrontations (dimension 1) are largely symptoms of structural conflict (dimension 2). As structural conflict is left unaddressed, the frustration, anger and dissatisfaction may rise to such an extent that groups may mobilise to confront perceived injustice.
- Activities undertaken as part of conflict regulation and resolution during potentially violent confrontations (dimension 1) can impact on the prospects for longer term reconciliation and conflict management efforts. If mechanisms are used to constructively address destructive conflict in the short term, they can lay a foundation of trust and help the parties better manage future conflict.
- The desired outcomes for each dimension influence the other. While creating negative peace is the focus of dimension 1, any agreement negotiated within this dimension needs to include agreements on future processes to address peace and justice, reconciliation and institution-building, in order to make the agreement sustainable.
- Efforts towards achieving positive peace are fundamentally tied to the ability of parties to end the hostilities and to prevent violations of human rights so that longer-term peacemaking and peacebuilding processes have sufficient time to meet their objectives.

Thus, considering this cause-and-effect relationship between human rights and conflict, it follows that the protection and promotion of human rights is essential to the management of conflict as it lessens the potential for conflict. This can further be clarified by considering how human rights and human needs are linked together (see next section.)

## What are human needs?

Basic human needs are universal. All people of all times, races and cultures share the same basic needs. These are an integral part of human beings and are associated with the fundamental drive in human beings, the motivation for behaviour. When these needs are not met, a deep sense of frustration results, coupled with a strong drive towards meeting the need. Some of these needs are biological (food, shelter, water), while others can be psychological, or relate to personal growth and development (identity, autonomy, recognition). Needs are not negotiable and cannot be compromised. They are inherent drives for survival and development (including identity and recognition).

There is an important distinction between human needs and their satisfiers. Satisfiers can be compromised or ignored, needs cannot. A satisfier of the need for respect, for example, may be to possess an expensive car. Since a whole range of possible satisfiers exist, it is possible to replace this satisfier with another (e.g. the genuine praise of others for a job well done). The need for respect, however, cannot be compromised.

## The relationship between human rights and human needs

Covering all spheres of life, human rights are concerned with requirements for human survival, subsistence and development (e.g. life, security, bodily and mental integrity, water, health care, education, etc.) As such, human rights 'cover' needs and values: each human right relates to certain basic human needs (e.g., identity, protection, participation, subsistence, freedom, etc.). The enforcement or realisation of such rights means that the needs that underlie those rights are being met.

If human rights are denied over a period of time, the needs to which those rights are related, are not met. Yet basic human needs cannot be suppressed because of their fundamental importance for survival and development. People will continue to pursue them, even if it is to their detriment (e.g. loss of life). This explains why a sustained denial of rights leads to conflict: human needs are being frustrated. The protection of rights is thus essential for the management of conflict, because it addresses basic needs that are integral to human beings. This is illustrated below.

## Basic human needs

What are some of the needs that human beings have, and that have to be met in order for them to feel safe and secure? If one were to ask that of various people, some of the following answers may be given:

shelter	food	identity	money
water	freedom	participation	understanding
subsistence	recognition	love	protection
community	respect	clothing	free movement
education	health	creation	resources

This list of basic human needs is not exhaustive – you could probably think of more. Clearly, some needs are material, whereas others are non-material. It is important that such needs are met because without them human beings can not survive and develop.

## Basic human rights

Human rights are rights that belong to each person on the basis of his or her inherent dignity as a human being. These rights belong to all people solely by virtue of their being human, irrespective of nationality, race, colour, social status, gender, age, political beliefs, wealth, or any other differentiating characteristic. They are based on the idea that all human beings have an 'inherent dignity' that affords human beings certain fundamental rights and freedoms that apply at all times in all situations and contexts and that relate to principles of equality, security, liberty and integrity. Some basic human rights and fundamental freedoms are:

- the right to life, liberty, and security of person
- the right not to be subjected to slavery; to torture, cruel, inhuman or degrading treatment
- the right not to be subjected to arbitrary arrests, detention, or exile
- the right to be recognised as a person before the law; presumed innocent until proven guilty
- the right to freedom of movement
- the right to own property; to work; to free choice of employment; to just conditions of work
- the right to freedom of opinion and expression; and of thought, conscience, and religion
- the right to freedom of peaceful assembly and association
- the right to take part in the government of one's country; to equal access to public service
- the right to an adequate standard of living (including food, shelter, water, medical care)
- the right to education: to freely participate in the cultural life of the community
- the right to marry and to found a family.

When you consider such basic human rights in relation to basic human needs, you find that all rights relate directly to certain needs. For example, 'the right to freely participate in the cultural life of the community' relate to needs of identity, recognition, participation, respect, community. 'The right to an adequate standard of living' relates to needs of food, water, shelter, etc.; while 'the right to life' covers all needs. Thus, human rights are not hollow legal principles – in fact, they relate to the basic necessities that all human beings have.

## International human rights instruments

Since World War II, human rights have been put down in a large number of human rights instruments. Some of the most important ones are:

- Universal Declaration of Human Rights (UDHR)
- [African Charter on Human and Peoples' Rights \('Banjul Charter'\)](#)
- International Covenant on Civil and Political Rights (ICCPR)
- First and Second Optional Protocols to the ICCPR
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention against Torture and other Cruel, Inhumane or Degrading Treatment
- Convention on the Prevention and Punishment on Crime of Genocide

- Convention on the Rights of the Child
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention relating to the Status of Refugees
- Protocol relating to the Status of Refugees

## **The African Charter on Human and People's Rights**

The African Charter on Human and Peoples' Rights (also known as the *Banjul Charter*) was unanimously adopted in June 1981 by the OAU and came into force in October 1986. By June 1997, all African states, except for Eritrea and Ethiopia, had become a party to the African Charter. Over 40 states are party to the OAU Refugee Convention.

By the time the African Charter was adopted, many African countries had already committed themselves to respecting international human rights standards. Therefore, the African Charter protects many of the basic human rights set out in the International Bill of Human Rights.

Like its European and Inter-American counterparts, the African Charter provides for 'first generation' (civil and political) rights as well as 'second generation' (social, economic, and cultural) rights. It also includes 'third generation' rights, meaning the rights of peoples. The Charter details individual duties as well as individual rights (to the family, the state, the society, and the African community.)

The Charter ensures the enjoyment of the freedoms and the rights that it recognises and guarantees such enjoyment without discrimination of any kind. The following rights are included in the African Charter: the right to life, the right to liberty and security, freedom from torture, the right to a fair trial, freedom of conscience, expression, association and assembly, freedom of movement, political rights, the rights to work, to health care and to education, and the principle of non-discrimination.

The Charter sets out to combine the specific needs and values of African cultures with standards that have been recognised as universally valid. Taking into account the African philosophy of law and the needs of Africa, the drafters of the Charter made an effort to reflect the African conception of human rights.

The Charter provides for an [African Commission on Human and People's Rights](#) yet does not provide for an African Court of Human Rights.

# **NEGOTIATION**

**WHAT IS NEGOTIATION?**

Negotiation is a voluntary attempt to resolve conflicts that arise from competing needs, interests and goals. It is a problem solving approach in which parties seek agreement rather than resort to violence and force. In situations where relationships are threatened or have been harmed, high mistrust exists and violence has occurred, negotiation as a problem solving approach is particularly difficult but all the more relevant.

When a dispute arises, parties will attempt to resolve the matter through power-based, rights-based or interest-based methods. *Power-based* procedures determine who is more powerful, implying that the stronger party should get to determine the outcome. *Rights-based* methods are based upon an organisation's or society's laws, norms and values. In a given situation, the decision is made by using some independent set of criteria to determine fairness or which party's claim is more legitimate. *Interest-based* procedures seek to reconcile the needs, desires and concerns of the parties involved (Ury, Brett and Goldberg, 1988).

In a conflict where tensions have escalated, disputants often rely on more powerful techniques to resolve their differences. They may move from interest-based to rights-based and power-based techniques in order to communicate their message. [The problem with this is that generally rights-based and power-based approaches are more costly. In organisations, communities and institutions which are experiencing a great deal of conflict, the environment tends to become distressed .when disputants increasingly use more power-based means to resolve issues. In these situations, the challenge is to move parties away from more costly methods to alternative ways of resolving their differences.](#)

### **Costs of using power to resolve conflict**

Generally, more powerful conflict resolution procedures incur higher costs. The following list notes four costs of greater use of power in attempting to address conflict (Ibid., p. 15):

1. A greater strain is placed on relationships.
2. Disputes start to recur with greater frequency.
3. While disputes may be settled, parties are less satisfied with the outcome.
4. Interactions between the parties require more resources, emotional energy and time.

