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**HEADQUARTERS, DEPARTMENT OF THE ARMY**



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## INTRODUCTION—THE CHANGING NATURE OF THE THREAT

States, nations, transnational actors, and non-state entities continue to challenge and redefine the global distribution of power, the concept of sovereignty, and the nature of warfare. Threats are states, nations, organizations, people, groups, conditions, or natural phenomena able to damage or destroy life, vital resources, or institutions. Preparing for and managing threats requires using all instruments of national power: diplomatic, informational, military, and economic. Threats may be described through a range of four major categories or challenges: traditional, irregular, catastrophic, and disruptive. While helpful in describing threats the Army is likely to face, these categories do not define the nature of the adversary. In fact, an adversary may use any and all of these challenges in combination to achieve the desired effect against the United States.

Traditional threats emerge from states using recognized military capabilities and forces in understood forms of military competition and conflict. In the past, the United States optimized its forces for this challenge. The United States currently possesses the world's preeminent conventional and nuclear forces, but this status is not guaranteed. Many nations maintain powerful conventional forces, and not all are friendly to the United States. Some of these potentially hostile powers possess weapons of mass destruction. Although these powers may not actively seek armed confrontation and will actively avoid U.S. military strength, their activities can provoke regional conflicts that threaten U.S. interests. Deterrence therefore remains the first aim of the joint force. Should deterrence fail, and there is some evidence that deterrence is less able to accomplish the goal, the United States strives to maintain capabilities to overmatch any combination of enemy conventional and unconventional forces.

Irregular threats are those posed by an opponent using unconventional, asymmetric methods and means to counter traditional U.S. advantages. A weaker enemy often uses irregular warfare to exhaust the U.S. collective will through protracted conflict. Irregular warfare includes such means as terrorism, insurgency, and guerrilla warfare. Economic, political, informational,

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and cultural initiatives usually accompany and may even be the chief means of irregular attacks on U.S. influence.

Catastrophic threats involve the acquisition, possession, and use of nuclear, biological, chemical, and radiological weapons, also called weapons of mass destruction and effects. Possession of these weapons gives an enemy the potential to inflict sudden and catastrophic effects. The proliferation of related technology has made this threat more likely now than in the past.

Disruptive threats involve an enemy using new technologies that reduce U.S. advantages in key operational domains. Disruptive threats involve developing and using breakthrough technologies to negate current U.S. advantages in key operational domains.

By combining traditional, disruptive, catastrophic, and irregular capabilities, adversaries seek to create advantageous conditions by quickly changing the nature of the conflict and moving to use capabilities for which the United States is least prepared. The enemy will seek to interdict U.S. forces attempting to enter any area of crisis. If U.S. forces successfully gain entry, the enemy will seek engagement in complex terrain and urban environments as a way of offsetting U.S. advantages. Methods used by adversaries include dispersing their forces into small mobile combat teams—combined only when required to strike a common objective—and becoming invisible by blending in with the local population.

Threats can be expected to use the environment and rapidly adapt. Extremist organizations seek to take on state-like qualities using the media and technology and their position within a state's political, military, and social infrastructures to their advantage. Their operations become more sophisticated, combining conventional, unconventional, irregular, and criminal tactics. They focus on creating conditions of instability, seek to alienate legitimate forces from the population, and use global networks to expand local operations. The threat will use advanced information operations and will not be bound by limits on the use of violence.

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Future conflicts are much more likely to be fought among the people instead of around the people. This fundamentally alters the manner in which Soldiers can apply force to achieve success in a conflict. Enemies will increasingly seek populations within which to hide as protection against the proven attack and detection means of U.S. forces, in preparation for attacks against communities, as refuge from U.S. strikes against their bases, and to draw resources. War remains a battle of wills—a contest for dominance over people. The essential struggle of future conflicts will take place in areas in which people are concentrated and will require U.S. security dominance to extend across the population.

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Unless this publication states otherwise, masculine nouns and pronouns do not refer exclusively to men.

## THE SKILL OF NEGOTIATION

Common military activities may not be thought of as negotiations, but in a sense, they are and can benefit from application of even the most basic negotiation techniques. Negotiations require the ability to maintain an open mind, the sensitivity to observe and grasp the situation, and most importantly, the ability to listen with understanding. Traditional negotiation strategies often leave the participants dissatisfied, worn out, or alienated, and frequently all three. Many negotiators advocate a strategy based on the Principled Negotiation method developed by Harvard Law School's Program on Negotiation. Additional information relating to the program can be found at <http://www.pon.harvard.edu/>. Unlike positional bargaining, the principled negotiation method focuses on basic interests, mutually satisfying options, and fair standards that typically result in a good agreement acceptable to all parties. Soldiers using "Principled Negotiation" methodology in foreign cultures must consider additional factors—the difference in worldview, motivations, and cross-cultural considerations. The outcome must ultimately accomplish the Soldiers' mission. These additional factors will be shown in detail in the cross-cultural negotiations section.

### FOUR POINTS OF PRINCIPLED NEGOTIATION

The four points of principled negotiation are:

- Separate the people from the problem. Attack the problem, not the personality.
- Focus on interests, not positions.
- Invent options for mutual gain.
- Insist on using objective criteria.

This section is not intended to make the reader an expert in negotiation techniques; however, understanding the four points of principled negotiation may assist the novice negotiator with improving his skills.



### **Separate the People from the Problem**

Human beings are not machines. They have strong emotions, different perceptions, and difficulty communicating with each other. Feelings typically become entangled with the objective merits of the problem. Negotiators should see themselves as working side by side, attacking the problem, not each other. This can be very difficult since many negotiators see the process as a contest of wills. This does not mean that personalities are not important or that personal relationships cannot be leveraged. It does mean that these considerations should not be the centerpiece of the negotiation process.

### **Focus on Interests, Not Positions**

Inexperienced negotiators tend to focus on their side's stated positions when the object of the negotiation is to satisfy their underlying interests. A negotiating position often obscures the main objective.

### **Invent Options for Mutual Gain**

The negotiator generates a variety of possibilities before deciding on a solution. He sets aside a designated time to think up a wide range of possible solutions. There should be mutual gains whenever possible and where interests conflict, results should be based on fair standards independent of the will of either side.

### **Insist on Using Objective Criteria**

Where interests are directly opposed, the negotiator insists that the result be based on some objective standard, such as previous agreements, market values, expert opinions, customs, or laws. By discussing such criteria, neither party loses to the other, rather both parties can defer to a fair solution.

## **MORE NEGOTIATION BASICS**

The following paragraphs provide additional information on selecting U.S. negotiators, negotiation facilities, and the number of parties involved in the negotiation process:

- *Selection of U.S. Negotiators.* The U.S. military is not normally responsible for large-scale formal negotiations, but the possibility for these actions exists. During small-scale negotiations (for example, hostage situations or surrender of small elements), all military members could be involved. When possible, a negotiator should be fluent in the language of all parties, be familiar with the cultures of all parties, have experience in political negotiations, and fully comprehend the total situation. Additionally, negotiators should be honest and sincere and present the appearance of being in control, yet open to considering other points of view.
- *Structure of the Negotiation Facilities.* The size, shape, orientation, quality, color, and all physical aspects of the facilities can have an impact on the negotiations. Unless specifically desired, all parties should have the same size flags, banners, chairs, tables, and so on, as well as the same number of translators and other support personnel in the actual negotiation chambers. Should there be more than two negotiation parties, it can be important to set up the negotiation table with an understanding of links and conflicts between each of the parties.
- *Number of Parties Involved in the Negotiations.* The number of parties represented in the actual negotiations should be held to the absolute minimum; however, all important factions must be represented either through direct negotiations or through some form of coalition with other directly involved parties.

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**DEALING WITH KEY COMMUNICATORS**

When dealing with key communicators, the negotiator should—

- Know what he wants from the meeting before walking into it.
- Never shame anyone.
- Be cautious about making promises.
- Slow discussions when appropriate.
- Be aware and respectful of status and age when speaking with people.
- Never underestimate the other guy.
- Avoid contradicting people.
- Understand the cultural implications of a direct NO.
- Stress formality.
- End discussions on a positive note.
- Know ahead of time what he can concede, and what he cannot.

## **CROSS-CULTURAL NEGOTIATIONS**

Because negotiation is fundamental to problem solving, the study, development, and honing of negotiation skills are critical to the Civil Affairs Soldier. The principal form of negotiation that the Civil Affairs Soldier is likely to conduct is cross-cultural negotiation. Cross-cultural negotiation brings with it a series of unique challenges and techniques. Culture fundamentally affects language and behavior. It also significantly impacts the way people handle conflict. When it comes to negotiation, one culture may prefer to use a competitive style (win-lose), whereas another culture may prefer compromise or accommodation (win-win). Cultural differences may lead to a conflict between what the parties expect and what their families and communities expect. This has an obvious impact on negotiating behavior.

Negotiations among members of the same culture can be stressful; negotiating with members of other cultures can be exceedingly difficult. Logically, working with other cultures is a basic skill for the Civil Affairs Soldier and an absolute requirement when acting in an advisory or foreign liaison role. Understanding the factors discussed will help minimize the difficulty of cross-cultural negotiation.

## **PERCEPTIONS**

Most Americans have certain preconceived ideas about people from other cultures. These perceptions may not be factually based, but they do exist nevertheless, and they influence the way people approach negotiations with foreigners.

Similarly, foreign negotiators have certain perceptions about American negotiators. Again, these perceptions may not be based in fact, but they too exist. Civil Affairs Soldiers need to know how other cultures perceive American negotiators so that they can adjust their negotiating style accordingly. The successful Civil Affairs Soldier must find ways to capitalize on the positive preconceptions foreign negotiators have of Americans and find ways to neutralize the negative preconceptions they may have.

Research indicates that different cultures hold different perceptions of Americans. For instance, most cultures think that Americans are hard working. The Japanese, however, do not associate this trait with Americans at all. Most Japanese perceive Americans as rude, and many foreigners think that Americans are culturally insensitive. They believe that most Americans are interested only in their own culture, language, methods, and customs. This perception is based almost entirely on two key factors. First, most Americans speak only one language—English. Many U.S. negotiators believe it unnecessary to learn any foreign language; if negotiators from other cultures want to do business, many Americans expect them to do so in English. Second, most Americans have distinct business customs from which they are unwilling to deviate. These standards and customs are forced upon foreign negotiators in practically every business transaction.

