PC→CP

Advanced Mediation Skills - Course Book

▶ WaterNet, CCR, ISRI, Catalic,
UNESCO-IHE Delft, UZ

PCCP Publications 2001-2003

1. Frederick M. Lorenz, *The protection of water facilities under international law*, UNESCO-IHP, 46 p.

2. Sergei Vinogradov, Patricia Wouters and Patricia Jones, *Transforming potential conflict into cooperation potential: The role of international water law*, UNESCO-IHP, 106 p.

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23. WaterNet, CCR, ISRI, Catalic, UNESCO-IHE Delft, UZ, *Basics of water resources -Course book*, UNESCO-IHP, 97 p.

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Advanced Mediation Skills

Course Book

Course C

Contents

Advanced Mediation Skills

Bibliography

The Centre for Conflict Resolution (CCR, formerly the Centre for Intergroup Studies) was founded by the University of Cape Town in 1968 as an independent non-profit organisation. It is based in the Western Cape, and works nationally and elsewhere in Africa to fulfill its mission.

MISSION

To contribute towards a just and sustainable peace in South Africa and other African countries by promoting constructive, creative and co-operative approaches to the resolution of conflict and the reduction of violence.

GOALS

- To provide third-party assistance in the resolution of community and political conflict.
- To equip and empower individuals and groups with the skills to manage community, political and social conflict.
- To participate in national and regional peace initiatives.
- To promote public awareness of the value and practice of constructive conflict resolution.
- To contribute towards an understanding of conflict and violence.
- To contribute to the transformation of South African society and its institutions by promoting democratic values.
- To promote disarmament and demilitarisation in South and Southern Africa

SERVICES OFFERED BY CCR

CCR's main activities include mediation, facilitation, training, education and research, with an emphasis on capacity-building in conflict prevention, management and resolution.

Training Workshops and Programmes

- Basic Mediation Skills
- Advanced Mediation Skills
- Conflict Resolution Theory and Practice
- Responding to Community Conflict
- Understanding Conflict
- Dispute Resolution Systems Design
- Creative and Constructive Approaches to Conflict
- Peer Mediation
- Parent Power for Peace
- Conflict Management in Rural Communities
- Capacity-building in Conflict Management for Local Authorities
- Management of Conflict and Multicultural Diversity for Police Personnel
- Conflict Resolution for Senior Government Officials
- Conflict Resolution and Human Rights
- Specialised training according to the needs of clients
- Internships

Facilitation and Mediation

- Independent third-party mediation and facilitation at the request of parties in dispute
- Design and implementation of dispute resolution systems for government and non-governmental bodies
- Design and implementation of public participation processes
- Crisis intervention in situations of violence
- Establishment and deployment of local teams of conflict resolution practitioners in rural areas

Support Services

- A Resource Centre open to visitors during office hours
- Assistance from library staff in locating material on peace and conflict
- Preparation and dissemination of training material
- Consultancy to international bodies; national, provincial and local government; non-governmental organisations; and community groups
- Workshops, seminars and presentations

Research

- Academic and policy research on the following topics:
  - Peacemaking, peacekeeping and peacebuilding
  - Defence and security policy
  - Civil-military relations
  - Regional security arrangements
  - International law on armed conflict
  - Defence industry
  - Demobilisation of former combatants
  - Defence and police budgets
  - Intra-state conflict

- Dissemination of empirical data on arms trade, military expenditure and defence production in South and Southern Africa
- *Track Two, a* quarterly publication on conflict management

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CCR Projects

- The Mediation and Training Service Project
- The Project on Peace and Security
- The Police Training Programme
- The Youth Project
- The Africa Project
- The Senior Government Conflict Resolution Training Programme
- The Prisons Transformation Programme
- The Great Lakes Programme
- The Human Rights and Conflict Management Project

Target Groups

The projects outlined above have various target audiences, including:

- Community groups
- Religious communities
- Armed forces Youth
- Development agencies
- Parliamentary committees
- Non-governmental organisations
- Police

- Correctional services and prisons
- Teachers
- Government departments
- International agencies and organizations

section1

INTRODUCTION TO MEDIATION

1. Methods of Conflict Resolution

2. Definitions of Mediation

3. Qualities of a Mediator

4. Skills of a Good Mediator

5. The Mediation Wheel

METHODS OF CONFLICT RESOLUTION

1. Force

Power or violence is used to resolve differences

2. Adjudication/ Litigation

Judge/magistrate imposes decision after hearing legal argument from both sides

3. Arbitration

Neutral 3rd party imposes decision after hearing both points of view

4. Mediation

Neutral 3rd party helps

5. Conciliation

3rd party acts as "go-between" for parties to meet and resolve differences

6. Facilitation

Neutral 3rd party helps to improve communication between parties, usually via a meetings

7. Negotiation

Parties meet (usually without the help of a 3rd party) to resolve differences

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2.   DEFINITIONS OF MEDIATION

> The mediator has no power to render a decision or impose a solution. Instead, the mediator helps the parties to work out their differences themselves and to construct a mutually acceptable solution.
>
> Gray, *Collaborating: Finding Common Ground for Multiparty Problems*

Mediation is a vastly different process from adjudication and arbitration.

- In mediation, rather than having an "authority" decide the issues, mediators help the parties negotiate so they can reach agreement. Mediation is the "art of changing people's positions with the explicit aim of acceptance of a package put together by both sides, with the mediator as listener, the suggestor, the formulator of a final agreement to which both sides have contributed" (Alper and Nichols 1981, 31).

- The mediator is there to facilitate communication between the parties. The mediator is the convenor, or the facilitator but not the one who makes the decision.

- Communication in the initial stages might consist of the parties talking mostly to the mediator, but as mediation progresses, the parties talk more and more to each other with the mediator guiding the process.

- The mediator is there to control the process - not letting the participants interrupt, call names, or engage in other destructive actions. But, the mediator does not control the outcome - the solution to the dispute comes from the parties themselves.

- Sometimes, the mediator engages in "shuttle diplomacy", in which he or she keeps the parties separate and brings messages back and forth. Separation of the parties is common in intense disputes such as war, court-ordered divorce mediation, or other situations where the parties are unable to be in the same room with one another.

- The bulk of mediation is performed with the parties in the same room, with mediator controlling the communication process for the mutual benefit of all the parties.

3.   QUALITIES OF A MEDIATOR

What kind of person would make a good mediator?

In thinking about these qualities, remember that nobody is perfect. We can develop and improve our qualities and skills with practice. These are guidelines of some qualities that would make for a good mediator:

- **Fairness:** giving each side an equal chance to speak/be heard;

- **Neutrality/Impartiality:** not taking sides in a dispute;

- **Independence:** not being closely linked to the individuals and groups involved in the dispute (sometimes this quality is unnecessary, for e.g. both sides might agree to have another person from the same organisation (or work, family, department, etc.) mediate their dispute);

- **Being a good listener:** always willing to listen carefully;

- **Being a good summariser:** ability to say accurately in a few words everything that has been said;

- **Coolness:** not losing your cool whatever happens;

- **Patience:** being prepared to wait, even if things take a long time;

- **Firmness:** keeping control of things without being bossy;

- **Politeness:** being pleasant to both sides, even if this is hard to do;

- **Honesty/Openness**: being straight with both sides and revealing the same information each;

- **Tact/Diplomacy:** being sensitive to tensions, personalities and conditions, and making everyone feel at home;

- **Commitment:** being prepared to see the mediation through, even though there are many obstacles;

- **Discipline/Discretion:** for example, not spreading rumors and publicizing information that is confidential to the two sides in the dispute.

4. SKILLS OF A GOOD MEDIATOR

What skills do you need to be a good mediator?

Even more than the qualities for a good mediator, mediation *skills* are what you have to work at developing with experience. Remember that you will not always be alone when mediating. More often than not, you will work with others on a mediation team. You can thus the combine your skills with the skills of the other mediator or members of the mediation team.
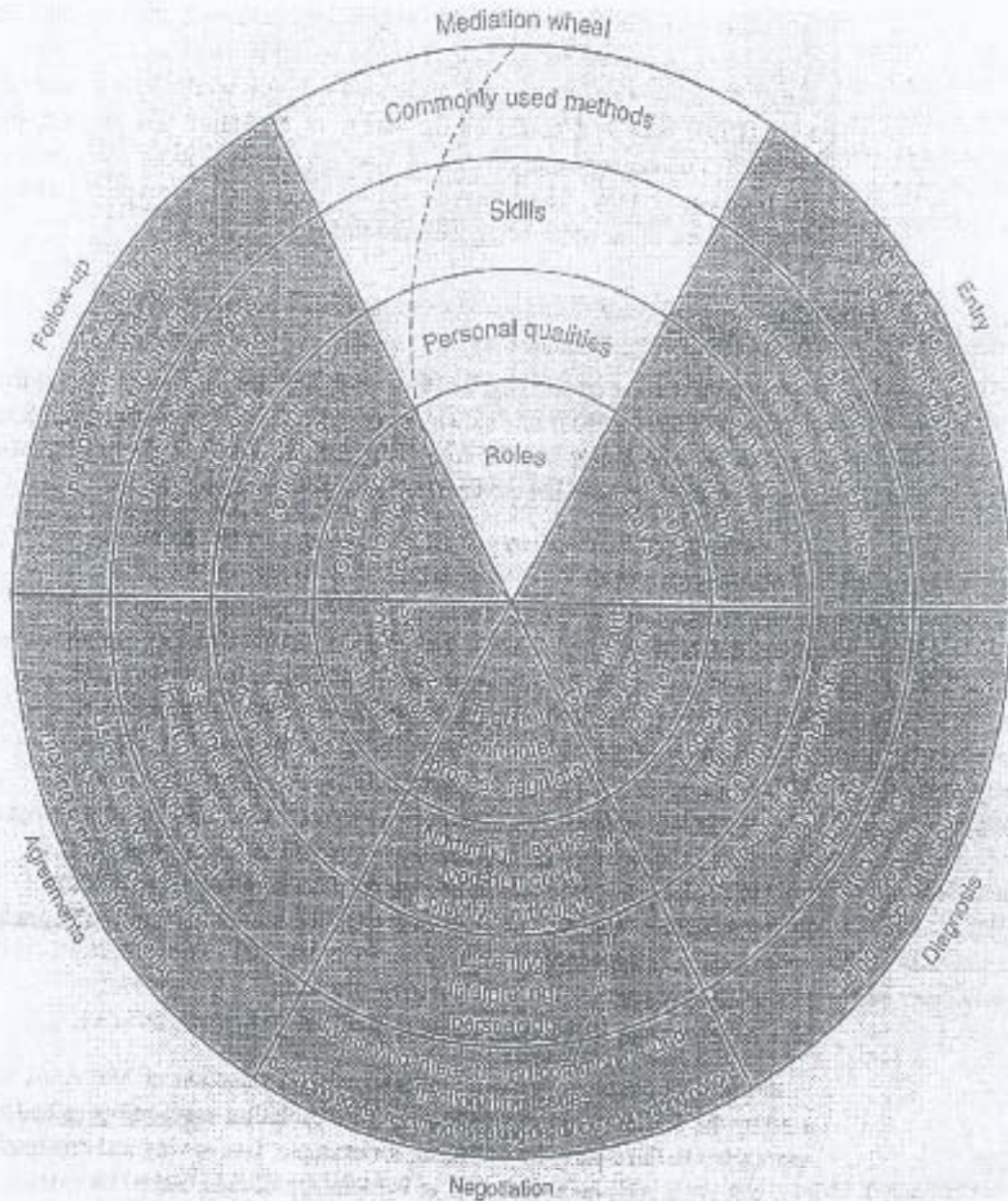Some mediation skills will also help you to play a useful role as a para-legal or resource person in your community. For example, they will help you with things like advice giving, and building and administering organisation and projects.

