Teaching Package for GSUM course on

MEDIATION AND THE UN SYSTEM

Prof. Laurie Nathan, University of Pretoria

GSUM

The Global South Unit for Mediation (GSUM) is a learning, research and training platform focused on international mediation. The Unit will promote the diffusion of knowledge and expertise among scholars, diplomats, governmental officials and non-governmental actors from the Global South.
The GSUM is the result of a partnership between the Institute of International Relations of the Pontifical Catholic University of Rio de Janeiro (IRI/PUC-Rio), the BRICS Policy Center, and the Royal Embassy of Norway in Brazil.

Teaching packages are comprehensive teacher´s guides prepared by renowned specialists addressing important topics of the contemporary international mediation agenda. Each Teaching Package covers five lessons and aims to assist academics and professionals interested in teaching classes on the following topics:

• Conflict Resolution and mediation as a field of study and practice
• Actors and Processes of Mediation
• Mediation and the United Nations System
• Mediation and the Global South
• Gender and Mediation
• Elements and Reflections on Success, Failures, and Lessons Learned

The opinions expressed herein are the sole responsibility of the author and does not necessarily reflect the position of the institutions involved.

About the Author

Dr. Laurie Nathan is Director and Professor of the Centre for Mediation (CRM) at the University of Pretoria, and member of the United Nations Mediation Roster and the United Nations Roster of Security Sector Reform Experts. His research focus is on Southern Africa and South African conflicts. More specifically, Professor Nathan is interested in exploring the causes, prevention and resolution of civil wars in Africa. This entails studying the structural causes of state crises, regional security regimes and dynamics, mediation and other forms of peacemaking. In addition to that, he has extensive experience as a policy adviser to the South African government and other governments in this region.

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1. Course Description

Context

Mediation can be defined as a process whereby a third party assists parties in conflict, with their consent, to reach agreements they find acceptable and are willing to implement. This general definition applies to mediation undertaken by the United Nations (UN). However,UN mediation also has a number of distinctive features: it is typically intended to prevent, manage or resolve conflicts with a high level of violence; it usually aims to address the political, social and economic causes of the conflict; it is often linked to complex peace operations and/or peacebuilding and statebuilding endeavours; it is influenced, sometimes positively and sometimes negatively, by the views of the UN Security Council and the interests of its permanent members in particular; and it has a strong normative orientation.

UN mediation has suffered historically from a lack of professionalism, expertise and rigour. A comparison with the military is instructive in this regard. Like the conduct of warfare, mediation is extremely complicated, volatile, unpredictable and risky. Yet unlike professional armed forces, the UN and other international mediators have traditionally placed no emphasis on training and education, on developing doctrines, strategies and operating procedures, on setting and maintaining standards, on appointments based on clear criteria and proven ability, and on learning from past experience. In short, international mediation has been viewed as synonymous with diplomacy rather than as a specialised activity.

Over the past decade the UN has taken far-reaching steps to overcome these deficiencies. It has established the Mediation Support Unit in the Department of Political Affairs;the Standby Team of Mediation Experts for rapid deployment in conflict areas; the UN Academic Advisory Council on Mediation; several training programmes, including the UN High Level Mediation Course; and a specialist website called UN Peacemaker (http://peacemaker.un.org/). The Friends of Mediation group, co-chaired by Finland and Norway, has been formed in the UN General Assembly.

These developments have inspired other multilateral organisations, including the European Union and the African Union, to introduce programmes aimed at strengthening their mediation capacity and expertise.

Academic and policy literature

Given the prominence of UN mediation, there is a relatively large academic literature on the subject. Some of this material focuses exclusively on UN mediation, either through case studies (e.g. Stanley & Holiday 1997)or through work with a thematic focus (e.g. Skjelsbaek 1991; Picco 1994). In addition, comparative research on international peacemaking invariably takes account of the UN as a significant mediation actor (e.g. Bercovitch & DeRouen 2005; Stedman 2002). One of the most pressing issues currently under debate is the mediation competition and tension that occasionally arises between the UN and regional organisations(Lanz & Gasser 2013; Whitfield 2005).

Aside from the academic literature, the UN publishes detailed reports on its mediation activities (e.g. UN General Assembly 2012) and on its mediation norms and policies (e.g. UN Security Council 2009; UN Secretary-General 2012). UN mediators write detailed after-action reports following the completion of peacemaking initiatives but these reports are not available publicly. An excellent distillation of wisdom gleaned from interviews with UN mediators can be found in Peck (2010).

Course overview

The Course focuses on the distinctive features and constraints of the UN as a mediator. In playing this role, the UN has a number of assets: it has vast financial and staffing resources at its disposal; it has extensive expertise in many areas of conflict prevention and resolution (e.g. security sector reform, constitution drafting, organising elections etc); it can apply considerable pressure on intransigent conflict parties, including through the threat and use of sanctions and military force; it has unrivalled convening authority, able to mobilise and co-ordinate the peacemaking efforts of states and international actors; and it

enjoys special legitimacy when the Secretary-General exercises his/her 'good offices' function by deploying special representatives and envoys.

