Mediation simulation skills

IREn5020 Mediation training for IR

dr. Martin Chovančík

Content

- Debriefing water exercise

- Kinds of mediators
  - Typology
  - Mediation styles

- Mediator personality
  - TKI
  - Explanation on variants

- Mediation emotional concerns

- 5 core concerns
  - Pair exercise on core concerns

- Tools

Water crisis debriefing

- **This is an exercise that is supposed to be frustrating** ☺
- LOGISTICS from the Teacher's package: *"Game instructions require 30 minutes to read. Negotiations require approximately two hours."*
- There is never enough time

- In the debriefing, focus on takeaways on:
  - Ambivalence and differing perceptions
  - Repeating dynamics
  - What you may do differently as mediator

What was most challenging about the negotiation? (Setting aside the unclarities you experienced)?

- *no idea about the intentions of the other participants*

- *it was not clear why a certain party argued for something, and whether **it was indeed his instruction** that this is a line he can not cross, or if s/he simply decided to negotiate hard and compromise less as a part of their own personal strategy. Bluffing?*

- *finding at least a tiny bit of a common ground not only between parties of Israel and Palestine, but **even between our Palestinian group itself***

- *the **party that I was expecting that would be on my side wasn´t completely***

- *I felt like **nobody fully understood what I demanded***

- *I felt shared ownership was the best option for guarantees and I **could not find any optional offer** or any additional step that would help me to give guarantees and reach the agreement in the end. I felt I was in a **dead-end where I had no other options***

- ***Takeaways – perpetual fog of war and how to lift it; principle-agent relationship***

How clear were you on your BATNA going in – did you establish one on paper for yourself? How about aspirations?

- *one idea about building our own small well in out territory. This project could be suggested to Moriah company. I mean **split that huge project to several smaller.** I strongly doubted the success of the negotiations, and **I was convinced of this again when I realized that** the instructions from the other side were not to allow the Palestinians to control the project.*

- ***I don't feel like I prepared BATNA in my head till I was sure about others positions***

- ***I had the best possible outcome in my head**, I knew where I can compromise and what could I give up if necessary.*

- *Honestly, I saw that the Palestinian side **has the only option to trust us just on our words**. But as you said, proper water amount pumped that increased step-by-step would be a great solution.*

- *I did not really consider BATNA too much as I focused more on trying to make the agreement happen and did not consider not reaching an argument… the instructions stressed that it was very important for the water commissioner to reach and agreement*

- ***My BATNA was that no well would be build and I would secure water from the already existing wells that would not dry up, but I still needed additional water that this project would grant me since farmers were already losing crops to dry winters.***

- ***Takeaways – absolute necessity of BATNA prior to negotiations/mediation***

What informed your negotiation strategy if no BATNA? What informed a choice of your allies?

- *I was counting on the fact that the well **would not be built without my approval, so I had some leverage.** If I did not have this leverage, I would be willing to make more concessions. I believed that I was in a better position than my allies so I would be able to secure most of my interests. (landowner)*

- *I wasn´t entirely sure who was my ally **because the party that should have been my ally behaved more in favour of the opposite party,** on the other hand the party I expected to be more in favour of the Palestinian side was helping my side. **This was quite confusing** and although I went along with it I cannot say that I would understand…*

- *My negotiation strategy was to **get at least one part of Israeli group on my side** so he would be able to maybe persuade the others to step down on their demands at least a little. I felt like sometimes we didn't quite understand each other even among allies as from time to time it was more like repeating ourselves instead of trying to **bring a new argument that could help our negotiations**. (Mayor PLE)*

- *it seemed like a rational project from which everyone could benefit, BATNA informed me mostly that it should be in the interest of both sides to reach an agreement*

- *I don't have a single strategy for the simulation. **I wanted to understand intentions of the rest.** In spite of this, I was **sure about my minimal requests** and I adhered to this throughout the entire process. It seems to me that the overall tiredness of the participants and a close impasse in negotiations **turned out to be the most influential on the result.***

- ***Takeaways – intra-party dynamics; track two and three; and party unity are always issues***

How did you know which information to divulge/share and which to keep?