Useful skills for mediators:

- **Interviewing/questioning:** getting information from people in a way that makes them feel free to speak;

- **Listening:** being able to concentrate on everything expressed by a speaker (the words, the feelings expressed and the body language of the speaker);

- **Summarising:** being able to sum up everything in a few words;

- **Translating:** accurately putting what is said into another language;

- **Simplifying:** putting difficult arguments/words into simple, clear language

- **Chairing/Facilitating:** running a mediation session in a way that encourages everyone to participate;

- **Note-taking:** writing down (recording) all the important points;

- **Drafting:** drawing up an agreement reached by the parties;

- **Observing:** keeping an eye on people's feelings/reactions during a meeting;

- **Counseling:** giving advice and support during a mediation session, especially during personal conflicts;

- **Negotiating:** trying to persuade each side in a mediation session to compromise on some issues;

- **Strategizing:** thinking of ways to get both sides to agree on some points.

THE MEDIATION WHEEL

Mediation wheel

Commonly used methods

Skills

Personal qualities

Roles

Follow-up

Entry

Negotiation

Source: From Elaine Yarbrough and William Wilmot, Artful Mediation: Constructive Conflict

section2

THE FOUR STAGE MEDIATION MODEL

1. Introduction Stage

2. Story-telling Stage

3. Problem-solving Stage

4. Agreement Stage

1. THE INTRODUCTION STAGE

Remember that when parties arrive they are often anxious and tense, suspicious of the other party and its motivations, fearful of being manipulated or taken advantage of, unclear about what happens in a mediation session and what to expect from the mediators, and even afraid that things will escalate out of control.

The purpose of the Introduction Stage is to deal with and allay these fears so that people feel comfortable about participating and trusting the process. The beginning of the mediation session affects the tone of the whole discussion. People usually agree to mediation 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 the mediation process. Getting people to agree to meet and talk is itself a major challenge which we will look at later. But for now we will assume that the "getting to the table" discussions have already taken place and the parties have agreed to meet.

Before Parties Arrive

1. Check signals with co-mediator:
   a) How you will divide tasks
   b) Anticipate any special difficulties in this mediation situation
   c) Cues during mediation. If necessary, offer verbal clues: *'John, would you pick it up from here?"* Or, *'John, could I bring up something here?"*

2. Check environment:
   a) A venue that is comfortable and as informal as possible
   b) Seating arrangements
   c) A place for private meetings
   d) Coffee, rest room, and smoking arrangements

Opening Statement

1. Welcome and Introductions

2. How we will proceed:
   a) Each person will describe the situation uninterrupted, giving their perspective
   b) Agree on what the basic issues of disagreement are
   c) Discuss these issues one at a time

3. The mediator's role:
   a) To help parties find their **own** solution
   b) Not to decide right and wrong (not being judgmental)

4 . Confidentiality and note-taking:
   a) Confidentiality is important for trust- and confidence building between the parties and the mediator
   b) Record-keeping is important to track the process for future mediation sessions and stages in the mediation process

5. Taking a break:
   a) Parties can ask to take a break any time
   b) Mediators may take a break and meet separately with each party (caucus)

6. Ground rules:
   a) Parties agree not to interrupt when another party is speaking
   b) Other ground rules
   c) CAN PARTIES AGREE TO THIS?

2.   THE STORY-TELLING STAGE

The story-telling stage is 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. Story-telling presents 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 them to hear **each other -** sometimes for the first time! This often represents a turning point for parties who have not understood the effect of their actions on others and who have not been able to express what the have been feeling.

Suggested sequence

1. Each party explains the situation from their perspective while the other party listens.

2. Mediators summarise facts briefly, and empathetically reflect feelings after each party finishes.

3. Optional:

a) Mediators ask clarifying questions
b) Parties are invited to respond to each other

4. The mediators define and list issues.

3.   THE PROBLEM-SOLVING STAGE

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 managing this stage.

Managing the problem-solving stage depends on the following key skills:

- **People/relationship building skills,** tools that enable the parties to establish a human bond amongst themselves, that is, communication skills

- **Process management skills,** for example, maintaining control, breaking deadlock, 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, with good timing used to switch 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 skillfully in real life, according to the dynamics of the conflict you face, the cultural setting, and the parties involved.

Suggested sequence

1. List issues on a flipchart

2. Point our commonalities
    a) common frustrations
    b) common commitments
    c) inter-dependency
    d) common good intentions, even if the outcome of a mediation session has been bad. (Note: find **something** to highlight in the list, but make sure that it is believable).

3. Negotiate issues one at a time
    a) Story-telling on each issue, in structured interview format
    b) Continue with the standard problem-solving approach; i.e.: - identify interests/needs
        - ask for ideas on resolution
        - evaluate ideas
        - choose a plan for implementation

4. People skills used throughout
        a) attentive listening
        b) highlight commonalities
        c) highlight good intentions
        d) acknowledge feelings
        e) coach direct dialogue
        f) coach paraphrasing
        g) draw people out in caucus
        h) affirm parties
        i) celebrate progress

4.   THE AGREEMENT STAGE

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 in the mediation process. There often exists a strong temptation 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 is that 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 than ever to achieve. By staying on guard to the very end, mediators can greatly reduce the occurrence of such a scenario.

An agreement should:

1. Be specific

Avoid ambiguous words (e.g. "soon", "reasonable", co-operative, "neighbourly", "frequent", "quiet') as they can mean different things to different people. Use specific words and dates that will have the same meaning to both parties. E.g., *"A and B agree to build a 2m high board fence along the property line between their houses, A agrees to buy the building materials, and B agrees to construct the fence. "*

2. Be clear about deadlines

State clearly all times and deadlines. For example, *'A will purchase the timber for the fence no later than 8 May, and B will finish the fence by 30 May. Both parties agree to have their own side of the fence painted by 30 June. "*

3. Be balanced

Everyone should "win" something, and agree to do/not do something. For example,
"Ms Jones agrees that she… Mr Smith agrees that he … "

4. Be realistic

Can the disputants live up to their side of the agreement? Ideally, the agreement speaks only for the disputants themselves, i.e.; actions that they personally have control over.

5. Be clear and simple

Avoid legalese. When possible use the disputants' own language.

6. Be proactive

Include provision for later review, 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 the agreement 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.

Section 3

EFFECTIVE COMMUNICATION SKILLS

1. Listening skills for mediators

2. Paraphrasing

3. Language and misperceptions

4. Questions vs statements

5. Emotions and conflict

6. Working with emotions

7. Conflict Analysis

One of the deepest needs of all human beings is to feel understood and accepted by others. Offering understanding to another human being is a potent form of empowerment, for we are offering life at the deepest level. 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 "I accept you as a credible person, I want to see the world as you see it." Our interactions with them must come from a point of deep, non-judgmental interest. "I want to grasp the WHY behind what you are doing, to gain insight into the deeper interests and needs lying beneath the surface of what you are saying."

From the moment that people feel another person truly seeks to understand, they begin dealing with problems and with other people more constructively. Good listening skills are the most important tools for the mediator to communicate understanding. These skills are particularly important in the story-telling stage, a time after the mediators have made their opening statement when the parties are invited to describe the conflict as they see it. But meeting each party's need to feel understood and accepted is an important skill throughout the mediation process.

Because a mediator is only as effective as his or her listening skills, good listening is first on the list of skills for mastery in mediation.

1.   LISTENING SKILLS FOR MEDIATORS

Goals

- Create a supportive environment that helps people relax and focus on issues.
- Develop rapport and trust with both parties.
- Convey empathy and respect for each person, regardless of their beliefs, words or conduct.
- Be able to summarise concisely the essence of each party's view.
- Be able to state problems in terms of problems and issues, not personalities.
- Aim for active, empathetic listening.

How?

Do:
- Be attentive, alert and avoid being distracted

- Be interested in the needs of the other person, and let them know you care about what is being said

- Be a non-judgmental, non-critical "sounding board"

Don't:
- Use stock phrases like "its not so bad", "don't be upset", "you're making a mountain out of a mole hill", "just calm down"
- Get emotionally hooked - angry, upset, argumentative. Don't let your values/biases interfere with what is being said
- Rehearse in your mind what you will say after the parties have spoken
- Jump to conclusions or judgments
- Interrogate the speaker or give advice

Ways to listed effectively

1. **Use your body** to create a positive atmosphere with your non-verbal behaviour, that is,
- appropriate eye contact,
- nodding the head
- facial expressions
- body (head, arms, legs) oriented toward the speaker, (that is, not turning away)
- tone of voice
- gestures

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. **Give encouraging responses -** verbally acknowledge that you are listening by softly saying: "yeah", "uhhunh", "I see".

3. **Invite more comments.** "Tell me more" or "I'd like to hear about it"

4. **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 each party's statement in terms of **issues** and **solvable problems,** instead of personalities, and to keep parties on track with the process.

5. Make **brief notes** in your notebook to keep track, but don't bury yourself in note-taking!

6. **Paraphrase** or restate in your own words ... (See note on paraphrasing)

2.   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 two parties
- For "laundering" vicious or insulting statements to make what was said less inflammatory, while retaining the basic points that were made.

How to paraphrase:

A. 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"*

B. A paraphrase has two components:

- **Restate facts,** *"Your wife locked you out of the house"*
- **Reflect feelings,** body language and tone of voice will clue you to *feelings. 'And you feel discouraged about things getting any better'*
- **Reflect will or intention,** *"But you would really like to sort things out with her."*

C. A paraphrase contains no judgment or evaluation but **describes empathetically:**

- *'So you believe very strongly that.. "*
- *"You were very unhappy when he... "*
- *"You felt quite angry with your neighbour in that situation... "*
- *"The way you see it then... "*
- *'If I m understanding you correctly, you... "*

D. **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 to the boss. 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 deeply that it went behind your back to the boss. You wish they had given you a change to sort things out with them."

E. 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 a party has made in a statement.

F. **A note of caution:** Paraphrasing is a positive and powerful tool in interacting with most, but not all people. In any group some people seem to prefer not to be paraphrased. In some cultures paraphrasing may be perceived as disrespectful. Observe carefully the reaction of those you are paraphrasing and adjust your use accordingly. Remember that paraphrasing must sound natural, and never patronising!

3.   LANGUAGE AND PERCEPTION

Language often reflects the perceptions that people have about a situation or about others. Careful attention to what people say often provides mediators with clues about crucial misperceptions. Such misperceptions can include:

1. Generalising:
Statement

"He always comes in late… "
"No-one cares how I feel!"

Mediator's response

"When does he come in late?"
"What is he late for?"
"Who doesn't care?"
"In what way don't they care?"

2. Unspecified noun/verb:

Statement
"I just don't like that sort of thing"
"He just bugs me"
"He never co-operates with me"

Mediator's response

"Tell us what you dislike?"
"In what way does he bug you?"
"When does he bug you?"
"Co-operate with what"
"when doesn't he co-operate with you?"

3. Speaking for others:
Statement

"I happen to know that no one around here can get on with him either"

Mediator's response

"Speaking from your own experience with Mr Brown, tell us more about what you are upset about… "
Just speaking for yourself, can you tell us what has been upsetting for you?"