On the other hand, the UN experiences certain challenges and has several liabilities as a mediator: its peacemaking authority is often contested, with regional bodies vying to lead mediation efforts within their geographical domain; the UN is occasionally hamstrung by divisions among the permanent members of the Security Council; the organisation is overly bureaucratic, leading to arrogance, insensitivity and lack of responsiveness to local conditions; and the UN's preoccupation with norms of various kinds inhibits the flexibility required for effective mediation. Moreover, in a number of conflicts the UN has attempted simultaneously to play the contradictory roles of 'good cop' and 'bad cop' (Picco 1994).

The Course will explore the dynamics outlined above through presentations by the Convenor, class debates, simulation exercises and critical analysis of case studies of UN mediation. As described further below, it will provide training in essential mediation skills.

2. Prior Knowledge Requirement

The Course is designed so that the students do not have to be familiar with the UN, international mediation or the literature on these topics. An academic background in International Relations or Peace and Conflict Studies is beneficial but not essential. Students who read carefully the required readings prior to the start of the Course will be adequately prepared (see Section 7 below).

3. Course Aims, Knowledge, Skills and Relevance

Aims

The Course has the following aims:

- To provide students with an overview of the academic and policy literature on UN mediation.

- To provide students with an understanding of the distinctive features and constraints of the UN as an international mediator.

- To engage students in critical analysis of UN mediation cases.

- To equip students with the skills of mediation.

Foundational knowledge and skills

The Course will cover the distinctive features of the UN as a mediator, exploring its strengths as well as its limitations and common mistakes. It will also review the Secretary-General's normative and policy propositions on effective mediation, which relate to inclusivity, national ownership, consent, impartiality, preparedness, quality peace agreements and harmonisation of international peacemaking. The Course will pay particular attention to two contemporary debates: is the most effective international mediator the UN, regional organisations, states or non-governmental bodies? And should mediators endeavour to include terrorists and extremists in mediation and negotiations?

Against this background, the Course will analyse case studies of the UN mediation for Libya, Guatemala and Syria.

The Course will offer skills training in core elements of UN mediation. It will

tackle the challenge of getting the parties to agree to negotiations, supported by the mediator, as the primary strategy for resolving their conflict. The mediator needs to convince enemies that their interests can be met sufficiently through dialogue and collaborative problem-solving. The Course will also tackle the challenge of ensuring that the parties at the negotiating table engage in constructive dialogue and negotiations rather than ceaseless rigidity, blame and recriminations.

Relevance

There can be no adequate understanding of international mediation without an appreciation of the mediation role of the UN. Not only is the UN the most prominent, experienced and well-resourced international mediator, it is also the main setter of trends in international mediation. Over the past decade this has been most notable in relation to the professionalization and growing normative orientation of mediation. Moreover, most regional organisations that seek to enhance their mediation capacity and expertise do so in collaboration with the UN. Even in major conflicts where the UN is not the lead mediator, the decisions and dynamics of the Security Council may have a dramatic impact on the prospects for a negotiated solution.

4. Course Breakdown: Topics and Questions

Day 1: Introduction and overview of progress and key debates

Session 1

Topics: Introduction to the Course; aims and schedule of the Course; the characteristics of UN mediation; the new dawn of professional UN mediation; key debates regarding UN mediation.

Questions: What distinguishes UN mediation from peacemaking undertaken by other organisations? What are the contemporary debates over UN mediation?

Session 2

Topic: The 'seven deadly sins' of international mediation.

Question: What are the major mistakes made by UN and other international mediators?

Session 3

Class debate: Who is the best mediator in intra-state conflict: the UN, regional organisations, states or non-governmental bodies? What criteria are relevant in addressing this question?

Day 2: State of the art policy thinking

Session 4

Topic: The UN Secretary-General's 2012 guidance on effective mediation.

Questions: What does the Secretary-General view as the fundamental requirements for effective mediation? What are the tensions between the various norms advocated by the Secretary-General?

Session 5

Class debate: Should mediators endeavour to include extremists and terrorists in processes of negotiation and mediation?

Session 6

Topics: Starting the process of mediated negotiations (i.e. determining the mediator's mandate from the UN and from the parties; selecting the right mediation process; distinguishing between the parties' positions, interests and needs).

Questions: How does the mediator obtain a mandate from the parties? What are the mediator's process options for facilitating dialogue and negotiations? What is the difference between a party's positions, interests and needs, and what is the significance of this distinction?

Day 3: Simulation exercise: getting the parties to the negotiating table

Session 7

Simulation exercise: Getting the parties to the negotiating table.[1]

Key question: How can a UN mediator convince the conflict parties to engage in negotiations?

Session 8

Simulation exercise contd.

Session 9

Simulation exercise contd.

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[1]This is a 3-hour simulation exercise developed for the UN High Level Mediation Course.

