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PERSPECTIVE

## Perspective

### The Mother of All Mediations

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President Clinton's recent meetings with Yasser Arafat and Ehud Barak failed to accomplish their limited goal—to implement the Sharm El-Sheikh cease-fire agreement. This points to a diminution of an already diminished reputation of the U.S. as Middle East peacemaker. The next President will have to deal with this tarnished U.S. image.

Previously, at Camp David, not only did Clinton's mediation efforts fail to stop the acrimony, but it contributed to unleashing forces that brought tragic violence. The raising of expectations through summit-type mediation and then the dashing of those expectations through failure had a devastating impact. A second failure could lead to a disavowal of the Oslo accords or even to all-out war.

What can be learned from the recent mediation efforts, and how can Clinton, if he has another chance, or the next President, use mediation to greatest effect?

The art and science of mediation has developed a set of principles and techniques which its adherents believe can be used to resolve virtually any dispute. Negotiation may be defined as the process of narrowing the number of issues in dispute and reducing the distance between the parties on each issue. Mediation, which is really negotiations facilitated by a neutral third-party, has proven successful in resolving highly complex and intractable disputes in com-

mercial, family, employment, international, and other disputes.

How can mediation be made to work in these circumstances?

The first principle of mediation is that there must be a will for there to be a way. Observers, and sometimes mediators, are deluded into thinking that they can sweep all disputants to glorious settlement. But, if one side does not have any intention of reaching agreement, or only of agreeing if their own terms are met, the prerequisite motivation is lacking.

Arafat may not have had the will to make a deal. Perhaps, he was too far out ahead of his people. On the other hand, perhaps Israel did not do everything it could to prevent an excuse for a breakdown. Something in Israel saw Barak as giving away too much and sought to undermine the process.

Thus, if the parties are not ready to make a deal, then the timing is not right.

A second principle of mediation is to maintain constructive momentum at all costs and to hold the parties to conclusion. The mediator moves the parties through two critical events in the process. The first is to move the parties away from the rigidity of their initial positions. Mediators generally start with the easiest issues to build trust and leave the hardest issues for last. The Oslo accords provided an effective schedule for these initial movements.

The second critical event is bridging the last gap—a moment when the whole settlement will come together or fall apart. "Closing" a deal means overcoming the parties' natural psychological resistance to ending a "fight"—in this case one of historic wars and suspicion. Even parties who have the will and the support to close a deal may be fearful or incapable of such a "final" commitment. All that goes before closure is tentative and may be altered. Only a final agreement is lasting and enforceable.

Clinton, or the next President, must use all his powers of persuasion, as well as economic and political leverage.

to convince the parties that making a deal is in their best interest, or at least better than any alternative.

A third principle of mediation is to establish a deadline to force the parties to put their best and final offers on the table. The deadline must be a real one that both sides accept, with the understanding that not reaching an agreement is much worse. Clinton's deadline is the end of his Presidency. The termination of Clinton's Presidency means that this may be the last chance for setting a bona fide deadline for a long time to come.

Fourth, "final positions" which leave gaps between the parties may be closed by creative suggestions by the mediator. The mediator may make an independent, "mediator's proposal" to bridge the gap, but this is risky. If the proposal is not accepted by both sides, the mediator leaves him or herself open to be criticized as having taken a position for one side or the other.

A mediator may fatally undermine his/her credibility with the party who feels that the proposal is weighted in favor of the other side. The evidence suggests that Clinton may have made such a proposal at Camp David. Clinton's proposal may have been acceptable only to close the deal but was farther than one side—Barak—was otherwise willing to move. Since the other side—Arafat—did not accept the proposal, Barak revealed a willingness to move beyond his "bottom line" without obtaining a full agreement. This may have been construed as a willingness to settle at almost any price. Arafat, perhaps having perceived that Barak "blinked," refused to accept, and went home thinking he could obtain even better terms in the future. Clinton's greatest failure may have been in pushing Barak to that point without having obtained a commitment from Arafat to also accept the terms.

While we do not know for certain whether Clinton made a "mediator's proposal" at Camp David, it might explain Arafat's unwillingness to accept the final compromise and Barak's indignation. Such are the perils of a mediator's proposal. Because the U.S. is probably not perceived by the Palestinians as a "neutral" mediator, any future final terms should not be publicly proclaimed as the resulting from a mediator's proposal.

One thing a mediator should not do, unless he/she intends to bow out as mediator, is to publicly criticize one side. This destroys the mediator's appearance of neutrality. After Clinton did so, Jacques Chirac and Mohammad Hosni Mubarak tried to step into the role of mediator. Arafat is seeking to "internationalize" the mediation function.

Nonetheless, the problem with changing mediators (the "United States," rather than any particular President) is that the inside knowledge of the give-and-take of negotiations is lost. The parties need to know that the mediator understands and credits each sides' prior movements as well as developing sensitivity to their styles and concerns. A consistent mediator is also in a better position to preserve commitments which had been previously agreed to in order to build on them when the parties return, at whatever point in time, to attempt to reach agreement on the remaining issues in dispute.

Finally, the mediator may work with the parties to alter public perception of who is achieving a "victory." For instance, when an agreement is stymied because the leaders have gone beyond their constituencies' expectations, mediators can help choreograph steps which bring leaders and led together.

Thus, if the Palestinians' expectations were too high, the President might have had Barak withhold a key concession, allow Arafat to go back home with a lesser deal, and then return to Camp David to obtain the additional concession so that he could appear victorious. This could hurt Barak politically, but he could absorb it more easily given his relatively more stable position than Arafat.

This is not an uncommon ploy in labor-management negotiations, where union members will reject terms being discussed at the table, then strike or take some job action, and subsequently ratify an agreement apparently better than the original terms. The union members feel confident that they obtained everything they could have from management only by showing some muscle in the process.

Of course, the violence and loss of life over the past few months are a high price to pay for this psychological comfort level. Violence can also take on a life of its own, driving a permanent wedge in the process.

Negotiated outcomes are in essence determined by leverage. Each side may wish to test its leverage in the process. But, ultimately, a solid agreement will only be reached if each side has adequate incentive to reach an agreement. Without such will, there may not be a way. □