Because these perceptions can create negative attitudes, U.S. negotiators must be sensitive to the preconceptions of foreign negotiators and work to counter any negativity. Gender, age, and race have the potential to seriously affect negotiations. Consideration should be given to ensure that cultural norms are met and peripheral issues or unnecessary posturing does not complicate negotiations. For example, some cultures are more sensitive to differences in age and sex, while when negotiating with foreign military forces, parity in rank may be more important. This is not to imply that negotiators must become fluent in every foreign language; by learning a few simple phrases, U.S. negotiators can show that they are at least somewhat interested in and respectful of the local culture and customs. At the very least, negotiators should learn the following phrases (or their equivalent) in the local language:

- Hello.
- Goodbye.
- Yes.
- No.
- Please.
- Thank you.
- Good morning.

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- Good evening.
- I hope to see you soon.

In addition to common terms and phrases, negotiators must learn the proper way to address people. In recent years it has become common for strangers in the United States to address each other by their first names. This custom has not yet taken hold in other cultures—most prefer to be addressed by some honorific title. Many counterparts consider it rude if negotiators address them by their first name. This is especially true of those who hold important government positions, academic titles, or military ranks. In some African societies, for example, it is common to address government officials as “Chief,” much as U.S. officials are often addressed as “the Honorable Ms. Smith.” Negotiators must research the local-language equivalent of military ranks and common titles (for example, Mr., Mrs., colonel, professor, and doctor). Formal titles should be used until the counterparts invite negotiators to use first names or other titles.

Mastering a few phrases of the local language or retaining the services of a native speaker is not enough; a negotiator should become familiar with local nonverbal communications and cultural expressions as well. Posturing, body language, and hand movements are a universal language and can provide the Civil Affairs negotiator with instant feedback during negotiations.

Negotiators may further counteract negative perceptions about American cultural sensitivity by having information about them, their organization, and their mission translated into the foreign language. Numerous software packages can translate important messages into French, Spanish, German, Italian, and several other languages. It is not necessary to translate every document into the foreign language; often a translation of one or two key documents suffices. This small gesture, requiring minimal effort, may be enough to show foreign negotiators that U.S. negotiators appreciate their local language and customs.

### Individualism

The United States encourages a largely individualistic culture. As such, the typical American negotiator prefers to enter into negotiations alone or, if required, as part of a very small negotiating team (two or three people, at most). This behavior is largely a by-product of U.S. culture, which focuses on the individual, performance, initiative, and accomplishments.

Most other cultures of the world place less emphasis on the individual and more on the group. The Latin American countries of Mexico, Argentina, Brazil, Venezuela, and Colombia all have cultures that are extremely group conscious. Cultures in the Pacific Rim, such as Japan, Malaysia, Hong Kong, China, and Taiwan are also group-oriented. Most societies in Southern Africa also emphasize group decisionmaking. Negotiations can drag out for long periods in cultures where the group—not the individual—is responsible for decisionmaking. Figure 1 provides a brief snapshot of the cultural views of the individual versus the group.

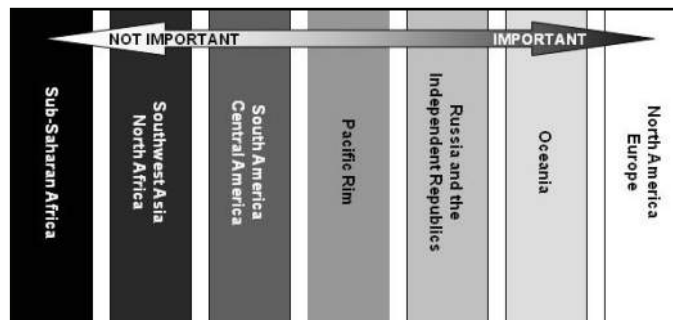


Figure 1. Individuality

When dealing with group-oriented cultures, U.S. negotiators may wish to reconsider the inclination to enter into negotiations alone (or with a very small group). In some scenarios, the arrival of a single negotiator indicates to counterparts that the individual (and, by default, the United States) is ill-prepared and unprofessional. In their

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view, a single negotiator does not have the required expertise to provide advice or support during the negotiation process. In some cultures—Russia, for example—sending a single negotiator or a very small team may be taken to mean that the other side is not serious.

Additional challenges face unaccompanied negotiators. When an individual attempts to negotiate on his own with a group of 10 or more, the lone negotiator may become flustered. Rather than one-on-one dialogue, the sole negotiator must absorb pressure from many persons. Sole negotiators must convince every member of the group. The individual negotiator must divide his focus among the team members of the other side, whereas they can focus on him alone. This can prove to be a nerve-wracking experience.

Negotiators should increase the size of their team when conducting business with such cultures. If possible, negotiators should find out in advance how many people their counterparts plan to include in their team. The number of U.S. team members should be increased to mirror the counterparts; this number should include subject-matter experts to assist during negotiations.

Unlike the group-think mentality of many cultures, delegates from Europe, Canada, and (Caucasians in) Southern Africa emphasize individual decisionmaking. Still, the decisionmaking processes used in these regions are not quite as individualistic as that of U.S. negotiators. When negotiating with people from these cultures, U.S. negotiators may need to adjust their approach slightly. Although they should concentrate on the chief decisionmaker, they should not entirely overlook the other members in the team. These individuals will still influence the decisionmaker during private discussions and caucuses.



### Punctuality

Americans place a great emphasis on punctuality, viewing it as an indication of an individual's basic ability and commitment. Professionals from Australia, the Benelux countries, France, Germany, Switzerland, Sweden, the United Kingdom, and Japan emphasize punctuality even more than Americans. Conversely, time is considered relative for those in Mexico and other Latin American countries. Members of most African cultures cannot understand why others have to conduct all their activities according to a clock. Appointments often start late, are rescheduled, or are canceled altogether. Figure 2 provides a snapshot of the cultural views of punctuality.

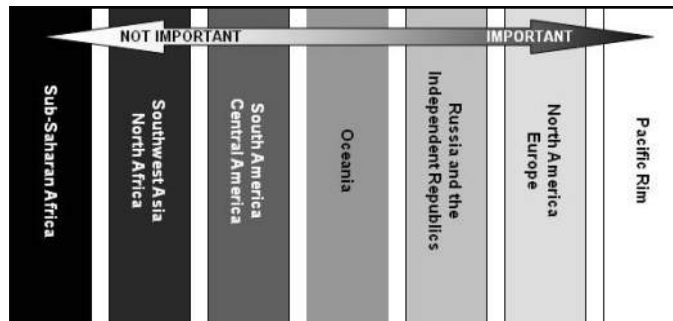


Figure 2. Punctuality

### Pace of Negotiations

The pace of negotiations in the United States is faster than in most other cultures; consequently, the negotiating process between Americans is usually much shorter. In the opening phase of negotiations, American negotiators normally do not spend much time on introductions and getting to know their counterparts. Little attention is given to building rapport or creating a positive and

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relaxed negotiating climate. American negotiators typically do not show much interest in learning about the roles of the team members in the counterpart's negotiating team. In fact, an American negotiator may not even spend much time introducing himself to the other members of his own team. American negotiators tend to attack the task of negotiating as quickly as possible.

Although the results-oriented approach is effective in many U.S. scenarios, it may create the impression with foreign counterparts that the U.S. negotiator is untrustworthy—that he is trying to force a decision at the expense of the other side. Foreign counterparts may feel that the U.S. negotiator is trying to exploit both them and the situation. Such negative perceptions may lead the foreign negotiator to avoid making any deals. The foreign negotiator—unlike his American counterpart—often does not want to simply arrive at a settlement or conclusion; he wants to build a positive relationship for future negotiations.

Negotiators from many other cultures spend more time on relationship issues and building rapport, particularly at the beginning. If U.S. negotiators do not consciously force themselves to slow this important phase of negotiations, they will fail to get vital information from their counterparts, create distrust, and weaken their chances of gaining vital concessions. Throughout cross-cultural negotiations, American negotiators resist temptations to make early concessions in order to move the negotiation forward or to demonstrate willingness to compromise. American negotiators who rush may make unnecessary concessions and actually weaken their position. Interestingly, research suggests that the party who makes the first concession usually gets the worst part of a deal.

Negotiators in the United States tend to close negotiations much faster than negotiators in other cultures. Often working under rigid timelines, U.S. negotiators must produce results quickly so that they can turn their attention to other tasks. The closing of a negotiation is looked upon by many other cultures as the time to cement the

relationship. An American negotiator who rushes away from a successful meeting may leave the foreign negotiator with a less-than-desirable final impression.

**Note:** A counterpart may offer to help with travel arrangements as an act of courtesy. Negotiators should use caution in accepting this offer. Counterparts who make the travel arrangements become privy to how much time the U.S. representative has to negotiate. The foreign negotiator may use this information to add additional pressure as the scheduled departure time draws near.

Negotiators from Canada, the Benelux countries, Sweden, Switzerland, and the United Kingdom maintain a pace similar to that of Americans. The negotiating pace in countries, such as Italy, Spain, and even Australia is somewhat slower than in the United States. French, German, Russian, and Japanese negotiators are used to a much slower negotiating pace. Negotiators from the Pacific Rim, Latin America, and most Africa countries proceed the slowest. American negotiators must significantly slow their pace when negotiating with persons from these cultures. Figure 3 provides a snapshot of cultural views of negotiation pace.

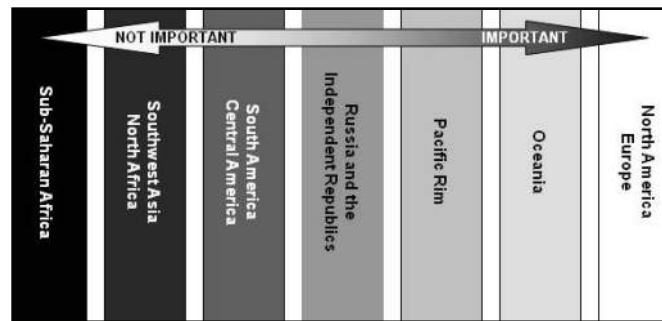


Figure 3. Pace

### **Relationship Building**

Americans are very competitive during negotiations and are inclined to stress short-term results. Interpersonal relationships are of minimal importance to American negotiators. Building long-term relationships only occurs after the successful completion of negotiations.