Day 4: Simulation exercise: facilitating dialogue and negotiations

Session 10

Simulation exercise: Facilitating dialogue and negotiations.[2]

Key questions: How can the mediator break deadlocks among the parties, overcome their intransigence and facilitate constructive dialogue and negotiations?

Session 11

Simulation exercise contd.

Session 12

Simulation exercise contd.

Day 5: Case studies of UN mediation

Session 13

Topic: Case study of the 2011 UN mediation for Libya – critical discussion led by two students.[3]

Background questions: What were the key causes and dynamics of the conflict?

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[2] This is a 3-hour simulation exercise developed for the UN High Level Mediation Course.
[3] At the start of the Course I will ask for two volunteers to make these presentations. Readings on the Libya mediation appear in the Required Readings section. For all the student presentations, I will provide support to the presenters outside the hours of the Course.
[4] At the start of the Course I will ask for two volunteers to make these presentations. Readings on the Guatemala mediation appear in the Required Readings section.

Who were the conflict parties? Who were the mediators?

Analytical questions: What were the UN's strategies in relation to the Libya crisis? Was the UN mediation viable? Was the mediation led by the African Union viable? What mistakes were made by the mediators?

Session 14

Topic: Case study of the 1994-96 UN mediation for Guatemala – critical assessment led by two students.[4]

Background questions: What were the key causes and dynamics of the conflict? Who were the conflict parties? What was the outcome of the mediation?

Analytical questions: Was the conflict ripe for resolution? What were the mediator's strategies? What mistakes were made by the mediator? Has the peace agreement been fully implemented?

Session 15

Topic: Case study of the current mediation for Syria – a critical assessment led by two students.[5]

Background questions: What are the key causes and dynamics of the conflict? Who are the conflict parties? When did the UN mediation begin, and how has it progressed?

Analytical questions: Why is this conflict not ripe for resolution through negotiations? What has been the role of the UN Security Council in relation to

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[5] At the start of the Course I will ask for two volunteers to make these presentations. This Training Package contains no references on the Syria mediation. The students will have to find their own material.

the Syria crisis? What is the mediator's mandate? Why did Kofi Annan resign as the UN mediator?

5. Extra-Course Topics and Questions

The following controversial topics, linked to the theme of the Course, will not be covered because of time constraints:

• Tackling the root causes of the conflict. The UN Secretary-General (2012) proposes that mediation in intra-state conflict should address the root causes of the conflict. To what extent is this really possible? Are some causes more amenable to negotiations than others? Are certain types of problem (e.g. economic policy), best left to a democratically elected post-conflict government?

• Adapting to local culture. Does the UN approach to mediation reflect Western conceptions of conflict, conflict resolution, negotiations and reconciliation? To what extent should, and does, the UN adapt its strategies and methods to local cultures? Is the appointment of UN mediators based on their cultural fit to the given conflict?

6. Teaching Methods and Materials

The Course will be presented in a variety of creative ways. In addition to inputs by the Convenor, there will be the following:

• Class debates in which students engage with contemporary controversies surrounding UN mediation (sessions 3 and 5).

• Simulation exercises and skills training based on fictitious case studies and followed by critical reflections and learning lessons (sessions 7-9 and 10-12).

- Critical analysis of case studies of UN mediation, presented by students (sessions 13, 14 and 15).

In addition to academic material, a number of short hand-outs will be distributed. The hand-outs were developed for the UN High Level Mediation Course. Drawn from both the academic literature and practitioner experience, they distil key lessons and mediation skills in a concise and useful manner. The hand-outs will guide the students during the simulation exercises.

7. Required Readings

Day 1: Introduction and overview of progress and key debates

Brahimi, L. and S. Ahmed, 2008, *In Pursuit of Sustainable Peace: The Seven Deadly Sins of Mediation*, Center on International Cooperation, New York University

Lanz, D. and R. Gasser, 2013, 'A crowded field: competition and coordination in international peace mediation', *Mediation Arguments 2*, Centre for Mediation in Africa, University of Pretoria

Nathan, L. 2012, 'A revolution in mediation affairs?', pamphlet issued by the Centre for Mediation in Africa, University of Pretoria

Day 2: State of the art policy thinking

Nathan, L. 2013, 'Briefing note on positions, interests and needs in mediation', prepared for the UN High Level Mediation Course

Nathan, L. 2013, 'Briefing note on mediation process design', prepared for the

UN High Level Mediation Course

UN Secretary-General, 2012, *Guidance for Effective Mediation*, New York: United Nations

Day 3: Simulation exercise: getting the parties to the negotiating table

Lanz, D. and M. Siegfried, 2012, Mediation Process Matrix, swisspeace

Day 4: Simulation exercise: facilitating dialogue and negotiations

Swisspeace, 'Briefing note on mediation tactics', prepared for the UN High Level Course

Swisspeace and MediatEUr, 'Briefing note on mediation and communication skills', prepared for the UN High Level Mediation Course