The mediator's responses above will often bring forth useful information, and move the discussion to more meaningful levels. Other responses that often accomplish the same thing, and may sound more empathetic are:

"Can you tell us more about that?"
"Could you be more specific?"
"Could you give us a specific example?"

4.   QUESTION vs STATEMENT

Questions are one of the most frequently abused forms of communication. In fact, a lot of conflicts are conducted in the form of questions. Consider an argument between a husband who has arrived home late from work and his wife who greets him at the door.

Wife: *"Who do you think you are, coming home at this hour?"*

Husband: *"Who do you think I am? Do you think I enjoy this anymore than you do?"*

Wife: *"How am I supposed to keep a family going if you get home late and the kids are screaming the whole time? Why don't you let me know that you're going to be fate?"*

Husband: *"How can I cal/ you when I'm out on a job site and there are no telephones around?"* (And on and on.)

This couple has a lot of angry feelings that they need to express, but rather than openly stating those feelings and really hearing each other, they are sparring, and hiding behind questions.

Questions are especially problematic where trust is low. They control the person being questioned, limiting the way in which he/she can respond. For this reason, questions are frequently used by lawyers in a courtroom or by police in interrogating suspects. Behind the question in such settings lies a hidden agenda, to trap the speaker. Many people use questions sincerely, without intending to trap or interrogate others. But where trust is low, their use tends to arouse defensiveness and resentment. Mediators and negotiators can build trust more quickly if they learn to use statements for gathering information rather than questions.

Statements invite others to share information. Their use creates a sense of openness and builds trust.

Questions (To be avoided if possible)

"Who is Mrs. South?" "what did you do then? ; "Who? Why? What? When?" etc.

Statements (examples of ways to get the same information sought by the questions above)

"Say more about Mrs X", "Tell us about what happened that day ", "Describe, clarify, expand etc.?" "I don't understand the connection between these events", "Please say more about…"

An example of poor use of questions by a mediator

Mr. Ncube, the leader of a taxi association involved in a feud with a rival taxi group, has been describing a series of vicious attacks on members of his association by the rival group. The mediator stops him after 10 minutes:

"Excuse me, Mr Ncube , this doesn't make sense. First of all, who are these officials you say are taking money from your opponents? And secondly, do you have proof that they are doing what you say they are doing?"

Mr Ncube gives a long and defensive reply. Midway through the mediator stops him again:

"Mr Ncube you say that they attacked your members two times in the last week with pangas and stones. Did you do anything to provoke them?"

Mr Ncube responds in a loud voice:

"Nothing, Sir. I'm telling you we were parking our taxis, and the stones

started flying from nowhere. We got out to defend ourselves and then they threatened us with weapons!"

The mediator says:

"But members of your group shot two in their group! Why didn't you just call the police?"

Example of use of statements as a deans of gathering the necessary information

Mr Ncube has been recounting his side of a local taxi conflict. The mediator listens quietly and takes note of a number of things he does not yet understand. After Mr Ncube has finished, the mediator paraphrases Mr Ncube's account and then continues:

"There are several things I don't fully understand yet. Mr Ncube, you mentioned "officials" whom you believe are taking money from other taxi groups. Please tell us more about these people. "

Mr Ncube responds with a description and when he is finished the mediator paraphrases his description. The mediator continues:

"You seem to feel very sure that indeed money is changing hands here. Could you describe the things that make you so sure that this is happening. "

A little later the mediator says:

"Give us a bit of background about things that led up to this attack."

A few minutes later, the mediator says:

"Say a bit about what might have caused them to come after you like this. "

At another point, the mediator says:

"In the end, of course, members of your group shot and killed two drivers from their group. I'd like to hear more from you about how you decided to respond with guns, rather than, for example, simply driving away and calling the police. "

5.   EMOTION AND CONFLICT

How people deal with their emotions varies from one culture to another, but if there is one statement that applies universally to all cultures, it is that strong feelings play a prominent role in conflicts. Knowing how to recognize the presence of strong feelings and how to respond constructively to them is thus a critical part of mediating.

How open people permit themselves to be with their emotions varies from culture to culture. In some cultures it is normal and expected that people in conflict will express anger or sadness freely. In others, direct or open expression of anger is viewed as disgraceful or deeply insulting to others.

Three things are required of anyone who wishes to function constructively in the presence of strong feelings:

1. **Self-awareness:** An understanding of one's own habits in dealing with emotion.

2. **Other-awareness:** Being able to sense what is happening to others emotionally.

3. **Skill:** Having a range of responses available so that you can choose a response that fits the situation you face

Self-awareness and Other-awareness

What do you do when you feel angry, sad, embarrassed, or afraid? Do you grow quiet and withdraw or do you become expressive and vocal? How do you respond when others are emotional? Are you comfortable with the expression of strong emotions, or do you prefer that others keep their feelings to themselves?

Each of us have our own patterns when it comes to dealing with emotions. These patterns are formed from a lifetime of emotions and experience. But it is during the first 10 years of life that most people develop the patterns that last for a lifetime. Thus, one of the most valuable ways to improve self-awareness and other-awareness is to reflect on childhood experiences linked to strong emotion. Such reflection almost always yields important insights about how we respond to emotionally as adults.

Summary

Anger is the most important emotion requiring reflection time when preparing for a mediation session. But fear and sadness are almost as important, and to a lesser extent, embarrassment as well. You can improve your self-awareness about ail four of these major emotions by repeating with each emotion the same exercises outlined below for anger. Simply replace

the word anger with whatever emotion you wish to reflect on, and repeat the exercises.

What is the point of all this introspection?

- If you become aware of your past response to emotion, you are likely to find it easier to choose more freely how to respond to the emotions of parties in the future rather than simply reacting in the same thoughtless way to every situation.

- Learning to pay thoughtful attention to *your* own response to emotion is by far the most important way of learning how to pay attention to the emotions of others.

- By listening to the reflections of others, you will learn a great deal about how people generally deal with emotions, and this will make it easier to understand parties in mediation.

6.   WORKING WITH EMOTIONS

Becoming aware of emotions, yours and those of others, is the most important step in preparing to deal with emotions effectively in mediation. Developing skills for responding is the next step.

Here are some skills and strategies for dealing with emotions in mediation. They range from approaches at the one end of the spectrum for actively encouraging the parties to express their emotions to, at the other end, approaches for containing and restricting the expression of emotions at the table. Because parties invariably are deeply influenced by their own emotions, many mediators prefer to deal openly with them, in the belief that that which is out in the open is usually easier to work with constructively, than that which is hidden. But for some individuals and in some cultures, open expression of emotions would be viewed as counterproductive. As always, mediators need to be comfortable with a variety of approaches and choose accordingly.

Assumptions

1. Emotions surround every human interaction, even those that seem practical or institutional. Feelings are a significant part of every mediation session - the only question is whether the parties will respond constructively to efforts to bring acknowledgement of emotions directly into discussions, and when and how to do this effectively.

2. Stubbornness, rigidity, fierceness, etc., appear to come from strength; but in reality they arise out of deep vulnerability. Intimidating people are deeply

wounded - most of them know it and are actually quite afraid behind their strong façades. The wounds are either:

a) Fears and insecurities about the current situation, or

b) Distant, often unconscious memories of past injuries at the hands of others, frequently childhood experiences.

3. The only person who can heal wounds is myself. No one can heal others. The calling of peacemakers and mediators is to enable healing by creating an environment in which it can occur.

4. Feeling responsible to "heal" others - a genuine temptation - hinders one from finding true healing. The turning point on the road to personal and spiritual maturity comes when individuals recognize that they, and no one else, are responsible to overcome the wounds of life. The challenge for a mediator is to be helpful_ to others without fostering the illusion that we are dependent upon others for healing.

Goals of the Mediator

- Enable people to "get in touch with" their emotions - which often point to deep wounds - in ways that do not create resistance.

- Acknowledge emotions of both parties without in any way implying judgment of right or wrong.

- Enable parties to state their emotions directly to each other, which often provides opportunity for healing.

- Assist parties in clarifying what they need in order to experience healing, especially when it involves people at the mediation table.

- To do all this in such a way that if one or both parties are not ready to acknowledge emotions and experience healing, the mediator can still remain an effective, credible assistant in practical problem-solving.

Strategies

1. Accept and acknowledge emotions. Talking about whatever emotions parties have is one powerful way for people to gain release from the power of those feelings. Mediators can assist this process by:

- Simply listening carefully to someone who is angry
- Using paraphrasing to acknowledge the anger that has been expressed

2. Create a structure in which people can express their emotions without getting into arguments. Taking Turns. The mediator invites the parties to take turns talking about a conflictual issue, or about their feelings. For example, the mediator might say:

"Both of you have mentioned several times an incident that took place last year when there was a argument between the two of you. Its clear that you both have strong feelings about this and I think it might be good to talk about this incident a little further. What I'd like to ask is that we agree to do this in turns, so that each of you has a chance to express your feelings about that situation without being interrupted. Perhaps we could begin with, X Please address your comments directly tome. Y, I'd like to ask you to just listen quietly for a few minutes, and then it will be your turn to speak."

(Y nods X then tells his side of things, the mediator paraphrases, and then the same thing is repeated with Y)

"Taking turns" is often used in the story-telling stage, but can be used throughout mediation to maintain control of any topic which arouses strong feelings. It is important that the parties speak to the mediator rather than to each other, in order to reduce the temptation to get into an angry exchange.

3. Push for specifics; don't be content with generalisations. Attempting to work constructively with emotions is fruitless, except in the context of specific events:

"You've felt helpless in your relationship with Mr X. Give us some examples that would help us understand what's been happening. "

4. Ask people to **"describe the impact on you personally"** of an event.

5. Interview each party about an emotionally charged event, encouraging "I" statements, and protecting the speaker from intrusion by giving clear cues to the listening party about not interrupting. For example,

"I'd like to take a little time to hear separately from each of you about what has been going on inside of you while this has been happening. I V like to do this one person at a time with no interruptions from the other person. Paul, I d like to ask you to lean back and listen for a couple of minutes while I draw William out on this. William, go back in your memory and place yourself in that situation you just referred to. Tell me the things you see/hear/feel that had a real personal impact on you. "

6. Coach direct communication. For example, *"William, I'd like to ask you to turn to Paul and tell him directly what you just told me. "*

(Effective only when positive statements are made or when feelings are stated in genuine "I" message format - "I felt confused/hurt/manipulated",

not "You…)

7. Coaching Paraphrasing. For example, *"Paul, I'd like to ask you to say in your own words to William what you understand him to be saying just now."* Then, " *William, tell Paul whether he is hearing you correctly and what he's missing. "*

Another way this can happen is by the mediator guiding the parties in paraphrasing each other, an exercise that can be remarkably powerful in helping parties to let go of their anger and to really encounter each other as people. The mediator might begin this approach by saying the following:
"It seems that both of you have a lot of strong feelings which are blocking us from making further progress in this discussion. I think it may be necessary to try to address these feelings before we can go any further. What I d like to do is give each of you a chance to listen especially carefully to the other person for a time and to do it in a special way. We I/ being with you, X, and invite you to speak to Y about the things that you have resented the most over the course of this conflict. Y, it will be your job to listen in this first round, and not only to listen, but also to summarise in your own words every few sentences what you hear X saying to you. That maybe difficult at first, and I'll give you some help until you get a feel for what we are doing. When we have finished with the fist round, it will be Y's turn to speak and for X to listen and summarise. Many people have found this exercise to be very powerful, but it is difficult especially for the one who must listen and summarise. Before we begin, I'd like to hear from you as to whether you're willing to try this. "

If the parties are ready for such an exercise, it is almost impossible for them to maintain their old anger. But if they are not ready and what they really want to do is to rant and rave for a while, or if they do not have complete trust in the mediator, this technique will fail miserably. Use it with special care!

