
Confidence-Building Measures in Mediation

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Attempts to resolve disputes often fail where the parties do not trust one another to negotiate fairly, nor to carry out any agreements that are reached. In international conflict resolution, mediators have successfully employed confidence-building measures (CBMs) to deescalate conflicts between states. Based on published research and on their own empirical experience, the authors suggest that CBMs could also be applied in other spheres of mediation, and describe some useful CBMs. Mediators who build goodwill effectively at the start of the process will be more likely to see disputes resolved and commitments kept.

Trust is a critical issue in mediation. Attempts to resolve conflicts often fail where the parties are deeply suspicious of each other. This chapter will suggest confidence-building measures (CBMs) that practitioners can propose to build trust between parties to a dispute. The concept of CBMs is currently being discussed solely in the field of international conflict resolution, where mediators are employing CBMs to deescalate conflicts between states (Borawski, 1986; Krepar and Sevak, 1995). CBMs could also be usefully applied in other spheres of mediation. In any situation where trust is lacking, mediators can use these measures to repair some of the relationship problems at the beginning of the process, placing the parties in a cooperative mind-set. Mediators who effectively build goodwill at the start of the process will be more likely to see the process reach completion, and more likely to see the parties fulfill their agreements afterward.

Experimental and experiential evidence confirms the importance of trust between the parties to the success of negotiation and mediation processes (Deutsch, 1958; Parks and Hulbert, 1995). Trust is generally demonstrated by a willingness of parties to place themselves in some position of risk in a negotiation, such as by being open with information sharing. An individual who distrusts another is less likely to wish to cooperate with that person (Zand, 1972). Mediators may find it difficult to encourage distrustful parties to try an interest-based process, and once there, such parties may continue to employ tactics of humiliation and sabotage.

It is often argued that trust is not a prerequisite for negotiations, and in fact a healthy dose of skepticism toward one's adversary is advisable. Zartman and Berman remark that "it is in the interests of the sharpest, most antagonistic negotiator to sincerely foster feelings of trust. . . . Thus, no party can be completely trusting" (1982, p. 29). However, they also consider trust and credibility to be essential to any fruitful negotiation. It is also important to distinguish between professional negotiators familiar with negotiation strategy, and clients, who may not possess the sophistication needed to handle negotiations with an untrustworthy adversary. Moreover, mediators who do not deal with the distrust between the parties will feel themselves increasingly pulled into the world of the conflict, where there are no neutrals, only allies and enemies.

Morton Deutsch's game simulation experiments provide strong evidence for a correlation between trust and cooperation. Deutsch had subjects conduct several variations of the Prisoner's Dilemma game. These games involve decisions about whether or not to cooperate in situations of uncertainty about the other's intentions. The gains or losses for each player depend on the assumptions that are made about the other party. In some of the simulations, one party was allowed to make the decision after the other party had moved. In other simulations, the parties were permitted to communicate with written messages prior to making choices. Based on the results, Deutsch reached the following conclusions:

- There are strong positive correlations between trust and cooperative behavior, and between suspicion and competitive behavior.
- Individuals are more likely to trust others if they believe the other person has nothing to gain from untrustworthy behavior and if they perceive that they are able to exert some control over the other person's outcome.
- Individuals who have experienced cooperative behavior from another in the past are more likely to respond cooperatively when they have the power to determine the outcome of the other.

Subsequent experiments (for example, Parks and Hulbert, 1995) have confirmed that without trust, individuals are less likely to risk cooperative behavior and more likely to engage in competitive behavior.

For this reason, the application of confidence-building measures at the start of a mediation process could prove useful. Confidence-building measures are gestures of goodwill made by one party to another, usually prior to engaging in substantive negotiations, for the purpose of gaining the trust of that party. The discussion and application of CBMs originated in the sphere of nuclear disarmament negotiations in the 1970s as efforts to achieve comprehensive agreements failed (Borawski, 1986, p. 9). The concept of CBMs most likely evolved from the negotiating model of Charles Osgood (1966). He recommended that the two superpowers adopt a strategy of deescalation that he termed G.R.I.T., or Graduated and Reciprocated Initiatives in Tension reduc-

tion. Essentially, the G.R.I.T. strategy advises either party to make a unilateral goodwill gesture and wait for the other to respond. Once several exchanges have been made, substantive negotiations can commence. These exchanges are now known as CBMs, and they have become an increasingly important tool in resolving international disputes. Mediators helped India and Pakistan agree on a number of CBMs, including cultural exchanges and advance warning of military exercises (Krepar and Sevak, 1995). Confidence-building measures have also played an important role in the Middle East peace process. Sadat's famous trip to Jerusalem, which made possible the Egyptian-Israeli peace treaty, remains one of the outstanding goodwill gestures of all time. It is surprising, in the light of the importance given to CBMs in the literature of international relations, that mediators and scholars in other spheres have not incorporated this concept.

