
Kluwer Mediation Blog

The Language of Diplomacy

Jeffrey Krivis (First Mediation Corporation) · Saturday, November 16th, 2013

The destruction of Syria's stockpile of chemical weapons was a major event that happened in the world this year and is a testament to mediated negotiations in which words trumped force in getting the job done.

Secretary of State John Kerry set things in motion when he said the Syrian government could avoid a military strike by turning over its entire chemical arsenal, while concurrently indicating that he didn't expect President Bashar Assad to agree to such terms. According to Kerry, "I purposefully made the statements that I made in London, and I did indeed say it was impossible and he won't do it, even as I hoped it would be possible and wanted him to do it. The language of diplomacy requires that you put things to the test, and we did."

This was constructive and appropriate hard bargaining that occurs everyday in not only foreign relations, but in our civil justice system. The challenge is to get the ear of the opposition, and make sure they have a sense that there is someone who comprehends their position clearly. In the case of Syria, Secretary Kerry utilized the positive relationship Syria had with Russian Foreign Minister Sergei Lavrov to "run interference" and serve as the impartial mediator in Geneva where the talks occurred. By utilizing a neutral whose credibility with Assad was of the highest magnitude, the negotiation mission took on a heightened sense of urgency, and gave Assad comfort in knowing he had the ear of a perceived ally. Assad wouldn't dare negotiate against Lavrov for fear that his friend would be fooled into terminating the process when a settlement was possible.

The biggest mistake a party can make in any case is to negotiate against the mediator. If the mediator is tricked into thinking that the party truly believes a stubborn position and has no flexibility, the process could be shut down indefinitely. Hard bargaining is fine provided that when the mediator puts the parties to the test by trying to create movement in the negotiation, the party who has taken a tough position makes sure the neutral is aware of his or her desire to keep the process moving forward, even if the offer is minimal. This permits the mediator to focus on the critical areas of the dispute and bring the parties an objective view of the pitfalls of the situation from who is "looking down from the balcony" as described by William Ury. The neutral then refocuses the dispute and describes how it might play out in front of the jury, or in Syria's case, the world stage.

As the diplomatic dance continues, the second phase of the process allows the neutral to estimate the terms of the settlement range and terms, and invite each side to provide a confidential response if the terms meet with their approval. If not, some fine-tuning will occur, but the process will not

be stalled because the neutral was fooled. Confidential firm commitments can then be obtained from each party and will not be disclosed to the other party, thereby creating a framework for resolution.


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