## **STRATEGIES AND OUTCOMES OF A DISPUTE**

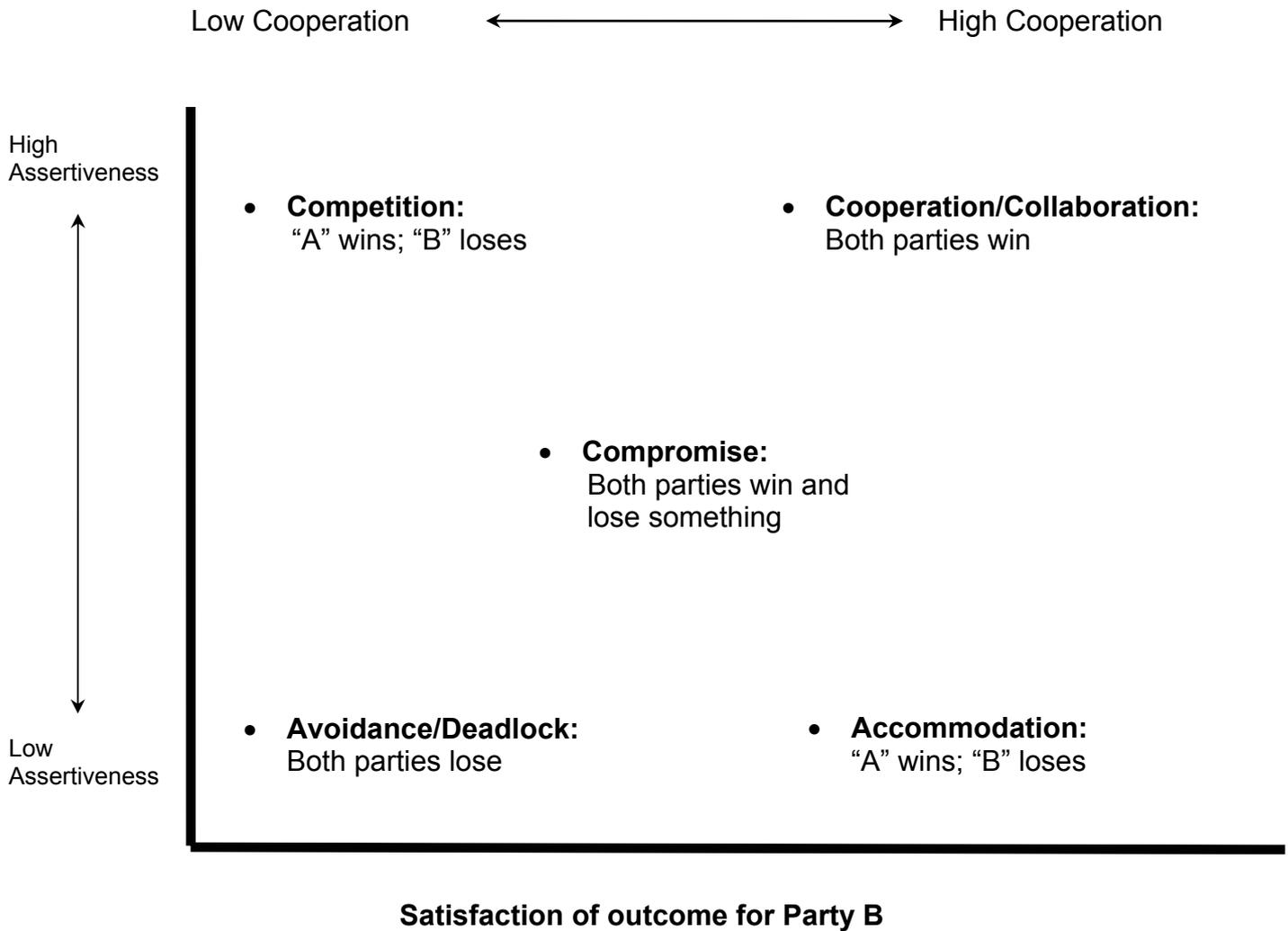


Figure derived from Kilmann and Thomas, "Interpersonal conflict-handling behavior as reflections of Jungian personality dimensions." *Psychological Reports*. 37, 1975. pp. 971-980.

## POSITIONS AND INTERESTS

*Positions* are a party's stated solution to the conflict. It is what they say they want. In a labour dispute, a union might state a *position* of wanting a 10% increase in wages. Positions are often tied up with satisfiers of basic human needs.

*Interests* are the basic needs, concerns, fears or values which underlie their position in a conflict. In the above labour dispute, the *interests* are what lead them to make a certain demand; however, their interests may only be partially met by money. There may also be interests related to fewer working hours, better benefits or gaining a greater measure of respect from management.

### **Types of Interests**

Moore (1996) identifies three different types of interests:

- *Substantive*, which relate to physical resources such as money, land or time.
- *Psychological*, which relate to issues of trust, fairness and respect.
- *Procedural*, which relate to the way the dispute will be resolved, who will be involved and how decisions will be made.

These three types of interests are inter-related. If resolution of the conflict is geared only towards meeting substantive interests, the resulting agreement may fail. Take the case of a development project which is designed to meet the needs of a squatter community. The squatter community may have substantive interests related to housing, water and electricity. In addition, they may have psychological interests of respect and fairness. They might also have procedural interests related to how decisions are made, about what is going to be developed and how the new resources are allocated. If these three types of interests are not met, the development project may never get off the ground. There are many examples of development projects which were left in ruins through neglecting psychological and procedural interests such as *consulting with the project's recipients* and *determining how decisions about the project are made*.

## **POSITIONAL NEGOTIATION**

### **What is positional negotiation?**

*Positional negotiation* refers to a competitive process in which parties make offers and counter-offers which they feel will resolve the conflict. Positional negotiations start with parties making an offer which will maximise their benefit. Each party then attempts to draw the other into their bargaining range by using a series of counter-offers and concessions. These exchanges of offers typically start to either converge on a solution

which both parties find acceptable or, if parties remain far apart, brings them to an impasse. This type of process tends to end in compromise, where gains and losses to both parties are distributed according to the ability of the negotiators and strength of their negotiating position.

### **When do parties use positional negotiation? (Moore, 1996)**

- when the stakes are high
- when parties are negotiating over resources which are limited such as money or time
- when there is little or no trust between parties
- when a party perceives that it benefits from making the other party lose
- when the parties' need for a continuing cooperative relationship is of lesser priority than a substantive win at the table
- when parties have sufficient power to damage the other if they reach an impasse

### **The positional negotiation process (adapted from CDR, 1997)**

#### *Determine your best solution*

What solution would meet all of your interests and needs? Determine what outcome would be most beneficial to you. Factor in the highest assessment of your ability to negotiate and the strength of your negotiating position.

#### *Determine your bottom line*

What is the point beyond which you cannot go? Determine what outcome would be least beneficial but still acceptable to you. Factor in the lowest assessment of your ability to negotiate and the strength of your negotiating position. Also determine your *best alternative to a negotiated agreement (BATNA)*.

#### *Determine the best solutions and bottom lines of the other parties*

What do you expect the opening positions of the other parties to be? Why do you think they will make these demands, that is, what are the underlying interests and needs which prompt them to take a certain position? Where do you think they will set their bottom line?

Of the range of issues under negotiation, what are the priorities that the other parties attach to these issues? Why?

#### *Create a negotiating strategy*

Review your targets and the targets of the other parties. Are there issues upon which you can both easily agree? Are there similar interests which create common ground between parties? Are there points you can concede in order to gain a more acceptable outcome on issues which are of greater importance to you? Are there issues on which you cannot concede or compromise?

For each issue subject to negotiation, develop an opening position which is based on your best solution. Set your bottom line. Then create fallback positions which

make concessions of increasing importance. As you are setting these positions, determine how and when you will move to back-up offers. Also consider how you will explain your positions to the other parties. Educate them on why you are taking a certain position, why they may need to lower their expectations and how your position meets the interests of the other parties.

### *Getting started*

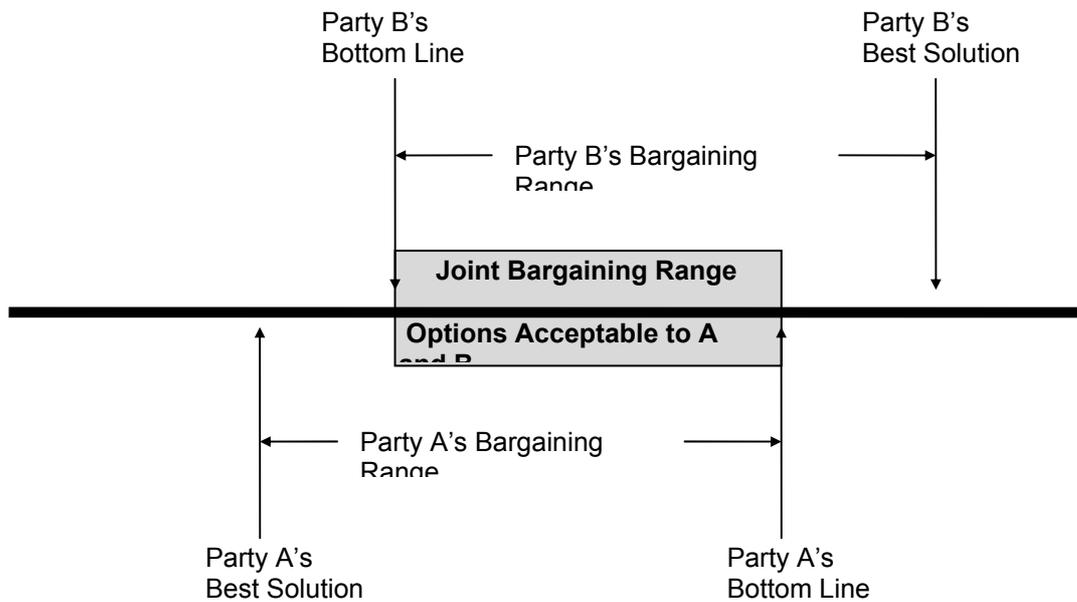
Consider the order of issues subject to negotiation. Is there a logical sequence? Are there relatively easy issues on which you can quickly gain agreement? If so, consider dealing with these first to build momentum for subsequent issues.

Open the negotiations with an offer which is close to your best solution. Explain to parties why you need this solution. Get other parties to explain why they need a certain solution. Look for underlying interests that are common to all parties or which you can easily meet.