- *I tried to keep an **"ace up the sleeve"** until the very end if I could not persuade them without it. The ace up the sleeve being a confidential information about the eastern aquifer... **only when it seemed that no agreement could be reached** was when I shared this information in a bilateral talk with the farmer's representative*

- *..non-negotiable conditions to my allies, however I didn't want my "enemies" to know them instantly. **First I wanted to get as much information as possible** and based on that I would want to negotiate face to face with someone that I can possibly share more sensitive informations with - only with someone I could percieve as possible ally.*

- *throughout the process I just went with the strategy of **divulging information that can help me** and I kept the information that if divulged could be used against me.*

- *helping us to know what kind of information could be used against us.*

- ***Takeaways: Trust-building, limits communication in the light of positions vs. interests***

- ***How much do our "weaknesses" divulge about our interest? And how much of that is a distancing form what we would be judged for or taken advantage of?***

Was it (info and strat) (and how) altered by the mediator?

- *The mediator did set a positive mood and somehow managed to deescalate any rising conflict **by changing the topic to another issue needed to be resolved***

- *Sometimes I felt like the **mediator shut someone down** and **after that I didn't want to share that much in front of everyone**. This however didn't affect the negotiation overall that much, as when part of our group was shut down, others would speak for him as **we prepared a plan for negotiation beforehand and any of us could propose it. (Mayor PLE)***

- *the mediator did a great job staying unbiased and he made sure that we stay on topic and he **"fact-checked"** when either side tried to make an **unrealistic demand**, or did not know the current situation about the water levels*

What type of role (based on lit.) was played by the mediator?

- *I think mostly **Facilitative mediation** was played by the mediator as he was trying to promote negotiations and so, however, I remember **several examples of evaluative mediation when he tried to make fairness determinations and explanations of other kinds of topics** (about the rights, idea of new well in Palestinian side, or even the example of being strict and direct to the parties).*

- *The mediator should **have perhaps been more focused on trying to change the narrative - creating an activist transformative-narrative mediation**. He did definitely increase the communication between disputing parties and deescalated any rising conflicts by setting an order in the debate and giving everyone a fair shot, while trying to divert focus when stuck, but I did not see him trying to change the narrative. He more likely presented a **facilitative mediation**..*

- *I believe he was quite neutral, he worked mostly as a facilitator **maybe at the end he was forcing a little bit more on the agreement** because of the time pressure which **influenced the Palestinian party to almost accept a deal with which they weren´t fully happy** but I believe it was mostly because of misunderstanding the fact that we thought we just must close a deal before the end of the time frame.*

- *The mediator **only served as a facilitator,** guiding the discussion at times and setting the agenda of when to discuss what, but **it did not seem that he took on a more invested approach** in the sense that he would try to coerce or incentivize each side, or by perhaps giving his guarantees that some obligations will be fulfilled by each side.*

- ***Takeaways – some didn't read the lit., but more importantly the parties can vest a role onto the mediator***

Did the mediator have to earn your trust? Was there anything he/she did to lose that trust?

- *In our case, his behavior did not cause any negative reaction.*

- *I simply trusted him to try and lead us to a decision which both sides would agree with. If anything, **I would feel that the other party (Palestine) would have reasons not to trust him,** because as was mentioned after the simulation, there were some concerning details which were kind of **unfair to the Palestinian side** (water prices, water quotas etc) favoring the Israeli side, and the mediator did not address these*

- *First I didn't feel like he needs to earn my trust, as **I trusted him from the beginning**, however this was a little bit **shattered when he shut one of my allies down**, as I started feeling he might be **more inclined to help and propose solutions better for the other side.***

- *I was glad when mediator stepped in into her question regarding the technical issues of the well as I didn´t have the information. **However if he would not do that I would have been most certainly capable to tell that myself.** Mediator did not lose my trust during the mediation.*

- *My trust came gradually since I could feel like being heard and felt that he was trying to be the best he could and as much impartial as possible. I do not believe/remember he did anything in this exercise that would make me lose my trust in him, contrary to what I expected, and he did offer to give groups privacy when needed.*

- *I was the one who asked for the mediator, he **had my trust from the beginning**, but at the end, when we discussed the shared ownership issue, he **stated and promoted that shared ownership is the only way to reach the agreement**, he stepped on the Palestinian side and **imbalanced the process.***

- ***Takeaways – impartiality is easy to use even through procedural matters, time and format a your friends***

How did the result of negotiations differ from your expectations?

