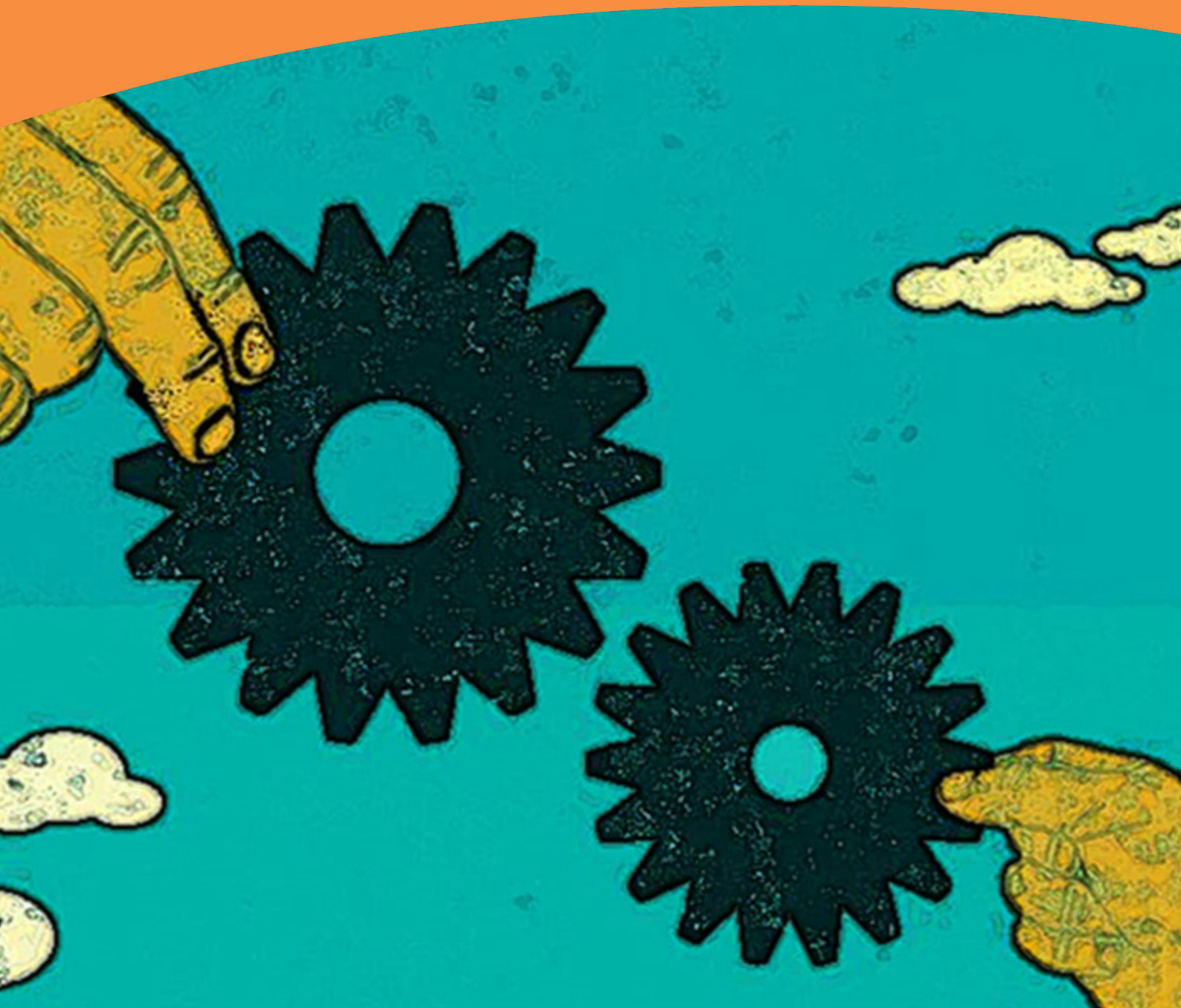


Conflict Management and Cultural Diversity

The Effectiveness of Mediation

Susanne Schuler



SUSANNE SCHULER

CONFLICT MANAGEMENT AND CULTURAL DIVERSITY

THE EFFECTIVENESS OF MEDIATION

Conflict Management and Cultural Diversity: The Effectiveness of Mediation

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INTRODUCTION

"We're blind to our blindness. We have very little idea of how little we know. We're not designed to know how little we know".

– Daniel Kahneman

"The promise of Intercultural Mediation" and how far can mediation help in intercultural conflicts?

We're living in a time where both possibilities and problems have no limits or borders. The more we are connected by technology and economic interdependence, the more we face challenges within that wider community.

The antidote to our global problems seems obvious: cooperation across borders.

But borders are there for a reason: they are built to surround cultural groupings, religions and nation states to protect their own. Within countries, there exist less visible borders, those of financial inequality, legal inequality, and racial inequality.

One might think that by creating a common value system we could transcend our borders and enhance cooperation amongst the members of a healthy global community.

Let's assume for a moment that this will work and let's explore that value system: What components would we find? Experts agree that charity, fairness, benevolence, loyalty, and the protection of the rights and freedoms are THE common values around the world. Translated to our daily behaviours, this is experienced as positive conscience, virtues, a strong inner sense of justice, and an understanding of the consequences of our actions. Unfortunately, these components often prove to be highly ineffective when it comes to resolving conflicts.

Why is that? We tend to apply these values only to members of our own community and not to 'non-members' or members of other groups. So, we have values and live by them, but in order to be able to resolve conflicts between groups or even on a global level we need to expand our borders and identify what it is we understand – what our community or group is.

Within a group we have a common purpose. This is important and helps us deal with local conflicts very well: we respect the perspective and points of view of our fellow members. By

changing our perspective and walking in our colleagues' shoes, we can begin to cooperate effectively by appreciating both points of view.

Amongst our many values, there is one 'driving value' which is powerful enough to create synergies from our different perspectives and therefore facilitates effective cooperation. It's the value of Charity. It is experienced as graciousness, benevolence and love. Is this the purest form of altruism? It moves us to care about the well-being and outcomes of others within our group.

"Within our group": Soldiers, for example, are trained to dehumanise their enemies in order to be able to fire their weapons if necessary. They must switch off this human trait in order to be able to kill members of another group.

This kind of dilemma is called the "Us-Them-problem" (Joshua Green). Evolution prepared us to deal effectively with the "I-We-problem", to put our own interests below those of others within our social community. This has been critical for our survival. It didn't, however, prepare us to cooperate with "Them". In transnational business, global pollutions, and multi-country conflict, something more is needed. An emotional extension of our borders has become crucial for our survival NOW.

Learning how to do this is a great opportunity. It may be the only chance to overcome global problems and to resolve conflicts effectively. This requires developing a new vision with an expanded identity which spreads beyond borders – a global identity as an add-on to our existing local ones. This may allow us to change perspectives, combine points of view and to care for others within and beyond our own communities.

Intercultural Mediation might be one powerful tool which can assist us in changing perspectives and developing curiosity for the issues of others.

Intercultural mediation is used when a conflict is determined or influenced by cultural differences and when its resolution takes these cultural differences into consideration, even if the cultural differences may not be the actual or original source of a dispute.

In this book, we will demonstrate that these cultural differences might play a crucial and decisive role in the mediation and conflict management process and its outcome. We consider intercultural mediation as a means of constructive conflict management.

You will also learn more about conflict sources and styles, triggers, challenges, and how to use your resources effectively when in a conflict situation. You will learn how to develop strategies for being a facilitator and how to use mediation to get to an effective outcome,

particularly in an intercultural context. Amongst top tips and exercises, we have included scenarios we encountered personally to bring the material to life.

You will go from theory to practice, from conflict to resolution, from ethno-centricity to ethno-relativity; you will experience and receive input about the powerful tool of mediation as a means for constructive conflict resolution.

1 A BRIEF HISTORY OF CONFLICT

"The greatest discovery of all time is that a person can change their future by merely changing their attitude"

– Oprah Winfrey

What is a conflict?

Before we start talking about conflicts and how to resolve them, we'd like to give you a definition we're going to use throughout this book.

Conflict is an actual or imaginative incongruence in the thinking/imagination/perception, and/or feeling, and/or desire between two or more so called actors (individuals, groups, organisations, etc.), which stops them from seeing the interests of the other/s (inspired by Glasl¹).

A conflict may only be perceived by one party whilst being non-existent for the other side. That alone can cause a disagreement. Mediation practice shows that there is never one correct vision of a dispute, there are as many perspectives as there are parties involved. Accepting this fact gives both the freedom to seek out the objective truth which is past-oriented and allows the parties to move forward by exploring other options.

Let's analyse in more detail the anatomy of a conflict to help us better understand what types of conflict exist and what the conflict sources are, and our contribution to them.

1.1 SOURCES AND TYPES OF CONFLICT

Where does conflict happen?

According to Glasl² (Glasl, 2009) conflicts can arise on various social levels:

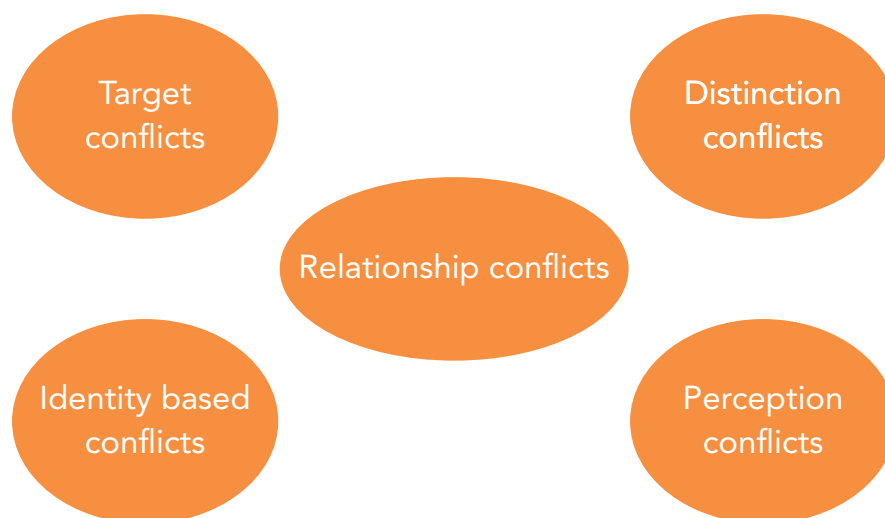
- In an individual as an *intra-individual conflict*
- Between individuals as an *inter-personal conflict*
- Within a group as an *intra-group conflict*
- Between groups as an *inter-group conflict*
- Between individuals and groups as a *person-group conflict*

In this book, we will look at conflict dynamics in general including all social levels of conflict and how mediation can help resolve them.

Why does conflict happen?

Conflicts help us satisfy our needs: basic physiological needs, and also help us to feel safe, loved, and to belong. They aid our need for esteem and self-actualisation (see also Maslow's hierarchy of needs³ (1954)).

When resolving a conflict, it is helpful to analyse the root cause. By doing this the mediator can find effective methods to address the core issues at the sources. We will elaborate on the 'How' later in the book in more detail (see chapter 6). In the graph below you can see a selection of the main sources of conflict which play a role in almost every conflict we experience (Moore, 2003⁴).



Target conflicts

Differences perceived in intentions

Distribution conflicts

Differences perceived in use or exploitation of resources

Relationship conflicts

Differences perceived in behaviour and relationships

Identity based conflicts

Perceived threats or aggression towards identity and person

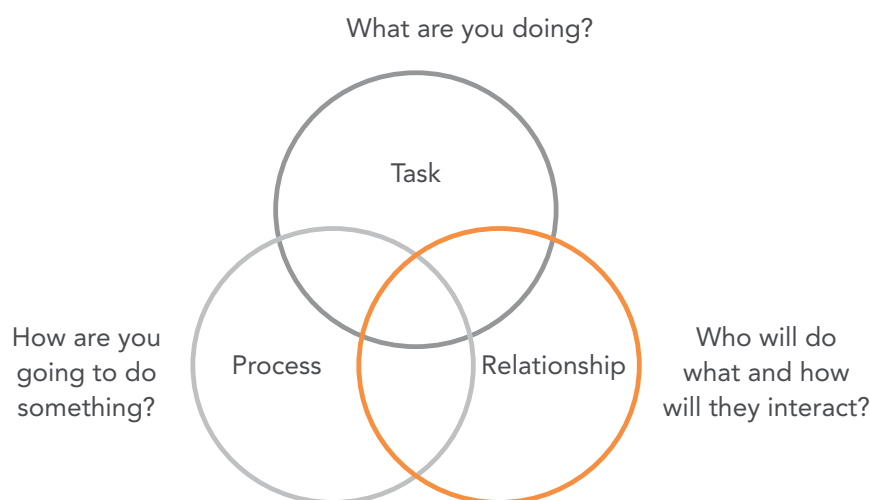
Perception conflicts

Different perceptions of a fact/issue

In which form does conflict occur?

