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COLOPHON

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CORRECTION PINPOINTS #41
- Column 2, line 19-20: P5+1 (Big 5 Plus Germany)
- Before line 4 after a space: Lesson: Negotiations involve concession, compensations and reframing (construction) for the parties to meet, uncomfortably, in the middle.
THE POWER OF COMMITMENT IN MEDIATION

This article looks at how the ability to commit can help the mediator to resolve a conflict. For the purposes of this analysis, to commit means to propose a way out of the mediated conflict and throw enough weight behind your proposal, so that rejecting it would be costly for the conflicting parties.

I argue that it is the ability to commit which makes an effective mediator. Some conflicts can indeed be resolved by mediators who cannot credibly commit to anything – be it full informational transparency, a focal solution, or punishment for defection. But these conflicts antagonism between the parties in such conflicts is usually low. Successful mediation of highly antagonistic conflicts requires not so much brute force, but rather the ability to make credible commitments.

Mediators are commonly classified into three groups: facilitators, formulators, and manipulators. Facilitators help to build trust and serve as intermediaries transmitting information between the conflicting parties. Formulators creatively help to invent a solution or to choose among available options. Manipulators apply pressure to the parties in order to force them to settle their conflict.

Experiments and formal research have shown that communication through a mediator is more effective than direct communication between conflicting parties. The most relevant experimental result for the purposes of this article is that the most credible mediator is the one who can complement communication with punishment. It effectively means that to be effective the mediator must be able to make a credible promise to punish uncooperative parties. All types of mediators – facilitator, formulator, or manipulator – need to have the will and resources to impose a procedure or a framework for solutions or a final and only solution on the conflicting parties.

Let us look at what exactly each type of mediator can commit to and what the effects are likely to be.

A “facilitating mediator” can commit to communicating full and/or truthful information to the disputants, that is, to ensuring transparency. Such mediating tactic would be based on the focal principle of full access to relevant information. That gives the mediator powerful leverage against the parties who are inclined to cheat. As a result, even without enforcing a particular solution, such tactic can narrow down the set of available solutions. Even if transparency eliminates all solutions but one, the case for that solution will be very powerful because that solution will result from a very conspicuous focal principle – full and universal accessibility of relevant information. Unconstrained freedom of speech enshrined in law is a good approximation of such tactic. In this case, the government acts as a mediator in disputes among citizens by enforcing the principle of free speech which usually prevents concealment of relevant information from stakeholders.

For example, commitment by international mediators to transparency (that is, disclosure by the mediator of information from sources other than the disputants themselves) has lately produced moderating influence on the parties in the conflict around Ukraine. The OSCE, the United States, the EU and others have been making public at least some of their observations and assessments of the situation on the ground. These reports and statements made purposeful deception by the parties of each other and of the outside actors more difficult and forced parties to at least partially abandon the tactic of denial and settle for a compromise solution – the Minsk II agreements of February 2015.

Information-focused mediation tactic becomes more effective if the mediator is able and willing not just to disclose the concealed information, but to punish the “crook” – the party which tries to deceive the opponent.

A “formulating mediator” has more options for making an effective commitment. Such mediator can commit – albeit without the ability to enforce – to a focal point in the form of a principle allowing for a range of potential solutions. Such commitment would be a way to set boundaries for a settlement. The principle that the mediator may choose to propose can derive from anything – even from mediator’s own convictions – but it should be focal, that is, conspicuous and salient. Such principle could be, for example, the preservation of territorial integrity of a disputed state (which happened with regards to Bosnia or Ukraine) or self-determination of the disputed state (East Timor, Kosovo, or Montenegro). Another famous focal principle that a formulator helped to hammer out and then tried to enforce is “land for peace” in the Arab-Israeli dispute.

In 1993 the European Union committed to the Copenhagen criteria – a set of requirements on democratic rule
and peaceful resolution of conflicts – that represented a focal principle for the settlement of actual and potential disputes among post-Communist states in Central and Eastern Europe. Specific ways of settling different disputes (between Hungary and Romania, Hungary and Slovakia, Poland and Czechoslovakia etc.) varied, but they all fell within the boundaries set by the Copenhagen criteria.