Day 5: Case studies of UN mediation

Centre on International Cooperation, 2011, 'Mission Notes: Libya', Centre on International Cooperation, New York University (http://cic.nyu.edu/sites/default/files/political_missions_2011_libya.pdf)

De Waal, A. 2013, 'African roles in the Libyan crisis of 2011', *International Affairs* 89(2): 365-379

Piiparinen, T. 2011, 'Law enforcer or mediator? The Libya crisis reveals paradoxes in UN conflict management', *FIIA Comment* 4/2011, Finnish Institute of International Affairs

Sieder, R. and R. Wilson (eds), 1997, *Negotiating Rights: The Guatemala Peace Process*, Accord Series 2, Conciliation Resources

Stanley, W. and D. Holiday, 2002, 'Broad participation, diffuse responsibility: peace implementation in Guatemala', in S. Stedman, D. Rothchild and E. Cousens (eds), Ending Civil Wars: *The Implementation of Peace Agreements*, Boulder: Lynne Rienner, pp. 421-61

8. Additional Readings

Bercovitch, J. and K. DeRouen, 2005, 'Managing ethnic civil wars: assessing the determinants of successful mediation', *Civil Wars* 7(1): 98-116

Crocker, C., F. Hampson and P. Aall (eds), 1999, *Herding Cats: Multiparty Mediation in a Complex World*, Washington DC: US Institute for Peace

Peck, C. 2010, *A Manual for UN Mediators: Advice from UN Representatives and Envoys*, UNITAR and UN Department of Political Affairs

Picco, G. 1994, 'The UN and the use of force: leave the Secretary-General out of it', *Foreign Affairs*, 73(5): 14-18

Skjelsbaek, K. 1991, 'The UN Secretary-General and the mediation of international disputes', *Journal of Peace Research* 28(1): 99-115

Stanley, W. and D. Holiday, 1997, 'Peace mission strategy and domestic actors: UN mediation, verification and institution-building in El Salvador', *International Peacekeeping* 4(2): 22-49

Stedman, S., D. Rothchild and E. Cousens (eds), 2002, *Ending Civil Wars: The Implementation of Peace Agreements*, Boulder: Lynne Rienner

Touval, S. 1994, 'Why the UN fails', *Foreign Affairs* 73(5): 44-57

UN General Assembly, 2012, 'Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution. Report of the

Secretary-General', UN document A/66/811, 25 June

UN Security Council, 2009, 'Report of the Secretary-General on enhancing mediation and its support activities', UN document S/2009/189, 8 April

Whitfield, T. 2005, 'A crowded field: groups of friends, the United Nations and the resolution of conflict, *Occasional Paper* 1, Center on International Cooperation, (http://peacemaker.un.org/sites/peacemaker.un.org/files/ACrowdedField_WhitefieldCIC2005.pdf).

BRIEFING NOTE ON MEDIATION PROCESS DESIGN[6]

There is no formula for designing a sound process for dialogue, negotiations and mediation. The process should be based on the mediator's analysis of the situation, the extent of ripeness for resolution, the parties' views on negotiations, the extent of progress as the process unfolds, and lessons drawn from previous peacemaking.

This Briefing Note looks at steps for bringing the parties to the negotiating table; direct versus indirect dialogue; varying the process in order to make progress; a list of additional process issues; and mediation in the broader context of peacemaking. The document should be read in conjunction with the Briefing Note on Developing a UN Mediation Strategy.

1. Steps for Bringing the Parties to the Table

Presented below are key steps in bringing the parties to the negotiating table. Although these steps are arranged sequentially, some of them might take place concurrently. The mediator does not have to include every step and might identify additional steps. It is possible that different actors play the mediator role at different stages of the process.

Steps: Mediator convenes discussion forums of proxies (e.g. academics, business leaders, religious figures who are close to the parties). Seeks to overcome mistrust & enmity, encourage understanding & empathy and promote viability & utility of negotiations.

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[6] Initially prepared by Laurie Nathan for the UN High Level Mediation Course 2013.

Mediator meets separately with party leaders & representatives. Seeks to learn about their interests, needs and reservations or fears regarding mediation. Seeks to establish trust and obtain mandate for mediation.

Mediator engages in shuttle diplomacy, facilitating indirect dialogue between party leaders. Seeks to build support for mediated negotiations and initiate discussion on agenda, venue, process & participation.

Mediator convenes informal and/or formal meetings of party leaders or officials. Seeks to obtain agreement on negotiations agenda, venue, ground rules, process & participation.

Mediator convenes formal negotiations.

Phases

Confidence-building

Preparing for negotiations

Negotiations

2. Direct or Indirect Dialogue?

In most protracted conflicts, particularly intra-state conflicts, it will be necessary at some stage to convene multi-party negotiations at which each party is represented by a delegation. This form of negotiations has a number of potential benefits:

- It can build confidence in the negotiations because the process is transparent, reducing any suspicion that leaders are 'selling out' or being manipulated by their opponents or the mediator.