In conflict theory there is mention of many types of conflict, such as hot vs. cold, workplace vs. commercial, professional vs. personal, and many more.

We suggest a different categorisation: conflicts are by their nature placed in three wider areas which are intertwined.



Task conflict resolution requires that, for example, team members of a project team are all clear on what is to be done, are focusing on the same objectives/outcomes, and feel they have a stake in the project.

Process conflict resolution requires that the team has cohesion and focuses on the practicalities.

Relationship conflict resolution requires to be dealt with rapidly in order to prevent escalation due to powerful negative impact. Dealing effectively with relationship conflicts can leave people feeling that they have been heard, and that getting through the conflict has strengthened the team.

Being aware of which type of conflict you're dealing with helps you think and develop an effective resolution strategy.

Let's have a look at how the different conflict types are interlinked. We add the dimension 'time' here and see what impact the three types of conflicts have if not managed over time:

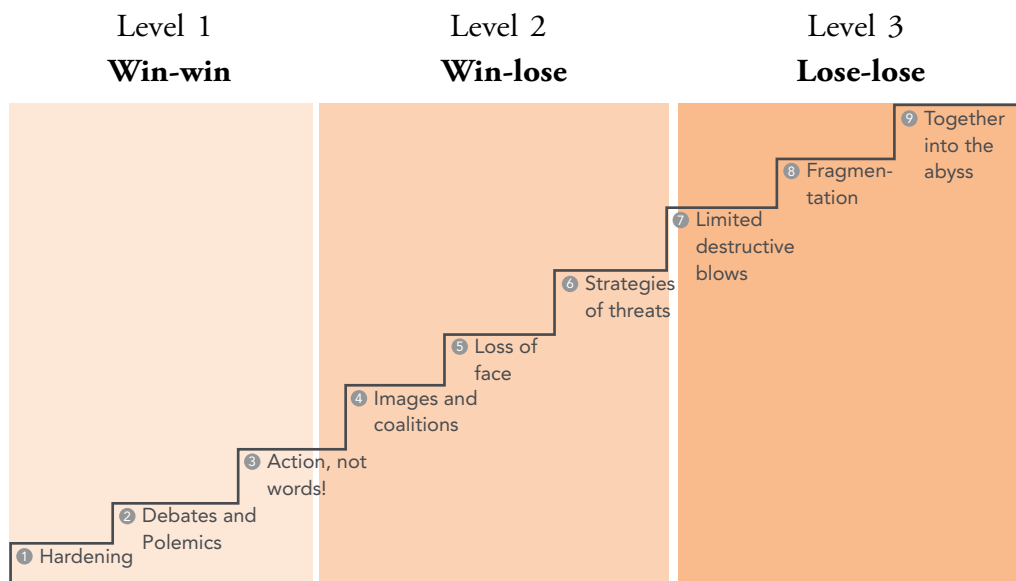
Relationship conflict almost always has a negative impact. Once the relationship level is affected there's no 'easy way out'. When you haven't tackled the issue, an effective continuation of work-related or personal projects is not possible.

Research says that teams in conflict, with **low Process and low Task conflict**, may have a reasonable level of cohesion and satisfaction, but they may suffer low productivity and/or effectiveness.

What are the implications for you? This means that you need to discuss Process and Task early on in projects to make sure that cohesion is combined with efficiency. If there is too much of this type of conflict for too long it can transform into relationship conflict.

1.2 CONFLICT ESCALATION

Now, that we know what a conflict is, what the source might be and in which form they can occur, it is useful to know how a conflict can develop when not adequately managed. Glasl's⁵ (2009) escalation model offers both a useful diagnostic tool and it is also a valuable tool to raise awareness of the mechanisms of conflict escalation and when a third party is needed to facilitate.



To provide a simpler way to analyse your conflict using the escalation steps, here are three headlines for each level. If you can answer any of those positively it means that the conflict you're analysing has probably escalated to this level:

Level 1: “From word to deed”: there are discussions, discords and ill-feelings, something you might experience on a daily basis which can be tackled by the conversations partners themselves.

Level 2: “I’m good and you’re bad”: Once you’ve crossed the line from a heated but healthy discussion to a mindset of ‘right and wrong’ you’ve entered the realm of an escalated conflict and it’s now recommended that you seek assistance to stay ahead of more serious consequences.

Level 3: “Whatever the cost”: On this level the conflict has reached ‘a point of no return’ and you are at war. Only very experienced facilitators will be able to turn this around, but only at the transition from level two to three. Beyond that, only a complete ‘reset’ will help, if anything is left to reset at all.

One last point on conflict analysis. There are different conflict styles which play a crucial role in the resolution of conflicts. A grasp of your style will help you to develop a more strategic approach to managing them.

1.3 CONFLICT STYLES

In the '70s, two conflict researchers, Ken Thomas and Ralph Kilmann⁶ (Thomas/Kilmann, 1977), took on the challenge to design an instrument to effectively measure conflict-handling behaviour and to overcome the social desirability bias: people's tendencies to present the most socially acceptable image of themselves, rather than present themselves as they really are.

The instrument they developed is called the Thomas Kilmann Inventory (TKI) and it is designed to measure a person's behaviour in conflict situations.

In such situations, they describe an individual's behaviour along two dimensions: (1) assertiveness, the extent to which the person attempts to satisfy their own concerns, and (2) cooperativeness, the extent to which the person attempts to satisfy the other person's concerns.

These two basic dimensions of behaviour generate five different modes for responding to conflict situations:

Each of us is capable of using all five conflict-handling modes. None of us can be characterized as having a single style of dealing with all conflicts. But certain people use some modes better than others and, therefore, tend to rely on those modes more heavily – whether because of temperament or practice.

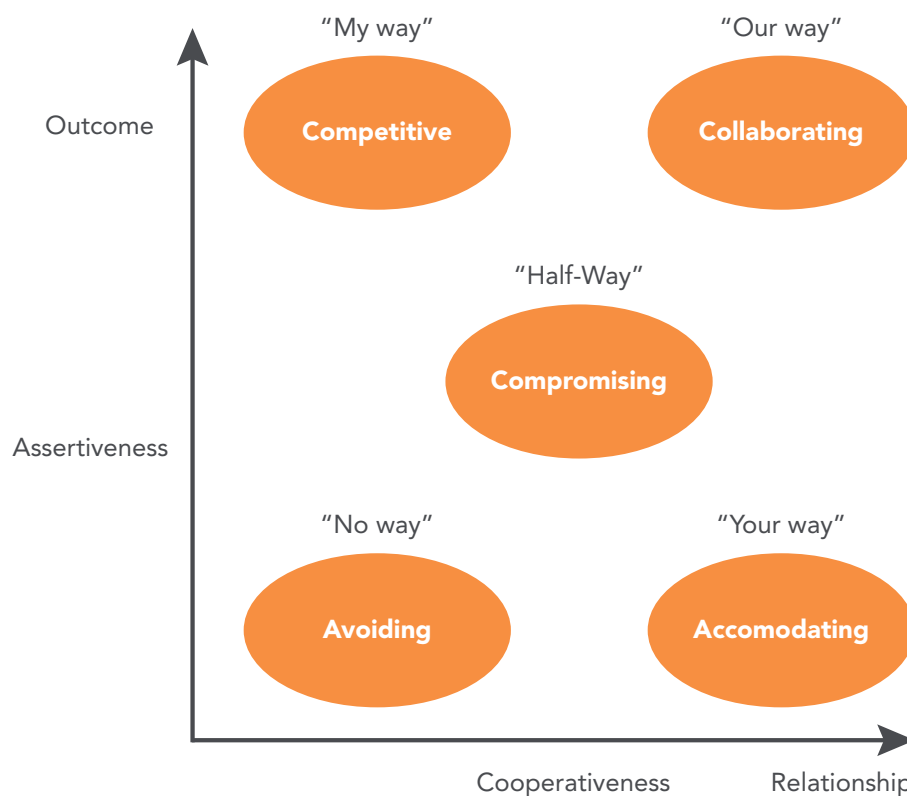


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Your conflict behaviour is therefore a result of both your personal predispositions and the requirements of the situation in which you find yourself.

What Thomas and Kilmann and many other conflict experts say is that conflict behaviours is a question of preference; no one style is right or wrong, but there are styles that individuals feel more or less comfortable with.

To illustrate what 'having a preference' means: if you were asked to fold your arms one over the other, and then to fold them the other way round, most of you will have a preference, although you can do it both ways and feel more comfortable the first way and a little bit awkward the second way.

So, why do we need to be aware of our preferences?

There are styles that we like more or less, we may overuse or under use them, and this preference has an impact on the conflict outcomes.

We may miss how others perceive us or we may misinterpret the actions of others and this can lead to unnecessary tension.

The use of each style comes with costs and benefits, and knowing them gives you a choice to switch or stick with a certain style. Below we give you two examples on how you could use the instrument to go from style to strategy using the *avoiding* and *collaboration* approach.

Feel free to read more about TKI and how you can use this tool and the work around it more effectively, or give us a call to learn more.

Avoiding

Description: This approach is uncompetitive and uncooperative. Avoiders do not immediately pursue their own concerns or those of the other person. They do not address the conflict. Avoiding might take the form of diplomatically sidestepping an issue, postponing an engagement until a better time, or simply withdrawing from a threatening situation.

Effective Uses:

- When an issue is trivial, of only passing importance, or when other, more important issues, are pressing.
- When you perceive no chance of satisfying your concerns, e.g. when you have low power or you are frustrated by something, which would be very difficult to change (national policies, someone's personality structure, etc.).
- When the potential damage of confronting a conflict outweighs the benefits of its resolution. To let people cool down and to reduce tension to a productive level and to regain perspective and composure.
- When gathering more information outweighs the advantages of an immediate decision.
- When others can resolve the conflict more effectively.
- When the issue seems tangential or symptomatic of another more basic issue.

Non-Effective Uses:

- When avoiding is only a short-term solution, no focus on the relationship, opting out of the dialogue completely, no problem-solving, damages to the relationship and non-achievement of own objectives, offers no new thoughts necessary for innovation.

Collaborating

Description: Collaborating is both competitive and cooperative, the opposite of avoiding. Collaborating involves an attempt to work with the other person to find a solution that fully satisfies the concerns of both parties. It means identifying the underlying concerns of both individuals and finding an alternative which meets both sets of concerns. Collaborating with two persons might take the form of exploring a disagreement to learn from each other's insights, concluding to resolve a condition which would otherwise have them competing for resources, or confronting the core issue and trying to find a creative solution to an interpersonal problem.

Effective Uses:

- To find an integrative solution when both sets of concerns are too important for compromise.
- When your objective is to learn, e.g. testing your own assumptions, understanding the views of others. To merge insights from people with different perspectives on a problem.
- To gain commitment by incorporating others' concerns into a consensual decision.
- To work through hard feelings which have been interfering with an interpersonal relationship.

Non-Effective Uses:

- When time is pressing, a decision needs to be made, e.g. emergencies, when outcome is far more important than relationship, for small decisions.

1.4 CONCLUSION: WHAT IS A 'USEFUL' CONFLICT FOR MEDIATION

Going back to Glasl's escalation steps, all conflicts from level two to beginning/middle level three require a third party to help resolve the conflict themselves. The parties are not able to resolve the conflict, as they've entered the negative spiral of conflict and need assistance to go back to level one.

In principle, level-one-conflicts can benefit from mediation even if the parties could take on the responsibility to manage their own conflict. Some awareness, initial help and training will enable them to do so.

However, conflicts escalated beyond the beginning of level three have to be ended through an external evaluative decision rather than a facilitated process.