### *Optimizing solutions*

Keep an eye on your bargaining range. Look for offers which fall within this range. Keep track of the types of benefits or concessions which you can offer to make certain alternatives favorable to other parties. If the negotiations start to deadlock, consider your *BATNA*. Use this to determine if and how you can compromise to accept certain settlement options.

## Determining the bargaining range



## Styles of Positional Negotiation

### *Soft and hard positional negotiation*

SOFT	HARD
Participants are friends	<i>Participants are adversaries</i>
The goal is agreement	<i>The goal is victory</i>
Make concessions to cultivate the relationship	<i>Make concessions as condition of the relationship</i>
Soft on people and the problem	<i>Hard on people and the problem</i>
Trust others	<i>Distrust others</i>
Change position easily	<i>Dig in to position</i>
Make offers	<i>Make threats</i>
Disclose bottom line	<i>Mislead as to bottom line</i>
Accept one-sided losses to reach agreement	<i>Demand one-sided gains as the price of agreement</i>
Search for the single answer: the one they will accept	<i>Search for the single answer: the one you will accept</i>
Insist on agreement	<i>Insist on your position</i>
Try to avoid a contest of will	<i>Try to win a contest of will</i>
Yield to pressure	<i>Apply pressure</i>

(Source: R. Fisher and W.Ury: Getting to YES. 1991)

## INTEREST-BASED NEGOTIATION

## What is interest-based negotiation?

*Interest-based negotiation* is designed for parties who have a need to create or maintain healthy relationships. In this type of process, parties discuss the issues that face them and express the interests, values and needs that they bring to the table. Instead of focusing on competitive measures and winning the negotiation, parties collaborate by looking to create solutions which maximise the meeting of all parties' interests, values and needs. This cooperative process focuses parties away from their positions and onto using interests and objective criteria for making decisions (Fisher, Ury and Patton, 1981).

## When should parties use interest-based negotiation? (CDR, 1997)

- When parties have interdependent interests, desires and concerns.
- When it is possible to create integrative solutions which provide mutual gain for parties (win/win).
- When an ongoing relationship between parties is important.
- When parties need to switch from adversarial interactions to more cooperative ones.
- When there are principles (e.g. human rights standards) which parties are bound to uphold.

## The interest-based negotiating process (adapted from CDR, 1997)

### 1. *Identifying substantive, psychological and procedural interests*

What are the different interests that you are trying to meet through the negotiating process? Why are these needs important to you? Which interests are of greater/lesser priority to you? How can you communicate these needs and their importance to the other parties? Also try to determine the interests of the other parties? Why are they important to them? How do they prioritise their issues?

### 2. *Getting started*

Instead of beginning with an opening offer as in positional negotiations, start with a period of time in which parties discuss the issues and educate one another on their interests, needs and concerns. Be explicit about your interests and those of the other parties. If other parties offer a position or solution, reframe it in terms of the interests they are trying to articulate.

### 3. *Managing the issues*

Clearly state the issues. Frame them in ways which are acceptable to all parties. Avoid stating issues in win/lose terms or in ways which suggest a certain outcome. Order the issues. Is there a logical order? Are there issues which are easily resolved? Can certain issues be grouped together?

### 4. *Problem-solving and option generation*

Jointly determine a strategy for problem-solving. Remind parties of the interests they and others bring to the negotiation. Generate options which will meet all or most of these interests. **Separate the generation of options from evaluating them.** Generate a range of options rather than focusing on one option at a time. Get parties to look at the problem from different perspectives.

## 5. *Evaluating options*

After a number of options are generated, evaluate them. Look at how well they meet the needs of all the parties. If there is no clear best solution, get parties to look at integrating aspects of different proposals, find ways to “expand the pie”, see if parties can make trade-offs based upon their priorities for settlement or reframe the issue.

### **Helping parties to move to interest-based negotiation**

If parties are oriented to negotiate over positions, there are ways to help them make a transition to interest-based negotiation. Here are some of the ways this can be done (adapted from Fisher, Ury and Patton, 1981; CDR, 1997):

- If parties state a position on an issue, ask them why that position is important to them. Listen for the underlying interests, needs and concerns they use to construct their position.
- Avoid framing issues in win/lose terms or in ways which predispose parties to a certain solution.
- Separate the person from the problem—be hard on the *problem*, not hard on the *person*.
- Look for solutions which provide mutual gain (win/win).
- Educate parties on their interests — show them how certain solutions can increase their benefits.
- If your proposal is attacked, do not go on the defensive. Instead, ask why they feel the proposal will not work, again listening for underlying interests.
- Create general principles to guide the development of proposals and the decision making process.
- Identify areas of common ground.
- Avoid generating options and immediately evaluating them.
- Use objective criteria such as human rights standards to assist in evaluating options.
- Use impartial outside experts to evaluate options or educate parties about the ramifications of certain options.
- During the evaluation process, keep a number of options on the table and look for ways to integrate the merits of a range of options.

# **COMMUNICATION**

**WHAT IS COMMUNICATION?**

One of the deepest needs of all human beings is to feel understood and be accepted by others. Offering understanding to another person is a potent form of empowerment. We need not agree with others to empower them in this way; we need only to make it clear through our eyes, body posture and tone of voice that we want to see the world from their perspective. Our interactions with others must come from a point of deep, non-judgmental interest. The key is to grasp the why behind what is being said or done in order to gain insight into the deeper interests and needs of the person with whom we are communicating. From the moment that people feel you are truly seeking to understand, they begin dealing with problems and other people more constructively. Good listening skills are used throughout any process designed to constructively resolve conflict. Good listening is, perhaps, the most significant skill a mediator or facilitator brings to assist parties in conflict.

## ACTIVE LISTENING

Active listening is a communication skill used by mediators and facilitators to aid communication by helping parties deliver clear messages and know that their messages were heard correctly. It is also an indispensable skill for interest-based negotiators.

### Objectives of active listening

- To show the speaker that his/her message has been heard.
- To help the listener gain clarity on both the content and emotion of the message.
- To help speakers express themselves and to encourage them to explain, in greater detail, their understanding of the situation and what they are feeling.
- To encourage the understanding that expression of emotion is acceptable and that it is useful in understanding the depth of feelings.
- To create an environment in which the speaker feels free and safe to talk about a situation.

### The four levels of listening

Active listening takes place on four levels:

- 'The head': listening for facts and other forms of information.
- 'The heart': listening for feelings. Conflict is often associated with strong feelings such as anger, fear, frustration, disappointment, etc. Strong feelings often block the way to rational discussions and therefore have to be identified and dealt with before proceeding to substantive matters.
- 'The stomach': listening for basic human needs. Identify what basic needs are driving the conflict and distinguish between needs and satisfiers.
- 'The feet': listening for intention or will. Identify in which direction the person/group is moving and how strong their commitment is.

### Procedures for active listening

- Acknowledge that you are listening, through verbal and non-verbal cues.

- Listen at all four levels and reflect your impressions through using the various active listening skills.
- Let the speaker acknowledge whether or not you have reflected their communication and its intensity correctly. If it is not correct, ask questions to clarify and reflect a modified statement to the speaker.

### **Principles underpinning effective listening**

- That the environment created for the speaker to express herself or himself is safe, especially in terms of reducing the risk of future negative consequences for messages delivered.
- That the listener is very focused on what the speaker is trying to communicate to her/him.
- That the listener is patient and does not jump to conclusions about the message.
- That the listener can show genuine empathy for the speaker.
- That the listener uses techniques which permit the speaker to verify or correct the emotion and content of the message.
- That the listener does not judge or make value statements about what the speaker is feeling.

### **How to achieve the goals of active listening:**

- Be attentive.
- Be alert and non-distracted.
- Be interested in the needs of the other person, and let them know you care about what is said.
- Be a non-judgmental, non-criticising “sounding board”.

### **Don't:**

- use stock phrases like *“It’s not so bad”*, *“don’t be upset”*, *“you’re making a mountain out of a molehill”*, *“just calm down”*.
- get emotionally hooked, angry, upset, argumentative. Don’t let your values/biases interfere with what you understand is being said.
- rehearse in your own head.
- jump to conclusions or judgements.
- interrogate or give advice.

### **Ways to listen effectively:**

1. **Use your body** to create a positive atmosphere with your non-verbal behaviour. i.e.:
  - appropriate eye contact.
  - nodding the head, facial expressions, gestures.
  - body oriented toward the speaker (head, arms, legs).
  - tone of voice.

Some researchers say that 80% of communication is body language, that is, what we do with our bodies, our faces, our eyes, and our tone of voice as we are speaking. Every culture has its own body language and mediators must think critically about how to use body language in such a way that the message comes through: “I am eager to hear and understand you.”

2. **Encourage responses.** “Tell me more” or “I’d like to hear about ...”
3. **Summarise** the basic viewpoints of the speaker as you've heard them. A summary is an extended restatement of the key points of information offered by the speaker. Use summaries to focus the speaker in terms of issues and solvable problems, instead of personalities.
4. Make **brief notes** on your pad to keep track, but don't bury yourself in them!
5. **Paraphrase** or restate in your own words.

## PARAPHRASING

Paraphrasing or restating what the speaker has said in your own words is a powerful tool:

- for communicating understanding to others.
- for moving the conversation to deeper levels — a good paraphrase often brings further, more reflective responses from others.
- for slowing down the conversation between the parties.
- for “laundering” vicious or insulting statements so as to be less inflammatory while retaining the basic points that were made.

