

Trust and Mediation in Asia: The Process or the Person?

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Virtually all authors on mediation agree that trust is an essential factor in the successful outcome of the process.¹ Psychologists have found that trust is vital to people's willingness to contribute time and attention to pursuing common goals, to reveal useful information, and to exercise "responsible restraint in sharing resources."² Indeed, one could even fairly argue that trust is *the* defining element of mediation, setting it apart from judicial dispute resolution, in which trust between the parties, personal willingness to cooperate, or even faith in the fairness of the process need not exist at all, as long as there is sufficient confidence in the power of enforcement.

Yet, this bedrock of mediation is more malleable than concrete, narrowing or expanding as it is translated into different languages or cultural contexts. Therefore, the mechanics of building trust can pose serious challenges to the practitioner who seeks to develop a viable mediation program. First, what is understood by trust? More practically, what factors are needed to create a sense of trust? Is it sufficient to trust in the fairness of the process or must one also trust the good intentions of other parties? If the latter, which parties—merely the other side or the mediator as well? And, finally, given the very short interaction period of mediation, how can an external mediator (i.e. one who has no prior association with the disputing parties) build a sense of trust or overcome mistrust within a relationship-based culture?

These questions have raised themselves repeatedly over the past decade as I have taught MBA courses on negotiation and dispute-resolution in Thailand, China, Korea and the United States. One of the exercises is a decision-making role play based on Enron's famously failed attempt to force Maharashtra state in India to honor the contract it had earlier signed to purchase power at inflated rates from Enron's Dabhol power plant. As the situation goes from bad to worse, with Enron already out \$300 million amidst mutual charges of cheating and corruption, students are asked to advise Enron on which of four options they should choose to deal with the standoff, including: A) mediation by a highly respected Indian mediator, B) arbitration in London, C) filing a lawsuit, and D) asking the US government to intervene. Although I have put this question before several hundreds of students, I have *never once* had an Asian team choose mediation. When asked to explain their concerns, the students' answers were always the same: *Because they could not expect a fair result from a mediator of the same nationality as the other disputant.* Even when I preceded the exercise with a lecture on the purpose, philosophy and process of mediation, emphasizing that, *at minimum*, any solution would require the absolute agreement of all disputing parties. Interestingly, the results remained unchanged. Process aside, they said, they just couldn't get over their mistrust in the mediator.

The students' reactions accords with the arguments put forth by Frances Fukuyama in his seminal book, *Trust*. Unlike Western societies, which have a high degree of generalized social trust, Fukuyama argues, most Asian cultures experience a very low sense of trust toward anyone with whom they do not have a family or childhood linkage or a developed relationship.³ Other scholars have borne out the primacy of "relational orientation" in Asian sense of trust.⁴ For example, one study published in the *Personal and Social Psychology Bulletin* found that, when dealing with a relatively unknown person, Americans trust primarily on category membership (*i.e. I trust you because of what you do*), while Japanese do so based on interpersonal linkages (*i.e. I trust you because of your relationship to me*).⁵ More specifically to

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our concern here, when exploring why Western-style mediation had not taken off in other parts of the world, an international team of mediators put the problem down to the strict adherence to the American professional association model which concentrates exclusively on mediator competence, ethics and dedication rather than on social factors. “In the United States,” they analogized, “most people do not care who their dentist is related to, and are more likely to value evidence of state-of-the-art training than proof that their dentist is highly regarded by the community.” However, they argue, experience in other parts of the world, particularly in Asia, has shown that trust there is more strongly related to a mediator’s “connectedness” and social authority.⁶

The Meaning of Trust

The English word “trust” is a widely encompassing term, originating from the Old Norse word for “strong.” The Oxford English Dictionary lists as the first definition: the “firm belief in the reliability, truth, ability, or strength of someone or something.” Its essence is the expectation that promises will be fulfilled—in personal relations that one can “walk the talk.” In most East Asian languages, however, the primary meaning of trust (*xin lài* in Mandarin; *shin-rae* in Japanese and Korean) is *reliance in the good faith or benevolence* of another. Belief in one’s *ability* to carry a promise out is a separate word—*xin xin* in Mandarin, *shinjin* in Japanese, *shin-yong* in Korean—more often translated as “confidence.” Whereas the English word “trust” implies objective but active reliability (e.g. “I trust you will carry that out as agreed”), the Asian *xin lài* or *shin-rae* focuses subjectively on benign intention.