- It can build a more solid and enduring consensus since agreements are reached by the parties' members and not only their leaders.

- It can lead to greater ownership of the process and agreements among party members and constituencies, making the agreements more sustainable.

Formal multi-party negotiations also have a number of potential disadvantages:

- The parties tend to grandstand at large plenary meetings. Tempers flare as they exchange insults and recriminations.

- Party leaders might be less flexible and less likely to agree with their opponents since this could be perceived by party members as weakness and betrayal.

Given the potential benefits and disadvantages of formal multi-party negotiations, a mediator might want to have a mixture of formal and informal processes (see below). Some mediators like to use shuttle diplomacy and caucusing at the early stages of the conflict resolution process, when the parties are least ready for fruitful face-to-face talks. When enough momentum and confidence has been generated, the mediator will convene multi-party negotiations.

3. Varying the Process in Order to Make Progress

Given the high level of enmity and suspicion between the parties to violent conflict, negotiations frequently experience stalemates and deadlocks. Mediators therefore use a range of different processes, sequentially or concurrently, to ease tensions, generate creativity and facilitate consensus. These processes include the following:

- Keep the parties separate and undertake shuttle diplomacy (or caucusing) between them.

- Convene talks with only the party's leaders.

- Convene technical working groups with party officials to explore specific issues.

- Arrange for technical experts to advise the parties on relevant issues and comparative experience.

- Organise training workshops or seminars on relevant issues.

- Consult civil society groups on the conflict and the negotiations.

- Support peacemaking efforts by civil society

A mediator seldom undertakes the above activities on his/her own. There is invariably a support team in the field, as well as back-up at Headquarters. The mediator might assign some of the activities to members of his/her team.

4. Additional Process Issues

The mediator will need to consider the following additional process issues, some of them in consultation with the parties:

- Rules on confidentiality

- Communication with the public

- The structure and sequencing of the talks

- The use of deadlines

- The use of resource people and technical experts

- Decision-making modalities

- Co-ordination within the UN system

- Co-ordination with other actors, including regional organizations

5. Mediation in the Broader Context of Peace Interventions

Mediation may or may not be the appropriate strategy at any given time in the evolution of a conflict. The UN and regional organizations might therefore undertake other peace interventions, and some of these can usefully be undertaken at the same time as mediation (c/f Briefing Note on Definitions and Categories of UN Peace Interventions). The mediator can play a useful advisory role in relation to the other interventions. Since more than one organisation might be involved in peacemaking, the challenge of coherence, complementarity and coordination is critical.

6. Further Reading

A Manual for UN Mediators: Advice from UN Representatives and Envoys, 2010, compiled by Connie Peck, Geneva: UNITAR and UN Department of Political Affairs.

Crocker, C, F Hampson and P Aall (eds), 1999, *Herding Cats: Multi-Party Mediation in a Complex World*, Washington: US Institute of Peace Press.

David Lanz and Matthias Siegfried, 2012, Mediation Process Matrix, swisspeace.

BRIEFING NOTE ON POSITIONS, INTERESTS AND NEEDS IN MEDIATION[7]

The literature on conflict analysis distinguishes between a conflict party's positions, interests and needs. This Briefing Note explains why the distinction is useful for mediators.

1.   Positions, Interests and Needs

A conflict party's positions are its stated demands, its publicly declared solutions to the problems as it sees them. In high intensity conflict, these positions tend to be hard-line, rigid and maximalist, and they invariably entail some posturing and condemnation of the party's opponents.

A party's interests are the perceived benefits, costs and threats that motivate it to take certain positions.

A party's needs are elemental aspirations and fears that underlie its positions and interests.

John Burton, an Australian diplomat and academic, developed an important theory of conflict and basic human needs. The theory has two profound insights. First, every person has basic human needs that are not limited to physical needs such as water, food and shelter, but also include psychological and existential needs for identity and belonging, affirmation and respect, dignity and freedom. Second, the frustration of psychological and existential needs is often a primary cause of violent conflict. It lies at the heart of many rebellions and uprisings. In these situations people may be willing to kill and die for freedom and dignity.[8]

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[7] Initially prepared by Laurie Nathan for the UN High Level Mediation Course 2013.
[8] See John Burton, 1990, Conflict Resolution and Prevention, New York: St Martin's Press.

Typical positions, interests and needs in a civil war

| Government	Rebels
Position	*Position*
Rebels are unrepresentative & illegitimate	Government is unrepresentative & illegitimate
Cessation of hostilities	End to government atrocities
Non-interference by external actors	International pressure on government
Negotiations to end hostilities	Negotiations to introduce democracy & justice
Interests	*Interests*
Respect for state authority	End to marginalisation & discrimination
Full participation in global politics & trade	Land reform
Economic growth	Economic development & empowerment
Retention of power and wealth	Equitable power-sharing & wealth-sharing
Needs	*Needs*
Territorial control	Full citizenship
National security	Physical security
Stability	Economic security
Dignity	Dignity
Sovereignty	Justice

2.   Analysis and Insight

The distinction between a party's positions, interests and needs is important for a mediator's analysis for two reasons:

1.   A party's resort to violent conflict is not driven by its public positions. Violence is driven by the party's interests and needs, which may or may not be articulated explicitly. The positions are a political expression of underlying interests and needs, which the mediator must understand in order to make useful interventions.