Case study 1: ‘Yes or Yes?’ Japanese consortium acquires European company

Background:

- *A European company was acquired by a large Japanese consortium.*
- *Each business unit leader in Europe had a counterpart in Japan and both have to report to their superiors (also a co-leadership).*

Issues:

- *Constant misunderstandings occur about tasks and processes.*
- *This is further confused by the Japanese counterparts confirming that they understood even if they did not.*
- *European leaders were uncertain about the execution of tasks, quality standards, deadlines, and the status of tasks or processes.*
- *This lead to different messages related to reporting the results to superiors. It lead to a separation of work teams rather than collaboration without admitting the fact that this was happening, it lead to stagnation of work and eventually had a negative impact on the working relationships and the quality of the work negatively.*

Diagnosis:

- *Different levels of English (both not mother tongue).*
- *Different meanings for the word ‘Yes’ – in the European context “yes, we will do as agreed” or, “yes, it’s done” or, “yes, I understand” – in the Japanese context “yes, we are part of the project”, “no, we don’t understand, but we can’t admit it”.*
- *The European teams were working with high autonomy and communicated directly.*
- *The Japanese teams were working in a strong hierarchical system and communicated indirectly. Face saving was essential. Mistakes or uncertainty were not expressed.*

Resolution:

- *The European teams accepted 'Face saving' as a value and agreed with the Japanese teams that each instruction will be summarised in writing in their own words by each team on each side.*
- *The pronoun "we" would be used instead of "I". This would highlight possible misunderstandings which could then be tackled and would avoid the exposure of one leader who might have misunderstood.*
- *A visual timeline was created which allowed each project member to track the status of the project easily.*
- *The timelines were planned more generously to allow for corrections. A virtual meeting once per month was agreed along with a face-to face meeting once per quarter to build relationships. The tasks were distributed according to each team's strengths.*

1.5 REFLECTION AND PRACTICAL TIPS

Reflection – A conflict in your own context

Whenever you realise you are involved in a conflict situation or you are observing one, we recommend mapping out the conflict and becoming clear on who the parties are, what the issue is about, what type of conflict it is, and how far it has escalated. You can then make a better informed decision about the kind of assistance you need.

Conflict Analysis:

- Map out the conflict parties on a sheet of paper: who are the conflict parties?
- What type of conflict do they have and what is the possible source?
- On which escalation level is the conflict?

General reflections:

- How do people approach conflict in your organisation or team in relation to the different types of conflict?

- Can you think of examples where task and process conflicts have turned into a relationship conflict, or where relationship conflict has got in the way of task and process?
- Think of the costs and benefits of each conflict style
- Consider what possible positive and negative perceptions others can have when someone applies a certain style
- Think about typical phrases someone uses when applying a style, e.g. “I’ll think about it tomorrow” for avoiding, or “Two heads are better than one” for collaborating.

TOP TIPS

- Check whether you have a perceived or real conflict
- Check what type of conflict it is
- Map out who the conflict parties are
- Check the escalation level and decide whether you’d like to involve a facilitator

2 INTERCULTURAL

"The highest possible stage in moral culture is when we recognize that we ought to control our thoughts."

– Charles Darwin

2.1 WHAT IS CULTURE?

We're living in a time where both possibilities and problems have no limits and borders. The more we are connected by technology and economic interdependence, the more we are connected through our challenges within that wider community.

The solution to the global problems seems obvious: cooperation across borders.

But borders are there for a reason: they are built through cultural groupings, religions and nation states protecting their own. Within countries, there are also the less visible borders of financial inequality within and between countries. In this chapter, we will explore differences in cultural concepts and their impact on the resolution of conflicts.

Objective culture concept

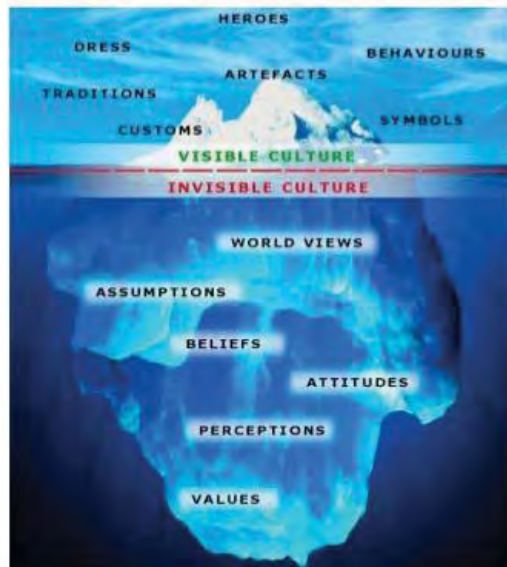
It seems obvious that having a definition of culture will help us resolve conflicts between cultures more effectively. However, we found in practice that some definitions of culture are more useful than others in achieving a satisfying outcome in conflict resolution. A common definition of culture, seeing it as an objective concept, is "*a collection of artefacts, institutions, and customs*"⁷ (Bennett, 1993). Having a concept of an objective culture might be useful for understanding the different histories of peoples and for appreciating the diversity of products they have created. However, such knowledge is not necessarily helpful in itself for dealing with conflicts between individuals or teams from different cultures. Other worlds such as corporate culture, individual culture, social culture etc. have to be considered as part of the 'cultural self' of each individual. What we've seen is that many experts in objective culture, including many experienced and well-educated international managers, still fail to communicate effectively with people from their own or another culture. We have also learned that knowledge does not equal competence. "Knowledge of objective culture is necessary but insufficient for developing and maintaining intercultural relations" (Bennett, 1993).

Cultural Iceberg Model

Developed by Edward T. Hall
in 1976

The external tip of the iceberg is the conscious surface of a culture

The vast part of the iceberg that is hidden, is the subconscious aspect of a culture



Subjective culture concept

We would like to suggest a more practical definition of culture, a subjective concept: “the pattern of beliefs, behaviours and values maintained by groups of interacting people” (Bennett, 1993).

Within a group we are bound together by a common purpose. This is important and helps us deal with local conflicts: we respect the perspective and point of view of our fellow members. By changing our perspective and walking in our colleagues’ shoes, we can cooperate more effectively.

Soldiers, for example, are trained to dehumanise their enemy in order to be able to fire if necessary. They must switch off this value in order to be able to kill members of another group.

When it comes to managing conflicts between two different groups or members of groups, the idea of subjective culture provides a challenge which is clearer to define. This kind of dilemma is called the “Us-Them-problem” (Joshua Green). Evolution prepared us to deal effectively with the “I-We-problem”, to sublimate our own interests to facilitate a functioning of our social community. This has been critical for our survival. It doesn’t, however, prepare us to cooperate with “Them”. In transnational business, global pollution and multi-country conflict, something more is needed. An emotional extension of our borders has become crucial for our survival.

Learning how to do this is a great opportunity. It may be our only chance to overcome global problems and to resolve conflicts effectively. This requires developing a new vision with an expanded identity – a global identity in addition to our local one. This allows us to change perspective, combine points of view and to care for others within and beyond our own communities.

In this context, it is a normal emotional reaction to question our own ability when we first encounter a radically different view of the world. So, we now pose the question: ‘how culturally sensitive are you?’

To question our own view of the world we have to be conscious of our privileges, biases, realms and realities that we’re living in, and also of those parameters which marginalise us.

2.2 MARGINALITIES

When put under stress, e.g. in a conflict situation, we have the tendency to retire to our ‘ethnocentric’ or ‘marginal’ position. We lose sight of what’s happening around us and focus on what’s familiar to us⁹. This position is largely defined by our upbringing and the sociocultural norms within which we have learned to function. Being focused on our ethnocentric world view, we tend to put the context including the other party (in our conflict) into the same frame. We assume that what is normal for us must be understood in the same way by them. It is the equivalent of believing that our assumptions are objective criteria when dealing with other cultures.

“Ignorantia praesumptionum non excusat” (Ignorance of our biases is not an excuse).

To avoid the latter, becoming aware of your own privileges (as a mediator and as conflict parties) is critical as a starting point on this journey. Below are some examples¹⁰ of privileges or disadvantages you may have experienced in your life so far, consciously or not. Often they are not spelled out explicitly, because it wouldn’t be politically correct to do so. This doesn’t mean that we can ignore them, in particular when dealing with intercultural conflicts.

Being male

- Men are often preferred when it comes to allocation of employment or promotion opportunities and are offered a higher salary for doing the same work as women.

Being white


- Being white still means being treated more kindly by the police, the legal system, in restaurants, and in other professional situations – with the historical exception of unskilled white men in economically deprived European towns.

Being attractive


- How human beings perceive attractiveness and its attributes can be defined objectively and vary depending on context (culture, time etc.). If you have these attributes, you will receive privileged treatment. Studies¹¹ prove attractive people can expect better employment opportunities, swifter service and justice, wealthier life partners, and easier working conditions.

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Being able-bodied

- Being able-bodied results in gaining access to better employment opportunities, housing, social activities, and being accepted as a fully functional member of society.

Being straight

- Cis-gender people have congruent gender identities with their assigned sex and they are perceived as aligned with their genetic sex. This creates simplicity and attracts preferred treatment.

2.3 REALMS AND REALITIES

Let's introduce two new concepts to give more texture to what is often lumped into the unconscious-bias-package. Realms and realities describe how our thoughts, feelings and perceptual references influence our contextual interpretation of the situation at hand. This means that, at any one moment, you are performing from a particular frame of reference that influences your thoughts and vocabulary which is additionally fed by memories from one dominant realm.¹²

To exemplify this phenomenon, let's take the outcome of the football world-cup final in 2014, Germany 7: Brazil 1. The score can be described in two different sentences: 'Germany won', or 'Brazil lost'. Both sentences describe the same outcome, but if we look at it through the eyes of the Brazilian players and those of the German players, we will very probably get a different view of the result.

That is to say that each realm provides the benefit of a cognitive context: resource, history and solutions. The problem with realms is that they are isolated and not connected with each other. This means that they generate a distorted picture of reality, ignoring other parts of the universe and, particularly, the dominant realm of the other conflict party.

Below you will find examples of dominant realms and we invite you to include them in your preparation for your next crucial conversation, to pre-test your interpretation of the situation.

Security realm

This realm describes our primal need for security, survival and stability as a main driver for our behaviour. We seek this in family, friendships, teams and also in traditions and rituals. We fear the loss of this in a hostile negotiation or when confronted by a difficult ‘outsider’¹³.

Industrial realm

This realm describes our need to control a situation and to have the feeling we can determine progress and outcome. We created mechanical solutions, scientific applications, production techniques or efficiency models to influence the pace of nature.

Community realm

This realm has its roots in our need for security and predictability but also our need for harmony and social capital within our in-group. We refer to civil rules, collective intuition and the rights and duties valid within our community. The risk of this dominant realm is that it can give a sense of entitlement and superiority that manifests as an unconscious prejudice towards anyone who is not part of the in-group.¹⁴

Realm of inspiration

This realm represents our desire to actualise our potential, to have meaning and to live out our ideas. This realm is actively encouraged by the mediator who facilitates the flow of fantasy, imagination and creativity to support the parties in reaching a robust negotiated outcome through a change of perspective, thinking ‘out-of-the-box’ and focusing on interests rather than positions.¹⁵

Identity

As we discussed earlier, being part of a community can make us experience what Prof. Robert Cialdini describes as, ‘pluralistic ignorance’ (2009). Our identity is hardly ever questioned and is almost invisible to us. Being part of a systemic entity makes us feel less accountable on a personal level. This is how group-think and exclusive behaviour (‘we-them’) originates.

Hence conflict is so valuable (if managed well), as it creates the opportunity to face different people, values and challenging worldviews that makes us become aware of our identity, our different thinking, and enable us to feel vulnerable to criticism.

When preparing for a mediation, questioning identity provides an indispensable starting point. We give you some examples of questions you might want to ask yourself when preparing for a mediation and which might also be helpful to pose to each party and to yourself when involved in a difference.

Reflective questions to identify your strengths and weaknesses:

- What are my values?
- What are my beliefs?
- What truths guide my social and commercial behaviour?
- What do I think, want and need?
- What do I like and dislike? In what do I trust?

and:

- What am I fearful of?
- What do I feel threatens my security?
- What do I *not want*?

2.4 CONTEXT – ETHICAL CONSIDERATIONS

In the general context of conflictual situations, but particularly in the context of intercultural conflicts, we need to have a closer look at ethical predispositions and their impact on our decisions. As we discussed in the previous paragraphs, we need to be conscious that each individual possesses a unique ethical blueprint which impacts our identity. When being over-exposed to a certain reality, when being put into a stressful situation or conflictual circumstances, and when being influenced by group think, our identity and personal integrity may be diverted into a socially more accepted activity. It is therefore crucial that the individual becomes aware of this vicious cycle and prepares themselves thoroughly before dominant realms, realities, group-think, and other unconscious behavioural patterns kick in. We have all experienced, in the heat of conflict, making instant decisions and saying damaging phrases that we begin to regret shortly afterwards. In order to prevent you saying things against your values and contradicting your integrity, it's best to have a clear idea about where your 'don'ts and do's' are, and where your red line is.

2.5 CONCLUSION AND REFLECTION

In this chapter we have seen traditional definitions. For dealing with intercultural conflicts we also need a more pragmatic and deeper tools to be able to get to the root cause of the intercultural conflict. Using the concepts of 'realms', 'realities' and 'marginalities' provides a framework for identifying and surfacing a variety of underlying cultural issues. Learning how to help parties to embark on their journey of awareness about their own assumptions, biases, thinking patterns etc. is a great opportunity. It may be our only chance to overcome global problems and to resolve conflicts effectively. This requires developing a new vision with an expanded **identity** which spreads beyond borders – a global identity as an add-on to our existing local ones. This may allow us to change perspectives, combine points of view, and to care for others within and beyond our own communities. In chapter 5 we will have a more detailed look at cultural issues as a challenge and consider how to overcome them.