- *My expectations were **probably far too optimistic and naive**, I expected that everything could be easily resolved and it seemed from the instructions that the new well will benefit all, and therefore if Palestinian fear is overcome thanks to guarantees, there should be no reason not to agree since the new well could provide 18MCM*

- ***From firstly optimistic** thought that we might be able to "clear" whole project, I went through transition and was glad that we were able to come to conclusion in at least one part of the negotiation.*

- *I **expected to come to a full agreement that all sides would agree to**, while not meeting all my interests but at least my vital needs (wishful thinking).*

- *I expected to reach an agreement on more points than that, but I did not think we could negotiate the full package. **I expected agreement at least on 2 points of issues**.*

- *I expected more alliances and more negotiation. The lack of understanding of the exercise made it "simple" to agree on some things and "hard" on others.*

- ***<u>Takeaways – expectation management is part of a mediator's role</u>***

How did you discover the interests and concerns of the other parties? Did the mediator assist in identifying interests? Did you assume you knew some or all of them?

- *__I discovered the interests__ of the other party thanks to the mediator at the beginning when he demanded all sides to introduce themselves and establish their interests, I learned about their concerns sequentially during the negotiation process and mainly by the end, __when I had the opportunity to talk to a single side of the opposing party__. I assumed I did know some but not all interests.*

- *I believe that the concerns of the parties were quite clear as they vocalized them. Regarding the interest I was not that sure. With some people it was quite obvious and they made clear what they want, some people were less clear. __Paradoxically I felt that I knew better what the opposite delegation wants__ than what my own delegation´s interests are.*

- *What might be interesting is that __I was more sure of the interests of Israeli parties than I was of my allies__ as we mostly discussed more of a short term parts of negotiations and I mostly assumed only the parts of the negotiation that we were in. This was contrary to our "enemies" as their __interests__ seemed pretty clear.*

- *I believe the palestinian side was quite straight forward in specifying their interests, it quite often seemed that the Israeli side made the proposals and the Palestinian side only raised their objections - which were mostly in fact their concerns/interests.*

- *__Takeaways – Are we really talking about interests or initial bargaining positions?__*

How much back-channel communication was held? Would you have preferred more?

- ***I would have liked to have had separate meetings more.***

- *I would definitely prefer more communication with the other party, **preferably with each member alone** in order to better understand everyones interests and possible solutions.*

- ***On the contrary.** I enjoyed negotiation between all parties far more, and at the same time I felt like we were able to move forward far easier when we were all negotiating, as when mentioned before, **I felt like in back-channel people were more or less repeating themselves** and I didn't feel the need to discuss things we already discussed with the same result over and over again.*

- *Not too much, and maybe I would have preferred a little bit more, but on the other hand it was **also fine that the whole negotiation was transparent and discussed in the general meeting** quite a lot which meant that usually everyone was on the same page*

- *Even though we have our own interests and slightly different goals we needed to look united and know what we want to pursue. In the end the Palestininan side almost agreed on the deal even though Margaryta disagreed and if we had more time we would probably be able to persuade them into the agreement because we would be able to use as advantage the fact they weren´t united.*

Was a mediation needed or redundant? Why (and try to envision the real-world situation)?

- *I think that the **mediation was absolutely needed.** First of all, the mediator did a great job and he was able to point out our mainpoints, so instead of arguing between each other, we were able to react on some points with much bigger clarity. Also, without the mediator the negotiation could go quite "hot" and the mediator was needed to "slow things down" a little bit*

- *It was probably better that it was mediated, **I could even imagine a little bit more invested and "enforcing" mediator**. Not in the sense of coercing the parties, but perhaps if more power was given to the mediator by both sides, it could be possible to overcome the mutual distrust between the Israel-Palestine sides*

- *I think that the mediation was valuable and he helped but he **wasn´t entirely needed**. I can imagine going through the negotiation even without mediator*