8. Caucus and draw out people who seem struck in their feelings and unwilling to discuss them in the presence of the other party. Invite them in caucus to share these feelings with the other in a joint session.

9. Ask people to rate themselves on a scale of 1 to 10 about readiness to let go of feelings over a given experience. 1 = definitely not ready; 10 = definitely ready. When people really seem stuck on feelings tell them it's important not to let go of them too quickly, that they should hang on to them for a while until they are tired of them and want to let go of them.

10. Here is a **simple question** facilitators can ask that sometimes brings constructive responses from people who are stuck in old hurts:

"What, specifically, do you need to do and what could others do that would enable you to move on from the past?"

Responding to the question moves the person in question out of the role of passive, blaming "victim", a role which makes them permanently dependent at an emotional level on the people they resent the most. In stating what steps for healing lie within their control and offering for negotiation what they need from others, people begin to exercise mastery over their own lives.

11. After progress has been made, **invite people to say something to each other** so that they believe they might be helpful in enabling the other to let go of their emotions. Sometimes it helps to give ideas, for example,

"You may want to say anyone of several things. You may wish to apologise for something, or you may simply wish to say 'I would do it differently if I could' Or you may wish to express appreciation for something. Finally, you may wish to make a statement of commitment about the future. "

(its often effective to list these as categories e.g.: apologies, acknowledgements, appreciation, commitments.)

12. Give parties an **opportunity to withdraw** and possibly write a summary of their feelings.

13. Encourage (with caution and always in private caucus!) private **counseling.**

14. Use ground rules. If one or both parties have been engaging in disruptive behaviour, it is sometimes effective to propose ground rules and ask both parties to accept them before continuing. The mediator might initiate this approach as follows:

"It seems like we 're getting in a lot of anger here, and I'd like to propose a couple of ground rules for the rest of this session. One would be that there be no further name-calling. Secondly, I'd like to ask that you address your comments to me and not to each other during the rest of this discussion, unless I specifically ask you to do otherwise. I'd like to gain a commitment from each of you about this proposal before we continue. "

15. Caucus or End the Session. If anger levels seem to be moving to a danger point, the mediator may wish to propose a 15 minute caucus or

break, or suggest that the session end and be continued on another date. During this period, it may be wise to spend some time with each party privately to give them a chance to "vent" their feelings.

16. Use Shuttle Diplomacy. Shuttle diplomacy provides the greatest level of control over anger, for in this approach the parties have no face-to-face contact. Rather the mediator shuttles from one party to another, ferrying ideas back and forth. It is most commonly used where the parties are too angry to agree to a face-to-face meeting, or where the mediator fears it may be impossible to prevent a blow-up if the parties meet.

7.   CONFLICT ANALYSIS

Entering into conflict situations is often an unpredictable task. The following model suggests a way for the mediator to gather data and increase the certainty that his/her entry will be constructive to the disputing parties. An mediator can develop a comprehensive picture of the conflict by identifying its key elements. This information usually points the intervener in a certain direction, that is, suggest ways to engage the parties to reduce tensions and work to find solutions to the problems that they face.

Much of this information is collected before a mediator brings the parties together; however, additional important information usually arises during the mediation/facilitation session. When you receive new data, you should incorporate it into your conflict analysis. This may help you determine why an issue is so hard to resolve or it may recommend an alternative approach to securing an agreement.

The following is a list of the main elements a mediator needs for analysis when entering into a conflict (adapted from Wehr, 1979; Moore, 1986):

1. Conflict history

- What is the background to this conflict? What are the historical factors which give rise to the present situation? What are the major events in the lives of the parties?

- Were there previous conflicts in this environment? How were they waged? How did these conflicts end? Did one party "win"; did they reach an agreement; was there a stalemate? Does the end of a past conflict have any impact on the current conflict?

- How have parties learned to manage conflict? Do they avoid, compete, accommodate, compromise or co-operate? What social institutions

have been created to address conflict? Are they being used? If not, why not?

2. Conflict context

- What is the physical environment of the conflict? How does this contribute to or detract from resolution efforts?

- What is the status of the relationship between parties? Are there moral, legal, traditional or institutional factors which inform this relationship

- What current events impact on the conflict? Are there recent changes in the relationship between parties, within their constituencies or with the parties in the conflict?

- How do political, social or economic events external to the conflict impact on the parties and the way they wage the conflict?

- How are parties waging the conflict? Are parties using power-based, rightsbased or interest-based approaches to resolve or manage the conflict? Are these methods escalating or stabilising the conflict?

- How do parties communicate and make decisions internally and with one another?

3. Primary parties

- Who are the parties directly involved in waging the conflict?

- From the perspective of the parties directly involved, what are the issues pertaining to the conflict? What positions do they take on these issues? What are their substantive, procedural and psychological interests? Do certain interests have higher priorities than others?

- What are their perceptions of other primary parties, stakeholders and intervenors?

- Are there internal divisions within the party? How are these being managed?

- What is the relationship between party leaders and their constituents? Are the leaders seen as legitimate? Do they have the authority to negotiate on behalf of the party? Can they "deliver" their constituency?

- Who are the informal leaders within the party who can influence acceptance or rejection of negotiations/agreements?

- Are there hidden leaders who can make or break agreements but who will not engage in negotiations?

- What are the values of the party? How do these values influence the way they wage conflict?

4. Additional parties

- Who are the stakeholders, patrons or third-party intermediaries who play a role in this conflict? How did they get involved in the conflict?

- Do additional parties have a stake in either resolving or continuing the conflict? What is their understanding of the conflict? What are their interests in the conflict?

- Are the additional parties aligned to one of the primary parties? If so, what effect does this have on the conflict?

- Are there parties which can influence primary parties to resolve the conflict?

- Are there intermediaries who are facilitating or mediating talks between parties? What are the primary parties' perceptions of these intermediaries? How does this affect conflict resolution?

- What impact does the media have on the conflict?

5. Issues

- What are the issues to the conflict? Are they data, relationship, value, structural or interest issues?

- Are there hidden issues?

- How do parties prioritize these issues? Are some issues more important than others?

- *Data: Do* parties need more/less information to understand the problem? Can parties agree on a process to clarify this information? Can an outside expert's opinion be used to break the deadlock? Can parties agree on objective criteria to assess data?

- *Relationship:* How can parties control destructive interactions? Are there ground rules, principles or procedures which can regulate expressions of emotions? Is the mediator/facilitator using listening skills to assist parties in constructively expressing their emotions and legitimising their feelings? How - can parties improve the quality and

quantity of their communication? How can they build trust and positive perceptions of one another?

- *Values:* Is it possible to reframe the issue as a structural or interest issue? Can parties "agree to disagree"? Can you create spheres of influence where one set of values dominates? Can parties identify superordinate goals which permit them to see their values in a different light?

- *Interest: How* can you get parties to focus on their interests rather than their positions? Are there objective criteria parties could use to help them evaluate options? Can you "expand the pie" (bringing in or discussing additional options or resources) to increase the range of solutions the parties can consider? Is there a way to get parties to make trade-offs based on their priorities? Are there integrative solutions which meet the interests of all parties?

- *Structural:* Do parties need to more clearly define roles or modify roles? Can ownership or control of resources be altered? Is the decision-making process fair? If not, can parties agree on an acceptable process? Can you get parties to change their negotiating or conflict management style to a more co-operative and less adversarial approach? Are there constraints which impede resolution such as the need for more/less time, physical distance between parties, or a distracting negotiating environment?

6. Power

- Does one party have more power over the other? What is the source of that power (e.g. social, economic, political, physical, psychological, legal, etc.)?

- What resources are at each party's disposal?

- Are parties using their power? If so, what is the result?

- What power bases are not being tapped by the parties?

7. Stages of conflict

- Is the conflict latent or manifest?

- If manifest, what precipitated the conflict?

- What is the current state of the conflict? Is there a stalemate? Is it escalating or stabilising?
- If escalating, what is happening:
  - Are issues moving from specific to general?

- Is there an increase in issues or resources used to wage the conflict?
- Has disagreement turned to antagonism between parties?
- Are parties increasing their use of power in order to secure a favourable outcome or to damage the other party?
- Are groups involved in the conflict polarized? Has extremist leadership emerged?
- Have parties broken off communication? Is communication between parties distorted or inflammatory? Are parties using propaganda to gain an advantage over the other party?

- If stabilising, what is happening:
  - Is there a fear of continued destructive interaction or escalation?
  - Are there safety-valve mechanisms or institutionalized conflict resolution procedures available to assist parties in redressing their grievances?
  - Are there agreements on norms and values, especially on acceptable ways to wage conflict?
  - Are there social bonds, friendships or cross-cutting group
  - memberships across the boundaries of the primary and additional parties?
  - Are there third-parties who are assisting adversaries in regulating, resolving and managing the conflict?
  - Is there a common threat or crisis which prompts parties to reassess their objectives and strategies?
  - Are there time constraints or other limitations on continued use of resources for waging the conflict?

8. Alternatives and options for settlement

- What are the parties' best alternatives if they are unable to negotiate an agreement?
- How aware are parties of the costs of continued conflict?
- How informed are parties about their interests and settlement alternatives/options?
- Are parties aware of each other's settlement alternatives/options?
- What steps have parties taken to achieve these alternatives/options?
- Are there additional parties that can provide incentives for a settlement?
- How realistic are the parties?

SECTION 4

CONFLICT ANALYSIS

1. People, Process, Problem

2. Positions and Interests

3. Strategies for moving from positions to interest

4. A process for problem solving

5. Managing the issues

6. Some typical problem solving sequences

7. Caucus

1.   PEOPLE, PROCESS, PROBLEM

People, Process, Problem. Another, similar form of conflict analysis through mapping tries to divide the conflict under examination into three aspects. These can be pictured as a triangle.

