
Kluwer Mediation Blog

When Something Is Better Than Nothing

Bill Marsh (Editor) (Bill Marsh Mediator) · Tuesday, May 8th, 2012

For students of South-East Asian political struggles (come on, you know you are out there!) last month marked an important landmark. The Government of the Republic of the Philippines and the Moro National Liberation Front signed an historic peace agreement intended to bring an end to 25 years of violent conflict.

Of course, this is welcome news. The end of violence almost always is. However, a study of the terms of agreement contains an interesting lesson for mediators. The agreement is in fact not a full peace agreement, but rather an agreement to continue negotiating within an express framework. The preamble states it to be an agreement to “the following principles, which shall further guide discussions on the substantive agenda of the negotiations”. It expressly “does not contain all points so far agreed upon and does not preclude future agreement on other key points”.

Whilst the legitimacy of certain claims is recognised in principle in the document, as is some demarcation between the powers of central government and any devolved powers to a new separatist governing power, the agreement is essentially an agreement to go on negotiating, albeit within some agreed principles. Given how much is left un-addressed, some may enquire at the value of such an agreement. Huge issues remain unresolved. No detail is established on any aspects – and as we all know “the devil is so often in the detail”.

This is an issue which regularly confronts negotiating parties, and hence also mediators. The more complex the dispute, the greater the number of issues to be resolved, the harder it is to reach a detailed agreement on all of them. The strategy of interim agreements can have significant power.

First, it probably represents the first and only thing the parties have agreed on in years, and so its symbolic value is considerable. Second, it can act to “lock in” progress to date, and create a mutual platform for further discussions. Any breaking off of negotiations thereafter involves going back on a physical, signed document, not “merely” deciding that efforts at finding agreement are no longer worth investing in. Thirdly, and critically, a formal record of progress to date generates both hope and momentum – both of which are critical to resolving complex conflicts.

However, such agreements can also pose problems. The temptation to defer the really difficult issues to another day is always present. There is a fine line to be drawn between the benefit of recording agreed points so far, and the downside of providing a pretext for the parties to avoid addressing the really challenging issues. All mediators know that there are times when we have to keep the “parties’ noses pressed against the glass” – an inelegant expression, perhaps, but pointing to the need to ensure that parties face up to and take the tough decisions rather than run from them.

Equally, we also need to know when we have pressed hard enough, and further pressure will simply undermine our relationship of trust with them.

Reading this point correctly – the judgment call about when to press and when to step back – is inherent in the mediator’s role. As usual, there are no easy guidelines. But as a general principle, I find that the better the quality of the relationship I have built with the parties, the more open they are to being challenged on difficult issues. I don’t think you can over-invest in building trust.

There is always a lot that can be agreed upon, short of a full substantive agreement. An agreement to a phone call next week still implies progress. An agreement to regard the mediation as ongoing, even in the absence of any physical meetings, carries considerable psychological force.

This week I am “resurrecting” discussions in a few mediations which I began several months ago. Some progress was made at the time, but nowhere near enough to reach a deal. Agreement was however reached in each case to regard the mediations as “ongoing”, rather than “terminated”, albeit without any specific commitments to meet or speak. Consequently the parties have remained at least partially in a settlement mindset. It was therefore no surprise to me, when I picked up the phone recently to try to breathe life into the negotiations again, that I found that considerable thinking had happened in the interim, and scope for progress existed.

So my encouragement to all mediators this month is – Some progress is often enough for the time being, and perhaps the furthest that the parties are willing or even able to travel at that point. An interim agreement, however minor the commitment, may be the best that can happen at that stage, and all that is needed.

And as for the negotiations between the Government of the Philippines and the Moro National Liberation Front, I wish them well. It’s tough to find peace, and we should honour all those who try.

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