Countries in Western Europe vary somewhat in the importance they place on establishing business relationships. German and French negotiators are very similar to Americans, placing little value on the development of long-term relationships. British, Scandinavian, and Swiss negotiators, however, display a slightly larger need to build relationships. Spanish and Italian negotiators have an even greater need to establish good relationships with their negotiating counterparts.

Except for Southern Africa, negotiators from the African cultures often stress the need to build relationships among themselves, but do not display a similar emphasis with negotiators from non-African cultures. When conducting negotiations, most Eastern European cultures do not value personal relationships as much as Americans. This is unlike the neighboring Russian cultural region, where negotiators display a slightly greater need for personal relationships—about as much as that of their American counterparts.

In Latin America, the Middle East, and the Pacific Rim, personal relationships rate high among the needs of negotiators. Friendship opens the door to a successful negotiation. Negotiators often expect to get together before negotiations so that they can get to know one another on a social level. Even during negotiation, members of these cultures spend a long time on general conversation before they introduce business. Negotiators from these three regions spend a great deal of time on the opening phase of negotiations. They first need to know the person with whom they are negotiating, and they must have a high level of trust in that person before they start making deals.

When dealing with persons from Latin America, the Middle East, and the Pacific Rim, American negotiators should plan first to engage in

small talk. Subjects such as politics, race, religion, and gender issues should be avoided. These topics seldom help to build relationships between strangers. Instead, American negotiators should try discussing the foreign country's history, cultural heritage, traditions, beautiful countryside, and contribution to the arts, economic successes, and popular sports. Questions about local restaurants are usually safe, neutral topics to begin a conversation. Negotiators must be prepared to discuss typical American traditions, sports, and cultural heritage; however, they must be careful not to go overboard with talk about America. It may come across as pompous and overbearing.

### **Language**

Business, government, and military personnel in Western European countries—particularly Germany, France, and the Benelux countries—commonly speak English. In France, however, even if the counterpart is fluent in English, negotiators are expected either to speak French or to use an interpreter. Most French do not like to speak English; they are very proud of their language. If a French negotiator does agree to use English, he will make it known that he is doing his American counterpart an enormous favor.

In some Western European nations—Spain, Portugal, and Italy, for example—most business, government, and military people do not speak English. Unless fluent in the local language, negotiators will need an interpreter. Counterparts in these countries also will expect American negotiators to present them with detailed written proposals in the local language. Interpreters also are required in any countries or regions where English is not a common language, such as Russia, Eastern Europe, and China.

As with most cultures, most Middle Eastern and Central Asian cultures appreciate foreigners who take the trouble to learn a few simple courtesy words (such as hello, goodbye, and please). However, most Arabs greatly treasure spoken Arabic. They often prefer that foreigners who are not fluent refrain from using more than

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a few, basic courtesy words. Most Arab businesspeople, government officials, and military officers speak at least some English; many are quite fluent.

English is widely spoken in business circles of Latin America and the Pacific Rim countries, but not necessarily within local government and military circles. English is a common language in sub-Saharan Africa because of the vast number of tribal dialects. English and French are common among the educated in sub-Saharan Africa, with English being more common in East Africa. English is an official language of Kenya. The western portion of sub-Saharan Africa has more French speakers, who often consider speaking French the mark of an educated person.

The interpreter is a vital link to the target audience. Native speakers can provide Civil Affairs forces with more than a multilingual capability. They can also provide valuable insight to local customs and calendar events that might impact the negotiation. Negotiators should be aware that a good interpreter, especially if he is local, could be invaluable in translating subtleties and hidden meanings during negotiations.

This added benefit may also bring unseen biases into negotiations. It is safe to assume that if the interpreter is not a U.S. citizen; his loyalty may not lay with U.S. interests and by nature, his religious beliefs, politics, and prejudices will permeate his speech. Continual vetting and the implementation of a training program will foster teamwork and help to identify any problem areas. It is also good practice to conduct rehearsals before each engagement to get the interpreter familiar with the topics.

In impromptu circumstances, or when the Civil Affairs negotiator has not worked with the interpreter before, it is a good practice to use short sentences and simple words. This time-saving technique allows everyone to follow the dialogue in both languages and helps prevent problematic transliterations. As a rule, refrain from using abbreviations or acronyms. They can cause confusion, and many cultures do not wish to advertise any lack of understanding and will

therefore not ask for any clarification. The negotiator should not make any assumptions; for example, he should not base the interpreter's reading or writing skills on his ability to speak. Nor should the negotiator assume that because there is an interpreter present the other negotiator does not understand English.

### **CONDUCTING CROSS-CULTURAL NEGOTIATIONS**

The basic elements common to all negotiations must be applied in a way that allows for the differing cultures of the participants. Elements that must be considered include the following:

- Opening strategies.
- Directness.
- Strengthening behaviors.
- Movement.
- Power.
- Face-saving.
- Formal agreements.
- Mediation.

#### **Opening Strategies**

The opening strategies of negotiators differ from one culture to the next. In the United States, negotiators tend to open with offers or demands that are very different from their final positions or expectations. They leave a healthy margin to bargain. Many other countries use a similar approach to negotiations; however, the application of this strategy may be very different.

Negotiators from most Pacific Rim countries also tend to open high, but not as high as American negotiators. Negotiators from these countries might not allow themselves as much bargaining room as American negotiators might expect.

Negotiators from the Middle East and Russia usually open with high to extremely high demands. Russians are well-known for opening with extreme demands or offers; some may even strain or exceed credibility. Therefore, they allow themselves a tremendous amount of

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bargaining room. American advisors must be cognizant of this practice so that they can build enough fat into their own negotiating range.

Doctor Henry Kissinger adapted his negotiating style to match his Russian counterparts. In his negotiations with the Union of Soviet Socialist Republics, Dr. Kissinger always opened with extreme demands and offers. If agreement must be reached somewhere between the two side's opening positions, he reasoned, it would make little sense to open with a moderate or reasonable demand. With the distance between opening positions broadened, Dr. Kissinger allowed himself sufficient bargaining room.

African negotiators tend to open with high to extreme demands. This is especially evident in labor negotiations. In other regions, such as Western Europe (less Spain and Scandinavia) and Latin America (less Mexico), negotiators open with moderate demands or offers that are close to their walk-away positions. American negotiators may expect them to move slowly and to make small concessions.

Regardless of the cultural differences between Americans and negotiators from other countries, it generally is wise to aim high. High opening positions lower the counterpart's expectations. They convey a silent message that the American negotiator believes in his case. They also leave enough bargaining space to allow the counterpart to win concessions without materially affecting the outcome. This allows the foreign negotiator to save face and report back to his superior that he was successful.

**Directness**

American negotiators are extremely direct. They ask counterparts direct questions, such as, "How do you feel about my proposal?" American negotiators are time-driven and want fast results. Because this approach is almost entirely unique to American and certain European cultural regions, it can create tension and difficulties.



Negotiators from most other cultures do not appreciate such directness. They perceive Americans as pushy and they resent direct behavior.

Negotiators from Latin America, Russia, Africa, and the Pacific Rim are less forthright than Americans. Members of the Pacific Rim cultural region—particularly China and Japan—negotiate in a very indirect manner. The true message from a Japanese negotiator, for example, is usually found between the lines. It must be extracted from the general context of the negotiations. Without ever really saying “yes” a Japanese negotiator may agree with an American negotiator. Similarly, the same individual may say yes without really agreeing; he may simply be indicating that he understands the message.

### **Strengthening Behaviors**

American negotiators prefer to deal with one issue at a time. In the United States formal presentations are favored, backup information is accurate, differences are dealt with directly, and detailed discussions of issues are common. Being results-driven, U.S. negotiators try to get through the negotiations as quickly and efficiently as possible.

The negotiating practices of Europeans are somewhat similar to the United States. They candidly express disagreements; however, they do so politely. Europeans tend to be more precise with facts than their American counterparts. They expect more detail in presentations and will take time to analyze the data very closely. They appreciate conceptually strong presentations. They are argumentative and like to debate issues to search for flaws in the logic of the opposing position. If they discover such a flaw, they will focus on it and fully exploit it. Any hesitation in answering their questions is normally interpreted as a sign of uncertainty, weak preparation, unprofessional behavior, or, even worse, as an indication of deceit.

African negotiators are less interested in the underlying logic of a position and are more prone to focus on specific facts and the details of propositions. With extensive questioning and debate, negotiations are often long, slow, and frustrating. The regional tendency for collective decisionmaking helps to slow the process even more.

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Negotiators often want to consult with persons who may be affected by the negotiations, particularly those who were not present. Although they prefer to discuss groups of issues, they are quick to pick out the good concessions and continue negotiating the ones they dislike. They will usually state any disagreements quickly. At times they may disagree so fiercely that it may come across as rudeness. However, care should be taken in interpreting their gesture. Normally, it is less a negotiating tactic than a normal means of expression. There is a good chance that no offense is intended.

Russian and Eastern European negotiators also expect rational presentations and will ardently argue the reliability of the facts presented. They often link issues and discuss them in groups instead of addressing issues one at a time. Consequently, the American negotiator must be thoroughly prepared and ready to cover multiple issues at a time.

Latin American and Middle East negotiators are notably passionate and argumentative. Emotions play a significant role during these negotiations. People from these regions express themselves strongly and vividly. They frequently wave their arms, speak very loudly, shake their heads, and throw down their pens to show their astonishment at the opposing side's positions. A negotiator who does not expect this behavior will feel uncomfortable, embarrassed, and perhaps even ashamed of his proposals. American negotiators must be prepared to deal with these emotional displays and not allow them to lead to unnecessary concessions. The best way to accomplish this is to allow the opponent to carry on without reacting to it; it should never be taken personally. The foreign counterpart (probably) does not intend to embarrass or make the American negotiator uncomfortable. It is simply part of his culture. The worst thing an American negotiator can do when encountering this behavior is to begin making concessions. Such actions simply reward the counterpart for his behavior.

Negotiators from the Pacific Rim prefer to have a large amount of information to help them decide. They use considerable technical detail to back up their proposals, and they expect the same of their

opponents. Their negotiating style is reserved; they will quietly and politely disagree. Negotiations can be lengthy. Pacific Rim negotiators—particularly those from Japan, China, and Malaysia—like to carefully analyze data. Also, the group decisionmaking practiced in most Pacific Rim countries slows the negotiating process because all the members must agree.