Positions
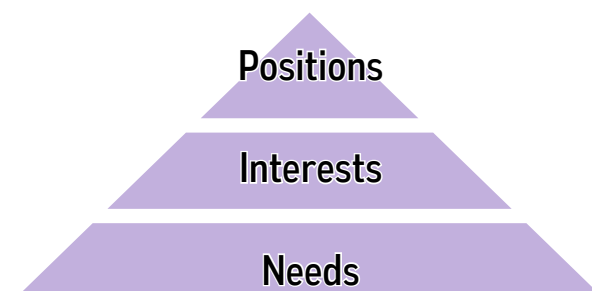
Interests

Needs

2.	A party's interests and needs are more fundamental than its positions and therefore less negotiable and amenable to compromise. Positions may change in the course of conflict and during talks but elemental needs remain the same. In order to end violence and prevent its recurrence, these needs must be addressed to the satisfaction of the parties.

Negotiability of positions, interests & needs

Positions	↑	Most negotiable
Interests		Relatively negotiable
Needs	↓	Least negotiable/non-negotiable
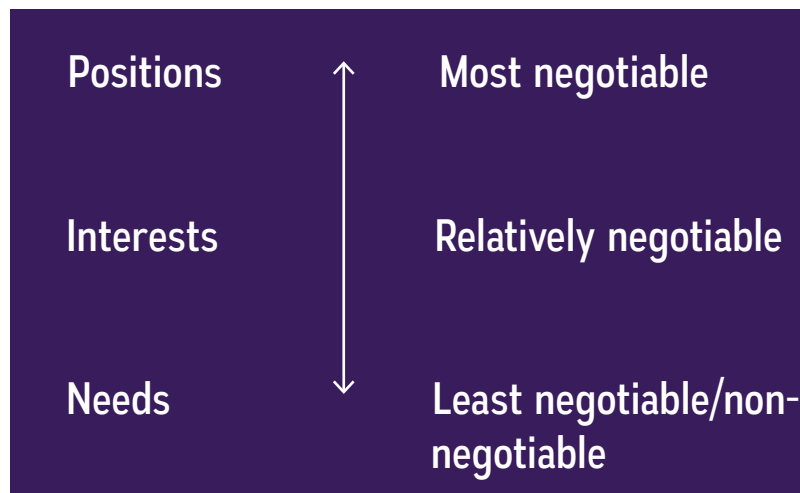
# 3.	Building Relations with the Parties

In order to be effective in an environment characterised by hostility and suspicion, a mediator and the members of his/her team must build a relationship of trust and confidence with each of the parties. One of the ways to do this is by expressing empathy with a party's interests and needs. The mediator might consider the party's positions to be completely or partly unacceptable for ethical or political reasons but should try to see legitimacy in the interests and needs that underlie the positions.

By building a relationship of trust with the parties, the mediator will gain a deep understanding of their respective interests and needs. Some of these interests and needs might be self-evident and others might emerge from the mediator's analysis, but it is only by listening closely to the parties that the mediator will become aware of their perspective on their interests and needs.
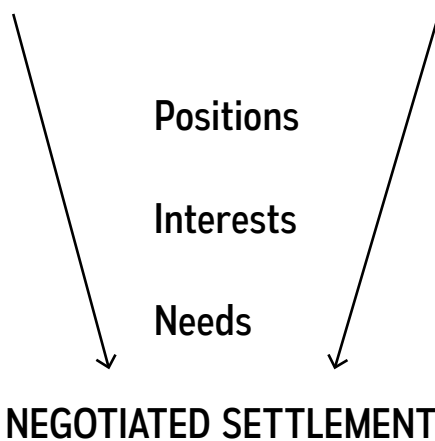
4. Facilitating Dialogue and Negotiations

Identifying common ground. In protracted conflict the parties' positions are usually incompatible and apparently irreconcilable. But the parties may well have common interests and they are likely to have similar needs, such as respect and security. A mediator can build a sense of common ground by shifting the dialogue away from the parties' preoccupation with competing positions to an exploration of potentially compatible interests and similar needs.

Divergence of positions, interests and needs

Party A   Party B

Positions

Interests

Needs

NEGOTIATED SETTLEMENT

Constructive dialogue and negotiations. Basic human needs like respect and dignity are relevant not only to the causes of the conflict and the content of a negotiated settlement. They are also extremely relevant to the negotiations themselves. When parties refuse to listen to each other and, even worse, trade insults, they deepen the frustration and intransigence of their opponent. In order to break the vicious cycle of mutual insults and recriminations, the mediator should encourage the parties to show respect for each other at the negotiating table and should design processes that are conducive to this (c/f Briefing Note on Mediation Process Design). When the parties go further than showing mutual respect and express empathy for their opponent's interests and needs, the potential for progress is high.