Case study 2: '12 angry men' – Common law vs. case law

Background:

- *A group of lawyers from the UK and a group of lawyers from Germany and Switzerland are working together on a big class action which is filed in the three respective jurisdictions.*

Issues:

- *Both groups find it challenging to agree on a working agenda, it is already challenging to agree on an agenda for the team meetings.*
- *The German/Swiss lawyers try to initiate debates around how to proceed and demand a detailed and structured project plan, whereas the UK lawyers prefer to have a big picture overview and to look for precedent as part of the foundation before beginning.*
- *There is general agreement though that a combined approach is sensible.*

Diagnosis:

- *The German/Swiss lawyers are trained in case law in a deductive way. This means the concrete case at hand is to be applied to the law, and the relevant articles which build the foundation for the claim need to be identified and put into context (German “subsumieren”, Engl. “to subsume”). They prepare for a case to be presented in front of a group of professional judges who expect a logical chain of arguments based on legal rules.*
- *The UK lawyers are trained in common law in an inductive way. This means they are trained to look for precedent cases which could be applicable to the case at hand. The law is not necessarily a written rule, but practiced through common practice and gathered in form of precedent cases. Rather than developing a theoretical chain of arguments they are preparing a pragmatic application of one or a series of cases. A theoretical approach might be developed in a second step. They are preparing a case which has to convince a jury of non-professional judges.*

Resolution:

- *Working with both groups separately on their individual part of the action, then to be continued in joint sessions where each group presents their case which is pressure tested by the others in order to refine it.*

TOP TIPS

- Map out your marginality/ies
- Ask yourself reflective questions to identify your strengths and weaknesses
- Map out your dominant realms (individual, corporate, national, domestic etc.)
- Create a list with all the biases and stereotypes you have towards the other conflict party and go through them one by one and reality test them

3 MEDIATION

"The mediator of the inexpressible is the work of art."

– Johann Wolfgang von Goethe

3.1 WHAT IS MEDIATION?

In this book we'd like to introduce a simple and pragmatic definition of mediation which reflects our international experience as practitioners.

Mediation¹⁶ is a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle the terms of resolution.

Mediation, in particular in an international context, is practiced in different ways and is based on different philosophies, in particular with regards to the role of the mediator and how the mediation should be conducted.

To give a better understanding, let's put 'mediation' on a map within the broader ADR context.

3.2 MEDIATION ON THE ADR (ALTERNATIVE DISPUTE RESOLUTION) SPECTRUM

Dispute resolution processes have existed informally in most cultures for centuries, and in many jurisdictions they have now been formalised into contemporary Civil Justice systems. ADR is any process involving the use of a third party (which is neutral or impartial) as an alternative to litigation. In some jurisdictions, where arbitration is less established, ADR refers to everything other than the courts, and so includes arbitration.

Negotiation
Mediation
Informal
Client-Driven
Future-oriented
Creating Options



Arbitration
Litigation
Formal
Judges and Rules
Past-oriented
Win/Lose

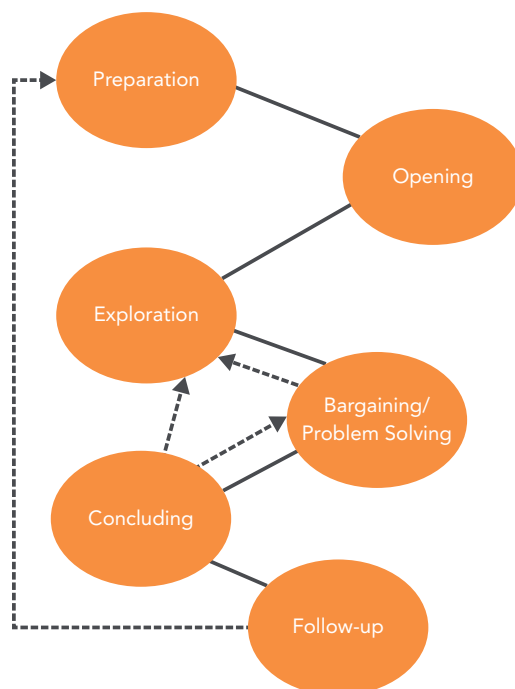
3.3 THE PHASES OF MEDIATION

There are many different models of mediation. However, most models and theories come up with a flexible multiple-phase process where the 'Exploration phase' is at the core. In this phase, the mediator helps the parties in private and/or joint meetings to surface their underlying interests and needs in order to move away from positions towards interests. This enables the parties to create options for a possible solution and at the same time a more sustainable outcome as all the parties contribute actively to the outcome and so are more likely to commit to it. Later in this book (in chapter 6) we will go into more detail on how to explore effectively.

We suggest a 6-phase process adding a mandatory follow-up phase which means that the mediator agrees a follow-up with the parties a couple of days and weeks after the mediation to ensure the sustainability of the agreed outcome: confirm the feasibility of the agreement, explore any eventual unsurfaced issues, and affirm the parties in their commitment and efforts they put into the process in order to encourage them to continue applying this effective conflict behaviour.

Most mediation processes start with a preparation phase which takes place before the actual mediation is happening and where information exchange, mediation agreement and all sorts of practicalities are discussed and agreed. When a time and date for the mediation are agreed, the process starts with the opening phase, where the parties and the mediator make their opening statements to clarify the issues and the process. The process then moves into exploration and after that into problem solving or bargaining, where the explored interests are distributed and options are created. The last phase is called the 'concluding phase', and this is the phase where the agreement of the negotiated outcome is formulated (three possible outcomes: continuation, separation, or no deal) including any actions and follow-up plan.

Over the last 2–3 decades this formalised process has been shown to be highly effective, when the principles of mediation are respected (voluntary and flexible process, parties in control, mediator as omni-partial process manager).



3.4 TYPES OF MEDIATION

To give more clarity, we differentiate between types of mediation and where mediation is used. The first describes the character of the process and the latter the application of either type. When we speak of type we imagine a spectrum where on one end you imagine a very facilitative approach and at the other end a totally evaluative approach.

What is the difference?



Facilitative Mediation

In the 1960s and 1970s, one type of mediation was predominant in theory and practice – so called ‘Facilitative Mediation’. Facilitative mediators want to ensure that parties arrive at agreements based on information and understanding in predominantly joint sessions with all parties present. The mediator limits their interventions and gives no recommendations or opinions.

Evaluative Mediation

This type of mediation is influenced and modelled on settlement conferences held by judges in jurisdictions with court-referred or court-annexed mediation. Evaluative mediators at the very end of the spectrum assist the parties in reaching a resolution by pointing out the weaknesses of their cases, and predicting what a judge or jury would be likely to do. Mediators who are towards the end of the spectrum might make formal or informal recommendations to the parties as to the outcome of the issues, in particular to reality test best and worst case scenarios.

As you can see in the graph above, up until the red line a range of interventions are possible to drive an effective mediation process. The red line highlights the border where the mediator risks losing their neutrality by giving an opinion on the merits of a legal process.

Use of mediation

Both styles or types – evaluative and facilitative – can be effectively used in conflict resolution depending on the context of the particular mediation case. The use of the mediation process will normally give a fair indication which style might be more appropriate and expected by the parties. Below, we give you a brief overview and recommendations on use and preferable style (created by Susanne Schuler).

Use/Context	Preferred style/type	Comments
Family	Facilitative and evaluative	More joint meetings, context and process depends strongly on rule of law, often mandatory process
Workplace	Facilitative and evaluative	Balance between joint and individual meetings depending on continuation or separation, labour law rules apply
Commercial (business (B2B), business to employee (B2E) and business to consumer (B2C)	Facilitative and evaluative	More 'shuttle' mediation (in caucus) with strong focus on reality testing and negotiation coaching in bargaining phase
Public Sector	Facilitative	Multiparty conflicts, often require moderation and facilitation
Community	Facilitative	Balance between joint and individual meetings depending on context, often only one party present
Victim-Offender	Facilitative (normally not an alternative to legal procedure, but an add-on to resolve the conflict on a personal level)	Balance between joint and individual meetings depending on context, encouragement to have joint sessions, purpose is reconciliation and restoration rather than a negotiated agreement
Faith communities	Facilitative	Balance between joint and individual meetings depending on context, purpose is mutual understanding and tolerance/ respect, and finding a way to co-exist in peace

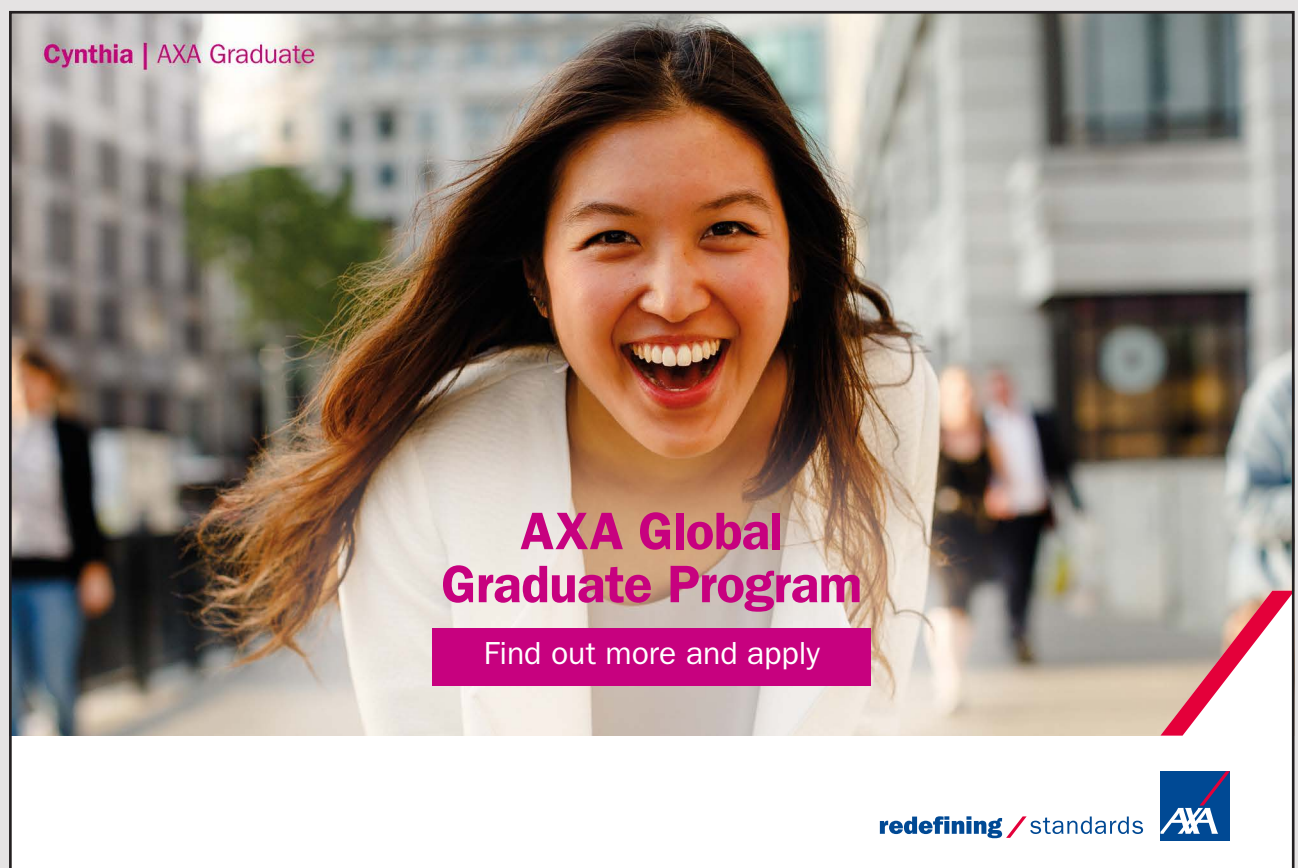
3.5 CONCLUSION: WHICH TYPE(S) OF MEDIATION IS (ARE) SUITABLE FOR INTERCULTURAL CONFLICTS?

Applying what we analysed just now, it seems obvious that we need to consider the context of the conflict at hand in order to decide which type of mediation is applicable rather than choosing between a more facilitative or evaluative approach. Intercultural components are only one layer of context added to the character of the dispute.