*Note:* One notable exception among the Pacific Rim countries is Singapore, where it is customary to negotiate briskly.

### **Movement**

Americans are tough negotiators. They concede points reluctantly and save concessions until late in the negotiations. When they do concede an issue, that concession often is the only one they are prepared to make on the issue. Because they are only prone to make a single concession, they tend to hold out for a long time without budging. When they eventually do move, they normally make the entire concession in a single move.

Other cultures may have different concession behaviors. The successful negotiator needs to become familiar with these behaviors. If the American negotiator knows what to expect, he can better prepare to adapt the strategy accordingly.

As noted earlier, consensus is important to African negotiators and they tend to base their decisions on group consensus. This significantly slows the negotiating process and leads to an escalating pattern of concession making, with the larger concessions made toward the end. Negotiators from the Pacific Rim also move slowly. Here too, group consensus is critical.

Negotiators from Russia and Eastern Europe tend to take an even harder line than Americans or Europeans. They do, however, move very slowly. This includes the granting of any concessions. Historically, Russian negotiators possess very limited authority and must regularly report back to their principals. Several negotiating sessions, with lengthy periods between, may be necessary to complete an agreement.

**Power**

In the United States, military, business, and government organizational power tends to spread from the top downwards. The most important job in any organization is the most senior officer who has final decisionmaking power. However, it is common for Americans to delegate much of this power to subordinates of middle rank. Officers lower down the line often are involved in key decisions. A middle-ranking officer may enjoy considerable power in deciding everyday issues. He may also have full authority to negotiate on certain issues.

In Western European organizations, the involvement of middle managers in key decisions is low. Delegation of power is limited. In Eastern Europe, power is even more centralized and bureaucratic. This slows the negotiating process. When conducting business in Europe, American negotiators must ensure that the counterpart has the authority to make decisions.

In Latin America, the senior officer makes decisions. Middle-ranking negotiators take their cues from the senior member of the negotiating team. Negotiators operating in Latin America must focus on convincing the negotiation leaders of the merit of their proposals.

Along the Pacific Rim, organizational power tends to be more-or-less evenly distributed among the various levels of management. Decisionmaking is based on group consensus. The leader of the foreign delegation may not have full authority to make commitments with the American negotiator. Often, however, this individual does have the authority to cancel negotiations. In other words, although he may not have the authority to say yes, he may have the authority to say no.

In Africa, organizational power often follows the hierarchy of the organization. The most senior manager makes decisions, but he will consult with managers lower in rank. The senior manager will make decisions that he believes are correct, even if it runs counter to the opinion of lower managers. American negotiators should concentrate their efforts on the most senior member while convincing the entire group.

**Face-Saving**

Although nobody likes to be embarrassed, American negotiators have a comparatively low need to save face during negotiations. Negotiations are either won or lost, and the American negotiator moves on to the next project. Negotiators from cultures, such as Latin America, Japan, and other Pacific Rim countries show a far greater need to save face. In these countries, it can be a major disaster to undermine the respect and value of your opponent in the eyes of his colleagues. For instance, an American negotiator should never address the person on the other side who speaks the best English. The more senior person in the other team may take this as a great insult—one that is not easily forgiven. American negotiators should never use curses, vulgar expressions, or other expletives during negotiations. Criticism should not be made unless absolutely necessary and should only be done in private. Most importantly, American negotiators must be prepared to make concessions that the opponent can take away as a win or gain.

**Formal Agreements**

Americans are known for their willingness to approach the courts for legal assistance. The impact of this phenomenon on negotiations is that foreigners may not trust Americans who want to create extensively detailed agreements. They may see it as the American negotiator's first step toward taking them to court. Because the foreign negotiator wants to build a relationship with the person with whom he is negotiating, he may feel that excessive paperwork is obstructive to building trust. Consequently, an American negotiator must be sensitive about these cultural differences, and should attempt to balance the counterpart's distaste for detailed contracts with the need to secure American interests.

Negotiators from Latin American, Pacific Rim, and Middle Eastern countries tend to avoid extensive written contracts. They want to create relationships, not paperwork. Trust is the cornerstone of their negotiations. If they do not trust someone, that person will have a serious problem in trying to make a deal with them.

The American fondness for detailed contracts is shared by other cultures. Negotiators from Europe, for example, also tend to draft

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thorough contracts. This is also true of many African negotiators. American negotiators should experience few problems when presenting extensive written agreements to negotiators from these countries.

**Mediation**

Negotiation in the United States often is viewed as two-sided, each side attempting to argue one position against the other. The Civil Affairs Soldier taking part in foreign negotiations may be required to assume a unique role—a role that does represent one side against the other. The Civil Affairs Soldier may need to assume the role of mediator between two opposing parties.

Mediation is a peaceful method for resolving differences and disputes with the help of an outside intermediary. Many cultures fail to appreciate the value of mediation. Because often it is not explained properly, many people do not understand the process. Others mistake it for arbitration, where someone makes a decision for the parties. Culture affects the way people view mediation.

Cultural differences cause inconsistencies in the expectations of mediators. In Western society, neutrality of the mediator is important. In African society, mediators are expected to provide advice or to offer solutions. If a mediator does not offer advice, the African parties may feel that the mediator is ineffective, and the Western party may feel that the mediator is doing a great job. Similarly, if the mediator does offer advice, the African may feel that the mediator is doing a great job, and the Western person may feel that the mediator is biased.

If serving as a mediator, the Civil Affairs Soldier must present a neutral position. Presenting neutrality can be difficult when the mediator comes from a different background than the disputants. The two disputants may view the mediator and one another with such skepticism that mediation may not be possible at all. The mediator will have a major task convincing the disputants of neutrality. The mediators must find ways to prove neutrality.

Cultural differences may affect communication during mediation. For example, eye contact during mediation may be appropriate between disputants of the same culture, but it may be inappropriate between disputants from other cultures. In some cultures, maintaining eye contact is a sign of respect; in others it may be viewed as offensive. Disputants from different cultural backgrounds must be sensitive to the significance of every gesture.

Mediators must try to guide parties through rational problem-solving stages. This may clash with one (or both) of the parties' cultural decisionmaking or conflict resolution patterns. Certain groups use circular reasoning or passionate discussions.

In cross-cultural conflicts, an enormous imbalance of power may exist, particularly between majority and minority groups. The more powerful party may exert greater influence because of better negotiation skills or greater resources. To succeed at mediation, a mediator may try to redistribute the power. When this happens, the more powerful group may conclude that the mediator is no longer neutral and may, as a result, withdraw from the process.

Mediators must understand that cultural values and biases influence everyone. They must realize that cultural conditioning may be the cause of the parties' negative feelings toward one another. Although the problem-solving approach makes sense to many people, others will revert to a confrontational stance in certain situations. To be successful, mediators must develop the ability not only to see the conflict clearly from his perspective, but also from the perspective of each of the disputing parties.

### **Final Tips on Cross-Cultural Negotiation**

The negotiator should do the following when conducting cross-cultural negotiations:

- Approach each conversation as an opportunity to learn about the other person's point of view. Think, "I wonder why they keep doing that?" instead of "I am sick of them doing that and I am finally going to tell them so!"
- Assume that he does not know what the other person's motivations are, because chances are, he does not.
- Keep facts separate; do not mix them up with feelings.
- Discuss his feelings, but without mixing them with intentions or facts. "What you did made me angry," is better than "Why are you constantly trying to upset me?"
- Look for solutions, not blame.
- Be honest with himself about his own motivations and feelings. He needs to ask himself why he finds this conversation difficult. Is it because of similar situations that went badly in the past?
- Realize difficult conversations are part of life. They are not going to go away, but they can become easier and more constructive.



## **MEDIATION**

Because mediation is the preferred method for conducting bilateral or multilateral talks, these guidelines are written mainly to facilitate mediation. However, the principles contained below should also apply in those cases where the Civil Affairs Soldier is serving as a negotiator or arbitrator.

The mediation process, like the interview process, consists of three distinct phases: the preparatory phase, the meeting phase, and the post-meeting phase. Unlike the interview process, which is normally a one-time event, the three phases are repeated before each mediation event.

### **PREPARATORY PHASE**

This phase includes determining where the mediation should take place, as well as doing research to understand what factors are involved so that a successful outcome of the mediation process will result. The following paragraphs discuss these actions.

#### **Environment**

When setting the environment, the mediator considers the physical meeting place and the individual or group requirements of the parties present at the mediation. The mediator should consider preferences among the representatives for a specific time or location. However, a safe, quick route equidistant for as many of the involved parties as possible should be the priority. All parties must feel secure and comfortable while at the mediation site. Shelter, water, food, light, telephone and communications assets, restrooms, paper and pens, chairs and tables, and any other requisite supplies should be readily available.

#### **Situation Research**

Preparation, as in any military operation, is the key to a successful mediation. The mediator must know the factual situation and the nuances that the local representatives will apply to the facts. The condition of local factories, level of education, age of the populace, amount of farming versus manufacturing, and lines of

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communications (roads, telephones, water, and so on) are but a part of the overall situation. Also critical are political inclination before and after the conflict, economic ties outside the country, and the ideologies of internal and external pressure groups seeking cooperation or disharmony.

The mediator must be fully aware of the resources he can exploit to reach an agreement. He must know about all possible resources, not only from the organization that he represents but also from other international, nongovernmental, or private groups operating in the theater.

The mediator should also know which requirements of the local populace he could leverage to increase pressure on the local representatives to comply with efforts to enhance stability and peace. For example, there may exist in the area of operations factories that are missing an easily procured part or farmland that could productively grow an alternate crop. Although this knowledge does not directly lead to an agreement, an effort by the mediator to obtain the missing part or an alternate crop source could nudge a party toward cooperation.

The local slant on the facts will vary by person, village, county, and nation. Mediators must know what each party can and will concede, and ensure that a balance is achieved.

The mediator must know as much as possible about the parties that are directly and indirectly involved in the mediation. There will be personalities and pressures from behind the scenes that can affect the willingness of the local representative to support an agreement. Mediators must know the ability of the people present at the table to effectively comply with any agreement that they sign. Frustration and distrust are hard to overcome when an unseen person derails an agreement made in good faith.