Creative solutions. The parties will not make progress in negotiations for as long as they remain locked into irreconcilable competing positions. The mediator can help them break extended deadlocks by exploring options for addressing

their respective interests and needs. A focus on hard-line positions has a yes/no and win/lose orientation but a focus on interests and needs is more creative and can generate a broader range of possible solutions to the problems at hand. The mediator can also bring in technical experts to show how the relevant interests and needs have been met in other countries.

BRIEFING NOTE ON MEDIATION AND COMMUNICATION SKILLS[9]

1. Importance of Communication in Mediation

Mediators need to be aware of interpersonal and psychological dynamics that give rise to misunderstandings among conflict parties and lead them to misinterpret each other's statements and actions. The parties often ignore, generalise and distort these statements. A key function of the mediator is to minimize these problems and facilitate effective communication.

Lewicki et al. identify three major reasons for perceptual distortions resulting in misunderstandings in negotiations[10] :

•   Halo effects: Based on knowledge of some attribute of an individual, people generalize about a variety of other attributes. For example, a smiling person is judged to be more honest than a frowning or scowling person. Negotiators might form rapid impressions of each other based on limited initial information and then tend to maintain these judgments even when they get to know each other.

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[9] Initially prepared by Laurie Nathan for the UN High Level Mediation Course 2013.
[10] Lewicki, R., Saunders, D., Barry, B. and Minton, J., 2003. Essentials of Negotiation (New York: McGraw-Hill), pg. 122.

- Selective perception: The listener singles out certain information that supports or reinforces a prior belief and ignores information that does not confirm that belief.

- Projection: Negotiators tend to expect their opponents to react to statements and actions the way they would; hence they project their own feelings and beliefs onto the other negotiators.

2. Listening Skills

A mediator must 'listen to hear what is being said' rather than 'listen to respond'. Doing this consistently enables greater understanding of the parties' interests and needs.

A message conveyed by a speaker has four dimensions and therefore mediators need to have 'four ears':

- Relationship: What does the message say about the relationship between the parties, and about the party's relationship to the mediator and the UN?
- Factual: What are the objective facts in the message?
- Revelation: What does the message reveal about the sender?
- Appeal: What does the speaker want to see happening? What is their plea? A message can be interpreted as a request for action.

3. Approaches to Effective Communication: Reframing, Reflecting, Summarizing

A UN mediator must ensure that the conflict parties communicate effectively, without damaging misunderstandings. Hence, he or she must pay attention to the parties' reactions to each other's statements and intervene when discussions become counterproductive. Effective communication serves the interests of the parties, since without it they cannot reach mutually acceptable agreements.

A mediator has three tools that can be used to facilitate effective communication during negotiations. These are reframing, reflecting and summarizing.

3.1 Reframing

Reframing is a process of redefining a situation by changing the way something is seen. For example, a picture changes if it is hung on the wall in a modern yellow frame or in an old-fashioned wooden frame. A mediator can facilitate effective communication by reframing statements and issues for the parties in a more neutral, non-judgmental and positive fashion. The mediator can reframe by shifting:

i.   positions   to   interests and needs
ii. violent language   to   non-violent language
iii. short-term and past   to   long-term future perspective
iv. personal   to   collective perspective

By way of example, when rebels and government officials accuse each other of "terrorism" or "banditry" because their opponent is "deliberately targeting women and children", a mediator might reframe the accusations as "a common concern among all the parties that women and children should not be the targets of any violence".

3.2 Reflecting (Loop of Understanding)

Reflecting is when the mediator/negotiator says back to the speaker what he/she believes the speaker has just expressed, using language that is close to the speaker's own. A good reflection captures both the substance and the emotional tone of what the speaker has said. "So, for you, what's happening is that…", "What you seem to be saying is…", "You're feeling…" etc. While one might want to avoid parroting, sometimes it is useful to repeat the exact message.

Ideally, this happens in the form of a 'loop of understanding', a concept

developed by Gary Friedman and Jack Himmelstein[11]. They describe looping as a technique to develop understanding throughout mediation/negotiation. The technique consists of four steps:

1. Listen and understand each party;

2. Communicate the understanding;

3. Seek confirmation from the parties that this understanding is correct;

4. Receive that confirmation.
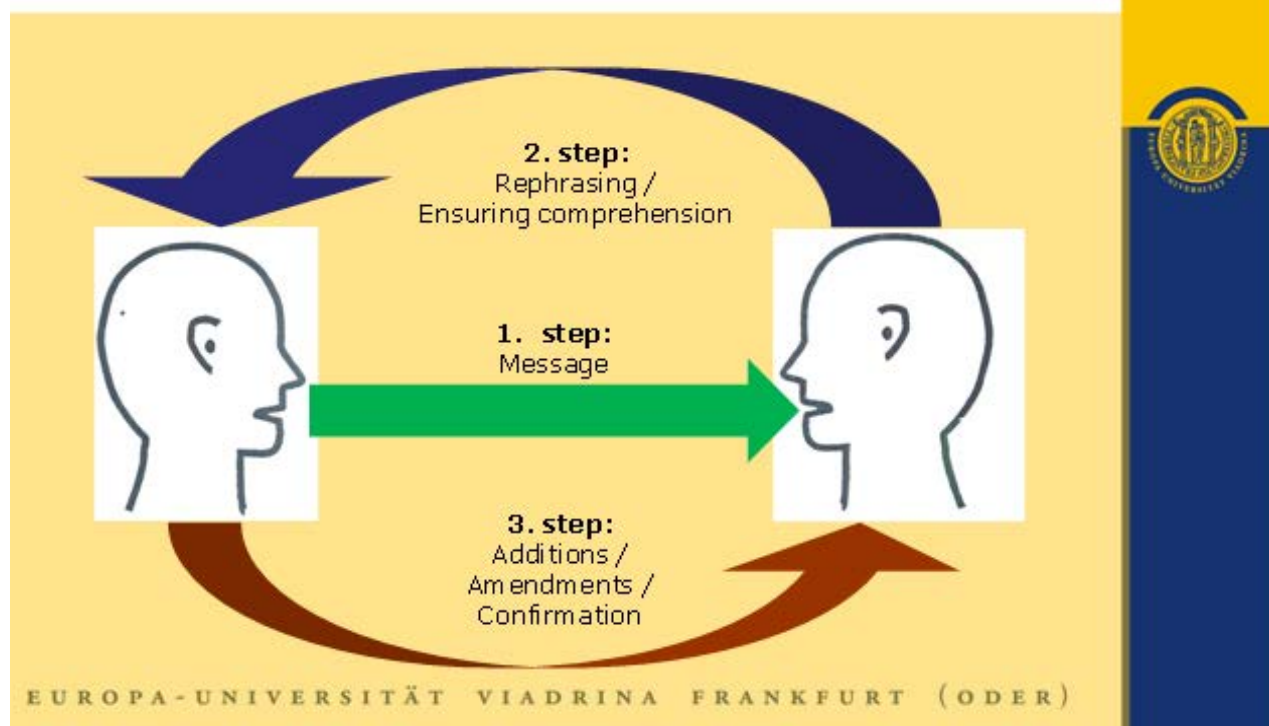
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[11] See the website of the Centre for Understanding in Conflict (http://understandinginconflict. org/2011/03/the-loop-of-understanding/

3.3 Summarizing

It is often helpful for a mediator to summarize the essential information and ideas expressed by a speaker. This focuses the discussion, heightens collective understanding and might help the speaker's adversary to 'hear' the main points. It is often easier for negotiator A to hear things from the mediator than from negotiator B. The mediator might say "So what you want to talk about today is…", "To summarize what you've talked about so far…", "There are a number of things you're disagreeing about, including…" etc. This type of technique is often applied when the mediator feels that there is a fundamental agreement or disagreement on a particular issue.

Effective communication techniques

Mediator	Negotiator
Identify perceptions and intentions of each party. Parties are often more open towards the mediator and reveal their concerns and beliefs more explicitly.	When you are the negotiating party, state your own assumptions and make them explicit. Spend the same amount of time thinking about your counterpart's assumptions.
Assess whether the parties' perceptions have led to misunderstandings.	Assess whether the lack of progress in your negotiation is based on substantive differences or on falsely held beliefs.
Assist parties in revising their perceptions and look at alternative interpretations of statements and actions of the other party.	Question your own assumptions and think of other ways to interpret your counterpart. Confront your counterpart with what you believe is the source of your misunderstanding, reiterating your "true intentions".
In some cases a mediator can use caucuses (i.e. meeting separately with each party) so he/she can filter information and primarily convey those messages contributing to a constructive exchange.	If no progress is being made in the absence of a mediator, propose to involve a third party as a mediator.
If misunderstandings are linked to the individuals conveying messages (particularly when there are difficult personal relationships involved), advise parties to change spokespersons or spend time in reframing and looping.	If you think misunderstandings are linked to the individual conveying messages, think about changing the person leading your negotiation.

BRIEFING NOTE ON MEDIATION TACTICS[12]

Effective mediators need to have clear mediation strategy that under pins and guides their activities(c/f Briefing Note on Developing a UN Mediation Strategy). Inaddition, mediators also require refined tactical skills. This document outlines some especifictatics that have to be useful for UN mediators in order to address the following questions:

a) How to deal with pre-conditions put forth by the parties?
b) How to structure negotiations?
c) How to deal with strong emotions at the negotiation table?
d) How to break dead locks?

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[12] Initially prepared by Swisspeace for the UN High Level Mediation Course 2013.