- ***Takeaways – think of when parties usually reach for mediation; different contexts call for different types of mediators; mediator roles need not be stationary BUT must be approved by all***

Mediator types

Social Network Mediators	Reputation-, Status-, Position-Based Mediators	Administrative/ Managerial Mediators	Vested Interest Mediators	Independent Mediators
• Prior and expected future relationship to parties due to membership in a social network	• May or may not have a current or ongoing relationship with parties	• Generally has ongoing authoritative relationships with parties before and after dispute is terminated	• Has either a current or expected future relationship with a party or parties	• Neutral/impartial regarding relationships and specific issues/ outcomes
• Not necessarily impartial, but perceived by all to be fair	• Seeks best solution for all involved	• Seeks solution developed jointly with the parties, within mandated parameters	• Has a strong interest in the outcome of the dispute	• Serves at the pleasure of parties
• Very concerned with promoting stable long-term relationships between parties and their associates	• Generally impartial regarding the specific substantive outcome of the dispute	• Has authority to advise, suggest, or decide	• Seeks solution that meets mediator's interests and/or those of a favored party	• May be a "professional" mediator
• Frequently involved in implementation of agreements	• Has authority to advise, suggest, or decide	• May have resources to help in monitoring and implementation of agreement	• May use strong leverage or coercion to achieve an agreement	• Seeks a jointly acceptable, voluntary, and noncoerced solution developed by the parties
• Generally has ongoing relationships with parties after dispute is terminated	• May have resources to help in monitoring and implementation of agreement	• Has authority to enforce agreement	• May have resources to help in monitoring or implementation of agreement	• May or may not be involved in monitoring implementation
• May use personal influence or peer/ community pressure to promote adherence to agreement			• May use strong leverage or coercion to enforce agreement	• Has no authority to enforce agreement

Mediator styles

- **Facilitation or communication**
  - Ensure parties have all relevant and correct information
  - Properly identify overlap and interests
  - Provide venue/structure
  - Have no substantive input on agreement or enforcement

- **Formulation**
  - All above AND
  - Redefine issues to better outline overlap
  - Conceive and propose new solutions to parties
  - "Procedural tactics" in issue selection, sequencing, or temporal constraints
  - Make use of packaging solutions

- **Manipulation**
  - All above AND
  - Use of leverage to move parties along to a solution
  - Guarantees but also compensation
  - Expanding from zero-sum options and altering cost-benefit calculations

Mediator styles

- What effect would you expect on a sustainable agreement from the various styles?

Mechanism	Style	Tactics
Information revelation	Facilitation	Make contact with parties
		Gain the trust and confidence of the parties
		Arrange for interactions between the parties
		Identify underlying issues and interests
		Clarify the situation
		Supply missing information
		Transmit messages between parties
		Fact finding
		Offer positive evaluations
		Allow the interests of all parties to be discussed
Coordination	Formulation	Control the pace and formality of the meetings
		Control the physical environment
		Ensure the privacy of mediation
		Highlight common interests
		Control timing
		Help devise a framework for an acceptable outcome
		Help parties save face
		Keep the process focused on the issues
		Make substantive suggestions and proposals
		Suggest concessions parties could make
Carrots/compensation Sticks/pressing Enforcement	Manipulation	Keep parties at the table
		Change parties' expectations
		Take responsibility for concessions
		Make parties aware of the costs of nonagreement
		Supply and filter information
		Help negotiators to undo a commitment
		Reward concessions made by the parties
		Press the parties to show flexibility
		Promise resources
		Threaten withdrawal of resources
		Offer to verify compliance with the agreement
		Add incentives
		Threaten punishments
		Threaten to withdraw mediation

Beardsley et al. 2006

Mediation and conflict management styles

- How one behaves in their own "conflicts" is extremely relevant to mediation to:
    - Identify one's own reaction to conflict and self-check (as mediator) and adapt
    - Have increased awareness of conflict modes of others (parties and representatives)
    - Identify, use, and leverage conflict styles of parties to move mediation forward