The mediator must also know if the local representative can sign an agreement and expect the support of the populace. If popular support is not forthcoming, any momentum toward stability will be lost. Finally, the mediator must know which international parties have an

influence on, as well as an interest in, the topics of the mediation. The mediator should ensure that the goals of the mediation are not at odds with those of a member of the international community.

When using an interpreter, the mediator must also be mindful of the interpreter's personal bias filter. To ensure the integrity and accuracy of interpreters, the mediator should arrange for a routine check of the interpreters. If the interpreter works directly for the mediator, the mediator arranges the check; if the interpreter is from a pool of interpreters, the mediator arranges a check with the interpreter's supervisor. Before key meetings, the mediator should brief the interpreters to ensure the interpreters understand new or difficult ideas and explain uncommon words and their definitions.

When hiring interpreters, mediators must consider many factors. Local interpreters tend to be the most fluent and have a better command of dialects, but they will be more likely to have more pronounced biases based upon their personal experiences and loyalties to particular ethnic or religious groups. American interpreters have a lower tendency to have personal biases, either for or against a party, but their command of local dialects may not equal that of a native speaker. If possible, mediators should use interpreters in tandem to ensure accuracy and reliability, and to reduce the effects of personal bias.

One of the most difficult challenges facing a mediator is ensuring that all parties are represented. In some cases, portions of the populace will be either underrepresented or not represented at all. The mediator must know the demographics of the region to integrate all potential interested parties into the process. Failure to do so will lessen overall support for stability and may actually lay the foundation for future controversy where the United States is cited as a biased entity.

#### **MEETING PHASE**

Effective communication is essential to maintain successful negotiations. This will often take place within meetings. Meetings may be informal and spontaneous or may be routine. However, Civil Affairs Soldiers must carefully think out and plan the briefing.

### **Before the Meeting**

Before any meeting, the Civil Affairs Soldier conducting the meeting should accomplish the following:

- Identify the reason for members meeting face-to-face.
- Ensure members have been invited well in advance.
- Establish the objectives for the meeting.
- Ensure all participants understand the objectives.
- Circulate reports and other documentation pertinent to the discussion before the meeting so information can be read and digested.
- Prepare the physical environment beforehand (check for warmth, fresh air, light, seating arrangements, security, communications support, accessibility of the meeting location, and solitude). The Civil Affairs Soldier should also—
  - Ensure appropriate visual aids (whiteboards, markers, sheets of paper, recording equipment, and overhead projectors) are in place.
  - Arrange members so they can face each other, if possible; for larger groups, he should try U-shaped rows. A leader has better control when he is centrally located.
  - In planning for negotiations, interpreter seating arrangements are critical. Careful positioning will help the negotiators maintain eye contact and keep the spotlight on the negotiation, not the interpreter.
  - Choose a location suitable to group size. Small rooms with too many people get stuffy and create tension. A larger room is more comfortable and encourages individual expression.
  - Vary meeting places, if possible, to accommodate different members.
- Collect any other resources needed for the meeting.
- Assemble static displays, if used.

- Establish and publish an agenda.
- Identify and prepare a facilitator.
- Identify and prepare a recorder.

### **At The Meeting**

During the meeting, the facilitator will—

- Make sure the meeting starts on time.
- Be knowledgeable on appropriate social customs and requirements.
- Be aware that people of different cultures may follow different time scales. If there are latecomers, welcome them, give them a moment to settle, and then tell them what the group is doing.
- Welcome members and organizations, and conduct introductions.
- Articulate ground rules that have been developed by the members:
  - *Respect for other people.* There will be no interrupting, no long monologues, no personal abuse, and sufficient time for everybody to express their views.
  - *Confidentiality.* Agreement needs to be reached on whether meeting content shall be discussed outside the meeting.
  - *Responsibility.* Everybody agrees to take responsibility for timekeeping, keeping to the agenda, and voicing their opinions in the meeting rather than afterward.
  - *Physical comfort.* Agreement needs to be reached on whether smoking is permissible or whether breaks can be negotiated.
  - *Decisionmaking.* Agreement needs to be reached on how decisions are to be made—by consensus or voting. If consensus cannot be achieved, at what point will alternative decisionmaking methods be used and who will decide?

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- Keep the group focused on the agenda.
- Thank everyone for attending the meeting and, if appropriate, set the time and place for the next meeting.
- Conduct a documents security check of the room or area after the meeting.

#### **After the Meeting**

After the meeting, members discuss problems so improvements can be made. The facilitator will—

- Follow up on delegation decisions, ensuring all members understand and carry out their responsibilities.
- Give recognition and appreciation to excellent and timely progress.
- Put unfinished business on the agenda for the next meeting.
- Conduct a periodic evaluation of the meetings. The facilitator can analyze productivity and make necessary adjustments.
- Ensure action plans and follow-ups are confirmed.
- Ensure minutes are checked (by both the facilitator and recorder).
- Ensure the timeframe for publication and distribution of minutes, reports, and the next agenda is arranged, as required.

#### **Goal Explanation**

The methods and operational aspects of an operation may be classified, but there is nothing classified about the goals of U.S. policy. Upon meeting the parties to the mediation, the mediator must be forthright and direct with what is expected between parties as it pertains to the establishment of stability and lasting peace. The mediator should present the U.S. goals to all parties to the mediation in written form and in the local language. After the local representatives have read the goals, the mediator should ask questions of them to ensure that they understand the goals and that there is no

mistaken conception that the mediator is trying to further the particular interests of either the United States or a local entity.

Neither the goal of stability nor of peace should have negative connotations. When applicable, the mediator should place the mediation effort in the context of a larger framework of international or regional agreements, or a treaty signed by a higher-level local government official.

**Establishment of a Professional Interpersonal Relationship with the Parties**

It is a challenge to balance the interpersonal relationship between the mediator and the local parties. Mediators must be accessible and open without appearing to favor one side over another. Any social meeting should be brief and based upon the professional relationship. Any appearance of being overly cordial with a party to the negotiation will erode trust. Mediators should treat all meetings as if they were in a business environment to preclude the taint of impropriety.

**Fairness and Impartiality**

In conjunction with interpersonal relationships, mediators must show fairness and impartiality. When a mediator suggests a program or offers to assist in providing funding or support for a cooperative project that adheres to U.S. policy goals, he must equitably divide the resources to ensure that neither side profits at the expense of the other.

Similarly, the mediator must know when to allocate rewards and punishments. If one party consistently cooperates while another party constantly resists or refuses to cooperate, the mediator must simultaneously reward and punish the respective participants. In this situation, an effective way to influence behavior is to seek an increase in funding or support for programs that benefit those who cooperate, and decrease funding or support for programs that aid the uncooperative.

Mediators should exercise discretion concerning the treatment of previously noncooperative parties, once they begin to cooperate. The

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mediator may recommend restoring lost funding or support or he may simply recommend that funding or support is permanently lost.

### **Perception Equals Reality**

An essential tenet in all mediation efforts in a post-conflict environment is that perception is the same as reality. The basis for reality is how a person perceives recent events and not how actual facts prove the perception right or wrong. Therefore, if a party to mediation perceives he was wronged, then he was wronged. Alternatively, if the United States was perceived as taking a side, the United States has, de facto, taken a side.

It is not the impartial mediator's place to correct false perception. In any event, he will be unable to do so in the limited amount of time he has to affect the situation. The mediator must be aware of local misperceptions and find a way to circumvent them. In a post-conflict environment, an effective way to correct misperceptions is by long-term revisions made with small steps.

### **Something Tangible to Offer**

While remaining impartial, the mediator must have something tangible to offer the parties for cooperation and, therefore, something tangible to take away for failing to cooperate. Otherwise, the mediator is only an observer and cannot lead the mediation effort toward cooperation, stability, and peace. There are instances, however, where a mediator has nothing traditionally tangible to offer. Funding may be slow in coming or nonexistent. In those cases, the mediator will have to improvise and seek either nontraditional support or methods that allow military resources to assist. The mediator can always leverage the prestige of cooperating with the United States. It is unusual for local politicians not to want to appear as being able to hold their own in a U.S.-led arena.



### **Money Equals Influence**

Money usually equals immediate influence; however, the use of cash can cause problems if not closely monitored. Mediators must not appear to be using funding for projects to force local officials into cooperating in agreements that run counter to the interests of the local populace.

The United States funds foreign aid projects expressly to influence the decisions of local officials. However, the perception that an official is a puppet of the United States will lessen his effectiveness in the community and quell popular support for U.S. policy.

### **Refocus of the Mediation Effort**

There are situations when the mediator may have to refocus the mediation effort. If the participants are actively opposing U.S. policy and the mediator's concerted efforts fail to alter that behavior, the mediator should redirect his effort. This is a very delicate and complex task. If the uncooperative representatives are able to quickly or easily replace, by domestic or international means, the same support or funding withdrawn by the U.S. representative, then the prestige and influence of the United States is adversely affected. The mediator should display his determination to seek stability and leverage his ability to curtail support for the uncooperative officials. Coordination with various members of the intergovernmental organizations operating in the area is critical.

If the mediator must redirect the mediation, he should consider different communication methods. The mediator can alter the meeting location, change which entities participate, reassess what subjects will be addressed, find a different intergovernmental organization to host, allow for surrogates, or lower the level of representatives from the local communities. To succeed, the mediator must be flexible.

The mediator must consistently demonstrate that the U.S. determination to achieve stability and peace is greater than the local dedication to continued conflict. He must constantly reiterate the goal

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of cooperation over the protests of the locals to confirm that the U.S. staying power will overcome any attempt to stall progress toward peace.

**Mediator Control**

Mediators must always be in control of themselves and the members of their team and not become personally involved. This is very difficult when the mediator has knowledge of a particular participant's inhumane acts or when a party to the mediation exhibits an aggressive attitude. No matter the circumstances, the mediator and his subordinates must maintain their composure.

Mediators must also control the outbursts of the participants. The mediator cannot tolerate belligerent acts or threats. When unacceptable behavior occurs, the mediator must stop the talks immediately to prevent escalation. The mediator should then schedule separate and private meetings with each participant to reiterate what is expected of each party.

The mediator, however, should not be emotionless. There are times when the mediator should show his disapproval, both verbally and through body language. Although the mediator should not yell or aggressively approach any participant, he should schedule a private meeting to clarify the reason for his disapproval.