This is more than a linguistic difference. Indeed, the varying definitions underlie very different foundations for trust between East and West. In his classic guide to Western-style mediation, Christopher Moore defines trust neutrally as “a person’s capacity to depend on or place confidence in the truthfulness or accuracy of another’s statements or behavior.” This definition centers on *factual reliability*.⁷ Compare that to the more *positive-intent* focused perspectives of Asian authors, such as Prof. Mari Sako’s description of trust among Japanese as “a mutual expectation that the parties will not exploit the others’ vulnerabilities created by cooperation.”⁸ Indian professor T.K. Das and colleague Teng Bing-Sheng reflect the same concerns with personal exposure. The objective definition of trust, as a belief in the likelihood that the other party will “do the right thing” is in fact more related to *confidence*, they argue; whereas trust is “the positive expectations of the other’s *motives* toward oneself in situations entailing risk.” Risk, they argue, is the “core of trust,” linked tightly to a sense of vulnerability at exposing oneself to the intentions of others.⁹ Finally Profs. Chen Xiao-ping and Chen Chao C. write that, in Chinese culture, “trustworthiness refers primarily to the sincerity than the ability of the person,” defining sincerity as having “your best interest at heart.”¹⁰

In Moore’s description of the mediation process, the trust problem is centered on the mutual perception of the unreliable behavior of the disputing parties—as it is the truthfulness or accuracy of their statements that are at issue. The mediator, as an unbiased neutral, exists outside of this distrust circle, thus safely positioned to help mitigate mistrust by creating “perceptions, if not actual behavior, that induce trust between disputants,” such as encouraging a climate of openness and honesty. This is what I will term a *process-based approach*, in which trust (or mistrust) is understood as primarily between disputants. Moore’s definition takes as a given that the disputants do not question the actual mediation *process* itself, accepting it to be transparent and fair to all. In this fair and neutral environment, the role of the mediator is to facilitate non-judgmental interaction between the disputants so that they can safely communicate and act collaboratively to rebuild trust in each other, paving the way for the resolution of the dispute.¹¹

This process-based approach coincides with the “principled negotiation method,” developed at Harvard University, in which trust is not a prerequisite to negotiation or even to agreement. Principled negotiators, write Profs. Roger Fisher and William Ury in their groundbreaking work, *Getting to Yes*, “proceed independent of trust,” as trust is developed through the negotiation process itself. “If you have established a basis for mutual trust, so much the better. But, however precarious your relationship may be, try to structure the negotiation as a side-by-side activity in which the two of you—with your different interests and perceptions, and your emotional involvement—jointly face a common task.”¹² According to this school of thought, although an important goal of negotiation is to create a strong working relationship, an agreement does not require personal trust, as mistrust can be alleviated and the parties protected through controls, such as insurance or contingency agreements.¹³

However, a growing volume of literature on culture and mediation has made a compelling case that, while fair process and strong agreements may be sufficient trust mechanisms in the universalistic societies of the West, they are insufficient to satisfy the demands for benevolence needed by collective societies, such as those in Asia. Moreover, in low-trust cultures the need for sincere and positive motives extends beyond the disputants to all parties at the table, most especially to the perceived leader of the process: the mediator. Cross-cultural mediators in the US, UK and Australia have noted that non-Western disputants put much higher emphasis than their Anglo-Saxon counterparts on the degree of trust they feel in the mediator.¹⁴ “There is no question that the mediator’s influence is instrumental in achieving the success of the negotiations,” writes attorney Sonia Nourin Shah-Kazemi of her experience with Asian family mediation in the UK. Thus, both in fact and in the perception of the disputants, “the mediator can no longer be considered simply as a detached observer, but is a party to the process of the mediation.”¹⁵