- A balance between ASSERTIVENESS and COOPERATIVENESS
- One or two modes are typically dominant
- Each has upsides and downsides
- Thomas Kilmann Conflict Mode Instrument
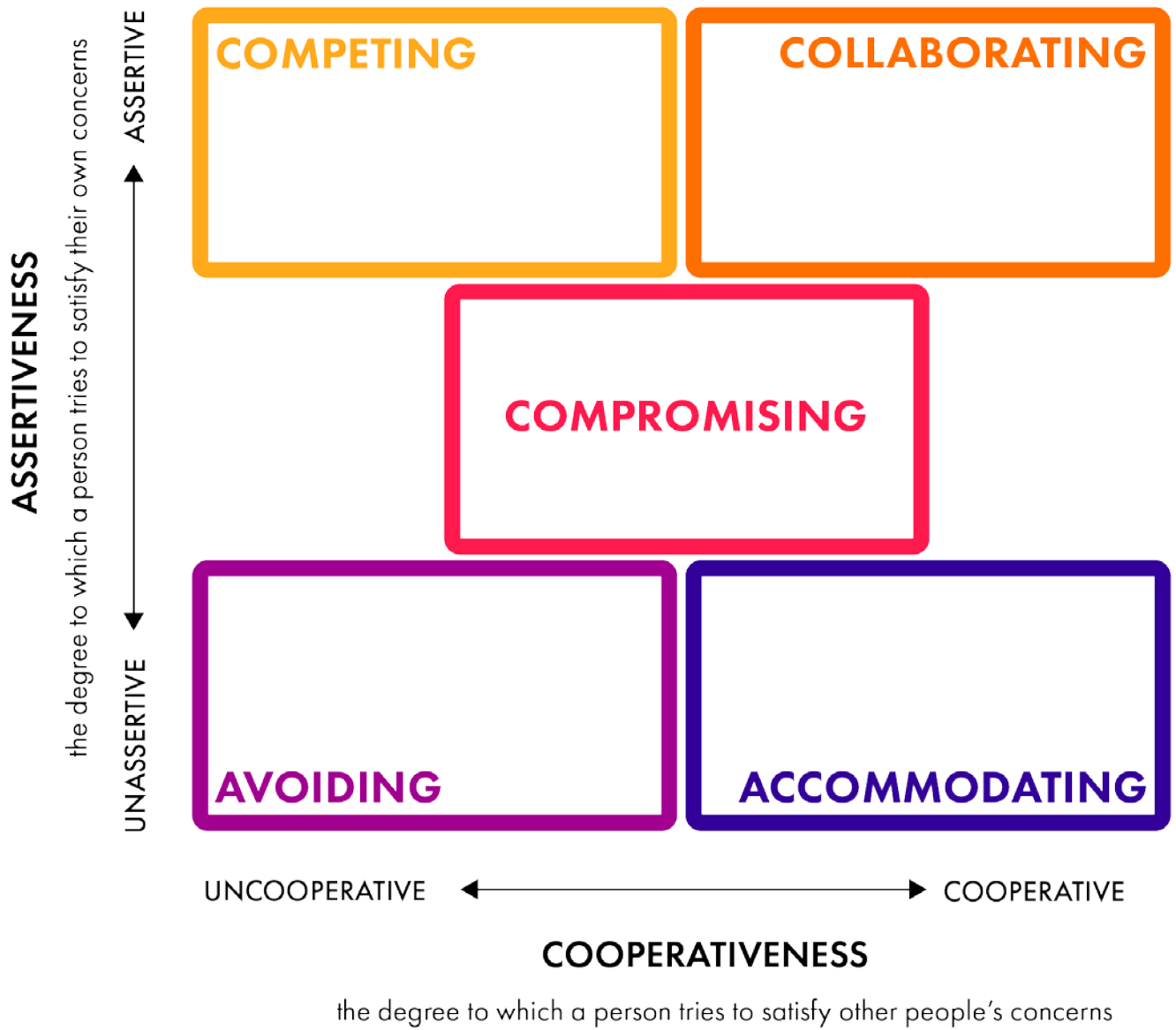
Thomas Kilmann Conflict Mode Instrument