**How to paraphrase:**

1. **Focus on the speaker.**
  - *“YOU felt...”, “You’re saying...”, “you believe...”*
  - **NOT** - *“I know exactly how you feel. I’ve been in situations like that myself.”*
  
2. **Paraphrasing can be effective at all four levels:**
  - **Restate facts:** *“Your crops have again been destroyed by your neighbour’s cattle”*
  - **Reflect feelings:** Body language and tone of voice will clue you to feelings. *“and you feel angry, bitter and worried about what your family will eat”*
  - **Reflect needs:** *“You need financial compensation and you need convincing assurances that this will not happen again (security)”*.
  - **Reflect will or intention:** *“You want to solve the problem as soon as possible”*.
  
3. A paraphrase contains no judgement or evaluation but **describes empathetically:**

<ul style="list-style-type: none"> <li>• <i>“So you believe very strongly that...”</i></li> <li>• <i>“You were very unhappy when she...”</i></li> <li>• <i>“You felt quite angry with Mr. X in that situation...”</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>“The way you see it then...”</i></li> <li>• <i>“If I’m understanding you correctly, you...”</i></li> </ul>
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4. **Act like a mirror not a parrot.** Paraphrase mirrors the meaning of the speaker's words but does not merely parrot the speaker; e.g.:
- Speaker:** *"I resented it deeply when I found out that they had gone behind my back. Why can't they come and talk with me, and give me a chance to sort things out with them?"*
- Paraphrase:** *"You were quite hurt that they didn't come directly to you to resolve things".*
- NOT:** *"You resented it deeply that they went behind your back. You wish they had given you a chance to sort things out with them."*
5. A paraphrase **should always be shorter than the speaker's own statement**, and is used after specific points. A summary is similar to a paraphrase but is longer and is used to summarise all the key points that have been made by one party in a statement.
6. **Paraphrasing and other communication skills e.g. questioning can be extremely useful in:**
- laundering language, i.e. rephrasing the statement so that insulting words are omitted.
 

**Speaker:** *"He is a liar".*

**Paraphrase:** *"You find it difficult to believe him."*
  - dealing with generalities and moving parties to specifics, e.g. *"He **always** comes in late..."* Response: *"When does he come in late?" "What is he late for?"*
  - unspecified noun/verb e.g.: *"I just don't like that sort of thing".* Response: *"Tell us what you dislike". "He always talks with two tongues".* Response: *"When did he make contradictory statements." "What is it that he said and to whom?"*
  - speaking for others, eg. *"I happen to know that no-one around here trusts him."* Response: *"Speaking from your own experience with Mr X, tell us more about what you're upset about.."*
  - highlighting the positive.

## HONEST COMMUNICATION

### Aims

- To communicate clearly and cleanly my perception of and feelings about a problem without attacking, blaming or hurting the other person.

- To open a discussion without eliciting defensiveness from the other person.

## Strategy

In addition to good listening, conflict management depends on honest talking.

When people are confronted with a situation that makes them very uncomfortable, they normally respond in one of two ways. Either they flee or they fight - flight or fight. There are times when it is necessary to flee (e.g. when attacked by a gang) or to fight (when one's life is threatened). But on the whole these typical responses are not very helpful to *resolve* problems.

For example: Mrs Matshediso is a Mathematics teacher trying to teach difficult concepts to her class at the end of a school day. She has a headache and feels very tired. Ntjantja, a pupil, does not understand Mathematics well, is frustrated and bored and starts talking to her friend – in spite of the fact that the teacher has asked them to concentrate.

The flight response is as follows: Mrs Matshediso storms out of the class, goes to the staff room, drinks a headache pill and sits down to wait for the end of the day. She has avoided a confrontation with Ntjantja, but has the problem been solved?

The fight response: Mrs Matshediso shouts at Ntjantja: “You are a disobedient and useless child. You will fail this subject and get nowhere in life. Get out of my classroom!” Mrs Matshediso has confronted the problem, she has attacked. But again, has the problem been solved?

There is a third way to handle this situation. Mrs Matshediso can use ‘I language’. ‘I language’ or an ‘I message’ is to communicate exactly how I feel without avoiding the problem, but also without attacking, blaming or insulting the other. She may, for example, say: “Ntjantja, I have a headache and I am very tired. When I see you talking while I am trying to explain these difficult sums to you I feel deeply irritated. I feel as if you are not respecting me. Can you help me to understand why you are doing this?”

In this type of ‘honest talking’ or ‘I language’ two things need to happen:

- I have to focus on my own feelings and thoughts and communicate them as *mine*.
- I do not blame or attack the other, nor do I accuse or insult them. I am saying to the other person that I have these thoughts and feelings because of his or her behaviour, and I create an openness for them to respond.

A possible syntax for an 'I message':

example	example	Example	Example	Complete own
The Action	Objective Description	When Yn	<i>When you give me instructions as if I am a child</i>	
My response	No Blame	I feel... Or I feel like...	<i>I feel insulted and powerless</i> Or <i>I feel like sabotaging your plans</i>	
My preferred outcome	No Demand	And what I'd like is that I ...	<i>And what I'd like is that I have more involvement in the decision-making process and be treated with respect.</i>	

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Some questions to ask myself when I am constructing an I message:

- Is my message 'clean' in the sense that I am not blaming, accusing or insulting?
- Am I stating the problem accurately and honestly?
- Have I stated my feelings clearly and honestly?
- Have I made the statement in such a way that it will lead to an open discussion or have I closed the matter through what I said or the way I said it?

## FRAMING AND REFRAMING

## HELPING PARTIES MOVE BEYOND RHETORIC AND THREATS

### What is a frame?

When talking about *framing* and *reframing* it is necessary to describe what we mean by the term *frame*. Think of it as a picture frame which surrounds an event or interaction. Within this frame is the picture we are trying to communicate. A piece of artwork such as a painting may show us a picture of a person, a landscape, or perhaps something more abstract. When we use the term *frame* in a conflict setting, we are talking about the words, gestures and emotions a party uses to describe the event, what they want or how they feel.

**Framing** is what parties do to 'paint their picture' of the situation. Framing is also used by intervenors to help the parties give richer meaning to this picture. This often includes getting a clearer definition of events, feelings and needs and helping parties understand the symbols they are using to create meaning.

**Reframing** is often used by intervenors to assist parties in redefining their 'picture' in ways which help move them beyond rhetoric, threats or other types of communication which impede progress towards resolution of the conflict. It may include rephrasing issues in a way which helps parties move from guarding their positions and towards cooperative problem-solving.

### Purposes of Framing and Reframing (CDR, 1997)

- Define or re-define the way parties describe events, emotions and needs.
- Add clarity to the meaning parties are trying to relate to the intervenor and other parties.
- Help parties gain a better understanding of events and their own feelings and needs.
- Change the perspective on certain events or understandings of the situation.
- Help move parties away from positional negotiation to interest-based negotiation.
- Break negotiation deadlocks by breaking down the issues or making them more general.
- Soften or strengthen demands or threats.
- Change the perspective of emotional or value-laden messages to enhance understanding.

### How to Reframe (Ibid.)

- *Change the person delivering the message.* There are times when people cannot listen to a message delivered by another individual. They may, however, be able to hear the same message if it is delivered by someone else. It may only need to be communicated by another representative of the party, another party involved in the negotiations, the facilitator/mediator or a respected outsider.
- *Use active listening skills to paraphrase, restate, clarify, validate and summarise.* Active listening skills form the foundation for reframing because these techniques are designed to aid the communication process. They can be used to remove emotional or value-laden language and provide periodic summaries and order to communication between parties.

- *Change the meaning of a message.* Reframing is often used to help parties identify interests which underlie their positions in a conflict. It can also be used to increase the manageability of the issues to a conflict by making them smaller and easier to resolve or making them more general so that it is easier for parties to identify common ground.
- *Change a party's perspective.* Reframing is also used to change the perspective a party has, permitting them to see things in a new way. This can be done by changing the context of the situation and having parties reconsider how they might handle a similar situation in a different context. Also, intervenors can try to get parties to consider the situation from the other party's perspective, or they sometimes help parties keep an eye on the bigger picture by using common ground or minimising differences.

Reframing is often used when the communication between parties is building tension or moving them towards a deadlock. It is used to help them re-define the situation to remove a problem-solving blockage.

# **MEDIATION**

**WHAT IS MEDIATION?**

*Mediation* refers to a process through which a third party provides procedural assistance to help individuals or groups in conflict to resolve their differences. Mediation processes vary throughout the world in form and underlying philosophy. In many Western countries, the mediator is usually an independent, impartial person who has no decision-making authority. In other societies, it may be more important that the mediator is known and trusted by the parties to the conflict rather than being seen as impartial.

Mediation is a voluntary process and its success is linked to the vesting of decision-making authority in the parties involved in the dispute. The mediator structures the process in a way which creates a safe environment for parties to discuss the conflict and find solutions which will meet their interests. Mediation typically starts with an introduction which includes, among other things, a description of the process and ground-rules which provide behavioral guidelines for the participants. Parties are then, in turn, given an opportunity to present their understanding of the conflict. After this, a list of issues is created and an agenda is devised to guide parties through the resolution process. The mediator then helps parties negotiate solutions to the issues they have identified. As specific solutions are reached, parties are asked to confirm their acceptance.