**Option to Retreat**

Parties to mediation should always have an option to retreat. The goal of mediation is not to defeat a party but to instill cooperation toward stability and peace. There may be times when a participant cannot support a position and the mediator should tactfully allow the party a face-saving route of escape. If an agreement is made with a party that felt trapped, that party is very unlikely to honor the agreement. It is more effective to reschedule and meet when actual progress can be made than to reach an agreement that will be discarded. All parties should be able to retreat honorably or with some form of victory.

### **Private Meetings**

Private meetings have an important role in mediation efforts. They allow the mediator and each participant to know one another on a personal level, and both the mediator and the individual party can explain their particular goals. In addition, issues a party would not discuss in front of an adversary can be discussed while details and differences of opinion can be ironed out.

The mediator should be aware that too many private meetings with one party or another may give the appearance of favoritism. Main issues of the mediation should be the focus in private meetings.

An effective use of the private meeting format is mediation conducted in seclusion and without outside witnesses. Because the parties do not have the opportunity or feel the pressure to bluster or outmaneuver their adversary for the benefit of the public, these meetings can be very constructive. Once cooperation and trust are established, private meetings can quickly lead to progress.

### **Public Meetings**

Public meetings are the most effective vehicle for widely demonstrating progress and support for increased trust, cooperation, stability, and peace between former warring parties. Public meetings also help establish the air of permanence and, thereby, add to the legitimacy of the effort.

Although public meetings are preferable to private meetings, the costs and inherent inefficiencies may outweigh the benefits. Coordinating public meetings can be extremely difficult. As local and international spectators attend the mediation, the physical requirements increase drastically. Security and safety issues also become more acute. The mediator must weigh concerns for security against the public display for stability and peace. Mediators must also ensure that the desire to cooperate and pursue stability and peace is genuine, and that parties will not intentionally use a public meeting to disrupt cooperation or U.S. policy.

## **POSTMEETING PHASE**

The postmeeting phase is the implementation and follow-through required for a successful mediation. The following paragraphs discuss the necessary actions that mediators must take.

### **Representative Accountability**

Once a local representative commits to and signs an agreement, he must be held accountable to the terms of the agreement. Support and funding for projects that benefit the signatories' communities should always be directly linked to continued adherence to all agreements.

The mediator must establish a system that ensures every party will adhere to all agreements. If a signatory begins to veer away from the intent or the letter of an agreement, the mediator must be prepared to apportion punishment and clearly and directly explain the reason for the punishment.

The mediator should use all forms of local, national, and international press, as well as intergovernmental organizations that monitor the area as watchdogs. As often as possible, the mediator should publicize agreements to make them a matter of public record, which will compel the parties to comply.

### **Accurate Information Delivery to All Interested Parties**

The press can be a tremendous asset and a tremendous burden for mediators. There are particular guidelines for interacting with the media, and the public affairs officer within each command is tasked with announcing official information releases. The public affairs officer is also the primary source for information on contacting members of the press.

The public affairs officer, Civil Affairs, and information operations personnel must observe certain parameters when they integrate media. They have to conduct an analysis of the target audience and the method of information delivery. They must balance the significance of the event with the amount of press coverage. The size

and the literacy rate of the audience are also factors. In addition, the geographic area (local, regional, national, or international audiences) has a significant impact on which media will be effective.

The Civil Affairs civil information management officer and local military information support assets should also be integrated into the delivery of information. Close coordination for timing and dissemination is critical for success. Accurately informing the public about successful agreements will broaden popular support for stability and peace while reducing the negative impact of local perceptions about the behavior of their former adversaries.

Wording and translation of information releases are critical. As one who is fully knowledgeable of the subject matter, the mediator should be closely involved in drafting all documents describing key points about the agreement. When writing information releases, the mediator should use short, direct sentences that read well if quoted. Speeches should be available in written form. Ratified agreements should be presented in as many applicable languages as possible. The mediator should ensure the accuracy of all translations. For the television and radio media, the mediator ensures information appears in short but understandable pieces that are usable as sound bites. As with everything that is to be disseminated after having been translated, the mediator should ensure that appropriate personnel have vetted the translations.

Timing is critical to effectively announcing a successful mediation. The mediator coordinates with the information officer and the public affairs officer to ensure no events disrupt or detract from the mediator's announcement. The mediator releases information once he has ensured the content is not diluted or edited to the point where it is ineffective. If possible, the mediator should avoid dates that involve major holidays, elections, religious holy days, historical events, or dates when a critical announcement is scheduled. The mediator should also coordinate with the other members of the international community to eliminate the possibility of conflicting announcements.

### **Written Records and Agreements**

Written records of all meetings must be kept to ensure that all participants to the mediation understand important terms, conditions, and definitions within an agreement. Without written records, it is impossible to establish the accuracy of an agreement. The parties to the mediation should see that notes and records are being kept. This serves two purposes: first, it reinforces the understanding that the participants will be held to the terms of the agreement and, therefore, should not make statements without intending to honor them; and second, a written record can be forwarded to the participants for their records. This documentation boosts the professional image of the mediation, thereby enhancing the legitimacy of the mediation effort.

All agreements must be written and translated. A handshake to symbolize the final acceptance of an agreement is excellent for a closing but does not substitute for a written and signed agreement. If necessary, the mediator can gather signatures on a working version of the agreement to establish documentation of an agreement. From this working version, the mediator can formalize the agreement with an official signing ceremony. The mediator should use all of these protocols to reinforce, among the local population as well as their representatives, the seriousness of the agreement and that all agreements will be monitored for compliance.

English is commonly accepted as the international language of agreements. During mediation, therefore, the English version of an agreement is the official version. If the intent or terms of an agreement are challenged, the English version must be the benchmark for all clarifications.

### **Mediation and Transition to the International Community**

The mediator should establish a routine by scheduling mediation meetings at set intervals. As the mediation progresses, he should invite key members from the international community to observe and participate. After the members of the international community become more active, the mediator may defer to them on decisions or

integrate their expertise. The mediator integrates members of the international community into the process as mediators and hosts to maximize exposure and establish cooperation. If possible, the mediator should encourage the group of participating entities to decide on a group name to encourage a sense of ownership and membership in an exclusive organization.

The mediator should transition the mediation effort, once firmly established, to the international community. The mediator can use the role of mediation leader, as well as the trust and prestige established over the term of the mediation effort, to prepare the participants for transition to the international community. Doing so will allow the international and nongovernmental institutions and organizations chartered to assist in these arenas to accomplish their mandates.

Effectively transitioning the international community into the lead role in the mediation effort will help them accomplish their respective missions and may lead to future international community support of U.S. military-led mediation efforts. As U.S. military representatives establish a reputation as effective mediators, the international community should in turn become more accepting of the U.S. military's mediation efforts and, therefore, become more enthusiastically supportive. Quicker support from the international community for U.S. military mediation efforts will then reduce the long-term requirement for U.S. force structure needed to conduct post-conflict operations.

The mediator should set a timetable in coordination with the international community that will gradually transition the lead role from the Civil Affairs mediator to a mediator from the international community. The Civil Affairs mediator should install a member of the international community as a co-mediator, or establish a pattern for alternating the role of lead mediator from one meeting to another. The Civil Affairs representative and the international community representative should be present at all meetings until final transition occurs. After coordinating with his chain of command, the mediator passes all records to the international community organization that is providing the person who is taking the position of lead mediator.

### **The Mediation Process and the Mediator's Actions**

Mediation in a post-conflict operation follows a general pattern. Although each operation is on a different timeline and can involve additional or fewer steps, the process remains constant. In some instances, steps in the process may take place at the same time or they may take place in a different order. The mediator must remain flexible and open to change based on the idiosyncrasies of the local situation. Because Civil Affairs mediators are often replaced at the six-month mark, the mediator must initiate the process as soon as possible after arrival. In addition, the mediator must have accurate records to ensure continuity when he transitions out.

Starting at establishing trust and ending at the first multilateral agreement, the average period for completing a mediation cycle is 4 to 6 months. Because the Civil Affairs mediator is usually in the area for about 6 months, he must act quickly and decisively to develop a plan for mediation. The following paragraphs describe the general mediation process and the steps the mediator takes during the process.

#### **Establishment of Trust (Closed Door—No Outside Observers, Participants, or Press)**

The mediator conducts one-to-one meetings to establish a professional relationship between himself and each individual participant. The mediator also explains U.S. policy goals, expectations, and the rewards of cooperation, as well as the consequences of noncooperation. The mediator compiles a list of the concerns and grievances of each party. He compares the lists and decides which issues show promise of cooperation. He looks for areas where infrastructure or lines of communication intersect. These areas generate many opportunities where the needs of the parties overlap. Group meetings of increasing size and frequency are held to establish a professional relationship between the participants. Following one-to-one and group meetings, the mediator tries to establish the routine of a social hour for small talk and to relax the participants in the company of former adversaries.



**Bilateral Mediation (Open or Closed Door—May or May Not Allow Outside Observers, Participants, or Press at the Mediator’s Discretion)**

The mediator orchestrates a simple agreement over a small issue that only involves two of the local entities or villages. He concentrates on those areas where concerns or needs overlap, and works with pairs of representatives from the local communities, one representative from each of the opposing sides. The mediator rewards the two participants with funding, support, or by coordinating assistance for their respective communities.

Throughout the entire course of the mediation, the mediator actively encourages all parties to meet outside the framework of the mediation. Details about wording or minor aspects about the terms and conditions of cooperation should take place directly between the opposing sides. The mediator should make every attempt to determine what the parties have agreed to, but the more important goal is to establish normalized communications between all local entities without the intervention of the international community or the U.S. military. The mediator meets with the representatives of adjacent entities or villages and discusses the successful cooperative efforts that are occurring in the region and the rewards that ensued.

The mediator keeps a comparative balance in the characteristics of the participants. He attempts to pair each entity with an entity from the opposition that has a similar size, infrastructure, farming or business base, and economic condition.

The mediator repeats the above process with issues of increasing importance to establish credibility in ever-expanding realms. He makes cooperation the norm so that it becomes expected and not a surprise.

The mediator initiates bilateral talks with as many pairs of the local entities as can be effectively managed. When possible, he works different issues with each pair to establish cooperation in various areas.