This broader conception of trust, which I term the *personal reliance approach*, puts the mediator into the heart of the equation. In contrast to the Western style of mediation in which the mediator fulfils the impersonal role of an objective *part of* the facilitative process, within the Asian cultural perspective, once the mediator involves in to the disagreement, he or she is no longer viewed *merely as a process facilitator* (i.e. an external party), but rather becomes an *active participant* in the effort to seek a solution. The mediator *personally* enters into an interdependent relationship with the disputing parties, who rely on the mediator’s goodwill and expertise to help obtain, or at least not frustrate, a positive outcome. This is a fact long understood by international conflict mediators. In the words of Jacob Bercovitch and Ole Elgstrom, “Whatever their specific characteristics or identity, mediators enter a conflict... and engage in various activities to change the parties’ behavior or modify the conflict environment. ...It is unrealistic and erroneous to view mediators as essential extraneous and disinterested agents.”¹⁶

The Role of the Mediator

As an active and influential participant in the mediation, the mediator in Asia becomes yet another source of risk and vulnerability for the disputants, raising core value concerns about the mediator’s own motives, beliefs, and general fairness. Therefore, before the mediator can facilitate and induce trust between the disputants, he or she must first reduce the disputants’ sense of vulnerability by giving them the confident expectation that the mediator’s *own* motives are pure and benevolent. Without personal trust in the fairness and goodwill of the mediator, the parties to the dispute would be less likely to share information, move from positional to problem-solving thinking, respond positively to cooperative messages, or engage honestly in the sorts of

side-by-side activities recommended by the process-oriented school. Indeed, they would be less likely to participate at all.¹⁷

The central question, then, is what forms the basis of that trust. The first requirement seems to be the need in Asian cultures to feel a sense of connection prior to giving trust. Asian cultures overall are considerably more collectivistic than are Anglo-Saxons. Among collectivistic cultures, personal relationships predominate over roles and “the distinction between ‘our group’ and ‘other groups’ is at the very root of people’s consciousness.”¹⁸ In other words, it is very difficult for a perceived outsider to gain someone’s trust—and the farther outside they appear, the more challenging building that trust becomes.¹⁹

Studies spanning groups from Chinese Malaysians to Cambodian Americans and Australian aboriginals have shown that in Asian societies the cultural background of the mediator plays a significant role in the trust of the disputants and therefore in their willingness to engage in the process.²⁰ While understanding or appreciating the disputant’s culture is a start, many Asian mediation experts feel that academic knowledge is not enough. “To what extent can such appreciation render credible the role of a mediator who does not share the culture of the disputants?” asks Shah-Kazemi. Contrary to the Western view that the relationship involves a one-way effort by the mediator to identify with the client, she argues that the mediator’s “involvement can *only* be efficacious and acceptable when there is that ‘identification’ with the mediatory *by the client*.”²¹ [italics added.] Michelle LeBaron, director of the University of British Columbia Program on Dispute Resolution, adds that collectivists also appreciate that an insider understands high-context nuances that would be opaque to an outsider, and does not require as much explicit communication, thus preserving face needs and group harmony.²²

A second important cultural factor in Asian mediation is “power distance,” or the extent to which people accept and respond to hierarchical differences in social status and power. The research of psychologist Geert Hofstede places all Asian countries into the upper half of the power distance index, with Malaysia, Philippines, China, Indonesia, India and Singapore ranking in the top 25 percent of countries covered in the survey.²³ The combined effect of high power distance and collectivism is significant to the issue of trust in mediators. While collectivism mandates the need for personal trust *prior* to cooperation, the addition of power distance suggests *how* that trust can be established. Cultural specialist Stella Ting-Toomey has shown that, in low power distance societies (primarily consisting of Anglo-Saxon and Northern European countries), trust in an individual is most often based on that person’s immediate or recent behavior or actions (*i.e. what he does*): exhibited personality, personal credibility, persuasive powers, win-loss record, decisiveness, etc. Whereas, in high power distance cultures, it is more often based on the individual’s position and standing in the community (*i.e. who he is*): role in society, family and kinship networks, honors given, reputation for consistency between word and action, etc.²⁴ Social psychologist Hwang, Kwang-Kuo describes the traditional Chinese approach to dispute resolution as a combination of the “principle of respecting the superior” on issues of procedural justice and “principle of favoring the intimate” as a guideline for distributive justice.²⁵