People

Problem   Process
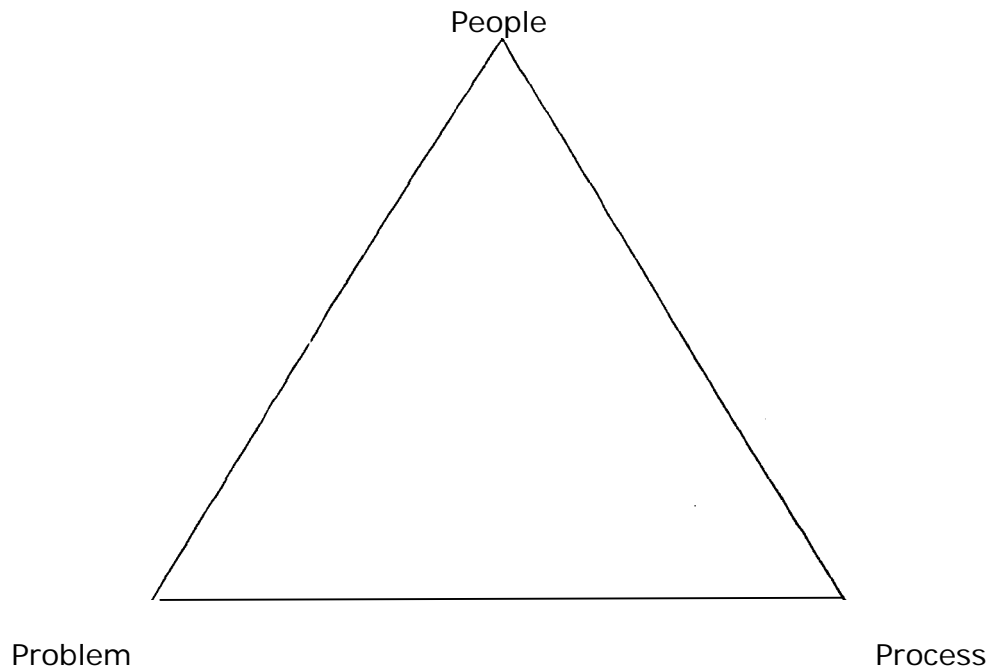
Source: adapted from the work of J. P. Lederach

Each aspect is analysed separately. The following questions help to analyse the conflict:

People

- Who are the individuals and groups directly involved?
- Who will be affected by or can influence the outcome of the conflict?
- What leadership and structure does each group have?
- How does each group view the situation?
- How is each group affected?
- What particular feelings, issues, etc., characterise each group?
- What are the main discrepancies in perception?

Process

- What have been the sparking issues?
- Is there a historic pattern to their interaction?
- What is the process each would want to follow?
- As the conflict developed, what additional problems or issues emerged?

- What degree of polarisation is there between each party?
- What actions of each party have intensified the conflict in the past, and are
- intensifying it at present?
- What role do more moderate individuals and groups have?
- How do the parties communicate? (and when, why, how often, with what results?)
- What mis-communications occur (including distorted perceptions, stereotypes, etc.)
- How could communication improve?

Problem

- What are the interests, needs and values of each party?
- What do they propose or pursue to meet them?
- How incompatible are their interests, needs, values?
- How incompatible are their proposed solutions?
- What shared basic needs underlie the conflict? (security? self-esteem? food?
- rights? land? etc.)
- What are the minimal essential outcomes each party might be satisfied with?
- What are the basic areas of agreement and disagreement?
- What resources are there for dealing with this conflict? (within the parties?
- Others?)
- What stage has the conflict reached - is it ripe for resolution/transformation?

Power

Another approach to form of conflict-analysis concentrates on unequal power structures. One common cause of conflict is a perceived unfairness in the structure of relationships within and between societies - for example, unjust distribution of resources, lack of access to land, housing, education, government, employment, lack of rights and representation. Conflict may result from people becoming aware of these structural inequalities and seeking to correct them.

2.   POSITIONS AND INTERESTS

What is the difference?

- **Positions** are stated as something that a party has decided on (a demand)*interests* are what cause a party to take a position.

- **A position** is presented to the world as a party's **solution** to a given conflict - *interests* are often what has **caused** this conflict.

- A party's **position** is what it **says** it wants - *interests* are what a party **really** wants.

An illustration of the difference between positions and interest:

Things are tense. The setting is a mediation session between Mr de Klerk, employee of the City Council, and' Mr Sipoyo, the head of the local Taxi Association. The issues are the proposed move of the taxi rank from Beach Road to the Civic Deck, which the Taxi Association is opposing.

Mr Sipoyo: "I'm telling you, we will not move to the Civic Deck, and if there are any arrests, we are going to blockade the streets. If you want to stop us, you'll have to arrest several thousand people."

Mr de Klerk: "*I'm not in the slightest intimidated by you threats, Mr Sipoyo. I promise you your blockade will be stopped and you will be arrested, and I have the men and equipment ready to deliver on that promise. "*

These are typical statements in a dispute. Each party has taken a position and refuses to budge. The conversation will get louder and. louder, parties will continue to state and re-state demands, and nothing will be achieved, except heightened tempers. The dynamics of this confrontation need to be changed. How can a mediator move the conversation to a more constructive level, beyond the mere stating of angry demands?

It is critical to recognise that underlying most demands or positions, are problems, concerns, needs, fears, expectations, hopes and desires. These are often the true motivators, and are referred to as interests.
Parties in a dispute rarely identify clearly what their interests are (Moore, 1987). This may be because:

1. They feel it is strategically better to hide these interests, so as not to weaken their position, or have power "taken" away from them.

2. Parties in an intense conflict often start to equate their position with their interest - they become so involved with ensuring that their position is

met/maintained - that they forget or do not consider what motivated the position in the first place.

3. They fear that to disclose interests may lead to ridicule or loss of face - especially if the interests are "soft" e.g. fear, insecurity, a need to feel loved, etc.

4. They themselves don't know what their positions and interests are.

3.   STRATEGIES FOR MOVING FROM POSITIONS TO INTERESTS

1. Concentrate on building rapport with parties, and engendering parties in the mediation process. Demonstrate genuine concern and a desire to understand the situation. The more solid the relationship with the mediator, the more willing parties will be to disclose the things that really motivate them in the conflict.

2. Do not waste effort challenging positions. Criticising people or their positions, or trying to get parties to "back off" on their position only causes them to cling to them more stubbornly.

3. Rather move the discussion to the underlying interest or problem by using open, non-threatening questions. *"Help me understand why you view this as so important. "Help me understand the reasons why you 've taken this position. "* The stance of being open and inquisitive, eager to learn and understand more about each party's perspective is key to the success of this approach. Quite contrary to "knowing it all", a mediator takes the role of a well-intended but somewhat ignorant facilitator.

4. Point out interests that are similar or the same, and highlight these. For example,
'I hear from you that you are both concerned that a confrontation may lead to violence, which both of you want to avoid at all costs… "

5. Help parties to understand that to identify and explore the interest of the other party does not necessarily mean that he/she agrees with them, and similarly that to disclose interests will not detract from a parties bargaining power, but rather move both parties towards a better solution.

6. Ask parties to come up with options for agreement, for example, *"What do you think can be done to solve this problem?"*

The function of the mediator is to direct the focus away from positions and to

try and explore the interests, which will help parties move away from competition to co-operation. It then often becomes apparent that there are several areas of agreement. In the example of the conflict between the City Council and the Taxi Association, it may well be that both the taxi leader and the traffic official do not

want bloodshed and are interested in the taxi rank being better organised. The mediator can use this information to build an agreement that takes into account the interests of both parties. This can ensure an outcome that is satisfactory, which lays the foundation for improved relations between both parties in the future.

4.   A PROCESS FOR PROBLEM-SOLVING

1. Agreement on process

Goal:
Agreeing on the basic ground rules for the conversation.

Strategy:
"Lets agree first on how to go about this. Could we agree that each of you will get a chance to describe what's been happening here without interruption from anyone else?"

2. Structured story-telling

Goal:
Creating a sense of "being heard" and building trust between parties and the mediator.

Strategy:
Each party gets a chance to describe the situation uninterrupted, and the mediator summarises back in his or her own words after each party has spoken. For example,

"Lets hear from both of you about what you see happening on this issue. I'd like for both of you to get a chance to describe this without being interrupted. Maybe we could start with you, Robert, and James, we 'll ask you to sit back and listen until Robert is finished, then we'll hear from you." (The mediator summarises after Robert has finished, then repeats with James).

3. Agree on problem areas

Goal:
Agreeing on the issues requiring resolution before trying to debate solutions.

Strategy:
"Let's see if we can agree where the differences lie before we talk about how to resolve this. It sounds like there are three main areas that need to be resolved. One is how to pay for the broken window, another is... Am I covering the key problems?"

4. Commonalities

Goal:
Creating an emotional climate conducive to problem-solving.

Strategy:
Pointing out the things usually ignored, which the parties have in common.

Common frustrations
'It sounds as if both of you have been frustrated by this situation. "

Common commitments
'It sounds as if both of you really care a lot about keeping this office running well. "

Inter-dependency
'Seems as if you both need certain things from each other and life will be much easier if you can work things out satisfactorily. "

Common good intentions even if the outcome has been bad
'It sounds as if both of you have been trying to do what you think is fair, but communication problems have gotten in the way. "

Find something from the list to highlight, but be sure it is believable.
For example, common frustrations, common commitments, etc. The highlighted issue must be an idea raised by both parties and not a new one introduced by the mediator. Parties must not be surprised by the issue the mediator highlights.

5. Identify interests or needs

Goal:
Identifying the real interests or needs behind positions or "pet" solutions. For example, Dad and son are arguing about the keys to the car.

Dad: "I don't want to hear another word about it. You can't have the car."
Son: "But dad, I've got to have the car."
The positions here are - you can't have the car/I must have the car. The interests are: Dad needs the car between 6 and 8 pm.; and Dad needs re-assurance that son is not going drinking with friends. Son has promised to provide transportation for two friends to go to a movie at 9 pm.

Strategy:
Ignore positions and *try* to get information regarding the underlying interests or needs. For example, say to the father:
"Help me understand why you don't want to turn over the car keys. " Say to the Son:
"Tell us why you need the car. "

6. Generate options

Goal:
Avoid polarised arguments by developing a range of ideas for resolution before beginning debate on them.

Strategy:
"Let's first of all try to think about ways to solve this problem. We'll discuss them in a few minutes, but for now I just want to hear a range of possibilities. "
Often, persistence is required to get parties to come up with ideas other than their own pet solutions. Stress that listing ideas does not mean that all are acceptable. List possible solutions on flipchart/board.

7. Evaluate options

Goal:
Engaging the parties jointly in critiquing the possibilities for solution. They are doing this together, jointly critiquing each other, rather than arguing with each other.

Strategy:
"Let's take a look at each of these possibilities now. What would be the strengths and weaknesses of this first possibility?" Or, *"How would this possibility affect each of you?"*

8. Choose a solution

Goal:
Negotiating a solution acceptable to both parties.

Strategy:
"Let's hear from each of you one solution. Given the ideas we've looked at above, how do you propose we resolve this problem?"

Meeting separately with the two parties can be effective.
Sometimes it is necessary for the mediator to propose a solution: "What if…"

9. Plan implementation

Goal:
Making sure a clear understanding exists and anticipating any possible problems

Strategy:
"Now that we've agreed on the way we're going to resolve this, let's make sure we think through exactly how to accomplish this… Who will do what, when, where, etc? Are there any difficulties we must plan for? How will you handle conflicts that may arise in the future?"

5.   MANAGING THE ISSUES

Clarifying the issues

One of the most useful contributions a mediator can make is to clarify the issues on conflict. This is often first done after each party has told their side of things in Story-Telling, 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. One party may think one problem is the cause, while the other may think a different problem is the cause.

- Frequently, the divisions between the parties appear to be 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 to one conflict once commented near the end of a mediation session,
  "Before we started it seemed like we had more than 3 issues between us. "

It is difficult to' maintain control of a 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 to

maintain control over the discussion process. The lack of 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 powerful tools for maintaining control is listing issues on newsprint or a chalkboard 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 the list to show commonalities and options for resolution.

