

Kluwer Mediation Blog

Mediation, Strategic Trust and the Seven Elements

Joel Lee (National University of Singapore, Faculty of Law) · Thursday, December 12th, 2019

It is trite that developing trust with parties and as between the parties is a vital part of the mediation process and what makes it work. This is of course easier said than done. I have previously written on trust in “[Trusting Thoughts](#)” (12 August 2012) and “[More Reflections on Trust](#)” (14 August 2015). I would like to focus my final entry for 2019 on exploring the interconnection between the Strategic Trust and the Seven Element frameworks.

For those who are unfamiliar with these two frameworks, it would be useful to briefly review them before exploring the interconnection.

The Seven Element framework has its roots in the Harvard Negotiation Program. It provides a way to prepare for, navigate through, analyze and measure progress in, resolving a conflict. While it is typically taught and deployed in the context of negotiation, it is equally applicable in facilitative, interests-based mediation.

The Seven Elements are:

- Interests: These are the needs and concerns that underlie the stated positions that parties bring to the table
- Options: These are the possible types of solutions/agreements that can be constructed from the interests that parties have brought to the table. The idea of course is to create as many options or combinations of options before decided on which option to commit to.
- Legitimacy/Objective Criteria: These are the measures by which we assess whether any option is fair or legitimate.

These 3 elements of Interests, Options and Legitimacy are often referred to as the “**Crafting**” or “**Creating**” elements where parties seek to create value and construct possible win-win outcomes.

- Communication: This element focuses on informational exchange and the factors that affect them (verbal, non-verbal, structure, process spatial, environmental, etc).
- Relationship: This element focuses on how to make the personal, professional and emotional connections between parties. The notion of trust is often said to be part of this element.

These 2 elements of Communication and Relationship are often referred to as the “**Connecting**” elements in that they connect the parties for the purposes of resolving the conflict.

- Alternatives: These are the things that each party can do on their own, should the negotiation or

mediation not come to an outcome that they can agree on. In the mediation field, terms like “Best Alternative to a Negotiated Agreement” (BATNA), “Worst Alternative to a Negotiated Agreement” (WATNA) and “Most Likely Alternative to a Negotiate Agreement” (MLATNA) are all examples of this element.

– Commitment: This element defines the parameters of when one can say yes to a potential option. By definition, in order to say yes to a potential option, it must be better than one’s BATNA (or WATNA or MLATNA whichever is one’s cup of tea). It should also be an option that is sustainable and better for both parties than a simple compromise.

These 2 elements of Alternatives and Commitment are often referred to as the “**Choosing**” elements in that this is the point in the negotiation/mediation where parties have to decide whether to agree or to go to their alternatives.

The Strategic Trust framework is a concept that I learnt from Thomas Schaub. There is a distinction between emotional trust and strategic trust. Emotional trust is that warm, fuzzy feeling we have attribute to and have in respect of any particular individual. However, these warm, fuzzy feelings are not necessarily accurate or reliable and is subject to all the perceptual biases that humans are prone to. Emotional trust is binary (I trust you or I don’t) and takes time to build. Sometimes, in the case of rebuilding trust, this may also be difficult, if not, impossible.

Strategic trust does not require these warm fuzzy feelings. It is more context-specific and is a function of how likely it is that one party will meet the interests of the other party. This likelihood is measured according to the level of Understanding, Ability and Willingness of one party to meet the needs and concerns of the other party. Expressed mathematically:

Strategic Trust = Understanding x Ability x Willingness

If we allocate a number (from 1-10) for each of these variables, we can derive a figure that measures how much we strategically trust someone in any particular situation. Clearly, if any of the three variables is “0”, then there is no strategic trust.

Seen this way, it does not matter if parties do not like one another personally. If they understand what is needed, and are able and willing to provide it, then one can say that in this specific context, strategic trust exists. This means that at the professional level, parties can work together.

Now that we’ve gotten the review out of the way, how might one use the Seven Element framework in the context of the Strategic Trust framework? The Strategic Trust framework allows us to identify where the weak link is. Where the score is 0 or low for any of the variables as between the parties, that indicates where we as mediators might be able to intervene.

For example, let’s say that the parties have difficulties communicating to one another what their interests, needs and concerns are. These difficulties could arise from parties not having identified their interests, needs and concerns, or not speaking the same language (either literally or metaphorically), or the information communicated being corrupted by cognitive biases, or parties not having the lexicon or skills to communicate their interests, needs or concerns.

These difficulties would mean that the variable of “understanding” would have a low score. The mediator can help facilitate understanding by improving communication between parties. This could include helping parties identify their interests, needs and concerns, or translating what parties are saying (whether literally or metaphorically), or asking questions clarify what is being said, or

asking questions that identify and address cognitive biases, or helping parties find the right words to express their interests, needs or concerns, or reframing what parties are saying so that it is more easily heard between the parties. These interventions revolve around the connecting elements of **Communication** and **Relationship** as well as one of the crafting elements, **Interests**.

By way of another example, let's say the parties understand each other very well but are unable to think of ways to come to agreement. This could arise because they do not have the technical skill to construct a workable agreement, or do not have processes by which they can explore possible solutions, or do not know how to decide as between possible solutions.

These challenges mean that the variable of "Ability" to meet one another's interests, needs and concerns would have a low score. The mediator can intervene here by, *inter alia*, helping parties conceptualise ways to dovetail their interests and needs, as well as design ways to protect against downsides, or to guide them through a process for creating and exploring possible solutions, or to guide them through sorting through the possible solutions, or helping them identify those solutions which are sustainable and legitimate, or identifying which solutions parties can live with. These interventions revolve around the crafting elements of **Options** and **Legitimacy**, as well as one of the choosing elements, **Commitment**.

Yet another example would be parties, while understanding one another's interests, needs and concerns, and able to find possible solutions to agree to, simply do not wish to agree. This lack of motivation could arise because, *inter alia*, parties feel that they have more to gain by not agreeing, or even if there is more to gain by agreeing, parties feel unhappy.

This means that the variable of "Willingness" has a low score. Here, the mediator's intervention can span all Seven Elements. The mediator could focus on what is really important to the parties (**Interests**) or help parties see that the solutions identified are fair/legitimate (**Options** and **Legitimacy**), or that the solutions while not ideal are outcomes that parties can live with (**Options** and **Commitment**), or engage in reality testing (**Alternatives**), or to address any people problems that remain via reframing, apology, etc (**Communication** and **Relationship**).

These examples are of course not exhaustive and I am sure you will be able to think of other challenges in each of these variables and ways to overcome those challenges using the Seven Elements. However, I hope that the discussion about the Strategic Trust and Seven Element frameworks, and the interconnections between them provides readers more tools to help their parties more successfully move towards a satisfactory resolution to their disputes.

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