- Take the test - https://psycho-tests.com/test/conflict-mode

- Don't think of a purely workplace/colleague or simulated conflict

- Go much more personal, think of situations from personal life, or situations where you have a truly vested interest

- Your results are private, you don't need to share them

- There is no way to return to pages, so once you hit next, you can't go back

- **Take your time,** do not rush, envision real-life situations

- Approx. 30 minutes

TKI - COMPETING

- Accentuates asymmetry but may make positive use of it
- Quick decisions may be suboptimal, but are quick and prevent stalling
- Has a significant toll on relationships and trust

- Handling Competing:
  - Focus on persuasive rather than dictation approach
  - Avoid exaggerations, precision is key
  - Crystal clear communication of intentions/interests (not just positions)
  - There is little latitude for degrading behavior, loss of temper, or blaming
  - Use of warnings but not threats (hold much more explanation)

TKI - COLLABORATING

- Requires openness and investment, but brings vulnerability and escalation risk

- Time and effort consuming, but worthwhile

- Extremely trust-dependent but accentuates the mutual nature of a problem

- Handling Collaborating:
  - While highly desirable it has very limited use in mediation
  - Should only be elicited for absolutely key issues
  - Created vulnerability may be exploited and derail the process
  - "WE" language and focus on potential positive shared outcomes
  - Conversation starts with interests not positions

TKI - COMPROMISING

- Compromises are great until they aren't – satisfies majority but leaves frustration and resentment

- Quicker but less optimal than collaboration

- Relationships remain unharmed but do not deepen, agreements may be fuzzier by not evaluation and mirroring actual interests

- Handling Compromising:
  - Even partial compromises are often not an option (vital issues)
  - Commitment to reciprocity and compromise needs to be established from both parties first – very hard transition from a previous conflict mode
  - Encourages temporary solutions thus presenting a dangerous agreement (sustainability)
  - Fairness is key and should be an external/objective criterion (e.g. expert)

TKI - AVOIDING

- Issue may be delayed or sidelined, but it isn't moot in a relationship and continues to "fester" hardening positions

- Allows prioritization of issues, but degrades others especially in asymmetry

- Avoiding issues prevents open communication of interests but may speed up agreement

- Effectively a lose-lose as neither party's interests are met, but may be required for emotions to cool down

- Handling Avoiding:
  - Clearly sequencing or sidelining issues for a set amount of time for greater priority or lesser emotionality is useful (while still dangerous)
  - Useful to come to joint agreements on what can be avoided and left to posterity
  - Clear BATNA and WATNA prior to engaging (and their clarification outside of interaction) are key

TKI - ACCOMMODATING

- Helpful, builds social capital by aiding, but sacrifices own interests

- Accentuates relevance of future relationship (or co-existence) as more important, but builds asymmetry

- A repeat pattern of accommodation may lead to quick exploitation

- May offer a quick solution, but leaves dissatisfaction

- Handling Accommodating:
  - Immensely impactful and useful as admission of being wrong on a joint issue (especially public)
  - A small full concession for one party may be a huge win for another
  - Despite both, an agreement should be sought on long-term goals to prevent a misuse pattern
  - Active listening and apology without growing defensive is a sought tool

At the table – Beyond reason

- The conflict modes and styles respond differently to emotionality

- No mediation or negotiation is devoid of emotions

- "Correct" identification and handling allows mediator to
  - Sidestep emotional traps
  - Diffuse the situation
  - Rephrase, reframe, reorient focus (while doing so without loss of trust)

- While negative emotions and their expression may be limited by procedure and protocol, this is most often insufficient

- **A mediator plays a crucial role in reframing the words, checking for clarity, decreasing the tone, all the while affirming understanding of stated words**

Beyond reason

Five core concerns

Core Concerns	The Concern is Ignored When…	The Concern is Met When…
Appreciation	Your thoughts, feelings, or actions are devalued	Your thoughts, feelings, and actions are acknowledged as having merit
Affiliation	Your are treated as an adversary and kept at a distance	You are treated as a colleague
Autonomy	Your freedom to make decisions is impinged upon	Others respect your freedom to decide important matters
Status	Your relative standing is treated as inferior to that of others	Your standing where deserved is given full recognition
Role	Your current role and its activities are not personally fulfilling	You so define your role and its activities that you find them fulfilling