While mediating the Bosnia conflict the mid-1990s, NATO and the United States applied the principle of Bosnia’s territorial integrity to set the boundaries of conflict resolution. This principle was seen as favorable to one of the sides – the Bosnian Muslims who would have had almost nowhere to stay if Bosnia were to be partitioned. Territorial integrity forestalled many other solutions, such as self-determination for the Bosnian Serbs. Yet it was based on a powerful focal principle of status quo/integrity, and therefore enough stakeholders and non-stakeholder alike perceived it as fair. An equally powerful alternative principle here could have been boundless fragmentation that would have clearly been dangerous. The power of commitment derived here from the focal nature of the principle: it is attractive because it is conspicuous, represents an equilibrium, embeds justice, etc. Overall, one finds surprisingly few fundamental concepts on which a proposed conflict settlement can be based.

Focal principle-based mediation may be one of the most interesting trends in contemporary mediation. Whether such mediation delivers tangible results in the foreseeable future may be a good litmus test of whether we are moving towards a rules-based international order or a more ad hoc and chaotic one.

There is yet another implication of the tactic of commitment to focal principles. If the mediator has a stake in a specific outcome and can frame it in terms of a fundamental concept, then such mediator stands good chance of imposing his preferred solution on the conflicting parties. However, that also applies to the negotiating position of any of the parties, even in the absence of a mediator – it is always useful to wrap one’s position in fundamental – and therefore focal – concepts or principles.

If we look at commitment to conspicuous formulas or principles, we shall see that one does not need to be a great power to effectively use the power of commitment in mediation. If a principle to commit to has a strong ethical value or moral power, a smaller nation (such as, for example, Switzerland or Norway) can assert it.
powerfully to influence negotiation outcomes.

A “manipulating mediator” believes that he is able to enforce settlement by imposing additional costs and offering incentives.

Just like a formulator, a manipulating mediator need not necessarily commit to a specific solution. Instead, he can, for example, impose costs on continued conflict by sanctioning both sides at the same time if they are unwilling or unable to reach an agreement. He can also commit to a certain negotiation timeframe and thereby pressure the parties into reaching an agreement (that could be, for example, centered around a focal principle).

Overall, improved access to information might eliminate or reduce the uncertainty about the future that is usually conducive to compromise. Certainty about bottom lines or the distribution of capabilities among negotiating parties can lead to continued conflict as long as the most resourceful party will not want to forswear its advantage. So it may be more effective for a mediator to commit to a range of possible solutions rather than to full information transparency. Such transparency did not help to end the conflict in Ukraine – at least, as of late 2015.

There are also challenges to commitment in mediation that cannot be neglected.

First, a solution for the mediator to commit to must be acceptable to all sides in a dispute. The focal nature of such solution may not be enough to convince the sides who may believe accepting the suggested focal point would undermine their negotiating position. If the mediator proposes a certain principle, the disputants will need to see how using that principle benefits them. In the most successful case, they will have to believe that abiding by that principle is fits within their range of preferred solutions. A reasonable level of uncertainty about the end result of applying a certain mediated solution may therefore be sometimes necessary for this solution to be embraced by all conflicting sides.

Second, a strong commitment by the mediator to a certain solution can undermine prospective agreement if the mediator fails to the grasp the essence of the negotiated problem or the interests of the parties. Especially if the mediator is more powerful than each of the parties, such failure can result in obstruction rather than facilitation of a compromise. For example, history is replete with examples of how the United States and other mediators botched the Arab-Israeli peace process by failing to commit to the right procedural or substantive outcome or by committing to a suboptimal solution.

Lack of flexibility in mediator’s commitment to a certain framework idea may lead to bad consequences in the longer run. For example, preserving unity of a state as an imposed negotiation outcome can only postpone the crisis so that it will break out at a future moment when mediators are worse prepared for it.

And finally, commitment by the mediator to a certain principle can create a moral hazard. This can happen if the solution imposed by the mediator favors one of the parties. In the future, the favored party may be inclined to pursue riskier policies knowing that the mediator is likely to “provide a cover.” For example, ethnic Albanian groups did exactly that in Macedonia in 2001, having been supported by NATO in Kosovo two years earlier.

The general conclusion is that much can be achieved by the mediator who carefully calibrates and flexibly adjusts proposed solutions, but shows credible willingness to enforce that solution if necessary.