The implications of these cultural factors on trust in mediation in Asia are significant, especially when one integrates them with the studies that show that, in times of stress, people are more inclined to cling tightly to cultural norms. Scholars ranging from the eminent expert on cooperation Robert Axelrod to cultural psychologist Harry Triandis have shown that collectivists are particularly likely to reject out-groups when they experience conflict.²⁶ As a result, while both scholars and practitioners emphasize the need among all disputants for a sense of trust in the mediator, they differentiate between the “North American model” in which the mediator is deemed trustworthy because of his or her presumed effectiveness as a mediation specialist and neutral, outsider status, and the “insider partial” model favored by many other societies in which

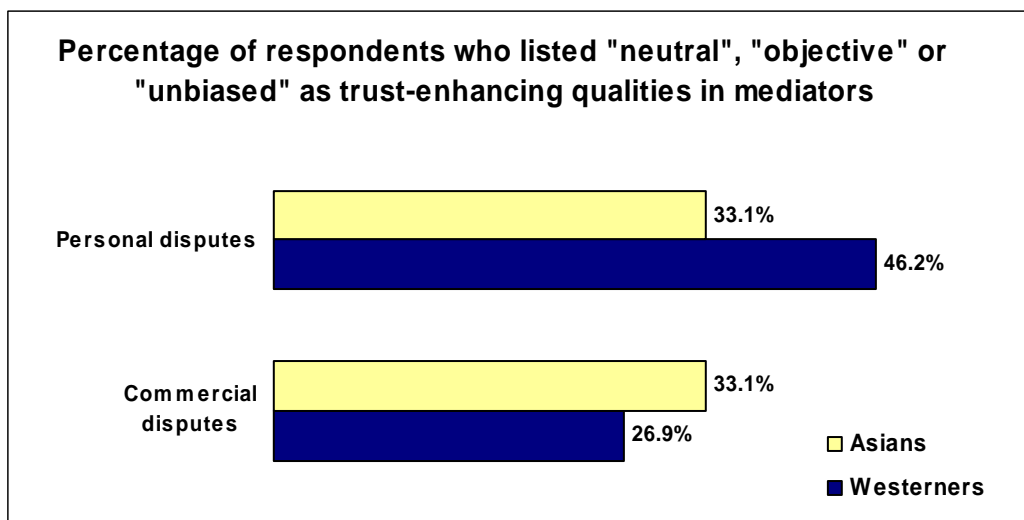
mediators who can demonstrate both familiarity with and continuing connections to both sides are more likely to breach the mistrust barriers and establish effective communication.²⁷

Research Findings

To test these theories, I conducted an informal, open-ended survey among students from my MBA classes in Asia and the United States exploring the factors that contribute to respondents' trust in mediation and mediators. I received 144 replies from 73 males and 66 females, mostly working professionals, with an average age of mid-30s. The respondents included 118 Asians (Chinese, Koreans, Thais, Singaporeans and Sri Lankans) and 26 Anglo-Saxons (American, British, Australian and New Zealand). Approximately 10 percent of respondents received follow-up interviews. While this survey makes no claims to scientific precision (as all the respondents spoke English and had received Western-style education), the responses still suggest some telling differences between Eastern and Western trust needs and the factors that fulfill them.