### **Fundamental elements of mediation**

The following elements distinguish mediation from other forms of conflict resolution:

1. **The process is voluntary.** Parties cannot be coerced into mediation and they may opt out of the process at any time.
2. **The mediator must be acceptable to all parties involved in the process.**
3. **The mediator offers *procedural* assistance rather than *substantive* assistance.** That is, the mediator controls the process of resolving the conflict while the content is the domain of the parties.
4. **The mediator must remain impartial.** That is, the mediator must be able to set aside his/her opinions on what the solution to the conflict should be. In addition, the mediator should be seen as neutral, in terms that she/he should not be in a position to benefit from continued conflict or benefit directly (in the form of some sort of compensation) from one of the parties.
5. **Potential solutions and decisions on agreements are determined by the parties to the conflict, not by the mediator.** While the mediator may suggest possible solutions, the parties decide what outcomes will best meet their interests. The mediator does not serve as judge or arbiter.
6. **Mediation is an interest-based method,** that is, it seeks to reconcile the substantive, psychological and procedural interests of the parties rather than to determine who is right or more powerful.

While there are various forms of mediation, some more directive than the above method, many peacemaking approaches are called mediation but do not meet all or even most of the criteria listed above. If a process is not truly voluntary or parties are coerced into decisions they would not make on their own accord, it is not mediation. This type of process frequently occurs in systems of violent conflict. While coercive methods may succeed in securing a settlement, it is unlikely that these settlements can be maintained over time without continued use of power. The long-term success of mediation is tied to the freedom given to parties to engage in the process and the authority that they grant to the agreement of their own making.

## ROLES PLAYED IN CONFLICT SITUATIONS

From the pre-negotiation stage to the negotiation and post-negotiation stages, people involved in the intervention process play a number of roles. Local, regional and international governmental and non-governmental representatives may find themselves assisting peacemaking efforts in a variety of ways, including (adapted from Mitchell, 1993):

**Explorer:** Carries messages between parties and reassures them about the room for negotiation and notes areas of common ground.

**Convener:** Initiates the resolution process by encouraging parties to take part and working to remove obstacles which impede peacemaking activities.

**Analyser:** Performs political, social or economic analysis of the conflict to assist other intervenors in determining causes of conflict and courses of action.

**Designer:** Helps parties and intervenors in creating a resolution process which will appropriately and effectively address the conflict issues.

**Communicator:** Serves as the communication interface between parties involved in the process and those outside the process, such as the media, general public or international community.

**Decoupler:** Finds ways for external parties who have become involved in the conflict to disengage while saving face and attempts to engage other external actors who can play less biased roles in endorsing the process or encouraging parties to participate.

**Unifier:** Helps with intra-party negotiations to repair divisions and assists them in creating a common understanding of the conflict and their goals and objectives.

**Enskiller:** Empowers parties with the skills required to negotiate, communicate interests, analyse scenarios and research aspects of the conflict.

**Educator:** Provides expert opinion or technical information to parties about aspects of the conflict issues.

**Envisioner:** Helps parties think about the conflict and possible solutions in new ways by using creative option-generating processes or bringing in relevant data.

**Evaluator:** Helps parties assess possible solutions and their impact on the resolution of the conflict.

**Guarantor:** Ensures that parties do not incur unacceptable costs either through involvement in the process or if the process breaks down.

**Legitimiser:** Encourages parties to accept the process by granting their moral, political or financial approval.

**Facilitator:** Assists parties in communicating to one another by creating a safe process for discussions, framing or reframing the issues and parties' understanding of the conflict and fostering a forum for effective listening and problem-solving.

**Enhancer:** Brings in resources to expand the options for settlement or reward participation in the process.

**Enforcer:** Monitors agreements and codes of conduct so that momentum for the process can be sustained.

**Reconciler:** Prepares parties for long-term relationship-building activities which are designed to reduce patterns of negative behaviors, destructive stereotyping and miscommunication.

This extensive list of roles shows the complexity of starting and maintaining peace processes. The range of skills, knowledge, resources and aptitudes required to be effective in these roles is unlikely to be found in one person or intervening body. Whether by design or happenstance, when a number of actors are engaged in different aspects of intervention work, there are certain challenges which emerge.

For those involved in conflict resolution efforts, there are three central concerns regarding the roles of other actors. One is to ensure that the necessary roles related to each type of activity (e.g. convener, envisioner, or facilitator) are being filled. The second is to ensure that the roles that a specific actor plays do not have conflicting principles and objectives. The third is to ensure that role players work cooperatively to achieve common goals.

### **Role Integrity**

Role integrity relates to ensuring that when a person plays multiple roles, none of the roles compromises the others. Some roles operate on fundamentally contradictory principles. For example, one of the characteristics of the role of a third-party facilitator is impartiality. If the facilitator is also seen as an advocate or patron for a party to the conflict, other parties may feel that the process is biased. There are other role combinations, such as enforcer and reconciler, which can compromise an intermediary's credibility or continued participation. The central point is that individuals or organisations who are providing procedural or substantive assistance to the primary parties involved in the conflict need continually to assess whether the roles they are playing compromise their continued participation. When concerns related to the role players arise which threaten the process, appropriate action should be taken. This may include decoupling people from a given role or even removing them from the process.

### **Role Cooperation**

When intervenors involved in various aspects of the conflict are not coordinating their efforts and, while their intentions may be good, their actions may impede or disrupt other activities. It is important for designers of a peace process to recognise that a number of people will be taking on different roles. The peace process needs to ensure that these people are aware of major events and decisions made by parties so that all people

involved in the peace effort are working cooperatively towards common goals of peace, justice and reconciliation.

## STAGES OF THE MEDIATION PROCESS

### Stage 1: Introduction

#### Purpose

Remember that when parties arrive they are often:

- anxious and tense
- suspicious of the other party and their motivations
- fearful of being manipulated or taken advantage of
- unclear about what happens in a mediation session and what to expect from the mediators
- afraid that things will escalate out of control.

The purpose of the Introduction Stage is to deal with and allay these fears, in order that people feel comfortable to participate in and trust the process. The beginning of the mediation session affects the tone of the whole discussion. People usually agree to mediate because they hope that talking might improve things. Getting things off on the right foot in an atmosphere of negative emotions is a critical first step in mediating. Getting people to agree to meet and talk is itself a major challenge which we will look at later in the course. But for now we will assume that the 'getting to the table' discussions have already taken place and the parties have agreed to meet.

*Remember that the Introduction Stage is your time - the rest of the mediation belongs to the parties. It is up to you to set the tone, be firm, direct the process. All of this will increase the confidence of the parties that their concerns will be taken care of.*

#### Before parties arrive

1. **Check signals with co-mediator**
  - How you will divide tasks
  - Anticipate any special difficulties in this mediation situation
  - Cues during mediation. If necessary, offer verbal cues: "*John, would you pick it up from here?*" Or, "*John, could I bring up something here?*"
2. **Check environment:**
  - As comfortable as possible
  - Seating arrangements
  - A place for private meetings
  - Coffee, rest room, and smoking arrangements

#### Opening Statement

1. **Welcome and Introductions**

2. **How we will proceed**
  - Each person will describe situation uninterrupted from their perspective
  - Agree on what the basic issues of disagreement are
  - Discuss these issues one at a time
3. **Mediator's role**
  - To help parties find their own solution
  - Not to decide right and wrong
4. **Confidentiality and note-taking**
5. **Taking a break**
  - Parties can ask to take a break any time
  - Mediators may take a break and meet separately with each party (caucus)
6. **Ground rules**
  - Parties agree not to interrupt when other party speaks
  - Other ground rules
  - Can parties agree to this?

### **Before the session begins check the environment**

- Arrive at the agreed meeting place well in advance of the parties. This gives you time to think through and check.
- Wherever possible, choose a space that is comfortable and supports good interaction. Remember that a room that is too big makes people just as uncomfortable as one that is too small. Think critically about your choice of venue even before you propose a mediation.
- Decide where people will sit in relation to each other and the mediator/s. The arrangement of the seating is also crucial. In order to create an atmosphere of openness etc., use a circle or triangle seating plan. No arrangement is "right" for all situations or cultures. What is important is that mediators consider how to adapt the space they are using to support the purposes of the meeting.
- Ensure where possible that there is a room for private meetings (see caucus)
- Plan arrangements in advance for toilets, smoking, meals, and tea or coffee if desired
- Decide how to greet people as they arrive.

Be 'in charge' from the moment the parties arrive so there is no question that the mediator is in control. Mediators should decide in advance who will sit where, and when the parties arrive show them where to sit. Mediators should also think through how to make introductions, and how to begin the session. Later in the mediation process, if things are going well the mediators can reduce their level of control, but in the beginning, it is

reassuring to the parties to see that the mediator is clearly in charge. From their perspective at this point, mediators clearly in control of the situation are their only protection from chaos.

## **Introductory comments**

Many mediators find it useful to develop a standard outline of things that need to be said in the opening minutes of a mediation session. But what and how will depend on the circumstances. It is important that whatever mediators say fit the situation. Here are some of the things often included in the mediators' opening comments.

### **1. Welcome and Introductions**

- In some cultural settings this phase would be handled in five minutes. In others, socialising would be an important part of getting started and might last much longer.
- It may be helpful to clarify how people wish to be addressed. By first name, last name, title? If there is uncertainty, one way to deal with the question is by indicating how you would like to be addressed and asking parties to say how they would like to be addressed.

### **2. How we will proceed.**

To give a simple outline of the mediation process may help to put parties, who may have little idea what happens in a mediation session, at ease.

- a Each party will be asked to **describe** the situation uninterrupted as they understand it.
- b We will together **create a list of the issues** for discussion.
- c We will then **discuss** these issues, looking to generate potential solutions.
- d We will try to work out an **agreement** that is acceptable to both/all parties.