For example, if we have a dispute between two business owners from different countries centered around the terms of contract and fees, we have, in essence, a commercial B2B conflict with an intercultural component. The relevant type of mediation in this case is commercial mediation. Facilitative and evaluative elements play an important role, in particular in the negotiation phase where strong reality-testing and negotiation coaching is essential to move towards an agreement.

If we have a conflict between two parents with different nationalities living in different countries who are undergoing a divorce process, and they are arguing about the custody of their child, a more facilitative approach seems to be required within the rules of law in the countries involved.


This means, the intercultural component alone is not the main criteria for the choice of intercultural mediation, the context of the dispute (commercial, family, community etc.) is relevant for the type of mediation to choose.



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Case study 3: '12 angry women' – Sexual harassment in an NGO

Background:

- *Supervisors – mostly African men – working in an NGO in an African country have abused their power and forced their female subordinates to trade sexual favours for promotion or job retention.*

Issues:

- *More and more internal conflicts within the organisation arise, high absenteeism, low engagement and performance as a consequence, and the bad news reaches the press.*
- *Conflicts can't be covered up any longer, some women speak out and inform the headquarters in Europe about what's happening.*

Diagnosis:

- *Organisational and hierarchical power backed up by the local socio-cultural structure is used to threaten the weaker members within this structure.*
- *It's been accepted almost as a given until the abuse escalates and surfaces.*

Resolution:

- *Working with the women who were affected and empowering them to speak up to build a case against the perpetrators.*
- *At the same time working with the perpetrators to help them become aware of their actions and to develop a sense of their wrongdoing.*
- *Remove them from their posts and replace them after having identified the root cause of the issues to prevent this power imbalance from re-establishing.*
- *Encourage both parties to undergo a perpetrator-victim-reconciliation-programme. Launch of an empowerment-and assertiveness-programme for women in similar positions in the entire NGO. Launch of a gender/diversity/inclusion and anti-sexual harassment programme in the entire NGO, transparency is paramount.*
- *Supervision, focus groups, facilitated conversations and training take place on a regular basis to move the organisation towards a constructive conflict culture.*

3.6 REFLECTION

Take a conflict you're currently involved in and apply the decision matrix below by firstly analysing type, intercultural component, area of conflict and the outcome. For the next step, evaluate each category, allocating between 1–10 points according to their relevance. In the table you can already see a multiplier for those categories which have more weight in the decision whether your conflict at hand is an intercultural conflict per se, or rather a mix.

From the total scoring you will then have a more objective picture of the conflict and what kind of mediation might be the most appropriate and also what competencies the mediator should bring to the mediation table.

	Type of conflict (process, task, relationship)	Intercultural component (different values, marginalities, different countries, different industries etc.)	Area of conflict (commercial, family, community, workplace etc.)	Relevance of outcome (effective business relationship across borders, functional custody communication, consensus in community about new transport guidelines etc.)
Analysis result				
Evaluation 1–10	1X ____	2X ____	1X ____	2X ____
Total				

TOP TIPS

- Identify the type and area of conflict
- Check whether there's a relevant intercultural component contributing to the conflict (crossborder, inter-faith, different jurisdictions)
- Check whether biases and marginalities are a relevant root cause in the conflict, this is an indicator that intercultural mediation is appropriate

4 MEDIATOR

"For good ideas and true innovation, you need human interaction, conflict, argument and debate".

– Margaret Heffernan

4.1 PROPERTIES OF A GREAT MEDIATOR

As a practicing mediator for many years, who assesses a range of mediators on a regular basis for accreditation programmes, and who is giving as well as receiving feedback on mediations myself, I understand the requirements and challenges for a mediator with regards to delivering a consistent quality. After having mediated it is crucial to capture the lessons learnt, and to scrutinise yourself for biased views before, during and after the mediation process. It is sometimes better to reflect on these matters with a supervisor who can provide objective feedback.

Mediators have to be constantly alert in their role as robust process managers, facing difficult situations during a mediation, dealing often with highly entrenched parties who have unlearned how to trust, even the mediator. They also find themselves in constant competition with other mediators when it comes to 'getting a case'. We tend to 'please the parties' to win the competition and might sometimes overestimate our competence to deliver the best we can in a specific case. From the users' perspective, it is difficult to decide who the best person for their case is and, often, titles, accreditations or references provide an indicator about the quality of a mediator.

In the last 15 years, my colleagues and I have trained several thousand individuals in more than 30 countries in mediation, effective dialogue, negotiation, intercultural competence and conflict resolution. We collect regular feedback on our training and mediations. Thus, we hope we can spot a good mediator when we see one. However, mediation is still a relatively young profession – practiced for hundreds of years – it is still evolving constantly and there is still more to learn.

To give a guideline on what a competent mediator looks like, we'd like to follow the guidelines recommend by some of the relevant mediation bodies and organisations¹⁷.

Personal and interpersonal skills: it is essential for an effective mediator to have the skills to build trust with the parties such as empathy, an open and curious attitude, and

active listening. They should be respected authorities who are able to create an atmosphere conducive to mediation.

Field expertise: this is not so relevant in mediation as the mediators act merely as process managers and the parties are the experts in finding a solution to their conflict within the context of their subject matter. However, it's important that the mediator has a certain experience when mediating in specialised fields such as commercial or intercultural mediation.

Mediation competence: this competence is acquired through recognised mediation training which shows that the mediator has undergone a thorough instruction that covers expertise in communication and psychology, mediation techniques, and above all a practical foundation to apply the relevant competencies such as relationship (active listening, being a host etc.), process (being an effective and rigid process manager) and content (facilitating an effective information exchange and negotiation coaching) skills.

Under each of these categories there's a non-exhaustive list with behaviours on how to achieve the overall outcome for each category. A good mediator knows how to apply them when necessary, they identify what is most appropriate and when to detach.

Important to note here is that only the competent and constant interchange of all three categories makes a 'good' mediator. It's not relevant if the 'How' is achieved through facilitative or evaluative approach, more important is that it is effective in the moment and in the case at hand, and that the mediator remains authentic.

Imagine playing the organ. You have a variety of keys to create a chord on one keyboard, and you have more than one keyboard plus registers and foot pedals – all of these can be used at once or separately.

To stay with this metaphor, an effective or even 'great' mediator – like every effective professional – delivers their work as more of an 'artist' – than a pure professional – who is consciously competent; it is about being aware of what you're doing in that very moment.

Case study 4: 'House of cards' – US supervisor vs. European team leader***Background:***

- *A global organisation with headquarters in the US hired a European team leader for their team in London. The general leadership was based in the US.*

Issues:

- *The supervisor in the US expected 24/7 availability from the European team leader, instant answering of emails, giving all instructions first priority and daily reporting.*
- *Most instructions were given via email. The communication style was direct covered in indirect politeness with veiled power threats.*
- *The European team leader replied according to her own priorities at hand and required autonomy and discretion to complete the tasks.*

Diagnosis:

- *Clash of the following dimensions: Autonomy and Trust vs. Command and Control Working culture. Direct vs. Indirect communication.*
- *Expecting only 'Yes' vs. The assertiveness to say 'No'.*
- *Avoidance of conflict through competitive behaviour vs. constructive conflict through collaboration and accommodating.*

Resolution:

- *In the end both parties agreed that separation was the only way forward as the ways of working were too far apart.*
- *Years later, the European supervisor acknowledged the fact that it would have been useful to have had a European supervisor based in Europe for the team rather than in the US, as the entire team underperformed and eventually resigned due to the culture clash.*

4.2 CONCLUSION AND REFLECTION: WHO IS A SUITABLE MEDIATOR¹⁸

Taking on board the concepts we mentioned in the previous section, we can now speak about the suitability of a mediator in two ways:

- 1) **Suitable overall**, meaning a competent practitioner who possesses a certain amount of experience who has credibility as a mediator. A mediator who is competent in delivering consistent quality by applying relationship, process and content skills throughout the mediation process, whatever the content of the case might be.
- 2) **Suitable for a specific case**. In the previous chapter we categorised mediation according to its nature, whether for example commercial, family, workplace or intercultural. In principle, every mediator should be able to manage a case independent of its nature. This is applicable when the case at hand is fairly general. If we have a very specific intercultural case – e.g. a child abduction across borders, a human rights case in a multinational organisation, a negotiation of a merger and acquisition of two global corporations, a workplace conflict between a local employee and the management of the headquarters in another country, or multi-party facilitations for building a plant in South-East Asia – then we want to make sure that we get the ‘right’ person who can deal with this. Experience, plus a certain degree of subject matter expertise, is required here. For a general intercultural mediation involving a clash of values and/or marginalities – a mediator who possess a certain track record of cases in and between different cultures (national and organisational) may be required, and one who can prove to have the tools and techniques intercultural competence requires as appropriate. If the case has another layer of complexity where a higher degree of subject matter expertise and experience is required, we need to look for a mediator offering this combination, e.g. a workplace expert with specialisation for employment conflicts within international corporations, or an engineer who’s facilitated many stakeholder meetings in construction cases etc.

TOP TIPS

An Effective Mediator has

- Interpersonal Skills: have a 'chemistry session' with the mediator before the mediation
- High sensitivity and intercultural competence
- Mediation competence: Training by a recognised training provider
- Field competence is not a priority



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5 CHALLENGES AND HOW TO OVERCOME THEM

"The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."

– Martin Luther King

In this chapter we will explore the main challenges all parties, including the mediator, face when involved in conflict and in particular in a mediation of an intercultural difference. We will furthermore provide some ideas on how to overcome them. Our suggestions are based on a collation of our own experience as practitioners, on the experiences other mediators in the field have shared with us, and also on research done on heuristics¹⁹ and intercultural competence. There might be areas which you find controversial. We'd like to invite you to build your own view on these topics.

5.1 BIASES

The notion of cognitive biases – human differences in judgement and decision making, also known as heuristics, was introduced by Amos Tversky and Daniel Kahneman²⁰ (Tversky & Kahneman, 1974). They explain heuristics as involving mental shortcuts which are simple for the brain to compute but sometimes introduce "severe and systematic errors". Below we will present the most relevant ones which in our view pose the most significant challenge to maintaining objectivity in a mediation process and which are possible root causes of why the parties perceive the situation very differently. Tversky and Kahnemann differentiate 2 systems on which basis we make decisions, either on the basis of 'automatic' (System 1) or on the basis of 'analytical' (System 2) thinking²¹. The types of biases we are going to present are shortcuts and based on System 1 thinking.

System 1	System 2
Unconscious Reasoning	Conscious Reasoning
Implicit	Explicit
Automatic	Controlled
Low Effort	High Effort
Large Capacity	Small Capacity
Rapid	Slow
Default Process	Inhibitory
Associative	Rule-Based
Contextualized	Abstract
Domain specific	Domain General
Evolutionarily Old	Evolutionarily Recent
Nonverbal	Linked to language
Includes recognition, perception, orientation	Includes rule following, comparisons, weighing of options
Modular Cognition	Fluid Intelligence
Independent of working memory	Limited by working memory capacity
Non-Logical	Logical
Parallel	Serial

Stereotypes: We are influenced by negative attributes given to specific groups. As a consequence, we will interpret whatever members of this group propose and offer in the light of the negative attributes. E.g. “Sales people have no integrity”, “Germans have no sense of humour.”

Halo effect and Attributed devaluation: This effect occurs when we evaluate one characteristic or feature of our opponent and our reaction to other features is influenced by the evaluation of this one characteristic. This can either be positive or negative. E.g. “Angela Merkel is the first female chancellor of Germany, she must have manipulated her male colleagues to get into this position.” “Apple is a very successful organisation, they must have great products.”

Confirmation bias: If we consciously or unconsciously have a certain preconception or hypothesis then we give disproportionately more consideration to evidence that confirms our hypotheses and disregard evidence that would provide a more balanced view. E.g. “Our neighbours are from Southern Europe, that explains why they are so noisy”. “Scandinavians are better parents because they give more autonomy to their children.”

Accuser bias and excuser bias: This is a natural human trait to protect one’s own self-esteem and dignity in order to improve and justify one’s entitlement in particular when competing for resources.

Conditioning bias: When growing up we were programmed with many messages uttered in the form of judgments about groups and individuals, which manifested through their repetition and accumulation as a default-bias. An example is when a traditional board (only middle-aged white men) of an organisation is hiring a new CEO and has the choice between a young woman or a young man who is outside their in-group, and a white man of their age.

Memory flip: When the memory of a conversation is confused with the memory of a personally experienced event we speak of a memory flip. We interpret an event through the bias-lens of someone else and it becomes our version of the event. It feels as if we experienced it first-hand.

Projected fear: When we hear one party saying: “It’s not my fault”, it could be that this party is shifting the blame worthiness from themselves to the other party and believes that what happened is not within their responsibility.