Beyond reason exercise

General Core Concerns	
Appreciation	Desire to feel understood and honestly valued. Lost when merit of other is depreciated or one's own is not communicated well. When issues outside of topic are dragged out, personal attacks.
Affiliation	Lost when othering and exclusion, ostracizing and marginalization. Non-inclusion in decision, or failure to recognize commonality. Communication of incompatibility.
Autonomy	Maintaining or increasing one's own autonomy at the expense of another's autonomy. Cornering or non-consultation on options or decisions.
Status	Belittling, degrading, or simply elevating one's opinion by using one's status all diminish the status of others and trigger an emotional response.
Role	Pigeonholing into a role preventing self-actuation or self-determination. Prolonging a standing which should have been a temporary role into a permanent setting or prevention of fulfillment.

Beyond reason exercise

- Separate in groups of 2
- Take 2-3 minutes to think of a situation
  - Personal (don't feel you need to share anything intimate if you don't wish to)
  - Fight/quarrel/heated emotions
  - You were emotionally invested
  - You feel had been mishandled
- Open the Word document in chat
- Describe the situation to the group/partner
- Together fill in the document for your situation
- Reverse roles – entire exercise is 30 mins

CORE CONCERNS PREPARATION FORM

General Core Concerns	*Their* Core Concerns	*My* Core Concerns	What I Could do to Address *Their* Core Concerns	What I Could do to Address *My* Core Concerns
Appreciation				
Affiliation				
Autonomy				
Status				
Role				

Leonard Risken 2006

Beyond reason exercise – share insight

- Have you uncovered any element you completely overlooked during the argument/situation?

- Have you found an appropriate solution to that specific concern?

- What would it have taken for you to recognize that in the moment?

- What manner of reminder/clarification would you have found acceptable from a third party in the situation?

- Imagine the fight at a mediation table – what tools does a mediator have?
  (and remember she/he may easily offend or lose trust for the same reasons)
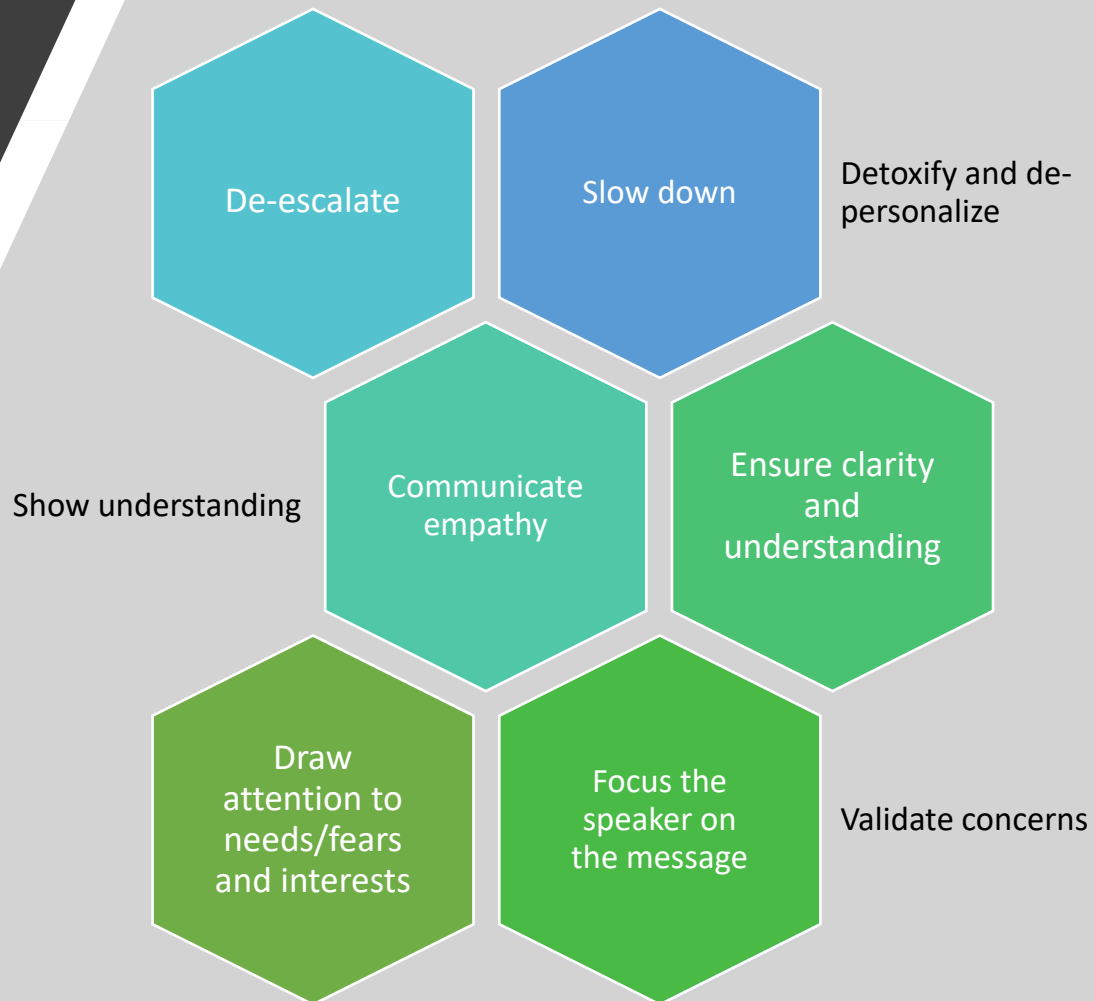
Guiding questions