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As bilateral talks advance toward a multilateral setting, the mediator exploits established cooperation between any or all of the pairs of entities. He encourages parties to a successful bilateral mediation to mentor other pairs who are facing similar problems. As the process moves forward into more formalized multilateral mediation, the mediator builds teams from the pairs to establish a personal bond between the participants.

The above process lays the groundwork for meetings between multiple entities. Before moving forward in the process, the mediator should ensure that there are enough successful precedents to indicate that multilateral mediation will be fruitful.

**Multilateral Mediation (Open or Closed Door—May or May Not Allow Outside Observers, Participants, or Press at the Mediator’s Discretion)**

The mediator meets with the pairs of representatives developed during the bilateral phase to determine their combined concerns and issues. He also determines whether they are willing to talk with other pairs of representatives to discuss larger group cooperation and concessions. The mediator explains U.S. policy goals, the rewards of cooperation, and the consequences of noncooperation.

The mediator demonstrates the rewards and advantages of cooperation by citing previous cooperative ventures and the proceeds that the cooperative parties received for their communities. He explains the goals of the mediation and what each cooperative party can expect to gain at the conclusion of an acceptable agreement. (The mediator should ensure that the international community and the military chain of command can and will sustain any support or funding that is proffered.)

The mediator asks the participants to propose a name for the group that is representative of the entire region. He refers to commonplace names for rivers, mountain ranges, or any major terrain feature that the local populace can readily recognize. The mediator should ensure the name does not have potential negative connotations, such as a major battle or the site of an atrocity.

The mediator begins the multilateral mediation with a statement of intent to cooperate. He works out the details ahead of time and has the participants sign the document, either as a group or during one-to-one meetings. A group setting is preferred.

The mediator has the international community and the military commander write congratulatory letters to the entire group of participants, and ensures that the wording is accurate and noninflammatory. The mediator submits a draft of the letter to the U.S. military commander and the representatives from the international community so that they have a common reference point from which to write their respective congratulatory letters. From this point onward, any communication from the U.S. military or the international community is addressed to the group to reinforce the perception, among the participants, of membership in a larger organization.

The mediator develops the statement of intent to cooperate into a declaration to work as a cohesive group for rebuilding infrastructure that affects the entire region. Once again, he procures congratulatory letters from the major international community and military headquarters. Each subsequent statement, declaration, or agreement should receive a letter from the appropriate international community and military leadership. The mediator matches the level of the local document with the level of the letter that the international and military communities deliver. For example, an agreement from a group whose physical boundaries are within the area of operations of a battalion should receive letters from the battalion commander and the leadership of the major international community organizations that conduct business in the immediate area. As the participants to the mediation outgrow areas of operations of the battalion or brigade, the next-higher level within the command structure, as well as the international community, should write a congratulatory letter.

### **Mediation by Establishing Protocol and a Schedule**

The mediator follows the rules of order for a typical board of directors meeting and begins distributing minutes from the previous meetings. He sets an agenda and keeps to it. The mediator encourages direct discussions between the participants of the mediation.

The mediator initiates a plan where the participants to the mediation rotate as the president or host for the meeting. Any equitable system of rotating this role is acceptable, be it weekly, biweekly, or monthly, as long as it allows all parties an opportunity to lead the discussion. (The mediator does not relinquish control of the mediation at this time.)

### **Integration of the International Community Into the Mediation (Open or Closed Door—May or May Not Allow Outside Observers, Participants, or Press at the Mediator's Discretion)**

This period in the cycle of the mediation is critical for establishing long-term stability and peace. The mediator identifies an organization within the international community that is directly involved with the issues of the participants and will be in the theater for an extended time. The international community organization should provide a person to act as a co-mediator or alternate with the military mediator as the head mediator. The U.S. military mediator begins to phase out of the lead role.

### **Agreement Resolution (Open or Closed Door—at the Mediator's Discretion)**

This period can be the least predictable in the mediation effort. If the mediator's preparation has been effective, no external events have disrupted the willingness of the participants to cooperate, and funding from either the United States or the international community remains intact, then participants can rather quickly reach a written agreement. If anything occurs to disturb the process, the mediator may have to reinstate the entire procedure.

After the basics of the agreement are verbally resolved, the mediator puts them on paper. The mediator can use butcher-block paper on an easel, or a similar form of displaying the points of the agreement to the entire group, to start the process of putting the ideas of the agreement on paper. The mediator formalizes the process by creating typewritten interim versions of all documents and giving everyone a copy. Participants use these documents as working drafts. The mediator makes changes and adds details, as required. Once the first part of an agreement is concluded, momentum toward cooperation is created. Then the mediator assumes the additional burden of keeping up the pressure to reach a finalized document.

**Agreement Announcement to the Public (Open Door—  
Outside Observers, Participants, or Press are Invited)**

The mediator develops a program to announce the agreement to both the domestic and the international community. He integrates Civil Affairs civil information and military information support assets to publicize the agreement. In concert with the public affairs officer, the mediator releases information to the local, national, and international press. The mediator ensures that the cooperating participants are the focus of all announcements. He downplays the role of the U.S. military mediation effort and enhances the role of the international community and the participants to set the stage for eventual transition to the international community.

The mediator allows access to signing events for print, radio, and television to publicly document the agreement. If possible, local, national, and international press agencies should be present and given copies of the agreement in the local language and in English.

The mediator has the local participants sign the agreement followed by the official witnesses from the international community and the military. A public display of civility, such as a group handshake, is also encouraged. The witnesses should be from the organizations tasked with monitoring the agreement.

### **Mediation Expansion**

Mediators should integrate efforts in one area of operations into the efforts of adjacent areas of operations. If there is no current effort underway in an adjacent area of operations, the mediator coordinates for expansion of the mediation effort across internal boundaries. The mediator educates key leaders in adjacent military and international community organizations on the methods that led to success.

### **Agreement Monitoring**

The organizations that mediated the agreement must supervise the agreement for compliance by all parties. To ensure everyone is meeting the obligations outlined in the agreement, monitors normally listed in the agreement monitor the local participants as well as U.S. and intergovernmental organizations that pledged support or funding.

### **Agreement Documents**

The documents that lead up to a multilateral agreement can range from the simple to the complex. The most successful documents allow for flexibility and are direct and simple. Complex documents, especially when translated, lend themselves to multiple interpretations.

All agreements must be written and readily available to establish compliance by the parties. The mediator coordinates the forwarding of documents to all international community and military organizations in the affected area, as well as adjacent areas, to coordinate all efforts to establish cooperation.

The mediator should leverage every document produced during mediation to increase the legitimacy and institutionalization of the cooperative group. Each document should be the foundation for subsequent documents until the goal of permanently established stability and peace is accomplished.

There is no standard format for any of these documents, and the mediator must tailor each document to the individual situation.

However, consistency in format is critical to establishing understanding and legitimacy as the process expands. Some of the common documents that the mediator will either draft or contribute to are—

- *Letters of Intent.* The most simple of the documents involving mediation, letters of intent are short statements signed by an individual or by two or more local parties declaring that the signatories will come together with the intention of discussing cooperation. The mediator should be the official witness for these documents. Letters of intent incur no commitment other than to enter into talks. There is no commitment from the United States or international community. Letters of intent are the base document the mediator uses to bring parties to the original talks.
- *Statements Supporting Cooperation.* Statements supporting cooperation are the next type of document that the mediator should pursue. These documents include more detail and should incorporate an explicit commitment from the United States or the international community to support or fund projects based upon demonstrated cooperation. These documents should quickly generate an official congratulatory letter from the U.S. military, as well as the applicable international community organizations.
- *Agreement to Cooperate in Support of Stability and Peace.* A written agreement, signed by all participants, is the pinnacle of the mediation effort. These documents—
  - Delineate the categories in which the signatories intend to cooperate (for example, refugee return, infrastructure reconstruction, housing, education, agriculture, and so on).
  - State what the signatories expect from the international community and the U.S. military in return for cooperation. (These documents can be politically explosive at the local level and, therefore, mediators should seek methods to limit negative political impact upon the signatories to the agreement.)

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The mediator should ensure that the document has enough detail to hold the participants responsible to the terms of the agreement. The document should be concise and not overbearing. The mediator should eliminate references to any local political group to preclude the perception of favoritism or the generation of negative publicity through association. Flexibility in how a signatory interprets an agreement should be very limited, and the body of the agreement must address each signatory's specific concerns.

The mediator will find that issues will emerge after the agreement is signed that will hamper cooperation. As soon as possible after a signatory identifies an issue, the mediator should draft an addendum to the original agreement that eliminates the problem.

#### **Additional Administrative Documents**

There will be circumstances when a mediator will have to draft a document to clarify a specific issue relevant to an agreement. The mediator should minimize these occasions to preclude confusion and distraction from the intent of the original document. The mediator's task in this situation is to create a simple addendum that is concise and directly addresses a grievance or clarifies a questionable detail.

#### **Adoption of a Name**

These documents are very simple and take the form of an official resolution. As long as the mediator, supported by civil-military operations planners, researches negative connotations associated with a name, there is little contention in adopting a name.

#### **Adoption of a Schedule**

When the mediator establishes a schedule, the mediator must ensure that the schedule is clear and equitable to all parties. Any agreements pertaining to exceptions to a predetermined schedule should be included to prevent confusion. Examples of common exceptions to a predetermined schedule include religious holy days, elections, state holidays, and contentious historical dates. The mediator can also



incorporate prearranged meeting places and alternate meeting dates or locations into the schedule, which adds to the legitimacy of the mediation effort.

#### **Establishment of a Revolving Leadership Program**

The mediator should write agreements about rotating the internal leadership role within the group of participants to ensure equality and that no individual party benefits exceedingly from a leadership position. The participant who is in the leadership role should not establish the group's agenda or have the power to veto or disproportionately affect issues brought to the mediation. During the mediation process, participants may identify the need for other administrative positions, such as secretary, deputy leader, and so on.

#### **Recognition of a Transition of Mediators**

When the time occurs for transition to the international community from the U.S. military, the participants should be encouraged to adopt a resolution recognizing a specific international community organization as the new mediator. A comprehensive transition plan establishes the official date of transition and the method for contacting the new mediator. (This document should not be required when the mediator transitions from one U.S. military representative to another since the organization that is leading the mediation has not changed.)