### **3. Mediators' role**

Parties often arrive expecting the mediator to be an arbitrator or judge, determining who is right and making decisions for the parties. Mediators provide procedural assistance to parties in conflict. It helps to clarify this role:

- Mediators help parties find their own solutions.
- Mediators do not to decide who is right and who is wrong.
- Mediators do not determine what the outcome will be.

### **4. Confidentiality and note taking**

It is important to indicate to parties that any notes that you as the mediator are taking are to assist you to keep track. The notes will remain confidential and they will be destroyed after a settlement is reached.

### **5. Taking a break and caucusing**

In order to keep parties fully informed about the mediation process, it is important to let them know that breaks may be called by the parties or mediators. Explaining this ahead of time prevents the raising of suspicion when a break is requested.

Note that:

- parties can ask to take a break at any time
- mediators may sometimes call for a break in the proceedings
- mediators may also ask to meet separately with each party (caucus).

## 6. **Ground rules**

When tension is high, mediators often propose ground rules and ask the parties to commit themselves to them: for example, not to interrupt when the other party is speaking. If you use this or any other ground rule, it is most effective if you specifically ask each to commit themselves to it so that they 'buy in' to the process. It is also effective to ask the parties if they have any ground rules that they would like to add.

### **An example**

The mediators meet the parties at the door, show them where to sit, and exchange appropriate greetings. Then the first mediator begins:

*"The purpose of our meeting this evening is to discuss the problems that have arisen between the two of you and to try to work out a solution. I want both of you to know that we have a lot of respect for your willingness to sit down and talk things out face to face like this. First, we would like to explain how we will proceed, so you know what will be happening. We will begin by asking each of you to describe the situation as you understand it. This will be a time for each of you to explain without interruption to us as mediators exactly how you view things. We will do our best to understand how it looks from your point of view. After that, we will try to make a list of the issues of disagreement. Then we will work together to examine exactly what each of you needs to solve this situation and what your ideas for resolution are. The goal is to find a solution that both of you can accept."*

(By pre-arrangement, the second mediator picks up from here): *"We would like you to understand our role. We think it is important for you to sort out your own solutions to your problems. You are the ones who are involved, so we want you to be the ones who decide what the solution will be. We won't be judges saying who is right or wrong or telling you what the solution must be.*

*Last of all, there is one ground rule that we would like to ask each of you to agree to, and that is not to interrupt when the other person is speaking. This is especially important in the next part of our discussion. Mr. East, can you agree to observe this ground rule?"* (Waits for a response) *"Ms. West, can you agree to observe this rule?"* (Waits for a response)

The first mediator continues, moving to "The Conflict Description Stage": *"We'd like to begin now by inviting each of you to explain your perspective on this situation uninterrupted. Mr. East, will you begin? Ms. West, we will ask you to listen along with us now as Mr. East speaks. In a few minutes it will be your turn. Mr. East, you can go ahead and begin now."*

## **Stage 2: Conflict Description**

### **Purpose**

The Conflict Description stage presents an opportunity for the mediator to begin to understand the perspective of each party, and to start formulating in his/her mind, the

crucial issues that need to be addressed, and a way to proceed. Even more importantly, through communication skills such as active listening, the mediator allows parties to feel that they have been heard, and assists parties to hear each other - sometimes for the first time. This represents a turning point in many conflicts, for parties who have not understood the effect of their actions on others, and have not been able to express what they in turn have been feeling.

## Process

1. Each party explains the situation from their perspective while the other party listens.
2. Mediators summarise briefly and empathetically as each party finishes, reflecting facts, feelings, interests and needs.
3. Mediators may ask, or invite other parties to ask, questions to clarify various points.
4. The mediators identify and list issues.

## Notes

1. **Rapport:** Building rapport with both parties is the primary goal here. Grasping facts and chronology is important but secondary.
2. **Paraphrasing:** This is a powerful tool for building rapport with many, but not all people.
3. **Questions:** Be careful with questions since they impose your agenda on the speaker (leading), rather than allowing the speaker's experience to structure interaction (pacing). Wait if you can. If you must ask questions, phrase them as open questions, not closed questions.

### Open questions:

*"Say more about Mrs Jones.", "Tell me your memories of that event.", "Describe, clarify, expand, etc."*

### Closed Questions:

*"Who is Mrs Jones?", "Who, why, what, etc.?"*

4. **Interruptions:** Be firm with parties about not interrupting the speaker. Respond to the first few and ignore later ones, not the reverse. Give them paper and pencil to make notes if they feel a need to respond to a specific point.
5. **Barbed comments:**
  - a Be prepared to say to someone listening to an angry account from an opponent: *"John, I know you have a different perspective and I want to hear your view as well in a few minutes."* Offered as an occasional aside to listening parties, such a comment by mediators can help them to keep growing anger under control.

- b Lauder with neutral paraphrase, e.g.: lauder “*she’s lying*” into “*you see things differently*”.
- c Ask for specific examples, e.g.: If party says “*he’s incompetent and totally irresponsible,*” mediator says “*please give us a specific example of what you have in mind.*”

6. **Writing up the issues:**

- it is preferable to have one common list
- condense issues if possible
- wait until both parties have had their input before putting up a visual list
- frame issues carefully to ensure that they are acceptable to all parties.

### **Stage 3: Problem-solving**

#### **Purpose**

The Problem-solving stage is the most challenging part of mediation, for it is now that the first serious efforts at resolution are made. Although we propose a sequence of activities that will give you some idea of things that might take place, there are no rules about how to go about this stage. The key to managing the problem-solving stage are:

- **people/relationship-building skills**, tools that enable the parties to establish a human bond between them. i.e. communication skills
- **process-management skills**, e.g. maintaining control, breaking impasse, and managing the flow of communication
- and **problem-solving skills**, that is, tools for enabling the parties to discuss the problems that separate them in a way that is efficient and constructive, using good timing in switching from one to the other. Thus you need to create a simple framework for yourself, and to master the use of the key tools, to be able to use them skilfully in real life, according to the dynamics of the conflict you face, the cultural setting, and the parties involved.

#### **Process**

Two basic tasks occur in this stage — working with problems through rational efforts at problem-solving and negotiation, and working with people — through good listening and skill in handling bruised feelings.

#### **Suggested sequence**

1. List issues for parties to see
2. Point out commonalities
  - common frustrations
  - common commitments
  - inter-dependency

- common good intentions, even if outcome has been unsuccessful — try to find something positive to highlight, but make sure it is believable.
3. Generate ideas to resolve the issues. It is often helpful to structure option generation by focusing on one issue at a time; however, there are situations where it is more constructive to group similar issues together and discuss them as a block.
    - Use the Conflict Description format for each issue
    - Continue with standard problem-solving approach:
      - a. identify interests/needs
      - b. ask for ideas to resolve
      - c. evaluate ideas
      - d. choose and plan implementation
  4. People skills used throughout
    - attentive listening
    - highlight commonalities and good intentions
    - acknowledge feelings
    - coach direct dialogue and paraphrasing
    - draw people out in caucus
    - affirm parties and celebrate progress

### **Clarifying the issues**

One of the most useful contributions of mediators is to clarify the issues in conflict. This is often first done after each party has told their side of things in Conflict Description, as a way of focusing the discussion that will follow in the problem-solving Stage. By clarifying the issues, the mediation process can be improved in several ways:

- Often parties are themselves confused about what the conflict is actually about. Party A may think one problem is the cause Party B may think a different problem is the cause.
- Frequently parties think that their divisions are greater/more numerous than they actually are. Clarifying the issues may help make the conflict seem more manageable. *“I was surprised when you made that list on the board.”* a party once commented near the end of a mediation session, *“Before we started it seemed like we had more than three issues between us.”*

It is difficult to maintain control of the discussion if the parties have not agreed to a list of issues for discussion. Having a written “agenda” of issues is the mediator’s most powerful tool in establishing an atmosphere of impartiality and maintaining control over the discussion process. Not having a written agenda increases the risk of parties simply bouncing from one issue to another, trading accusations but never penetrating deeper to the underlying needs.

### **Listing the Issues**

One of the mediator's most useful tools for maintaining control is listing issues on a flipchart or overhead transparency at the beginning of the Problem-Solving Stage. This provides a visual agenda and makes it easier to keep the discussion focused. Create a list of the issues needing work and interact with it. Use it to list commonalities and options for resolution.

Visual lists:

- help people feel heard so they don't need to keep driving home their point
- create a sense of order
- help parties focus on a common problem rather than on each other
- can provide guidance when you need to change direction

It is preferable to form one list of problems to reinforce the awareness that this situation is a shared problem requiring joint effort to solve. If you are working with parties to develop a framework for trade negotiations (sometimes referred to as 'talks-about-talks') a partial list of issues might look like this:

-venue selection -dates for negotiations -invitations -seating arrangements -trade issues to be discussed
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### **Remember to describe the issues impartially**

Either way, mediators must at all times take care to talk about and write issues in words that are impartial and convey no sense of judgement or taking sides.

### **Determining Agenda Order**

After the parties have agreed to a list of issues, mediators face a strategic choice: Which issue to begin with? There are a variety of ways to make this decision. Regardless of how you make the decision, no one party should be allowed to make the decision about which issue to begin with as this may create the impression that the mediators have given up control of the process to one side. The decision should be made by the mediators or jointly with the parties.