The responses to the questionnaire generally support Hofstede's conclusions about the personal trust needs of collectivistic, high-power-distance cultures. In the key categories of mediator detachment and qualifications, respondents differed significantly along East-West lines, with a smaller divide in the latter category between what I will term Buddhist cultures (Thais and Sri Lankans) vs. Confucian-based cultures (Chinese, Singaporeans and Koreans). However, in one important area, the study uncovered a significant exception: *When parties to a dispute are from different national, ethnic or religious groups, Asians exhibit as high a preference as Westerners in having a neutral-outsider mediator.*

Chart 1: Preference for Neutral/Outside Mediator

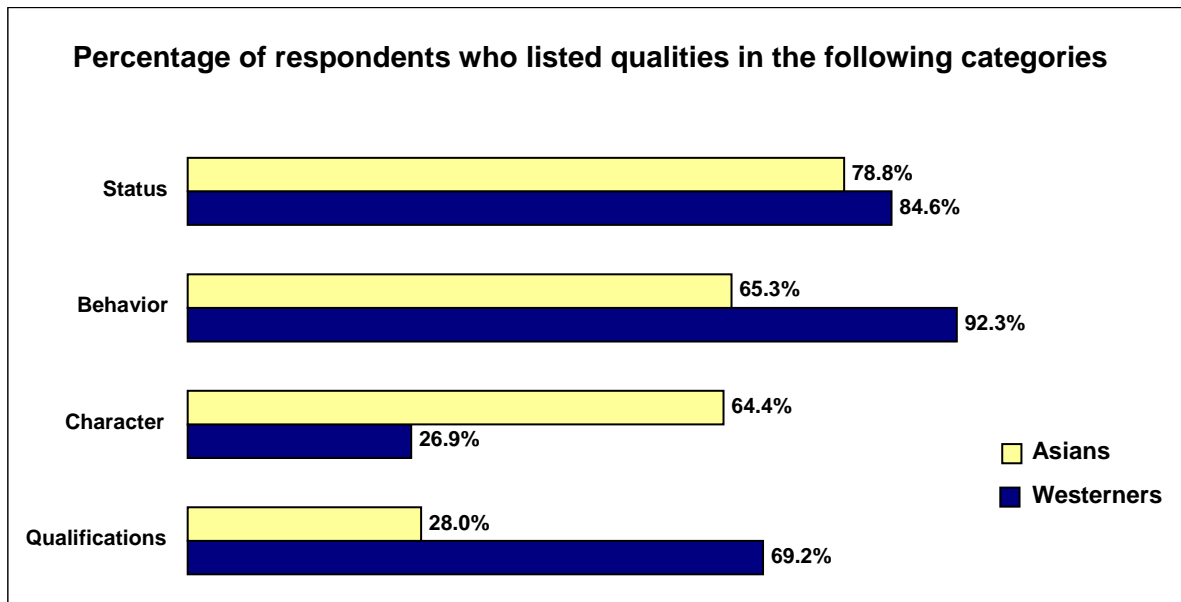


Note: Figures do not add to 100% as respondents were allowed to list more than one quality

Overall, while most Asian respondents expressed a need for a sense of fairness in creating trust in mediation, in personal disputes they were notably less concerned than Westerners that the mediator be detached or impartial: as Chart 1 shows, 33.1% of Asians listed qualities such as “neutral,” “objective” and “unbiased,” as compared to 46.2% of Westerners. Indeed, 16.1% of Asians (vs. 7.7% of Western respondents) said they would feel more trusting if they knew the mediator personally and 25.4% expressed a desire for some connection. In a commercial dispute, the Asian desire for impartiality remained constant at 33.1%, while, interestingly, the