In the literature to date, much of the discussion of goodwill gestures assumes the context of a traditional negotiation with no third party, a context in which the parties themselves control the exchange of gestures. Experimental evidence suggests that these gestures should be offered unilaterally and unconditionally by one party at a time, that they should involve sufficient risk to the offeror to prove sincerity, and that they should be unanticipated by the receiver (Pruitt and Carnevale, 1993, p. 147). However, the risks can be high with unilateral gestures of this kind. An untrusting adversary might interpret the gesture as a ruse or a sign of weakness, or dismiss it as meaningless. Some gestures may be inappropriate and cause offense to the other party. For these reasons, a neutral third party could be quite useful in overseeing the exchange of gestures. The mediator would help ensure that the offers are appropriate and are interpreted positively by the other party.

The manner in which CBMs would be exchanged in a mediated process would differ at times from a traditional negotiation process. In Charles Osgood's G.R.I.T. strategy, one party would begin the process with a small gesture, and then wait for the other side to reciprocate. In a facilitated process, however, the more common approach would be a symmetrical exchange of CBMs for two reasons: first, symmetry—asking both sides to make roughly equivalent gestures at the same time—helps maintain the mediator's neutral image; second, parallel and coordinated CBMs give parties the assurance that their gestures will be reciprocated, and therefore embolden them to make more significant moves. However, there are situations in which the mediator might permit or encourage one party to make a unilateral gesture, if such a gesture is needed to allow the other party to move forward in the process.

Ways to Build Confidence

CBMs can be grouped into four general categories: those that demonstrate a willingness to talk, those that demonstrate a willingness to listen, those that demonstrate a willingness to meet the needs of the other party, and those that

demonstrate a willingness to improve the long-term relationship with the other party. The next sections set out some concrete examples of CBMs, with illustrations from our own personal experience and that of others. Some of these illustrations show unilateral CBMs, while others show more symmetrical, two-way exchanges. These examples should be used merely as guidelines, and should not hinder the creativity of the mediator in designing particular CBMs for a given context.

Demonstrate a Willingness to Talk. A good place to start is for the mediator to elicit from the parties the reasons why they have chosen a nonadversarial and collaborative process to resolve the conflict. The mediator should ask both parties about the costs of continuing the conflict. For instance, the parties could be asked about the stress they have suffered from the dispute, and about their failure to resolve the dispute through more adversarial means. Without an awareness of the destructiveness of the conflict, each side is free to impute less noble motives to the other's participation in the negotiations.

In a divorce mediation case, the husband had been taping his wife's conversations and had hired a private investigator to spy on her. The distrust on both sides ran very high. Both sides were asked about their choice of mediation. When questioned about the results of his past efforts and the reasons why he was willing to try mediation, the husband said that he was worn out emotionally and financially, and realized that nothing he could do could change his wife's decision to separate. This admission may well have influenced her decision to continue with the process.

Demonstrate a Willingness to Listen. Showing a willingness to listen is a confidence-building measure of considerable importance. Many mediators set ground rules for respectful listening and also engage the parties in active listening techniques. However, the mediator might ask the parties themselves to verbalize their willingness to respectfully listen to each other's grievances. Otherwise, an opportunity for confidence building becomes instead the imposition of the mediator's rules for the process.

In a recent case involving a dispute between a manager and staff, the staff members were very skeptical of the manager's ability to change her aggressive managerial style. However, the manager demonstrated a genuine interest in hearing the personal grievances of the staff. We coached the manager to listen without comment, and to thank each person who spoke. The staff members reciprocated by expressing their grievances in a polite, sometimes apologetic, manner. The result was an agreement to develop a new relationship of mutual respect and trust between the manager and staff.

Demonstrate a Willingness to Meet the Other's Needs. Isolina Ricci, a family mediator, has invented a technique called "Traded Assurances" (Ricci, 1985, p. 89). The mediator asks each party in the first mediation session what the other might do to undermine the mediation. She then poses the follow-up question, "What might he/she agree to do that would let you feel you could

trust him/her?" Any commitments the parties make to each other are then written up as agreements that both parties can sign, thus becoming their first mediated agreements.