#### *Possible Strategies*

1. **Rank by Importance.** Parties pick the two most important issues and begin discussion on these. When completed, continue with the next two. Effective when atmosphere is good, but difficult when tension is high.
2. **Easiest First.** (In terms of time, emotional intensity, 'risk' to parties etc.) Beginning with the easiest issue is probably the most commonly used strategy for deciding where to start. Can be useful when things are tense. Often success on small items creates momentum for larger ones and makes discussing other items easier.

3. **Most Difficult First.** (In terms of time, emotional intensity, 'risk' to parties etc.) If an issue seems the most pressing/crux of the conflict, and parties have a need to deal with this issue in order to be able to focus on others, it is important to deal with it first. If you get resolution on this issue, it creates a clear sense of progress. Often other issues fall away, having been mentioned to add weight to the main problem.
4. **Separate Long-term from Short-term Problems.** Then begin with whichever list seems most resolvable, usually the short-term.
5. **Alternating Choice.** Parties take turns picking issues for discussion.
6. **Principles First.** Parties begin by agreeing on a set of criteria about any potential agreement. E.g.: *"We agree that the ideal solution would:*
  - (a) enable both parties to continue as partners in the firm;*
  - (b) keep budgets at current levels of expenditure;*
  - (c) be consistent with current company policy regarding lateral moves."*

This strategy is particularly effective in complex disputes.
7. **Building-Block.** Issues are dealt with in a logical sequence by determining which issues lay groundwork for decisions about later issues. E.g.: *"We'll begin with the issue of job description since the issue of salary level depends on what the job description is."*

### **Point out commonalities and points of agreement**

People in conflict often get so caught up in the heat of disagreement that they often lose perspective and ignore the things they actually agree upon or share in common, or even their common history. Mediators can be a moderating force by repeatedly reminding people in conflict of these things.

1. *Pointing Out Commonalities in Early Problem-Solving:* One particularly effective time to summarise points of agreement is after the parties have agreed on the list of issues needing discussion, but before they have actually begun in-depth discussion. It is possible in almost any conflict situation to find points that the parties share in common:
  - They may both have stated a desire to be reasonable or to get the conflict resolved.
  - They are both likely to benefit a great deal from a resolution of this conflict.
  - That they have both been willing to attend this mediation session means that they haven't yet given up on this situation and probably indicates a desire to resolve things.
  - They may both have said that this conflict has been painful, frustrating, costly, etc.
  - They may both have talked about how committed they are to the other party or the mediation process.
  - They may both have talked about steps they took in the past to resolve things. Even if these failed, they indicate good intentions to work things out.

- They may both be victims of the same larger forces, such as racial/ethnic tension, financial constraints, violence, etc.
- They may both have indicated that they have made mistakes or over-reacted in the past.

It is possible to identify several areas that the parties agree upon or share in common, even in the most polarised conflict. Pointing these out repeatedly throughout the discussion process is an important contribution to the emotional atmosphere of discussion.

Be cautious! Remember that pointing out commonalities is not about:

- making up nice things that aren't true. Be sure that any commonalities you talk about reflect things the parties have already said or have agreed upon or that are obviously true.
- telling the parties that they don't have any real disagreements or that the disagreements aren't significant. At all times the mediator accepts that there are real conflicts. In pointing out commonalities you are merely pointing out that in addition to the areas of conflict, there are also some things the parties agree about.
- suggesting that resolution is going to be easy. On the contrary, the point is that there is hard work ahead, and that as they enter into this work, it would be helpful for the parties to remember those things that they share in common.

Your credibility as a mediator is probably your most important asset with the parties. Never lie; never exaggerate the prospects for peace. Whatever you point out has to be real and believable.

2. *Summarising Negotiated Agreements:* As the negotiations continue, it becomes increasingly easy to point out agreements. The mediator can now summarise the agreements that have been worked out in the current mediation as a way of establishing a positive atmosphere. By reminding the parties of what they have accomplished, the mediator can thus discourage them from falling back into attacks and recriminations.

## Some Typical Problem-Solving Sequences

<p><b>Classic Problem-solving</b></p> <ol style="list-style-type: none"> <li>1. Define the problem.</li> <li>2. Generate as many options as possible for resolution</li> <li>3. Evaluate the options</li> <li>4. Pick the best.</li> <li>5. Develop implementation plan</li> </ol>	<p><b>Principles first</b></p> <ol style="list-style-type: none"> <li>1. Identify the problems each is facing</li> <li>2. Agree on the principles each side could support</li> <li>3. Work on the specific implementation of the principles in the problem areas</li> <li>4. Devise a clear implementation plan</li> </ol>
<p><b>Future First</b></p> <ol style="list-style-type: none"> <li>1. Define the present state - describe as specifically as possible what is happening</li> </ol>	<p><b>Joint Education/Problem Definition</b></p> <ol style="list-style-type: none"> <li>1. Identify in broad terms the issues needing resolution</li> </ol>

<p>now</p> <ol style="list-style-type: none"> <li>2. Develop a desired future state - describe the kind of situation or relationship you would like to exist</li> <li>3. Create a list of possible strategies to reach the future state</li> <li>4. Analyse the responses</li> <li>5. Select the best response</li> <li>6. Specify steps to implement</li> </ol>	<ol style="list-style-type: none"> <li>2. Joint education and data gathering concerning the issues</li> <li>3. Develop problem statements -- for each issue create several problem statements that describe non-judgmental and specifically the problems that need to be addressed in resolving the issue or describe the needs that motivate each party concerning each issue</li> <li>4. Identify options to resolve</li> <li>5. Develop recommendations</li> </ol>
<p><b>Criteria First</b></p> <ol style="list-style-type: none"> <li>1. List problems/issues</li> <li>2. Develop a list of criteria that an acceptable solution must meet (or go straight to 3)</li> <li>3. Generate a list of possible solutions</li> <li>4. Evaluate each solution in the light of the criteria</li> <li>5. Choose the best solution</li> <li>6. Develop implementation plan</li> </ol>	<p><b>Focus on Interests</b></p> <ol style="list-style-type: none"> <li>1. List problems/issues</li> <li>2. Choose one and ask for ideas to resolve it</li> <li>3. Whenever there is difficulty, ask each party to clarify their concerns (identify the underlying interests)</li> <li>4. Work through the list of issues one at a time, and develop an implementation plan</li> </ol>

## **Caucus**

Caucus is a private meeting between the mediator and only one party. To keep things balanced, mediators caucus with both parties separately. Caucus is a useful tool, since dealing with one party at a time is simpler than with two or more in the same room. When things get tense or difficult, caucus is one easy way to maintain a sense of control. When all else fails, caucus!

Some mediators do most of their work in caucus, conducting 'shuttle diplomacy' between the parties. This can, however, cause suspicion. Then too, caucus does little to empower the parties to solve their own conflicts themselves, for the parties depend entirely on the mediator to work out the differences. Direct dialogue between parties is always preferred, but private caucus is sometimes needed to break a deadlock or deal with emotional or confidential issues. Caucus is a powerful tool for dealing with problems, and in volatile or sensitive disputes it may become the primary means of communication.

### **Call a caucus when:**

- Parties are deadlocked.
- High stress is getting in the way of communication (repeated breaking of ground rules, disruptive behaviour, indications of distrust of you or the other party, repeated expressions of emotion).
- Parties are making unrealistic proposals or concessions.
- You feel you are losing control of the process or grasp of the facts.

### **Steps to follow when caucusing**

- 1. Indicate you want to meet separately with parties, and that you'll meet with them in turn.**
- 2. Establish rapport with the party you're with**
  - Ask: "*How do you feel about how it's going so far?*"
  - Note positive accomplishments e.g. areas of agreement, helpful behaviours/contributions
  - Allow venting of strong feelings and sensitive information through active listening
- 3. Take the role of "concerned outsider" regarding the areas of deadlock, e.g.:**
  - "*Clarify for me again your stand on this...*"
  - "*Help me understand your major concerns...*"
  - "*What ideas do you have to resolve this?*"
  - "*Can we come up with something acceptable to both of you?*"

4. **As much as possible get the parties themselves to come up with ideas,** but if they come up with nothing, toss out ideas in "if-then" or "what if..." format, e.g.:
  - *"If he were to do X, then might you consider Y?"*
  - *"What if we were to agree that...?"*
  
5. **If necessary, take the role of "reality tester",** e.g.:
  - *"How do you think the situation will get resolved if both of you continue to take this position?"*
  - *"What are the costs of not resolving this likely to be?"*
  
6. **Suggest expanding the party's informational resources if needed** - attorneys, accountants etc.
  