This (non-exhaustive) list of biases provides you with an idea of how our thinking is influenced and could assist you in identifying whether your own or the parties’ thinking is biased. When conducting supervision sessions for mediators we explore with them their thinking patterns and recommend a ‘mental hygiene’ to become aware of triggers and programmed behaviours in order to make informed decisions rather than jumping to conclusions. During a mediation it allows the mediator to help the parties reflect on factors which might have shaped their view of the world. You will be able to surface the real interests and needs represented through the parties’ behaviours and expressions.

TOP TIPS

Great mediators reflect upon their own make-up and the possible make-up of the parties at the mediation table.

- Explore your unconscious identity-led behaviours
- Describe your preferences and points of view on important topics
- Create a list with the influencers who impact your decision making and opinion shaping
- Find your triggers and default behaviours by self-reflection and asking others
- Keep a diary in which you note down your observation and consult it on a monthly basis.

5.2 LEGITIMACY

This section provides the mediator with insights into justification²³ and legitimacy arguments from the parties' perspective. This helps the mediator explore more effectively and to influence (with integrity) the parties regarding their drivers and underlying needs. Surfacing legitimacy is particularly effective in the negotiation phase of the mediation, as trust has been built between mediator and parties and they are more open to receiving probing questions. In this phase, negotiation coaching is essential and assisting the parties to identify the rationale of their argumentation is highly influential and beneficial for the reconciliation process.

Here are some examples of legitimacy²⁴:

- Individual:

Identity: This is the sense we have of ourselves. It concerns the individual's honour and perception of place within civic society. A typical phrase is, "Do the right thing".

Vision: This is a classical area in mediation, exploring the best and worst case scenario of an outcome to find out what the parties' vision of the future looks like. Each party has their own view about the conflict and how it might end. Each vision scenario will be backed up by arguments they consider as real (see also biases). The mediator plays an important role in reality testing together with the parties how probable either scenario is.

Rational: Part of reality testing is surfacing the rationale behind arguments. It's only natural that the parties justify their demands and positions as being logical, rightful and factual. This may consist of cost-benefit-analysis, profit and loss, or some other device that relies on

science, financial figures or the law. The mediator's task here is to pressure-test arguments and match them to the party's vision of the case.

- Collaborative – influencing:

Helping Hand: A phenomenon that occurs quite often in mediations is when one party is experiencing an emotional low or a feeling of weakness. By asking for permission to convey this to the other party, the mediator might be able to trigger a reaction in them to offer a helping hand. This strategy must be applied carefully as it only works when the mediator and the parties have established sufficient trust and where one party has the power to constructively help the other party.

Reciprocity: 'Tit for Tat' is crucial for a successful negotiation, in which creating value, exchanging concessions and expanding the size of the pie by offering and expecting trade outside the obvious areas of discussion is desired. According to research, the 'tit-for-tat' strategy is the most successful strategy to achieve your goals – fulfilment of your interests – in the long term²⁵.

TOP TIPS

- Practice those techniques in your daily life
- Find out which ones suit you best, and which, when used against you, irritate you most
- Build acuity in spotting and countering these attempts at legitimacy when they are used against you in every day negotiation
- Observe them in television courtroom dramas, observe them when leaders speak. Observe them when you're dealing with sales people

5.3 CONCLUSION: CULTURE AND LEGITIMACY

In this chapter we introduced you to some relevant challenges occurring in particular in intercultural mediation.

Whilst biases, stereotypes and personal competencies are the main contributors to conflict situations, legitimacy is the most relevant one. Justification comes in different forms, some of which are highly manipulative. What makes an argument powerful is both the foundation and core value of it, and the assertiveness with which it is communicated.

As an example, if one party comes from a country that upholds and enforces the world of law, then law is a core value for the legitimacy of their arguments and world view. The party very likely will use legal arguments and possible judicial precedents to base their arguments or their objections to the other's offers on. Let's assume that in this example the other party comes from a culture where the law plays a minor role and other factors are more prominent, they will disregard the first party's arguments based on the rule of law. The first party will not understand this perspective and will feel uncertain as to which form of legitimacy to continue within the negotiation.

Case study 5: 'All quiet on the western front' – A Central-European company goes private

Background:

- *A company from Central Europe is approaching privatisation and is required to provide the authorities and investors with a sustainable action plan for the sale considering the implementation of Corporate Governance practices which also requires an effective communication amongst all stakeholders – private and public sector stakeholders, the board and the executive team.*

Issues:

- *The organisation is still quite hierarchical and most of the shareholders are from former communist times.*
- *There is some baggage around corruption to be resolved. Some shareholders are leaders of modern enterprises which employ best practices.*
- *The communication and trust amongst the shareholders, the board and the executive team has broken down.*
- *A consultancy firm is putting extra pressure on the executive team with regards to getting the finances and the organisational structure in order.*

Diagnosis:

- *Clash amongst the ex-communist patriarchy dominated by private networks with influential and influencing contacts, serving old relationships were core values and essential to make business (a subtle and difficult web to navigate)*

- *because those societies trade on reputation and personal endorsement, difficult for a mediator who has not invested time in building a relationship with all the relevant key players*
- *with modern forms of leading an organisation respecting the rules of law, as well as financial and governance best practices are indispensable to becoming established.*

Resolution:

- *Facilitation between all stakeholder groups including individual sessions with each group. Identifying the key individuals and finding common interests.*
- *Suggesting a general amnesty of all actions taken before the privatisation process started to give an opportunity to make a fresh start without baggage.*
- *Installation of new leadership team with modern values.*
- *Trust-building exercises for the new executive team and board with mutual agreement to commit to the new rules and to accept regular observation from an independent consultant to ensure a smooth transition.*

When preparing for an international mediation, it is therefore crucial to investigate the sources of power and the cultural difference in social structures. This can mean the difference between success and feeling threatened and confused.

5.4 REFLECTION AND EXERCISE

“How culturally sensitive are you?”²⁶

By reflecting your own ability when you're faced with a radically different view of the world, you will be prepared to identify the degree of intercultural sensitivity developed by the mediation parties.

Take a few minutes and visualise such a situation, either one that you have experienced, or you may imagine it. Feel free to make some notes.

Here are some ideas on how you can interpret your reaction within a spectrum of ‘sensitivity’ and ‘intercultural competence.’²⁷

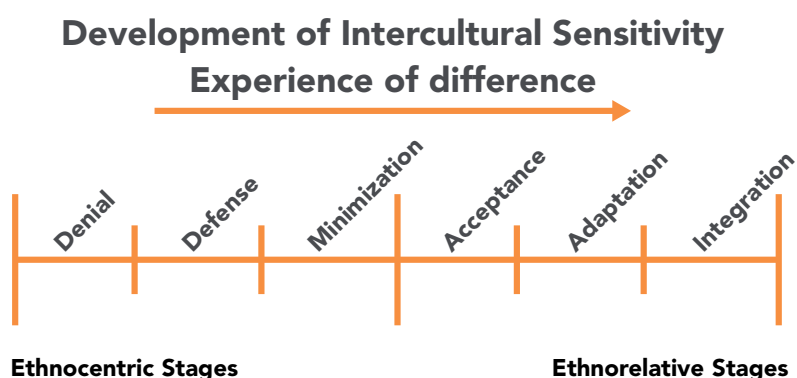
Low sensitivity: Little to no reflection on own identity and values. Past exposure to difference might have been perceived as threatening and unpleasant. Typical phrases and

thoughts might be, “Those immigrants are a problem!” Or, “If they work in our country they should play by our rules!”

In difficult economic times or before elections, these phrases unite the less educated and disenfranchised to vote for the candidate who contrives to create a common enemy – normally a cultural minority target. In the recent ‘Brexit’ referendum in the United Kingdom (23 June 2016), this kind of argumentation was observed on both sides.

Medium sensitivity: With this degree of intercultural sensitivity one feels aware and confident to cope well with diversity by minimising perceptions of its negative impact. Confrontation is avoided by employing accommodating behaviour. Statements like “Underneath, we are all the same” and, “We all have to live on one planet” are uttered, knowing that they are untrue as we live with obvious privilege and marginality and that we are clearly different from the other conflict party.

High sensitivity: Deep and sophisticated reflection and acceptance of own values, beliefs, marginalities and privileges and thus the properties of others allows us to work towards integration.



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Dr. Charles Hampden Turner summarises the kinds of behaviours individuals employ at this level: They are able to recognise difference when they face it. They are able to show respect in communication with people who are different (not in their in-group) and they can synergise the optimal of their culture with the optimal of the other culture to create a healthy symbiosis that promotes solutions, trust and building bridges across the diversity gap.

This process is known as **reconciliation**²⁹. To reach this level of sensitivity is difficult, even without being involved in a conflict. It is therefore normally recommended to have an impartial, highly sensitive facilitator assisting in the reconciliation process of an intercultural conflict.

6 TOOLS – METHODS AND TECHNIQUES

“By three methods we may learn wisdom: First, by reflection, which is noblest; Second, by imitation, which is the easiest; and third by experience, which is the bitterest.”

– Confucius

After having spoken about overcoming challenges in facilitations not only within an intercultural context, we'd like to provide some pragmatic tools on how to help achieve reconciliation.

We will focus on four main areas: Active Listening, Empowerment, Trust Building, and Stakeholder Mapping as impactful techniques an effective mediator should deploy.

6.1 ACTIVE LISTENING

Research and practice has shown that Active Listening is a highly effective technique in mediation to build rapport with the parties and to surface information about their needs and interests.

Retired FBI hostage negotiators Gary Noesner and Mike Webster describe active listening as being a “powerful tool” for hostage negotiators “to stimulate positive change in others.”³⁰ The New York City Police Department's Hostage Negotiation Team (NYPD HNT) also emphasizes the importance of a negotiator utilising active listening skills during a crisis and hostage incident.

In hostage negotiation, there is a five-step technique that negotiators use to influence behaviour. They start with active listening, then move to empathy, then on to rapport, influence, and behavioural change.

What is Active Listening?

In general, we might say that we're fairly competent in listening. Let's make a little test. When you have your next conversation with a work colleague or with a friend, observe yourself on which of the following levels you listen.

Don't try to apply one of the ways, just listen and observe yourself and after the conversation go through the levels and reflect on what you did.

Level 1 Listening = Waiting for our turn to speak. What would a typical response here be? E.g., “Yes, I did tell you...next week”. We are not listening at all but are simply thinking about what we want to say next. This is a very bad habit but many of us do it all the time.

Level 2 Listening = Relating words to our own experience. “I don't know what do do with my targets? I am so far behind but it is out of my control! Do you think I should”.... We listen but focus on how it affects us and do not always stay focused on the other person.

Level 3 Listening = Giving advice. “What you need to do is this...” We are often all very good at giving advice but most of the time others do not want it. If they wanted advice they would ask for it!

Level 4 Listening = Active Listening: “Seek to understand before you seek to be understood.” (Covey)

Spectrum of Active Listening Skills with increasing level of verbal engagement

Questions (open, closed, hypothetical)
Summarising
Reframing
Paraphrasing
Reflecting
Silence
Minimal verbal prompts
Non Verbal Communication

As you move up the ladder you are engaging in more proactive verbal skills.

The main distinctions between these skills are:

- Reflecting is putting into words the impact of a situation on the other, including the underlying emotions
- Paraphrasing is stating in a few of your own words the content of what someone has just said
- Reframing is rewording a statement made by another for positive effect
- Summarising provides an overview of the main thoughts, feelings, themes and issues expressed.
- Questions:
 - OPEN – opening up, finding out things you don't know/haven't considered
 - CLOSED – clarifying, checking, stopping an unproductive flow
 - HYPOTHETICAL – trying out ideas, breaking deadlock.

Questioning

The preparation for the exploration centres on identifying questioning styles that can have a beneficial effect during the dialogue of a mediation. Examples include:

<ul style="list-style-type: none"> • <i>high gain questions</i> – ones that reap a flow of powerful information about the shopping list of the other party;
<ul style="list-style-type: none"> • <i>reflective questions</i> – these hypnotic formulations put the listener in a new situation and change perspectives. An example would include, 'if I telephoned your best friend, what would they say are your best qualities in the workplace?' The change of perspective often releases a flow of information that can unstick a difficult negotiation;
<ul style="list-style-type: none"> • <i>scaled questions</i> – these are perceived to be more objective. An example would include: 'On a scale from 1 to 10, how fed you think my current offer is?';
<ul style="list-style-type: none"> • <i>hypothetical questions</i> – these detach the listener from the constraints of the present and allow access to imagination and vision for the future. An example would be: 'What would be your best case scenario for the outcome of this negotiation?' or 'Imagine you could ask everything from your negotiation partner, what would be the most important point for you?'