A visual list:
- Helps people feel heard so they don't need to keep driving home their point
- Creates a sense of humor
- Gives you a handy out when you want to go in a different direction
- Helps parties focus on a common problem rather than on each other

There are two ways of listing issues

One is to make separate lists for each party:

Issues for Neighbour X	Issues for Neighbour Y
• Payment of broken window • Music • How to address future problems	• Quarrelling between children • Music • How to address future problems

But where possible, it is preferable to form one list of problems, reinforcing the awareness that this situation is a shared problem requiring joint effort for a solution. A single list of issues might have looked like this:

Issues for Discussion
• Broken window • Noise • Quarrelling between children • How to address problems in future

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 which do not convey a sense of being judgemental or taking sides. It would only make the conflict more difficult if the mediator were to list the above issues as:

> - Window broken by son of Neighbour Y
> - Irresponsible partying by neighbour Y
> - Cheeky behaviour of Neighbour X's children

This list would only serve to entrench the conflict and polarise the parties further!

Determining the 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 abut 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 of 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 discussion of 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 be able to focus on others, it is important to do this 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 pick up alternly issues for discussion.

6. **Principles First**
Parties begin by agreeing on as set of criteria about any potential agreement.

For example, *"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. For example,
"We 'll begin with the issues of job description since the Issue of salary level depends on the job description. "

Point out commonalities and summarise 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.

Pointing out commonalities in early problem-solving

One particularly effective time to summarise points of agreement is after 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 have in common:

- They may have both stated a desire to be reasonable or to get the conflict resolved.
- They are likely to both 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 have both said that this conflict has been painful, frustrating, costly, etc.
- They may have both 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 unemployment, racial discrimination, violence, low wages, etc.
- They may have both 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 have in common, even in the most polarised conflict. Pointing these out repeatedly throughout the discussion process is an important contribution to the emotional atmosphere during discussion.

Be cautious! Remember that pointing out commonalities is not:

- 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 there are also some things the parties agree on.
- 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 the things 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.

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.

6.   SOME TYPICAL PROBLEM-SOLVING SEQUENCES

Classic Problem-Solving	**Principles First**
1. Define the Problem. 2. Generate as many options for resolution as possible. 3. Evaluate the options. 4. Pick the best options. 5. Develop an implementation plan.	1. Identify the problems each party is facing. 2. Agree on the principles each side could support. 3. Work on the specific implementation of the principles in the problem areas. 4. Devise a clear implementation plan.
Future First	**Joint Education/Problem Definition**
1. Define the present state - describe as specifically as possible what is happening now. 2. Develop a desired future state - describe the kind of situation or relationship you would like to see existing. 3. Create a list of possible strategies to reach the future state. 4. Analyse the responses. 5. Select the best response. **6.** Specify steps to implement the strategy.	1. Identify in broad terms the issues needing resolution. 2. Joint education and data gathering regarding the issues. 3. Develop problem statements - for each issue create several problem statements that describe non-judgementally and specifically the problems that need to be addressed in resolving the issue or describe the needs that motivate each party regarding each issue. 4. Identify options for resolution. 5. Develop recommendations.
Criteria First	**Focus on Interests**
1. List problems/issues. 2. Develop a list of criteria than an acceptable solution must be made (or go straight to number 3 below) 3. Generate a list of possible solutions. 4. Evaluate each solution in the light of the criteria. 5. Choose the best solution **6.** Develop an implementation plan.	1. List problems/issues. 2. Choose one and ask for ideas to resolve it. 3. Whenever there is difficulty, ask each party to clarify their concerns (identify the underlying interests). 4. Work through the list of issues one at a time and develop an implementation plan.

7.   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 for mediators, since dealing with one party at a time is much simpler than with two or more in the same room. When in caucus, all information is regarded *as* confidential. The mediator cannot relate any comments, proposals, etc. from a caucus to the other party, except if the party grants permission. Whenever 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. Also, caucus does little to empower the parties to solve their own conflicts, for the parties depend entirely on the mediator to work out the differences. Direct dialogue between the parties is always preferred, but caucus is sometimes needed to break a deadlock or to deal with emotional or confidential issues that may arise. Caucus is a powerful tool for dealing with problems, and in extremely volatile or sensitive disputes it may become the primary means of communication.

Call a caucus when

1. You reach a deadlock.

2. High stress is getting in the way of communication (repeated breaking of ground rules or other disruptive behaviour, ,on-going indications of distrust for you or the other party, repeated expressions of emotion, breaking of appointments, making of unrealistic concessions).

3. You feel like you are losing it (emotionally, grasp of facts, control of the process).

4. All else fails!

Steps to follow when caucusing

1. Indicate that you want to meet separately with parties, and that you'll meet with them in turn.

Establish rapport with the party you're with
a) Ask: *"How do you feel about how its going so far?"*
b) Note accomplishments such as agreements, helpful behaviour or contributions made
c) Remind the party, that this discussion is confidential

d) Allow for venting of feelings and/or disclosure of sensitive information through active listening.

2. Take the role of "concerned outsider" regarding the areas of deadlock. For example,
"Help me understand your major concerns.. ""Lets look at your choice in this situation... " "What ideas do you have to resolve this?" "Can we come up with something that will be acceptable to both of you?"

3. As much as possible get parties to come up with ideas, but if they come up with nothing, toss out ideas about "if-then"/''What if..." format. *"If he did, then might you consider Y?" "What if we agreed..?"*

4. If necessary, take the role of "reality tester". For example, *"How do you think the situation will get resolved if both of you continue to take this position?" "What are the likely costs if this is not resolved?"*

5. Suggest ways to expand informational resources if needed - attorneys, accountants, and counsellors.

6. Get permission to convey informational/proposals to the other at the end of the caucus. For example, *"Is it all right for me to discuss your offer with the other party?"* But, when you discuss an offer form Party A with Party B, don't simply convey it is a unilateral offer. Rather link it to something wanted by party A from party B.
For example, "Party B, if we could get Party A to agree to give you **(whatever it is that A has indicated openness to offering)**, *would you be willing to consider offering in exchange* **(whatever Party A wants from Party B)?**

7 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. For example,
"Well, we've made some real progress regarding this issue... Party A you've agreed that you will... Party B, you've agreed that you will... I'd like to ask you both to confirm in the presence of the other that you support this... Lets now talk a little more specifically about how we will implement this agreement... "

SECTION 5

ADDITIONAL ADVANCED MEDIATION CONCEPTS

1. Seven tools for breaking a deadlock

2. Co-mediation

3. Tools for group dialogue and issue formation

4. Using shuttle diplomacy

5. Single-text method

6. Values underlying conflict resolution

7. The illusion of neutrality

8. Characteristics of community conflict

9. Multi-Party mediation

1.   SEVEN TOOLS FOR BREAKING A DEADLOCK

1. Avoid the trap of over-responsibility

Remember that you cannot make peace, only the parties can. The role of a mediator is to assist the parties in **their** discussion process, but in the end it is their conflict and they are responsible for the outcome. Feeling over responsible will cause you to function badly in your role. Over-responsible mediators:

- Often become frantic, and instead of being a quietening centre that draws the parties beyond angry posturing to a place of deeper reflection, they feed tension and fear into the process.

- Are desperate to avoid failure, and so overreact to each difficulty. This often results in pushing the parties to accept the mediator's own suggestions for resolution.

- The parties usually resist this pressure and before long the mediator finds his/her energy is being consumed by arguments between him/herself and the parties.

- Seek credit if things are going well. This may cause resentment or suspicion from the parties

  If things are really going badly it can be useful to say the following:
  "It seems like neither of you are prepared to take any steps towards the other person to resolve things, and I am not sure that I can do anything further in such a situation. So I want to hear from you about what to do. Do you want to continue this discussion, or is it time to give up?"

  Usually (but not always) the response is a panicky, *"Please, don't go!"* and often the parties then begin taking a more reasonable stand.

2. Trust the process

Rather that feeling personally responsible to come up with solutions, effective mediators trust the discussion process to bring solutions. They know that any mediation process will have ups and downs and that the only way to get to the ups is by going through the downs. All the mediator need do is to keep the right kind of discussion process going and solutions will often emerge the when the time is right.

3. Focus on understanding the needs and interests of each side

What is the "right" kind of process? One key part of the answer is this:
A process in which the parties feel increasingly confident that the mediator understands their needs and interests.
It is also important that parties feel that the other side understands them as well. To ensure this, the mediator must do his/her work at understanding the parties in **the presence of both sides,** helping one side to see how the other is really feeling, and vice versa.

To understand needs and interests, simply focus on learning as much as you can about each side and their concerns when you reach an impasse. If mediators understand and help parties to articulate needs and interests, the task is easier than it seems. The solutions often begin to emerge almost of their own accord from this type of discussion.

4. Switch from problem-solving tasks to relationship-building

Mediation involves not only problem-solving skills for negotiating difficult issues, it requires relationship-building skills for working with people who are hurt, angry and suspicious. Success in mediation requires a good sense of when to switch from one set of tasks to the other. Whenever things get difficult it is probably time to make such a switch. (Relationship-building tasks refer to such things as pointing out commonalities and areas of agreement, allowing parties to vent their feelings, etc.)

5. Seek agreement on a new or different procedure for discussion

Sometimes it helps to set aside the problematic issues for now, and instead try to, reach agreement on next steps in a discussion process that might lead to agreement on the issues. For example, two colleagues in a community organisation got stuck in a discussion about the use of a secretary, whom they shared. The mediator suggested that they set this issue aside for a week and that during this time each of them makes a list of activities and times for which they need secretarial assistance. The parties agreed and a week later found that with the additional information in front of them, they could negotiate on a plan to co-ordinate their work.

6. Use Caucus

Caucus is an essential tool that every mediator should know how to use. Caucus is a private meeting between the mediator and only one party. To keep things balanced, mediators caucus with both parties, first one and then the other. All discussions done in caucus are confidential. The mediator

cannot divulge information emerging from a caucus unless the party grants permission for the mediator to relate specific information to the other party. Caucus is a welcome "security blanket" for mediators, as the dynamics of dealing with one party at a time are much simpler than having two or more in the same room.

7. Deadlock-breaking mechanisms

In some situations the parties might be willing to employ a deadlock-breaking mechanism. One such mechanism is arbitration, that is, the parties agree to submit a particularly difficult issue to an arbitrator selected jointly by the parties. There are at least two different kinds of arbitration:

Standard arbitration:
The parties agree, usually in writing , to accept and be bound by whatever decision is made by the arbitrator.

Non-binding arbitration:
A slightly different process in which the decision of the arbitrator is optional and not binding on the parties. Even if the parties reject the decision, the arbitrators' finding, particularly if it is announced publicly, may alter the balance sufficiently to enable the parties to negotiate a settlement on their own.

2.   CO-MEDIATION

Many mediation organisations use a co-mediation model. Having a second mediator reduces the pressure on the single mediator to listen effectively, capture all the important information, and the process. Working with another mediator gives you a sounding-board for weighing possible options for the conflict resolution process. When co-mediating consider the following:

1. Choosing a mediation team

The selection of a mediation team can have a significant impact on the process. A particular disputant may find one mediator easier to talk to than another. Mediators all come with a varying array of skills and experiences. These should be considered when putting a mediation team together.

- The team should, ideally, reflect the racial, ethnic, gender, language and age characteristics of parties.
- Match strengths and weaknesses of mediators.
- Look for mediators who have conflict resolution experience within the specific field of conflict (e.g. labour/management, community, environmental, etc.).

2. Determining and balancing roles

Some mediators may be good listeners while others may have excellent problem-solving skills. When co-mediating, it is good to know the person with whom you will work. This creates a sense of teamwork and keeps the process moving smoothly. Role definition is especially important for inexperienced mediators because it adds order to a complex process.