Often there are immediate issues of conflict that are exacerbating the conflict between two parties. These issues do not go to the core of the dispute, but so long as they exist, they will continue to fuel the conflict. The mediator should try to obtain some short-term agreement to remove some of these irritants. When considering possible CBMs, the mediator should search for gestures that one side could make at minimal cost, yet would mean a great deal to the receiving party. Care should be taken not to pressure the parties to give up something that is important to them.

In a divorce mediation case, a husband refused to get his pension valued and make the necessary financial disclosure. In the first individual meeting with the husband, the mediator asked what he would need from his wife in order for him to operate in good faith and share financial information. He said he needed her to allow him some money to continue paying for his children from a former marriage. The mediator posed the same question to the wife in the individual meeting with her. The wife said she wanted her husband to disclose his financial information, and also to apologize for a remark he had made in the previous joint session. The mediator then brought them together, and they exchanged their messages. The husband apologized, and then both parties asked the mediator to write up the commitments they had made into agreements to be signed. The husband proceeded to get his pension valued, and both seemed satisfied with the good faith of the other party.

Demonstrate a Willingness to Improve the Relationship. There are numerous possible CBMs that could be used to transform antagonistic relationships. The most basic confidence-building measure for healing conflicts is the apology. Most everyday conflicts are resolved with apologies, yet mediators have not made sufficient use of them. Of course, there are difficulties. First, apologies might bring the connotation of blame. Second, they could be dismissed as insincere. Third, exchanges of "I'm sorry" might seem like a trivialization of the conflict. All these concerns can be addressed with the appropriate techniques.

Rather than expressing culpability, apologies ought to express a recognition of, and regret for, harm suffered by another in the past, and a willingness to try to avoid causing such harm in the future. From the information provided about the history of the dispute, the mediator should focus on events that were particularly hurtful to one side or the other. In caucus, the mediator might ask the parties, "Was there anything at all that you could have done better, or wish you had done better, in that situation?" The mediator could then assist the parties in preparing a written statement to deliver orally in the mediation session. The receiving party should be instructed to say only "Thank you," and to make any further comments privately to the mediator at a later point.

In a divorce mediation case, the mediator felt the husband was displaying a cavalier attitude toward the grief he had put his wife through. She was very upset that he had asked her to leave her home country and family, and soon after she did, he left her for another woman. In the joint session, the mediator tried to obtain some apology from him for the hurt he had caused, but the man seemed intransigent. At the next session, however, he volunteered a sincere apology to her. He said he had felt terribly guilty for the pain he had caused. The admission paved the way to a much more constructive conversation between the two. This example illustrates two key points: first, parties may resist making statements of regret when the other party is present, which is why a caucus may be more appropriate, and second, apologies do not only benefit the receiver, they can also release the feelings of guilt that have been repressed by the offender.

In another case, a couple had asked the mediator to mediate a separation agreement. The parties had expressed ambivalence about the separation. The mediator decided to use the CBM process to explore each side's feelings about reconciliation. In caucus, she asked each party, "What would you need to see or hear the other person do or say to consider a possible reconciliation?" and "What would you be prepared to do yourself in order to effect a reconciliation?" She then had the parties deliver their responses to each other. The result was that the parties asked to change to marital counseling. The mediator felt that the CBM process had kept her from pressing ahead with business-as-usual long enough to work on the parties' relationship.

Using Confidence-Building Measures

After the exchange of gestures, the mediator should assess the parties' readiness to commence substantive discussions. The mediator may well need to do more work on the relationship issues before moving ahead. CBMs need not replace other techniques for dealing with relationship conflicts. Often, however, the parties will not be willing to invest the money and time to deal fully with these issues. Particularly in divorce mediation and in three-hour civil mediations, money and time are scarce resources. It is here that CBMs can be really effective to quickly place the parties in a problem-solving mind-set.

Intractable conflicts cannot be resolved with great leaps. They require small steps and time, time for the disputants to alter their image of each other. Mediators in the international arena have realized for some time the importance of transforming the exchange of messages between adversaries that reinforce these stereotyped images. Conflicts in divorce, workplace, or neighborhood cases can involve the same intensity of hatred and distrust as international conflicts. Therefore, mediators at the community level can employ the same technique of using CBMs, albeit in altered form, to assist people in their difficult mediations.

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