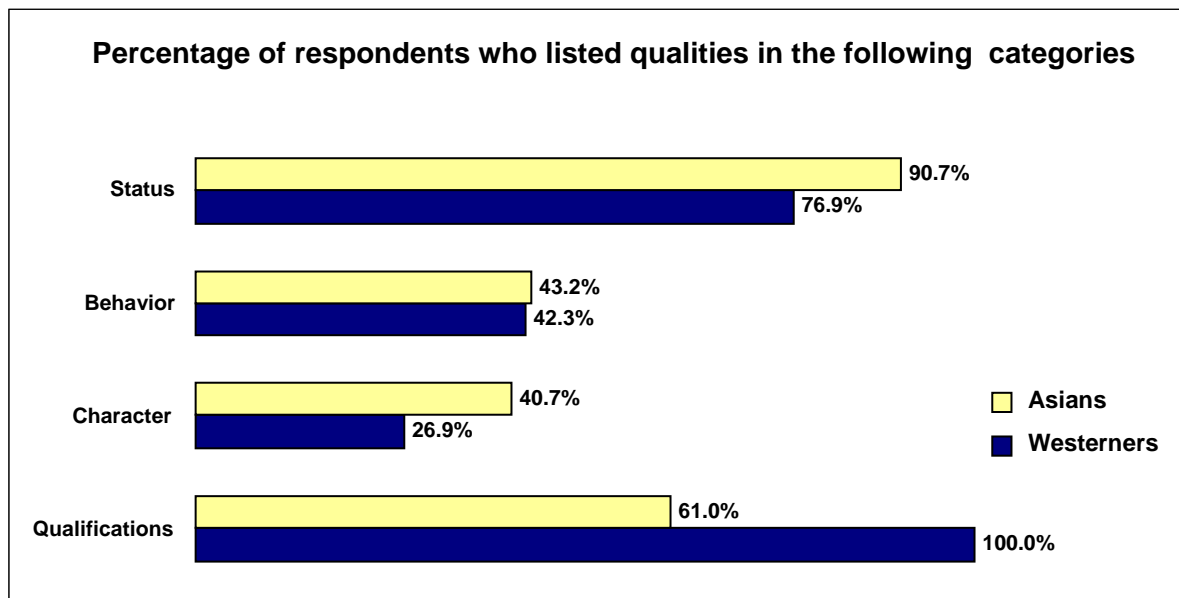
Western requirement that the mediator be a neutral outsider dropped to 26.9%, being replaced by a demand for specific qualifications related to the issue under dispute.

Chart 2: Desired Mediator Qualifications in PERSONAL Disputes



Note: Figures do not add to 100% as respondents were allowed to list more than one quality

Chart 3: Desired Mediator Qualifications in COMMERCIAL Disputes



Note: Figures do not add to 100% as respondents were allowed to list more than one quality

Charts 2 and 3 corroborate the argument that Asians exhibit greater collectivism and power distance than Westerners. After dividing the trust-enhancing characteristics listed by the respondents into broad categories of status, achievements, character and behavior, Asians in the survey placed highest emphasis on qualities relating to status (educational level, knowledge,

reputation, age, etc.), with 90.7% saying that that would be an essential precondition to trust in the mediator in a commercial disputes and 78.8% giving it significance in a personal dispute. Westerners, although also concerned with status, placed highest emphasis on behavior (calm, good listener, likeable, problem-solving) most often—92.3% of the time—in relation to personal disputes, switching to a preference for specific qualifications (mediation-specific experience, success rate, recommendations, communication skills), which were listed a full 100% of the time in relation to commercial disputes.

Among Asian respondents, the most important mediator-specific qualities in their willingness to trust the mediation process are shown on Table 1:

Table 1: Key Mediator Qualities for Asians

%	Personal Dispute	%	Commercial Dispute
40	Experience	65	Experience
33	Neutrality/objectivity	33	Neutrality/objectivity
25	Understanding	22	Knowledge/intelligence
20	Fairness	21	Understanding
16	Personal relationship	18	Reputation
15	Confidentiality	13	Fairness
15	Reputation	13	Success rate