7. **Get permission to convey important information or proposals to the other party,** e.g.: *"Is it all right for me to discuss your offer with the other party?"*
  

But, when you discuss an offer from one to other don't convey it as unilateral. Rather link it to something wanted by Party A from Party B, e.g.: *"Party B, if we could get A to agree to give you X, would you be willing to consider offering in exchange Y?"*

  
8. **If you secure agreement from both parties to a proposal in caucus, then bring them back together and repeat the agreement in the presence of both,** e.g.: *"Well, we've made some real progress regarding issue Z. Party A, you've agreed.... Party B, you've agreed.... I'd like to ask you both to confirm in the presence of the other that you support this.... Let's now talk a little more specifically about how we will implement this agreement...."*

### **An Example - Setting up and using caucus**

*"I'd like to take a break now and meet separately with each of you. We call this caucus; it's a time just to talk about how things are going and see whether we can come up with new ideas for resolving things. I'd like you to know that whatever we discuss in this caucus is confidential and I won't be sharing it with anyone else unless you give me permission to do so. Party A, perhaps we'll begin with you..."*

Party B leaves the room and the mediator begins the caucus: *"Well, Party A, how do you feel about how things are going?"*

The mediator wants to discuss one issue that has caused special problems. S/he says, *"Tell me a little more about your concerns regarding Issue X?....What are the things that are most important to you here?....Do you have any ideas that we haven't discussed yet for resolving Issue X?....What do you think will happen if we don't get this issue resolved today?....How do you feel about that?....Is there any other way we can solve this? Supposing we could get Party B to do..., would you consider doing...?"*

During the caucus Party A makes an offer to resolve the conflict. The mediator seeks permission to discuss this offer with Party B: *“Would it be all right if I mention this to Party B?”*

The mediator then meets with Party B and asks similar questions. S/he is cautious with the offer from Party A, and mentions it in general terms only after Party B also makes a related offer. *“Party A is indicating some flexibility on this issue as well. I think if you were prepared to make this offer we've just now discussed, that Party A would respond positively. Would you be willing to discuss this jointly with Party A?...”*

Back in joint session with the two parties, the mediator says: *“Well, both of you have indicated some flexibility regarding Issue X, and I'd like to have some joint discussion on this now. Party A, you have indicated flexibility regarding..., and Party B, you have suggested.... I'd like to give each of you a chance to respond to this now...”*

## **Stage 4: Agreement**

### **Purpose**

The purpose of the Agreement Stage, is to concretise the outcome of the problem-solving stage, and to ensure that any agreements reached are clear, specific, realistic and proactive.

This stage is one of the most critical phases of the mediation process. Strong temptations often exist to relax a few minutes too soon, but this can be very costly. One common cause of failure in mediation is that mediators and parties neglect to work out the details and procedures for implementation of agreements. The result: days or weeks after an apparently successful settlement, renewed conflict breaks out over the meaning of the original agreement. Sometimes this conflict can be resolved with another round of mediation, but all too often the agreement breaks down entirely, with the parties bitterly blaming each other for failure to keep promises. Peace may now be harder to achieve than ever. By staying on guard to the very end, mediators can greatly reduce the chance of such a scenario occurring.

### **Process**

The agreement should state clearly **WHO** is agreeing to **WHAT, WHERE, WHEN** and **HOW**. The disputants' wording can be used whenever possible. An effective mediation agreement should:

1. **Be specific**  
Avoid ambiguous words (e.g. 'soon', 'reasonable', 'co-operative', 'frequent') as they can mean different things to different people. Use specific words and dates that will have the same meaning to both parties. For example, *“Party A agrees to a 60-day moratorium on development of mining operations on the border of the national park.”*
2. **Be clear about deadlines**

State clearly all times and deadlines. For example, “*The environmental task team has until 30 June 1997 to perform an EIA. Both parties will have until 10 July 1997 to review the study.*”

3. **Be balanced**  
Everyone should ‘win’ something, and agree to do/not do something. For example, “*Party A agrees that... Party B agrees that...*”
4. **Be realistic**  
Can the disputants live up to their agreement? Ideally the agreement speaks only for the disputants themselves, i.e. actions over which they personally have control.
5. **Be clear and simple**  
When possible, use the disputants’ language. While agreement details are very important, making agreements too complicated can lead to misinterpretations or misunderstandings which create further conflict.
6. **Be proactive**  
Include provision for later review, or set up a monitoring mechanism, or agree on a procedure for dealing with problems that may arise.
7. **Be signed by everyone present**  
Upon completion read to the parties and get their responses. Does it cover all issues? Do they pledge to live up to it? Should we agree on some way to review progress in the near future? Then sign and date the agreement and give copies to both parties.

## **CULTURAL ASPECTS INFLUENCING CONFLICT RESOLUTION**

Culture plays an important role in how we view conflict and how we approach it. Here are some of the ways that culture influences the conflict resolution process (CDR, 1997):

1. *Approach to conflict.* What does your culture tell you about how to deal with conflict? Is the message to avoid conflict, accommodate the other party or attempt to ‘win’ the conflict? What are the messages you receive about compromising your position or collaborating with the other party?
2. *Approach to problem-solving and agreements.* How do people conceptualise problems? How does this influence the problem-solving process? Are differing values attached to verbal and written agreements?
3. *Relationships.* How are relationships built in your culture? Are relationships in a social setting built differently than in a business or political setting? How do people attain status in your culture, through age, race/ethnicity, gender, knowledge, experience, wealth, etc.?
4. *Time.* What is the cultural impact on time as it relates to conflict? Do you deal with conflict straight away or do you let tensions dissipate before attempting to resolve it? When parties are describing their understanding of the conflict, do you control the amount of time they have or let them speak until they are finished? Do you use time to

put constraints on the resolution process?

5. *Space*. What are the cultural views on space? Do disputants like to be far apart or close together? Are there other people around them? If so, how close are they? Where do the disputants come together to discuss their problems? Do they meet on neutral ground or on one party's 'turf'? Do they prefer the setting to be formal or informal? Is the conflict resolution setting open or closed to people not directly involved in the conflict?
6. *Impact of social structures*. What are the larger social structures and institutions which influence conflict? Are there religious, ideological or familial structures which are important? How do they tell the disputants to act in a conflict situation?
7. *Communication*. Is communication direct or indirect? Are disputants using a common language? What effect does an interpreter have on communication? Do disputants speak directly to one another or through a third person? Which non-verbal cues or gestures are used and to what effect?
8. *Intervenors*. What are the cultural views on intervening in conflict? Are there structures in place for people to use to resolve conflict? Who are the intervenors and what qualities do they possess (e.g. age, gender, expertise, status, etc.)? What is the role of the intervenor?

## CONVENING MULTI-PARTY STAKEHOLDER NEGOTIATIONS

When conditions in a conflict ripen to a point where parties are willing to consider opening lines of communication, intermediaries perform a number of tasks in preparing to bring parties together. They usually start with an analysis of the conflict which is used to help identify stakeholders, issues, process options and a time table for the negotiating process. The dynamic nature of conflict systems means that, especially at the beginning, these activities may need to be repeated. Intermediaries should allow time for the process to move forward in a way which permits them to uncover additional stakeholders and issues which will become part of the ensuing stages of negotiation.

For intermediaries, understanding the conflict and identifying stakeholders are the first steps in the process. Conflict analysis is used to uncover these additional parties so that the reconciliation process does not unravel at a later stage due to an incomplete understanding of the extent and nature of the conflict. In the conflict analysis phase, intermediaries research information on the conflict through the media, reports, documents and by interviewing stakeholders. The objective of this research is to identify ([see Conflict Analysis in Section 1](#) for more detail on each aspect of the analysis):

- **Historical issues**
- **Conflict context**
- **Parties**
- **Issues**
- **Bases of power**
- **The stage of conflict**

While media accounts and other documents are important resources for conflict analysis, interviews with stakeholders are necessary for reasons other than just providing data about the conflict. Interviews also:

1. Provide parties with contact to the intermediary, giving intervenors the opportunity to build trust and to establish credibility in the resolution process.
2. Can be used to condition parties for negotiating with one another, noting why resolution of the conflict is important and what they need to do to prepare themselves for negotiations.
3. Help identify areas where more information or resources are needed to assist parties in resolving their differences. This may include educating parties about certain legal or technical aspects of the conflict or negotiating process.

### *Preliminary Process Design*

Through this interactive process of identifying stakeholders, building a list of issues and analysing the conflict, intermediaries start to develop a preliminary process design. This design should meet the procedural, psychological and substantive interests of the parties. A strong process design will address the following concerns and questions (adapted from CDR, 1997):

- *The format of the negotiating process.* What is the design of the actual discussions? How will parties address the issues? Which procedural options will be used to manage the agenda?
- *Where the negotiations will take place.* Should they take place within the system of conflict or outside? Should they take place in one party's stronghold or at a neutral site?
- *The timetable for the process.* How much time is needed for an effective process? What will be the effect of too little time or too much time?
- *Who will be directly involved in this process.* Who is directly impacted by decisions made about the issues to the conflict? Who has decision-making authority within the primary parties? Who can make or break agreements of the negotiating forum? When there are large numbers of parties, how do you structure representation for maximum participation and a workable process? How do you structure participation to deal with the possibility that a party's representative may be unable to attend every session?
- *How other parties will be informed about the status of the negotiations.* If all parties are unable to sit at the table, or if secondary parties need to be apprised of developments, what structures should be put in place to ensure that relevant information is communicated in a clear and timely manner? How will you ensure that confidential information is not leaked?
- *The issues to be addressed.* What is the scope of the process? That is, what do parties feel should be addressed by this negotiating forum and which issues are off limits?
- *How will decisions be made and what is the authority of those decisions.* How will parties in the negotiating forum make decisions: voting, consensus, modified consensus? Are decisions of the forum binding on all parties or subject to approval by

constituencies not at the table? How will deadlocks in the decision-making process be handled?

- *What will you do if stakeholders opt out or walk out of the process.* What will the forum do if certain parties opt out or walk out of the process? What impact will this have? Are there mechanisms which could be put in place to deal with this potentiality?
- *What will you do with unidentified stakeholders who emerge later in the process.* If this occurs, how will the process handle this? What will you do about decisions already made which affect this party? If necessary, how will you prepare them to join the process?

As this preliminary design takes shape, the stakeholders need to understand and agree on the form and content of the process. During the phase of preparing parties for a particular process design, intermediaries often need to identify people within the system of conflict who can champion the peace process (Moore, et. al., 1992). These champions are typically influential people who have either high credibility and integrity, or have the authority to encourage parties to participate. At this stage, the goal is to obtain a formal commitment from the parties to engage in the resolution process.

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