Exercise:

Below you will find some examples to practice. You can find some suggestions for possible solutions in the appendices.³¹

Reflecting and Paraphrasing

1. “I am uncomfortable with the way this conversation is going. I feel like you are challenging my management style and practices. After all, this is my family’s company.”
2. “Our suppliers are absolutely crucial to our business. If our key supplier can’t deliver for us, we are in trouble.”
3. “Running this business is stressful enough as it is, without you bringing this minor matter to me. We have an audit committee, so let it do its job without bothering me.”

Reframing and Questioning

Reframe, in the way indicated, the statements below. Then provide an open, closed, and hypothetical question that might follow on from the reframe.

Statement	Reframe	Questions
“I don’t trust the CFO. She has proven herself to be hopeless at her job and she is always un-cooperative and stupid.”	To neutralise	Open: Closed: Hypothetical:
“This new product is definitely what we need to develop to grow the business.”	From specific to general	Open: Closed: Hypothetical:

Reflecting and Reframing

Statement	Reflect	Reframe
The total chaos with the audit report just drives me mad!		...in time
He treats us board members like children! Who does he think he is, Steve Jobs?		...to neutralize:
This new product is a fantastic idea! It will make investors at least 1 million a year in profit.		...from specific to general:

6.2 POWER AND EM-POWER-MENT

Identifying the sources of power of each party is one of the most impactful techniques a mediator can apply to create progress in the reconciliation process. When the parties appreciate their power, this helps them to assess their own realities of power.

A good starting point is exploring the sources of their current power. There are 4 places in which you can help parties to explore.

Personal power:

Help the parties remember privileged and/or successful moments in their lives, e.g. when they were in the presence of people who inspired them or when they achieved something extraordinary. As they recall those moments, ask them to think how they felt, how they reacted, and let them name the values they felt touched by or ones that they experienced. This is a good place to begin when assisting them to describe their own character and personal strengths.

Additional questions you may pose, “What are the pillars and core values of your personality?”, “What are the motivators for your actions?”, “Which of your behaviours have the most impact on the people around you” And, “What habits support your life?” Within their answers you will help them gain access to their personal power.

Professional power:

Explore with the parties their working life with regards to their training and qualifications in theory and methodology. How do they apply them and what have they experienced when being involved with working with teams, projects and decision making? This information gives them a wide spectrum of knowledge, experience and insights to reflect upon.

Social power:

Conflicts happen in the context of countries, companies or communities and social networks. It is about whom you know and how well you know them. The social power comes with two dimensions, width and depth.

Width: Conclusions about one's power and character are very much aligned with your social network³². We tend to gravitate to those with a similar power rating.

Depth: This is about your reputation, an attribute of power which is mostly out of our control. How deep do your relationships go? Do all the people in your network know you? And what do they think of you? Your reputation lives on what people say about you when you are not in the room. This includes social media which becomes more and more relevant to judges one's social power. What will the other party find out about you on social media?

When we are aware of our personal, professional and social power, we can realise its potential.

Exploring these three sources of power will empower the parties and make them aware of their positioning and status which can move them out of their state of disempowerment and limited view of the reality to access their power more effectively.

Purpose

Purpose is intertwined with one's core values and principles which guide and limit us through life in pursuit of a higher goal.

The answers to the questions you may have asked the parties about their values, their beliefs and their influences are a clue to the moral code by which they live. Below are some additional questions to help them identify their purpose:

- What beliefs do you choose to live by?
- Which ethical value is non-negotiable for you?
- In your private and professional relationships, which are common values that are important to you?
- When you remember your favourite teacher, lecturer or team leader, what values did they expose that you respected and have adopted?
- When you listen to the news or read a newspaper, which behaviours or justifications do you find completely unacceptable?
- When you watch films or read novels which themes stand out for you? And which dilemmas do you particularly enjoy the heroes resolving?
- When you discuss politics, which topics are set in stone for you and which topics generate a more flexible debate?

Helping the parties understand their moral and ethical purpose can free them to focus on what really matters to them and to identify triggers which can lead to deadlock in the mediation process.

Identifying your purpose doesn't, however, give you the right to criticise the other party if they haven't done their bit. In order not to fall into the trap of low-sensitivity and prejudice, respect is the best way to inoculate such negative behaviour. A neutral third party can assist you in becoming more sensitive when dealing with difference and to help you hold back from judging others expressing their particular purpose. This is a prerequisite of building trust and trustworthiness.

Case study 6: 'Let's brainstorm' – Silicon Valley meets The Rocky Mountains

Background:

- *M&A between a small and successful Californian start-up and a big global traditional organisation in Europe for patent and knowledge transfer.*
- *The leaders of the start-up will be transferred to Europe to lead local teams and to transfer knowledge.*

Issues:

- *Creative, high-tech and high touch working culture of the leaders clashes with the local expectation of being told what to do.*
- *Working with rigid structures and processes.*
- *Performance is dropping, frustration is experienced on both sides. The merger is about to fail.*

Diagnosis:

- *Clash of creative, open feedback, open plan, shared power, high trust, work and private life mixed, interdisciplinary working, coaching – culture.*
- *and traditional, structured, highly hierarchical, closed office doors, working in silos, work and private life separate – culture.*

Resolution:

- *Coaching and awareness sessions with leaders and teams separately, then together. Recognition of different sets of values with regards to work and life.*
- *Identifying with both groups what success and work satisfaction look like, surfacing of needs and interests, focusing on team effectiveness and each individual's strengths as well as costs and benefits of different working styles.*
- *Identifying synergies and how best to work together, embracing different styles and giving up old habits.*
- *Teams now work well together and have created new ways of collaboration, even more effective than before.*

6.3 TRUST BUILDING

"The best way to find out if you can trust somebody is to trust them."

– Ernest Hemingway

In one of my employment mediation cases one party was eager to know how to build trust with their managers even if they perceived them as condescending and not interested in them. On the other side, the managers considered it crucial to learn how they could build or even re-build trust with their team members to enhance and ensure a constructive collaboration.

Lots of research has been done on trust, and one could reduce the basic answer to Hemingway's suggestion. However, upon delving deeper into the topic of trust building, we find that there are three pillars, or three prerequisites, which are necessary to build trust:

Ability – the actual or perceived capability and competence to build trust

Benevolence – the extent to which a person is believed to voluntarily do good to the other

Integrity – the perception that a person adheres to a set of principles considered acceptable by the other and acts consistently according to those.

So, how does this help our group of staff members who wish their managers to trust in them?

They could start listening to their managers with a different set of ears when they hear them shouting "I need this report on my desk by tomorrow morning". You might agree from your own experience that they would be inclined to hear this with either their 'appeal'-ears

(“I want YOU to work on this report NOW”) or with their ‘relationship’-ears (“I don’t trust that you will complete this task without me telling you”). They also could listen to this message with their set of ‘self-disclosure’-ears (“Please listen to me, I am under extreme pressure and need your help.”). In other words, they could apply ability, benevolence and integrity toward their managers rather than expecting it from them. When we communicate a message, we almost always disclose information about ourselves. For example, when shouting at someone we might disclose anger, frustration or fear about an issue, which doesn’t necessarily have anything to do with the receiver of the message. As the receiver, you have the choice to listen differently (actively), to reflect back what you perceived, and to come from a place of curiosity and benevolence to understand what the sender of the message is really communicating to you.

On the other hand, what could the managers learn from ABI in order to (re-)build trust with their team members? For less empowered team members, receiving commands and task requests keeps their lives simple and, of course, maintains all the responsibility... with you. Some managers go along with this system as it protects their privacy. They are able to keep a thick castle wall between their private lives, their past and their mistakes, and the workplace. With some managers, in particular middle managers, we observed that the wall around them is so thick that they are private in public and public in private.

For a mediator to help create trust amongst the conflicting parties, you need to encourage them to show vulnerability by talking about their real interests and stake in the conflict, and to assume that the other party will appreciate this sign and might even return it.

6.4 STAKEHOLDER MAPPING

Stakeholder mapping is helpful to prepare for a mediation and also during the mediation together with the parties.

This technique allows us to identify the individuals or groups that are likely to affect or be affected by a proposed action and also going back as part of a conflict source analysis, and sorting them according to their impact on the action and the impact the action will have on them. The mediator uses this information to assess how the interests of the respective stakeholders could be addressed during the resolution. During a mediation, this analysis can be repeated and adapted either only by the mediator or together with the parties in an appropriate and confidential way.

The most common presentation styles³³ use a matrix to represent two dimensions of interest, frequently with a third dimension shown by the colour or size of the symbol representing the individual stakeholders.

Some of the commonly used ‘dimensions’ include:

- Power (high, medium, low)
- Support (positive, neutral, negative)
- Influence (high or low)
- Need (strong, medium, weak)

6.5 CONCLUSION AND REFLECTION

It is important to have a big toolbox with an eclectic mix of techniques from different disciplines, such as project management, coaching, training, psychology, sports etc. to be able to pull out the most effective technique for the moment.

It is also essential to have tried and practiced all the techniques you’d like to apply as a mediator to know their risks and benefits and if they match ‘your style’. To remain resourceful and authentic and to keep it simple is also relevant.

You can effectively manage a mediation just with active listening, as this is still the most effective way to assist the conflict parties in finding resolution.

7 DEVELOPING AS A MEDIATOR

"Be yourself, everyone else is already taken."

– Oscar Wilde

To become or not to become a mediator is not the question. Often, we're already unconsciously mitigating disputes between colleagues, relatives, friends or members of teams we're leading. The question is whether you aim to do this much more deliberately and also more effectively. Mediation skills are also life skills that bring you better outcomes in all sorts of situations. In case you're a leader, for example, mediation skills enable you to create super performing teams and to do more of what YOU like to do.

7.1 GETTING STARTED

A good starting point is taking stock of your already existing skills, so that you can identify those you still need to acquire.

Where do you already apply your skills? Here are some aspects to reflect upon:

Becoming a more effective facilitator

You are a manager and you have to facilitate project outcomes through people and varied stakeholder groups. Mediation provides you with a highly structured facilitation process involving all stakeholders towards a negotiated outcome they choose to commit to.

Becoming an effective negotiator

You are a sales person, a contract negotiator, or in a position where you have to negotiate deals on a regular basis. In order to get what you and the other party want without applying massive pressure, it is indispensable to learn to put yourselves in the other party's shoes and view issues from another perspective. This skill provides you with a unique insight into how to engage with your opponents, in particular if they have sharply different interests and demands.

Becoming a more effective leader

You are an executive leader and you wonder which leadership model amongst the plenty of models out there you should choose to adopt. Being a mediator means that you know how to listen, how to influence with purpose and integrity while recognising other's interests, how to work with different personalities and agendas, and how to make assertive decisions. So, no leadership model is required.

7.2 TEST YOUR MEDIATION COMPETENCE

This is a quick and non-academic self-evaluation to give yourself an idea about your level of competence.

Answer the questions below intuitively and mark on the continuum where you think you are. If you feel confident enough, we recommend that you ask trusted family members, friends and colleagues to evaluate you as well and then compare the results (similar to a 360).

There is no right or wrong, the following questions provide you with a better picture of your behaviour and attitude towards conflict and indicate areas you might want to work on.

How comfortable are you with conflicts (professional and private)?

1 10
Not at all Highly

What is your conflict style?

1 10
Avoiding/Competing Collaborating

How often per week are you involved in conflicts either as a party or as a mediator?

1 10
Not at all More than 3 times

How strong is your need to resolve a conflict you are involved in or one that you observe?

1 10
Non-existing Very strong

How able are you in general to put yourself in the shoes of someone else?

110
Not at all Very able

How well do you master active listening – how patiently can you listen (on level 4)?

110
Not at all Highly

How well do you handle emotions, your own and others', applying empathy and allowing space?

110
Not at all Very well

How well do you chair/facilitate meetings with regards to process and time management?

110
Not at all Highly

How well can you separate an issue from the person?

110
Not at all Very well

How likely are you to go straight to problem solving rather than exploring an issue?

110
Not at all Highly

*How strongly are you influenced by biases, stereotypes, group think when making decisions?
(indicator is how much time do you allow yourself between trigger/stimulus and reaction)?*

110
Not at all (I reflect a lot before I react) very much

How well can you give responsibility back to the owners of the conflict/problem?

110
Not at all Very easily

How well can you detach from the details and see the bigger picture?

110
Not at all Very easily

How clearly do you communicate, and how clearly can you summarise information?

110
Not at all Very well

How important is it for you to be liked, rather than being respected?

110
Not at all Very much so

How important is confidentiality and safety (face saving) for you and for those you work/live with?

110
Not at all Very much so

How much do other people entrust you with their problems and conflicts?