- Determine how you will share the stages of the mediation model (for example, who will start the introduction, or who will initiate the story-telling, etc.).
- If your co-mediator becomes quiet, invite him/her back into the process by opening the floor to them (e.g. Vuyo would you like to follow-up on this discussion before we move to the next issue? Or, David, would you summarise the issue for Party A?).

3. Handling transitions

Transitions between mediation stages, especially from story-telling to problem-solving, can be tricky. When co-mediating, one mediator can summarise points

from the current stage while the other mediator prepares to start the next stage. For example, Mediator A can be outlining the main issues from the story-telling stage on a flipchart, while Mediator B is deciding how to group issues and select an issue to start with.

4. Cues

While some aspects of the mediation process can be worked out ahead of time, co-mediators must become skilled at giving direct cues to one another during the mediation. Cues are used to:

- Find out if the co-mediator is ready to move on to a new topic or stage (for example, Karin, is there anything you would like to follow-up on before we move to the next issue?).
- Turn the process over to your co-mediator (e.g. Let me summarise the issues and then Andries will lead us into the problem-solving stage.).
- Solicit advice from your co-mediator (e.g. Let me summarise the issues and then Andries will lead us into the problem-solving stage.)

Co-mediation brings more conflict resolution resources to the table, enhancing the chances of a successful mediation. Co-mediators need to work as a team. While one mediator takes a lead role in a certain stage of the process, the other mediator must remain focused on what is happening and

ready to step-in and move the process forward since transitions or changes in the process can occur quickly.

Co-mediation is also used extensively by organisations who train new mediators. Working with an experienced co-mediator should provide opportunities for the novice to use a range of conflict resolution skills (e.g. communication, problem solving, etc.) and to provide assistance whenever appropriate or necessary. Another product of co-mediation is that each mediator gets to observe how other conflict resolution specialists handle various situations. This cross-fertilisation of ideas and methods permits all mediators to update their skills.

3. TOOLS FOR GROUP DIALOGUE AND ISSUE FORMATION

The following are tools to enable people to talk in large or small group settings about issues which they disagree on, with the focus being on **public** disclosure and discussion.

1. Conflict spectrum

Identify one end of the room for people **strongly** convinced about one idea, the other end for those **strongly** convinced of the opposite. Ask everyone to take a strong position or one that is somewhere on or between these two points. Then invite individuals to share why they chose the spot they are standing in. This can be taken further by then dividing the spectrum into three groups - the two ends plus a middle group. Give each group 20 minutes to prepare a list of strengths and weaknesses of their position, and then report the list to the total group.

2. Interviews

- Select and interview one to three individuals from each perspective in the presence of the entire group.
- Interviewer must be viewed as trustworthy and should relate warmly to each interviewee. Your tone is that of a friendly, informal conversation with careful listening by the interviewer and lots of paraphrasing. Begin on a personal note ('Tell me a little about yourself," or, "Tell me what's been happening for you this week.') to establish rapport. Then move to the issues at hand. "How do you personally view these issues?" (Encourage people to speak only for themselves.) "Tell me what's been happening here from your own perspective." "In what ways have you personally felt misunderstood at

times?"
- The interviewer may wish to list views on newsprint or have an assistant do so.
- When finished, the interviewer may wish to turn to the audience and inquire if there are any views not yet heard which someone wishes to add. The interviewer should be firm that any speakers must come forward and be interviewed - this keeps the discussion manageable.

3. The Samoan circle

Place eight chairs in a circle. Appoint a team of two people to represent each of the two perspectives. These four could come forward, sit in a circle and discuss _ the issues at hand. Anyone in the larger group who wished to participate may do so by coming forward and taking one of the empty chairs. If those chairs are filled, others who come forward may stand behind one of the "extra" chairs until it becomes available. If the issues are volatile, a neutral moderator can be used.

The key to success in a tense setting is:
The facilitator stresses that. all are welcome to participate, but al communication **must** *occur in the circle.*

4. Small group discussion

Option A

Participants in a large group are randomly assigned to small groups with diverse members. Small groups are given 15-20 minutes to create a list of the three to five most important issues facing the group. A spokesperson is assigned from each group to report in front of the large group, where the issues are tabulated.

Option B

Participants in a large group are assigned to small group caucuses of people with similar views. One way to assign people to "caucus" groups is by first using a spectrum, which quickly and easily defines people's viewpoints.

Caucus should be used when:
- People are too timid to speak up in front of those with whom they disagree or; when anger is very high or; when issues are fairly clearly defined but people need to check things out with those they agree with before accepting proposals.
- In small group work. The goal is usually not consensus, but an attempt to document diversity or work at clarification of viewpoints. If tension is high, each group can be asked to move around the circle and hear

all the views, with no discussion until everyone has spoken. One can also make use of a brief questionnaire, which each person completes as a way of sharing views with the group.

5. Role reversal presentations

A person from each side is asked to spend time with people from the other side and then give a presentation summarising the views of the other side. Be sure to give each side a chance to respond. Ask the following questions: Was the presentation of their views accurate? Would they like to expand on it in any way?

6. Role reversal interviews

Same as above, but each person is asked to pretend they are another person with opposite views:

Facilitator:
"Mr X, I'm going to ask you to pretend for a little that you're Mr. Y over here and to speak in the first person as though you were him as I ask you some questions. Are you ready to try it? Well now that you have your Mr Y hat on, tell me a little about yourself, where you are from and what you do, Mr Y. (The facilitator should always begin with a few personal questions to help people get into the role.) Now, as Mr. Y tell me a little about your views on this issue…" (The facilitator needs to do much supportive paraphrasing.)

When X is finished being Y, the interviewer turns to Y and asks for evaluation. How well did X do in presenting Y's views? Any key points that he or she missed? Then reverse and have Y be X.

7. The Fishbowl

One group sits in a circle of listeners. Only people in the inner circle may speak. After a while, reverse positions so those who were listening in the outer circle get to speak too.

8. Tools to muzzle big talkers

Option A
Ground Rule - no one speaks twice before everyone has had a chance to speak once.

Option B
Matchsticks - everyone gets three matchsticks. Every time they speak they

must throw a matchstick into a dustbin. When the matchsticks are gone, no more talking!

Option C
High Talk; Low Talk
This is a variation on the Fishbowl. People who rate themselves High Talkers sit in the outer circle; those who rate themselves Low Talkers take the inner circle.

9. Comments

- If people are timid to speak out in front of the group, the spectrum is a good technique for public disclosure of viewpoints *en masse.* It is often a good "ice breaker" for group dialogue. It cuts down on anxiety about what others may be thinking. Sometimes what people thought was an extremely polarising issue may actually bring the majority of the group to a "middle" position on the spectrum.

- If the list of issues emerging in a discussion is long, facilitators must provide guidance on how to consolidate the list into a few broad headings and then narrow it down to the most pressing issues. One easy way to select the key issue is to ask everyone to pick the three issues they see as most important. Go down the consolidated list and ask for a raise of hands on each issue: How many people had this as one of their top three issues? Issues with the highest number of votes are the ones people most want to discuss.

4. USING SHUTTLE DIPLOMACY

When parties cannot meet face-to-face, perhaps due to a high potential for violence or because they live far apart from one another, mediators may use shuttle diplomacy. In this process, parties speak indirectly to one another through the mediator. The mediator meets with one party, discussing problems and possible solutions, and then -meets with the other party. The mediator "shuttles" discussion issues and proposals between the parties, noting each parties' interests and common points of agreement, until a solution is secured.

While this may succeed in securing an agreement, the disadvantage of using shuttle diplomacy is that parties are not empowered to discuss their problems constructively with one another. As future issues arise, these parties will likely continue to require the assistance of an outsider.

5.   SINGLE TEXT METHOD

When using the Single Text Method, the mediator meets with parties to discuss issues, interests and possible acceptable end scenarios. Next the mediator creates a draft document which describes a possible solution to the conflict which meets the majority of each party's interests.

The document is circulated to the parties for comment. The mediator revises the document based upon their comments and resubmits it to the parties. The mediator attempts to revise the document until both parties find it acceptable.

This is the method that U.S. President Jimmy Carter used in 1978 to create the Camp David Accords between Israel and Egypt. This method is very useful during "shuttle diplomacy", but it can also be used in conflicts where the disputants meet face-to-face. The single-text document serves as a written record of potential agreements allowing parties to check them with their constituencies and to determine if agreements need to be modified to really work at grassroots level.

6.   VALUES UNDERLYING MEDIATION

1. Mediation is a participatory process whereby parties learn to creatively resolve disputes, preparing them to handle future problems in a more effective manner.

2. The dispute and its possible resolution options belong to the parties involved, not the mediator.

3. The mediator's responsibility is to define and manage a process by which the disputants constructively attempt tó resolve their differences.

4. The mediator should remain impartial throughout the process, seeking to assist all parties in obtaining a satisfactory outcome.

5. The mediator should disclose any information regarding financial, inter-personal relationships, or psychological influences which may compromise his or her neutrality.

6. Information discussed during any part of the mediation process should

remain confidential, unless all parties agree to make specific information publicly available. In the case of private sessions (caucuses), information arising in these sessions should not be related to the other parties unless permission is granted.

7. Mediation is not appropriate for all conflicts. Once the mediator has determined the nature of the conflict and the needs and interests of the parties, he or she should provide good faith advice as to whether or not mediation is suitable for the specific situation.

7.   THE ILLUSION OF NEUTRALITY (by Ron Kraybill)

"Keep your opinions to yourself What the parties decide to do is their responsibility. You should he entirely neutral or all rimes. - (Advice from a labour mediator to a student intern)

"The duty of the churches is to he agents of reconciliation. That means we must avoid taking sides and be neutral." (Statement by a church leader about a community conflict)

⁻Yes, I am aware that one Side has launched most of the attacks against the other side. But we are trying to make peace here and that means we must maintain our neutrality. - (Mediator responding to concerns raised by community leaders about violence initiated by one party in an on-going mediation).

Is "neutrality" ever a constructive goal in conflict? I believe the answer is No. Were I able to, I would remove the word "neutrality" from the English Language, for it has caused much injury to the cause of peacemaking. It confuses many mediators with a false understanding of their task; it blocks many sincere leaders from acting on their own deeply-held principles of justice; it damages the credibility of the entire enterprise of peacemaking in the larger community.

People who try to be "neutral" do so, I believe, because they think that if they want to work for peace they have no alternative. After all, who enjoys trying to act, as one wag put it, "like a recently arrive amoral eunuch from Mars"? Good news for the "neutrals". There are alternatives and we shall propose several. But first, consider two objections to the concept of neutrality.

Problems with neutrality

Neutrality is an illusion; there is no such thing as a detached or objective observer. Natural social scientists have in recent years come to recognise this as a given. Even if I sit in a corner in complete silence while two people fight,

I communicate assumptions or values which influence the situation, such as "screaming is acceptable" or "this conflict and the things being agreed upon here are of no concern to other", etc.

Rather than pretend to have no values or to be neutral, people seeking to be a constructive presence in any conflict should learn to be reflective about what values motivate them and be open about those values with others.

Another objection to neutrality is that in the words of Fr. Albert Nolan of the Institute for Contextual Theology in Johannesburg, "it makes reconciliation an absolute principle that must be applied in all cases of conflict." Neutrality, says Nolan, assumes that all conflicts are based on misunderstandings, that blame lies equally on both sides, and that all that is needed is to bring the two parties together and the misunderstanding will be rectified. In truth, Nolan points out these assumptions are wrong in some conflicts. Sometimes "one side is right and the other wrong. One side is being unjust and oppressive and the other is suffering injustice and oppression. In such a case not taking sides would be quite wrong."