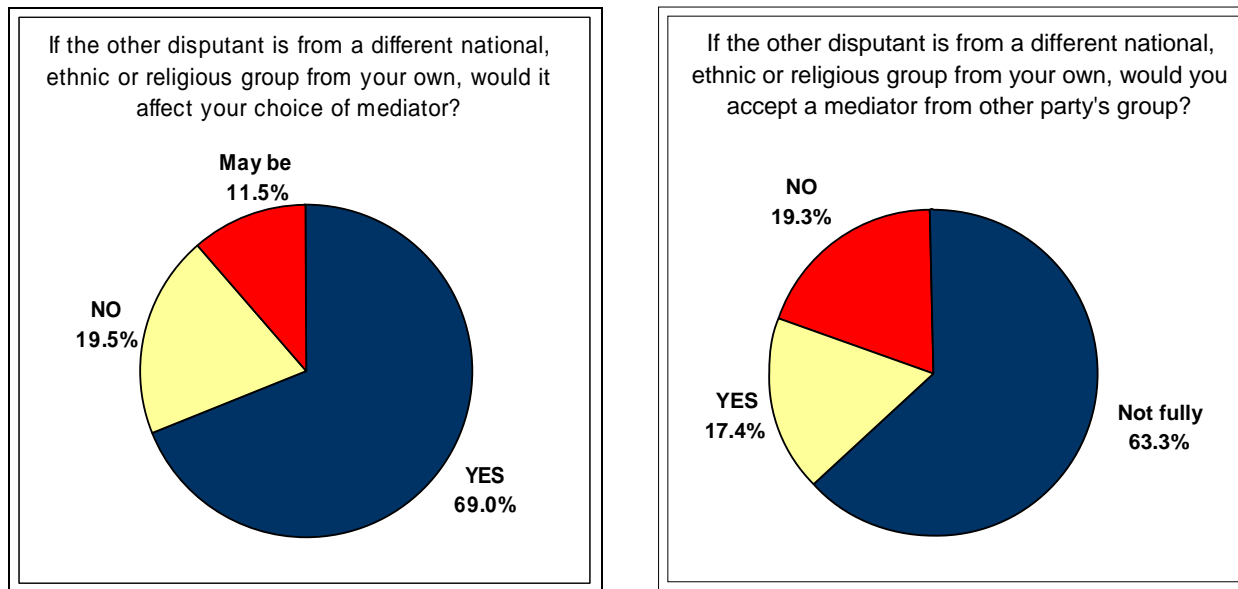
Note: Figures do not add to 100% as respondents were allowed to list more than one quality

There were also areas of global agreement. Both Asian and Western respondents placed a very high priority (above 90%) on experience of the mediator, averaging a 5-year minimum. Both emphasized a need for professional and educational qualifications, though Asians as a whole gave it a higher priority at 81% than did Westerners at 71%. (Confucian-based cultures were highest of all at 91%.) Age was a significant factor for all categories of respondents, with 65% of both Westerners and Asians agreeing that it had an effect on their level of trust, listing an average preferred minimum age of 35. (For Confucian-based cultures, 86% listed it as a trust factor, with the average minimum age being 40.) The factor that played the least role in the trust level of any group was gender, with only 11% of Asians and 16% of Westerners saying it mattered (and with those who stated a preference being equally divided between preferring females and males).

The most significant finding of the survey, however, is that when faced with a situation in which “the other disputant is from a different national, ethnic or religious group from your own,” Asians significantly increased their preference for a wholly neutral mediator. Asked if such a cross-cultural scenario would affect their choice of mediator, 69% of Asians answered “yes” and another 11.5% said “maybe,” for a total of 80.5%. (Among Westerners the corresponding figures were 46.2% and 23.1%, for a total of 69.3%.)

As shown on Chart 4, this correlates to a clear aversion to any mediator that is related to the in-group of the other side—with 82.6% of Asian respondents saying they could not fully trust such a person. But, in explaining how cultural issues would affect their choice of mediator, respondents tempered their preference for a mediator from their own in group with a pragmatic understanding that the other side would have similar mistrust issues with that choice, which, if not addressed, would abort the process entirely. Thus, a neutral outsider or, as LeBaron suggests, an “equidistant” insider became the preferred option in selecting a mediator in a multi-cultural dispute.²⁸

Chart 4: Asian Response to “Out-Group” Mediators



Practical Implications

The results of this survey corroborate the findings of mediators on the ground as well as cultural studies that raise concerns about the effectiveness of transplanting a purely Western, process-oriented model of mediation into an Asian culture, without making adaptations for the latter's greater collectivism and higher power distance. Taken together, they support the argument that Asian mediation centers should be prepared to adapt to the increased need among their clients for trust in the person of the mediator prior to entering into the negotiation process.