110
Very few Many people

How much do you enjoy supporting/coaching/developing others?

110
Not at all A lot

Case study 7: 'Fluffy vs. commercial' HR function and the Business

Background:

- *Various global organisations require consultancy on how to embed the HR function within the business and how to teach them to be commercial so that they can contribute to achieving business targets.*

Issues:

- *HR functions tend to operate on the basis of the purpose of 'dealing with people', whereas the business is motivated by 'dealing with sales' and 'dealing with numbers'.*

Diagnosis:

- *There is a clash of core values: Commercial vs. Humane.*
- *Both functions worked in silos and spoke different languages, they stopped listening to each other and sought to confirm the biases of the other.*

Resolution:

- *Both functions have one common purpose: keeping the organisation alive and afloat and ensuring quality of work.*
- *Helping both sides to understand each other better and starting to communicate in one language helped them to see the common purpose and the synergies through effective collaboration.*

7.3 CONCLUSION: KEY DEVELOPMENTAL STEPS

Being an unconsciously competent mediator is a question of personality and pre-existing skills. Becoming a consciously competent and effective mediator is a deliberate decision and lifelong practice, practice, practice. Every individual has the potential to be a facilitator, in whatever league you choose to play. You need to make a conscious decision if you want to work on this potential, to 'build the muscles' and to embark on a continuous learning

journey. Research on mediation over the last decades shows that facilitation skills get you better deals, more content employees, more effective team performance, higher quality-relationships (private and professional), help you save time and money, and give you the confidence that there is a way out of a difficult situation. It's not a panacea to solve every conflict or war in the world, but it gives you the freedom to decide how you want to master a situation, according to the motto 'misery is optional'.

8 TOP TIPS FOR INTERCULTURAL MEDIATION

"Different people, like different communities, have different strengths, and the only thing that works is using our different strengths together."

– /Angn!ao/'Un (Kiewiet), Ju/'Hoan San Community
Member

Let us remind ourselves when 'intercultural mediation' is recommended: *when a conflict is determined or influenced by cultural differences and when its resolution takes these cultural differences into consideration, even if the cultural differences may not be the actual or original source of a dispute.*

Source of conflict: When you have identified that the dispute at hand is an intercultural one, you continue with the analysis of the source and the escalation step of the conflict. This information gives you an idea about whether you need a third party to help resolving the dispute or whether you might be able to deal with it yourself, in case you are trained in conflict resolution and you are sufficiently detached from the dispute at hand.

Key mediation competences required are skills in building rapport and relationship with the parties, to manage a process rigidly and effectively, and last but not least to be able to work with the parties on the content of their differences in order to move information between the parties to create a dialogue and exchange on facts, figures, needs and interests.

Intercultural competence or high sensitivity when dealing with difference is an additional quality a mediator needs to possess when mediating in international or intercultural contexts.

Culture: We learned in chapter 3 that when dealing with intercultural conflicts we need a more pragmatic and deeper definition of culture to be able to go to the root cause of the intercultural dispute. A useful framework to approach this challenge is to become aware of our own and the parties' concepts of 'realms', 'realities' and 'marginalities' to be able to surface the underlying cultural issues. This requires developing a global identity as an add-on to our existing local ones which allows us to change perspectives, combine points of view and to care for others within and beyond our own communities.

Reconciliation: This means the mediator needs to have a high-sensitivity level of intercultural competence. Individuals who possess a high level in intercultural competence are able to recognise difference when they encounter it. They can manifest respect in communication and they can combine the optimal of their culture with the optimal of the other culture to create a healthy working synergy that promotes solutions, trust and bridges across the chasm of diversity. It is more of an exception that the parties to a conflict are able to achieve this level without the help of an impartial, highly sensitive, third person.

9 FINAL CONCLUSIONS

*"I think and think for months and years. Ninety-nine times,
the conclusion is false. The hundredth time I am right".*

– Albert Einstein

We started off with the following hypothesis: "The promise of Intercultural Mediation" and how far can mediation help in intercultural conflicts?

Having explored in the previous chapters both concepts, that of mediation and that of culture, we can come to the general conclusion that 'YES', mediation can help to resolve intercultural conflicts. Mediation is a powerful tool helping us in changing perspectives and developing curiosity for the issues of others.

Intercultural competence gives us a new vision with an expanded global identity as an add-on to our local one which spreads beyond borders. This empowers us to get out of the biased 'Us-Them' group think pattern into a healthier 'I-We' view, to change perspectives, combine points of view, and to care for others within and beyond our own communities.

This might be the most important take-away from this book: Building intercultural competence is crucial to overcoming prejudice and exclusion and to move towards an effective and inclusive dialogue.

It is difficult to resolve a conflict in which we are personally involved, so most of the time it is recommendable to engage a third party who is detached from the dispute and who can therefore help us explore our interests and needs which is indispensable with regards to finding a solution.

Mediation is not a panacea to resolve all our conflicts, in particular if our opponents don't want to be part of a negotiated solution. It is however a powerful analysis tool which is time and cost effective and which gives us clarity about our positions and interests (even without the other party present).

We have covered a lot of different concepts and theories that you may choose to explore and reflect upon as part of your preparation for the next conflict or as part of general

preparation, knowing that you will use your findings in a range of circumstances. The more prepared you are the more options and choices become available to you.

Mediation skills are life skills which help us become better parents, better partners, better colleagues, better negotiators, better leaders, better politicians – better human-beings.

It is this simple, a truth but not trivial at all. It requires patience, giving up our EGO (= Extinguishing Great Opportunities), being prepared to accept different views, making decisions, giving up to indulge in our self-limiting beliefs and destructive thinking patterns, being clear about our values and fears, communicating clearly, living with uncertainty, giving to receive, and learning how to detach from the importance of winning.

10 OUTLOOK

"We must become bigger than we have been: more courageous, greater in spirit, larger in outlook. We must become members of a new race, overcoming petty prejudice, owing our ultimate allegiance not to nations but to our fellow men within the human community".

– Haile Selassie

So, what comes next? We believe that effective negotiation can help prevent conflicts and enhance constructive dialogue. Each single human interaction is a negotiation.

Negotiation often has the dodgy connotation of manipulation, a whiff of having to give up or fight, of losing and winning, or be left with an unsatisfactory compromise. We're facing our EGOs, worst nightmares and fears.

If we move beyond the assumption that a negotiation aims to achieve something better, a successful negotiator needs to be able to distinguish the 'before' and the 'after' of a negotiation in order to make an informed decision about what steps to take first and how to prioritise them.

If we asked you to operate a new machine or fly a plane you may ask for a few lessons first. Ironically, in our experience, we find that most people will plunge straight into a negotiation employing their instincts and thinking that their primitive reactions represent the height of sophisticated methodology. Using instinct as the only resource is like gambling at the casino with the outcome of a negotiation.

Successful Negotiation

The difference between a successful and a less successful or even failed negotiation lies in effective preparation and a well-managed process, ideally by a negotiation expert who coaches you through the tough negotiation ride. As involved parties, we are hindered in our resourcefulness, having to remain centred and in control by our emotions, thoughts, and biases. Let's face it, we all want the best deal for ourselves. And that's OK. How do we get there?

Creating Value

Negotiation in its purest and most effective form is about claiming value in a non-positional way. This is the contribution of mediation which describes a process to resolving a positional dispute focusing on rapport building and exploration to help the parties move from positions to interests. It is about creating value – baking a bigger and richer pie.

Claiming Value

Having created a bigger pie, we eventually have to distribute it. We call that the ‘Bargaining phase’ within a mediation. That’s the moment when it can all go wrong if not managed well. When it comes to distribution, we tend to fall back into tribal behaviour, become positional, feel scarce, and choose competition over collaboration.

Enjoying Your Value

When preparing well – having a negotiation agenda, knowing your BATNAS and WATNAS, your weak and your strong points, your risks, your trade-offs, having an idea who the other stakeholders are and what they might want – you have a real chance to achieve the best outcome for yourself and others without having to become a negotiation villain. You can enjoy the value you created through constructive negotiation behaviour.

APPENDICES

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Decision Tree³⁴: mediation facilitated by third party or not.**Examples of active listening techniques****Reflecting and Paraphrasing**

1. "I am uncomfortable with the way this conversation is going. I feel like you are challenging my management style and practices. After all, this is my family's company." So you feel upset that I challenge the way you run your family's company?
2. "Our suppliers are absolutely crucial to our business. If our key supplier can't deliver for us, we are in trouble." I get the impression you are quite worried about the impact that suppliers' troubles could have on our company?

3. “Running this business is stressful enough as it is, without you bringing this minor matter to me. We have an audit committee, so let it do its job without bothering me.” It seems like you are getting angry that I am adding to your stress by bringing up issues that should be dealt with by others?

Reframing and Questioning

Reframe, in the way indicated, the statements below. Then provide an open, closed, and hypothetical question that might follow on from the reframe.

Statement	Reframe	Questions
“I don’t trust the CFO. She has proven herself to be hopeless at her job and she is always un-cooperative and stupid.”	To neutralize I see you are not fully satisfied with CFO’s performance.	Open: How could she do her job better? Closed: Do you think we need a different CFO? Hypothetical: Let’s say we fire the CFO – what signal would that send to the market before the IPO?
“This new product is definitely what we need to develop to grow the business.”	From specific to general We need new products to grow the business.	Open: Please tell me what our competitors are doing to grow their companies? Closed: Do you think the current product line has no room for growth? Hypothetical: If frozen yogurts were not an option, what other opportunities could we explore?

Reflecting and Reframing – Sample Answers

Statement	Reflect	Reframe
The total chaos with the audit report just drives me mad!	So you are very frustrated with how the board handled the audit report?	...in time: You would like the board to handle the audit process differently next time.
He treats us board members like children! Who does he think he is, Steve Jobs?	You feel very disrespected by the CEO?	...to neutralize: So you think the CEO should change the way he communicates with the investors.
This new product is a fantastic idea! It will make investors at least 1 million a year in profit.	It seems to me you are quite excited about frozen yogurt as a new business direction.	... from specific to general: You believe we need new business directions.

ABOUT THE AUTHOR



Susanne Schuler is an experienced business and intercultural facilitator, conflict mediator and coach. Her legal studies, business experience and her work in diversity combine effectively in her mediation and consultancy role. She speaks 5 languages fluently and has worked in more than 20 different countries. Susanne works with international organisations such as SAP, BASF, Unilever, Roche, Novartis, Genentech, IKEA, KPMG, E&Y, Bloomberg and for institutions such as the UN and the European Bank for Reconstruction and Development, and for major UK organisations including the BBC and Lloyds Bank. Susanne has trained over 1,000 delegates from more than 30 different nationalities in negotiation techniques, mediation, conflict management, and diversity and inclusion. Susanne also leads a programme focused on resolving board conflicts which she delivers around the world. An accredited mediator in the UK and Germany, Susanne has facilitated more than 100 mediation and conflict management cases to a constructive resolution. She is a published author and her most recent publications are a chapter in *How To Master Negotiation*, published by Bloomsbury and this book.

Born in Namibia, Susanne has lived, studied and worked in Germany, Switzerland, Spain, France, Belgium, and the Americas.

ENDNOTES

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10. Please note that these are examples of advantages which are a given and which can't be influenced. We need to be aware of the fact that our conversation partners might categorise us according to those stereotypes and treat us differently because of their biases. We would like to make it very clear that the authors of this book, don't support those biases.
11. E.g. Daniel Hamermesh, *Beauty pays*, 2011.
12. See also Kahnemann, *Frames and Reality* (2012), Chap 34.
13. See also Maslow, *A theory of human motivation* (1943).
14. See also Turner and Pratkanis (1998) on group-think, pp. 105–115.
15. See also Howell and Schuler (2014).
16. Adopted by the Ministry of Justice and Her Majesty's Court Service (UK), Central Office of Information (UK), the Organisation for Economic Co-operation and Development (OECD), the International Finance Corporation (IFC) of the World Bank, and others.
17. BM., <http://www.bmev.de>; GWMK, www.gwmk.de; CEDR, www.cedr.com
18. See also appendix 1: decision tree on whether to use a mediator or not.
19. http://psiexp.ss.uci.edu/research/teaching/Tversky_Kahneman_1974.pdf
20. Tversky & Kahneman, p. 1125, 1974.
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22. See 11.
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26. Based on Bennett's scale of intercultural competence, 1993.
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29. s. Trompenaars/Hampden Turner, 2002.
30. Noesner, Webster, 1997.
31. Inspired and adapted from IFC/CEDR board level conflict programme. <https://www.cedr.com/news/?item=IFC-partners-with-CEDR-to-tackle-board-level-disputes-in-emerging-economies>
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