Alternatives to neutrality

Rather than hiding our values, peacemakers can be explicit about them. After all, we are the ones who call for unusual responses from others. We more than anyone else need to be clear and articulate about what motivates us and what others must do if they are to participate in the peace we seek to support.

In a seminal essay in 1975 American conflict practitioners James Laue and Gerald Cormick suggest that a social intervention should be guided by core values of freedom, justice and empowerment. Of these criteria, justice is the primary one, since freedom and empowerment are actually pathway values leading to the creation of justice. For Laue and Cormick, "the single ethical question that must be asked of every intervenor in community disputes at every decision-making point in the intervention is: Does the intervention contribute to the ability of relatively powerless individuals and groups in the situation to determine their own destinies to the greatest extent consistent with the common good?"
Thus intervenors must first analyse the conflict in its context, and then choose an appropriate response. Laue and Cormick identify five roles commonly played by intervenors.

1. **The activist** works closely with the powerless or non-establishment party in a conflict. He or she is usually either a member of the non-establishment group or is so closely aligned that he or she "fully merges his or her identity with the powerless party." Activists skills usually include organising, public speaking, devising strategy, and the ability to rally a following.

2. **The advocate** plays a similar role to the activist in the sense that he or she promotes the interests of a particular side. But the advocate functions from a more detached standpoint, serving as an advisor or consultant to the group, rather than identifying personally with the group he or she serves.
The typical advocate for the establishment party is the management consultant, while the community organiser is the most frequent type of out-party advocate. A negotiator representing any of the parties also exemplifies this role type."

3. **Mediators** "do not have their base in any of the disputing parties and thus have a more general, less party-parochial view of the conflict." The mediator is also "acceptable at some level of confidence to all of the disputing parties".

4. **The researcher** may be "a social scientist, a policy analyst, a media representative, or a trained lay observer, who provides an independent evaluation of a given conflict situation. The researcher perceives the conflict in its broadest context and is able to empathise with all positions".

5. **The enforcer** brings formal coercive power to the conflict. The enforcer is often "a formal agency of social control in the larger system within which the conflict is set - the police or the courts - or perhaps … a funding agency or an arbitrator." Though elements of this role appear in many conflicts, one rarely sees it in pure form. "The web of issues and parties is usually so complex that no single person or agency has an appropriate base to command allegiance to an imposed solution…"

The challenge from this perspective is to choose the role most likely to lead to justice, freedom, and empowerment. Mediation may often be the role needed, but in some situations a greater need exists for an activist or advocate. Laue and Cormick observe that people performing other roles often call themselves "mediators", thus perpetuating the widespread misperception that mediation is the only useful intervention role.

Quite the opposite of being neutral then, intervenors must at all times make decisions and undertake actions which reflect a clear set of values. If intervenors are not clear about their own values or self-critical in assessing what values their actions actually support in a situation, they are vulnerable to being used by the more powerful party to serve unjust purposes. The goal is not to he neutral, but rather to be ethical: to be conscious of one's own values and the likely outcome of one's action so that the intervenor can make appropriate choices.

Advocacy as an alternative to neutrality

Another alternative to neutrality begins by broadening the definition of advocacy and recognising that we are advocates of **something** all of the time, whether we are conscious of it or not. The question is not **if** we are advocates, but rather of what. From this perspective we can identify at least four kinds of advocacy.

1. **A party advocate** takes the side of one party and pushes loyally for its advantage. "My country/ my party/ my friends - right or wrong." This is what most people have in mind when they think of advocacy. But other kinds of advocacy exist.

2. **An outcome advocate** works for an outcome he or she deems desirable, without regard to who happens to benefit from this outcome.

3. **A process advocate** promotes neither party nor outcome, but rather a particular way of deciding things or getting things done.

4. **A values advocate** champions concepts or principles: democracy, fair play, the rule of law, human rights. etc.

Thus giving up neutrality does not mean that peacemakers merely jump in and take sides (though in Laue and Cormick's framework that may indeed be called for in some situations). Peacemakers can choose forms of advocacy that enable them to define a clear perspective without falling into the blind partisanship of party advocacy.

The mediator as process and values advocate

I believe mediators should view themselves as passionate process advocates. This enables us to avoid parochial side-taking, yet still root ourselves deeply in values that will guide us in making principled decisions about our role and in interpreting our work for others.

As process advocates, we should be clear within ourselves and articulate in describing to others the nature of the processes we facilitate. We should be prepared to walk away decisively, if necessary, from any situation which does not support the values we stand for. Our commitment to justice, freedom. and empowerment will enable us to take a clear and explicit stand on a variety of principles regarding any process which we facilitate:

> **Conduct of participants**:
> Negotiations should take place in ways that respect the dignity and equality of all persons in the negotiations as well as those affected by the negotiations.

Parties represented at the table:
No negotiations should proceed if serious effort has not been made to involve all parties with a legitimate interest at stake.

Negotiator mandates: Negotiators must hold a genuine mandate to negotiate on behalf of the people they claim to represent.

Access of constituencies to decision-making:
Negotiations must place final decision-making power in the hands of the people most affected by decisions taken at the mediation table, either by direct involvement in decision-making processes or through legitimate forms of representation.

Power:
Must be relatively equal if conflicts are to be genuinely resolved rather than merely temporarily suppressed. Mediators must acknowledge the realities of power and recognise that power is a relative and constantly changing phenomenon deriving from many sources. (Sometimes, for example, apparently "powerless" groups actually have a great deal of power.) Mediators should analyse carefully the timing of their efforts so as to ensure relatively equal power. They should also recognise and support the necessary role of activists and advocates. and be ready to decline to mediate if power imbalances are too high.

Problem-solving approaches:
Mediators should be articulate and persuasive in advocating processes of negotiation and decision-making that shift the dynamics of interaction between the parties from simple positional power manoeuvring (which only postpone real resolution) to genuine grappling with the legitimate needs of each side. For example, the mediator can guide the parties through analytical exercises, which raise the issues of the basic human needs that underlie most social and political conflicts, and which enable the parts to reflect on the long-term consequences of not meeting these needs.

Information:
All parties should have equal access to critical information.

Accountability:
A mediator should hold all parties accountable: to other parties at the table in living up to agreements and in being honest about the extent to which they can make binding commitments; also to their own constituencies in accurately and competently representing constituency concerns and interests, and in keeping constituencies informed and appropriately involved in the decision-making process.

The challenge for all mature human beings and peacemakers in particular is

to stand for something; to have opinions and goals, and to work constructively for their implementation. We are not "neutral". but then what are we? Impartial, fair, principled, committed to the legitimate needs of all. Many words will do, but let us never accept a description that robs us of the heart of our humanity: our identity and our values.

8. CHARACTERISTICS OF COMMUNITY CONFLICT

Community conflicts are decidedly different from most other sorts of conflicts. Although no dispute is exactly like another, community conflicts do have common characteristics.

Parties

- **Complicated network of interests**
Community conflict involves several/many parties, parties are often groups/organisation. Representatives are often responsible to many parties, with diverse even competing interests i.e. member of the civic, the concerned parents group and the church.

- **Varying levels of expertise**
For example, in conflicts that involve large amounts of technical data, or complicated financing, the understanding of this information may vary from group to group.

- **Different forms of power**
Power comes in a variety of forms, including that derived from formal/informal authority, resources, access to decision makers, moral high ground,. information, and personal characteristics. This may vary from group to group, or individual to individual.

- **Lack of continuing relationships**
There is often no need for a continuing relationship after the dispute is resolved. This is in contrast with, for example, a conflict at work or in the family, where the fact that parties need to continue to live or work together may cause them to temper their actions, and be more sensitive to the needs of each other.

- **Strongly held values**
Community conflicts are often about different beliefs about what is right/wrong, just/unjust, and policy decisions are often choices between competing values. Often what seems to be a conflict between competing economic interests, has its roots in the different worldviews or experiences of parties, who do not understand each other. Conflict does

not happen because values are different, but because one side demands that the other gives in!

Issues

- **Broad range of issues**
Usually a wide range of complex issues, for example, in a dispute about toxic waste storage, issues could include monitoring for safety, maintenance, transportation, value of property, etc.

- **New issues emerge**
Issues that were not apparent/ important at first, become important, and often as new issues emerge, it becomes necessary to involve new stakeholders. An equal amount of attention should be paid to issues that emerge late in the process as to issues apparent from the start.

Process

- **The importance of technical information**
Technical information is important in terms of understanding the nature of the problem, and helping to find a solution, since each party brings its own set of facts/perceptions into the debate. All the parties need to agree on a common database before solutions can be developed.

- **Differing decision-making procedures**
The organisational structures of different groups may vary, that is, they use widely different procedures for making decisions. This means that parties with a hierarchical decision-making structure are often represented by the individual responsible for making decisions, and who can do so immediately as issues arise. Representatives from loosely organised groups may need more time to consult with constituencies and achieve consensus, and decisions made immediately by them may not hold.

- **Unequal accountability**
Accountability varies among groups depending on the type of organisation. Corporations are held accountable by law for their behaviour. They are concerned about their public image, and often have relationships with government and other organisations which make them additionally accountable. Community groups often don't have the same legal constraints, and their behaviour and reliability of their commitments often depend on the character of individuals and on public opinion.

- **No formal guidelines**
unlike for example labour disputes, community conflicts have few formal mechanisms for resolving conflicts. Enforcement of agreements is also

done only on a case-by-case basis, and can break down very easily. As far as government intervention is concerned, it is also not always clear which government departments/agencies have jurisdiction. There is also very little in terms of statutory rules for public disputes other than legislation that relates to damage of property etc. (Adapted from Carpenter and Kennedy, **Managing Public Disputes,** Jossey-Bass Publishers 1988)

9.   MULTI-PARTY MEDIATION

Characteristics

- Multi-party disputes have complex networks of relations
- Violence
- Racial, ethnic, religious, ideological conflict
- Protracted conflict
- State intervention is required
- State intervention protracts trouble
- Loss of belief that solutions are possible

Obstacles to settlement

- Confused uncertain goals
- De-individuation of adversaries
- Communication problems
- Rigid stands of principle
- Threats
- No desire to settle

Hints to mediators

- Focus on dispute vs conflict resolution issue by issue
- Target less complex conflicts first, if possible
- Incremental reconciliation
- Link parties with community resources
- Proactive vs reactive interventions
- Establish an advisory committee
- Structure caucuses to keep the process manageable
- Be aware of resource needs, that is, information, time transport, funds, legal advice, etc.
- Structure location and times of meetings
- Use a mediation team
- Establish an agreed agenda
- Use task groups/plenary ratification
- Record all recommendations, proposals, conclusions, action plans

- Interim reports on progress
- Clear implementation plans

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Constitution of UNESCO (excerpt)

London, 16 November 1945

The Governments of the States Parties to this Constitution on behalf of their peoples declare:

That since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed;

That ignorance of each other's ways and lives has been a common cause, throughout the history of mankind, of that suspicion and mistrust between the peoples of the world through which their differences have all too often broken into war;

That the great and terrible war which has now ended was a war made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men, and by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races;

That the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern;

That a peace based exclusively upon the political and economic arrangements of governments would not be a peace which could secure the unanimous, lasting and sincere support of the peoples of the world, and that the peace must therefore be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind...

International
Hydrological Programme

World Water
Assessment Programme
www.unesco.org/water/wwap