To address those relationship needs, the following policies should be considered:

1. **Provide complete information on the mediators.** It is no secret that transparency creates trust. Just as mediators seek to create an atmosphere of honesty and transparency within the mediation process, they should be open about their own backgrounds. The goal is to broaden possible senses of identification and thus to create a connection with the disputants. Lewicki has defined three types of trust: calculus-based (based on a sense of control over the other party), knowledge-based trust (based on having sufficient information about and so a sense of understanding of the other party), and identification-based (a true sense of connectedness.)²⁹ Providing plentiful information about a mediator, beyond mere professional qualifications, can contribute both to knowledge-based and identification-based trust, remembering that Asians tend to be concerned with general experience and qualifications, including education, positions held, honors received, age, family status, and other affiliations. There is a bonus outcome to doing this, for the more affiliations an individual presents, the greater likelihood that he or she will be accepted either as an insider or, at least, equidistant between the disputants.

2. **Allow disputants to jointly choose their mediator.** A step beyond providing ample information about the mediators is to allow disputants to peruse the perspective mediators' profiles in order to make an informed choice of a person with whom they would feel comfortable entering into an interdependent relationship. Stephen Goldberg, professor of law at Northwestern University and coauthor of *Dispute Resolution: Negotiation, Mediation, and Other Processes*, even suggests that mediators should be open to questioning by potential clients about their philosophy and past experiences.³⁰ The process of choosing a mediator has the important side benefits of beginning the mediation process with an agreement between the disputants while simultaneously morally obligating them to work constructively with their jointly chosen mediator to try to achieve a mutually agreed outcome.

3. **Practice co-mediation.** Co-mediation is often drawn upon for highly technical disputes that require an expert as well as a facilitative mediator. In highly emotional disputes it can also help considerably to have at least one mediator who is connected to the disputants' in-group member—or, in the case of cross-cultural mediation, to have a member of each party's in-group—to improve communication, create an atmosphere of trust and respect, and provide an understanding of the context of the dispute. While this requires careful coordination and a good working relationship between the mediators, the advantages of this method are great as it provides disputants with a clear working model of cross-cultural harmony, setting the stage for greater cooperation.

Trust is a thornier issue in the East, where it is not given so freely as in the West. However, as a principal requirement, if not defining quality of mediation, it is not one that can be brushed aside in an attempt to follow a neutral, objective model. While dealing squarely with trust issues does make for “messier” mediation, it also offers the only real hope of developing a viable mediation system in Asia.

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⁶ Honeyman, Christopher, Bee Chen Goh and Loretta Kelly, “Skill is Not Enough: Seeking Connectedness and Authority in Mediation,” *Negotiation Journal*, 2004: 20(4), pp. 489-511.

⁷ Moore, *ibid.*, pp. 177-180.

⁸ Sako, Mari, “The Informational Requirements of Trust in Supplier Relations: Evidence from Japan, Europe and the United States” in: Lazaric, Nathalie and Edward Lorenz, eds. *Trust and economic learning*, Cheltenham, UK: Edward Elgar, 1998.

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- ¹² Fisher, Roger, and William Ury, *Getting to Yes: Negotiation Agreement Without Giving In*, 2nd ed., NY: Penguin Books, 1991, pp. 11-13, 38.
- ¹³ Bohnet, Iris, "The Payoff of Trust," *Harvard Negotiation Newsletter*, 2004:7(7), 9-11; Susskind, Lawrence, "Don't Like Surprises? Hedge Your Bets with Contingent Agreements," *Harvard Negotiation Newsletter*, 2005: 8(1), pp. 7-9.
- ¹⁴ See, for example, **Stringer, Donna, "Bridging Cultural Gaps in Mediation," *Dispute Resolution Journal*, 2001: 56:3, pp. 29-31; Honeyman, op. cit.; Welsh, Nancy, and Debra Lewis, "Adaptations to the Civil Mediation Model: Suggestions from Research into the Approaches to Conflict Resolution Used in the Twin Cities' Cambodian Community," *Mediation Quarterly*, 1998: 15(4), 345-358.**
- ¹⁵ Shah-Kazemi, Sonia Nourin, "Cross-cultural Mediation: a Critical View of the Dynamics of Culture in Family Disputes," *International Journal of Law, Policy and the Family*, 2000:14, pp. 302-325.
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