#### **Layout of a Typical Agreement**

The mediator should establish a standardized format for each type of document based upon the peculiarities of each operation. All subsequent documents in the area of operations should, to the extent possible, follow the format of documents written to accomplish similar goals. This leads to a formalized and predictable structure to succeeding mediation efforts. The mediator coordinates the production of enough copies of the agreement in the local language so that each signatory can receive an original document with original signatures. In addition, all participants and witnesses should sign an official English version of the agreement. For example, if there are six participants and two official witnesses, the mediator should

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coordinate the production and signing of nine documents to allow each participant and witness to receive an original document. Each participant and witness receives an original copy with the English version maintained as the official reference document.

The general format for an agreement includes the following:

- *Introduction.* The introduction should state the name of the group signing the agreement, the goals of the agreement, location, and date of the signing, and administrative information specific to the signing.
- *Body.* The body of the agreement should include—
  - The specific areas in which the parties to the agreement will cooperate.
  - Political entities that will adhere to the agreement.
  - Specifics, as required, clarifying the terms of the agreement.
  - What the signatories to the agreement expect from the members of the international community and the U.S. Government.
- *Conclusion.* The conclusion should state that the agreement is made in an effort to support stability and peace between the communities that are parties to the agreement and reiterate the signatories' willingness to cooperate for the benefit of their communities.
- *Signatories.* The signatories should sign immediately below the body of the agreement. The signature blocks should include a typed line long enough to accommodate a signature, the typed name of the signatory (under the line for the signature), with the signatory's title along with the name of his community under his name. If the signatories habitually affix a seal to official documents, the document should include a blank space for an official seal to prevent distortion of the signatures.

**Note:** The order of the signatures should not show favoritism. An effective technique is to arrange the signatures in the order in which

the participants joined the mediation effort. Since the mediator took pains to maintain a balance, the signatories should be in a balanced and unbiased pattern.

- *Witnesses.* The witnesses should sign at the bottom of the document and their signature blocks should follow the pattern used for the participants. Again, the document should include a blank space for official stamps or seals.

### **Maintaining the Agreement**

Until the cessation of U.S. participation in an operation, the U.S. military representative who initiates the original mediation effort is responsible for monitoring that the signatories comply with any agreements stemming from mediation. In addition, the U.S. military mediator or representative is responsible for ensuring that the members of the international community, as well as the U.S. Government, comply with the obligations they made.

### **Checking for Compliance**

Either the mediator or a representative of the U.S. military should habitually attend the meetings that the parties to the mediation have scheduled. This attendance exhibits the continued interest of the U.S. military and allows for an insight into how the efforts to support cooperation are progressing. Continuing contact with the representatives that have to comply with any mediated agreement facilitates communications and an open environment. The mediator or his representative should always seek ways to reinforce cooperation.

The mediator or his representative should perform scheduled and unscheduled inspections into areas where the local parties have agreed to cooperate. Meetings with local leaders, who are not signatories to a mediated agreement, should include questions about support by the populace for cooperation, as well as adherence by the local community to previous agreements.

Mediators should use all available information resources—military and civilian—to monitor adherence to the terms of the agreement. The mediator should also watch for parties that circumvent the intent

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of the agreement. Warnings as to possible punishment for noncompliance should be timely and direct. The mediator should have leeway for recommending curtailment of support for intentional breaches of an agreement.

Conversely, mediators should reward cooperation between former adversaries in areas not covered by the terms of a mediated agreement. If possible, mediators should seek additional funding or support for initiatives outside the parameters of a previous agreement.

The mediator should apprise members of the international community of the current situation, advising members of an increase or decrease in cooperation. Doing so allows the international community to reward or punish the local entities as their behavior dictates.

**Moderating the Size**

When the mediator sets out to bring former warring parties together, he is always concerned with the issue of how many communities to incorporate into the mediation. Each operation will be different since no two nations have political subdivisions of the same size.

The mediator must be careful not to include too many parties in a mediation effort. Too large of a population can overburden the funding and logistical capability of the military assets and the international community. A gradual expansion of the population involved in mediation can generally be planned for and accommodated, but too many people too fast will overwhelm the theater's logistical systems.

Each party will have issues specific to their community and, with a large group, the likelihood of competition for resources escalates. Additionally, the requirement to monitor agreements by a small force over expansive terrain is inefficient. The typical optimum size of a mediation effort is six to eight participants, depending upon the population and geography within each community. Mediation efforts larger than this tend to overcome the ability of the limited number of U.S. military personnel and should remain in the realm of the international community or the U.S. State Department.

## **ADAPTIVE THINKING AND LEADERSHIP CONCEPTS**

The following concepts explain and define core requirements for military personnel to mitigate dilemmas in a complex environment.

### **DEFAULT MINDSET**

Individuals view or perceive their environment through their default mindset. It is composed of education, training, experience, background, religion, culture, and so on. What a negotiator or mediator needs to ask is—“Am I perceiving this situation with the understanding of the interpersonal and cultural nuances present, or am I reacting to this situation driven by my default mindset that may or may not have adequately prepared me to effectively mitigate or understand what I am experiencing?”

### **POSITIONAL POWER**

Soldiers are taught a positional or rank-based power system on day one in the military. They make a career of solving problems using their positional power. It is a very effective and traditional process used most effectively in combat. The problems begin when they find themselves in a situation where their traditional positional power is not recognized. By the very nature of many special operations forces missions, special operations forces deal with many civilian elements from outside a formal military structure. These civilian elements do not recognize the military’s traditional positional authority. Soldiers can use their power to force compliance, but the drawbacks generally outweigh the short-term solution. Soldiers need to have the maturity to recognize a situation that requires them to use a different method to influence populations. Simultaneously, they must also keep that power at the ready and, if necessary, bring it to bear because of the high threat environment they move through.

### **Negotiation**

Negotiation is the process whereby interested parties resolve disputes, agree upon courses of action, bargain for individual or collective advantage, and/or attempt to craft outcomes which serve their mutual interests. It is usually regarded as a form of alternative dispute resolution

### **Mediation**

Mediation is a process of alternative dispute resolution in which a neutral third party, the mediator, assists two or more parties to help them negotiate an agreement with concrete effects on a matter of common interest; lato sensu is any activity in which an agreement on whatever matter is researched by an impartial third party, usually a professional, in the common interest of the parties.

### **BEST ALTERNATIVE TO NEGOTIATED AGREEMENT (BATNA)**

Knowing the BATNA or bottom line is critical before entering into a negotiation situation. Does the mission state specifically to deal with an individual or accomplish an objective? What is the other party's agenda and is it contrary to U.S. interests? The best defense is knowing what the U.S. BATNA is. The BATNA is distilled from the commanders' intent and that sometimes may be hard to define.

### **ZONE OF POSSIBLE AGREEMENT (ZOPA)**

After establishing the BATNA, the negotiator attempts to determine the BATNA of his negotiating partner. Through direct information, battle handoff, data calculated from other sources, experience, and so on, he can then estimate the BATNA and the presence or absence of a ZOPA.

The negotiator can simplify the process by asking and answering the following questions:

- What is the objective?
- Are there any options or alternatives and can they still achieve the objectives?
- What is our BATNA?
- What is their BATNA? (Do we have a ZOPA?)

**OVERCOMING OBSTACLES TO CONDUCTING NEGOTIATIONS**

Negotiators have a difficult time communicating and problem-solving with people of their own culture while speaking a common language. A negotiation situation is further complicated when the people to be negotiated with are from a foreign culture, speaking a different language, using different body language, and so on. Understanding the operational environment is crucial when dealing with foreign environments. Even if the negotiator knows the right answer, he has to refrain from dictating the solution. The negotiator wants the parties involved to take ownership of the resolution so the results can be durable, long lasting, and enforceable. The negotiator does not have the time, manpower, and resources to continue returning to resolve situations repeatedly.

**CLAIMING VALUE VERSUS CREATING VALUE; POSITION VERSUS INTEREST**

Claiming value is essentially a win-lose negotiation or a zero-sum game. Negotiators compete to win the biggest piece of the pie they can get. They are okay with losing the remainder to their negotiating partner because they have the piece they wanted. There is not much of an opportunity to develop a relationship and it is rather adversarial in nature. In a true win-win style, the goal is to create value through relationship-based efforts. The negotiator negotiates to make the pie (and ultimately what they win) bigger. To create value, they need to understand what is behind their negotiating partner's position and help him achieve it; and thereby, achieve our own objectives. When viewed through their default mindset, what they perceive may not show them what is motivating that person. Understanding the interests behind the position is what gives them a tool to understand what is motivating that person. When they know what is motivating a position, they can then guide towards a solution. Attacking a position because of a flawed default mindset can cause an irreconcilable breakdown. The negotiator looks at what is behind the position to see what the true interests or motivations are. Searching for those interests behind the position is a way to avoid attacking that position.

### **STRUCTURE OF NEGOTIATIONS AND THE TENSIONS OF THAT STRUCTURE**

The negotiator conducts these activities as a member of a team and that adds tension to the process because of how well the team members get along. Every team member's role needs to be identified and the objectives understood. Rehearsing and conducting a scrimmage of the roles is critical in alleviating surprises by team members.

### **DO NOT LOSE THE WAR FIGHTING TO WIN ONE BATTLE**

The negotiator's natural competitive spirit is a traditional strength and asset that he uses to accomplish his goals and objectives. The negotiator must know that the enemy realizes his competitive spirit is a predictable attribute, and they are constantly adapting their own tactics, techniques, and procedures, and manipulating the environment to try to turn that traditional strength into a weakness.

### **PRINCIPLED NEGOTIATION**

Principled negotiation is the approach to negotiation developed by Roger Fisher, Bill Ury, and others, first described in the book *Getting to YES*.

In concept, principled negotiation is a win-win approach where the goal is to reach a lasting agreement, rather than traditional positional (win-lose) bargaining.

Elements of principled negotiation included:

- Separating the people from the problem.
- Focusing on interests rather than positions.
- Generating a variety of options before settling on an agreement.
- Insisting that the agreement be based on objective criteria.



**ACRONYMS**

|            |  |
|------------|--|
| BATNA      | best alternative to negotiated agreement                             |
| U.S.       | United States  |
| USAJFKSWCS | United States Army John F. Kennedy Special Warfare Center and School |
| ZOPA       | zone of possible agreement   |

## RECOMMENDED SOURCES

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