- The power of a question

- At their disposal, the mediator has a broad selection of questions

- And access to re-framing

Type of question	Objectives of question	Circumstances of potential suitability
Open	General disclosure and exchange of information in open-ended way; get things started.	Commencement of joint and separate sessions; whenever else mediator seeks non-defensive response. Phase 1 and 2
Closed/closing	Controlled disclosure of information through affirmative or negative response. Can only be answered yes or no.	Not in opening stages only later in mediation. Phase 3 and 4
Clarifying	Verify or correct the listener's understanding of a communication; either general or specific information.	Where parties are not being sufficiently clear or specific on important matters.
Probing	Obtain further specificity or justification from speaker, or to test option being considered.	More appropriate in separate meetings to avoid defensive response; or towards end of mediation to 'road test' options.
Focused/Focussing	Disclosure of more detailed facts or information about a specific aspect of an event, incident, etc.	When there is time pressure or parties are rambling and the mediator needs to achieve direction.
Distracting/disarming	To deflect attention from a destructive interchange between parties.	Whenever there is a need to deflect from high emotions or destructive exchanges.
Reflective/empathic	Select and validate an important emotion or fact and highlight it.	Appropriate at all times when active listening and reframing called for.
Circular/triadic	Generate a larger perspective on a certain subject or problem; enable parties to think from respective others' point of view.	Whenever there is need to broaden view and create empathy between parties' positions, interests and needs; encourage change of perspective.
Leading	To elicit information which the questioner already knows, to lead the speaker to a predetermined outcome.	Only when uncontroversial information needs to be elicited, but not otherwise.
Hypothetical/future	To get parties to consider options hypothetically without feeling committed to them.	When there are impasses or breakdowns in the negotiation process; or to develop options for settlement in Phase 3.
Rhetorical	To make a point dramatically or to produce an effect.	When the parties need to be confronted with an obvious reality.
Suggestive	To suggest possible or obvious options for settlement, to float options without parties feeling committed to them.	As a last resort, where the parties are making no headway on their own.

REFRAMING

De-escalate

Slow down

Detoxify and de-personalize

Show understanding

Communicate empathy

Ensure clarity and understanding

Draw attention to needs/fears and interests

Focus the speaker on the message

Validate concerns

- You seem to be most concerned about…

- If I understand you correctly, then you think…

- So you're saying that…

- From what I understand, you were frustrated with the option…

- Could you kindly clarify what we need to understand better…

- Is this what you'd like to see happen…

- Avoid triangling, the objective is to bring more clarity, understanding, and not become a target