

# **Mediation, more than hype?**

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## **CHAPTER ONE : MEDIATION AND STORIES**

### **STORIES IN GENERAL**

Stories are important. They are so much more than factual explanations and accounts given. Stories talk about how the narrator perceives situations, how he feels them and how the facts present themselves to him. Stories are full of emotions, very vivid and highly subjective. The narrator reveals so much of what is important to him, what colours his life, what is moving him.

Stories of others, when we listen to them, have an impact on us, the listeners, as well. Whether we like the story or not, recognise ourselves in them or not, one way or another they link us with the narrator and/or his story.

### **CONFLICTS AS STORIES**

When people are in conflict, they like to tell their stories too. In escalating conflicts people tend to drag in many more side questions, sometimes to the point where they lose track of the original issue.

The intensity of the story is meant to convince the listeners about how much they have the right on their side, about how much they are hurt, ignored and unheard in their needs and feelings, about how they experience injustice and feel unrecognised in who they profoundly are. The more these stories are told, the more they become complex, elaborate and colourful.

The conflict story shows us, the listeners, how far the conflict has escalated (words, intonation, speed, ... are all indications of the escalation grade):

- Is the conflict still on a rational phase?
- Did it move on to an emotional level?
- Did the conflict go beyond reason and emotion to become a fight?

## **MEDIATION AS A STORY**

Each mediation model (and there are a lot around) is a story too: it says, in its own manner, what mediation is and how it should be practised. Each mediation model/story:

1. Embraces an implicit or explicit worldview and an implicit or explicit view of humanity,
2. Has an own vision on conflicts,
3. Defines its mediation goals
4. Prescribes the specific role of the mediator.

Since the renewed interest in Mediation/Alternative Dispute resolution (ADR), which took place in the nineteen sixties, many models have been developed, sharing common views and at the same time specific approaches (among others Problem solving, narrative, solution focused, transformative, provocative...). These different models do not exclude each other. Starting mediators tend to rely strictly on the model learned, experiencing that sometimes it works and sometimes it does not. Very often, more experienced mediators use different models according to the specific needs of their clients in specific situations. Even more, the different models enrich each other and few are the mediators who stick to only one and exclusive modus operandi.

## **UNITY IN DIVERSITY**

In the vast choice of mediation models, there is a common element, though. Mediation as an ADR has a specific way of dealing with conflicts.

Instead of traditionally handing out the decision making power to third parties who are invested with an authority given to them (judges, arbitrators, experts, political authorities, bosses, parents, teachers...) or instead of traditionally fighting (people with themselves or with others, organisations and companies with their members and towards others, nations against nations...) in mediation, and under the guidance of a mediator, the autonomy of the client (the decision making power remains in their own hands) and the connectivity

of the clients (they collaborate together to find a “win-win” solution) are core and crucial characteristics of mediation, without which mediation would not be mediation

## **DEVELOPMENT-ORIENTED MEDIATION (DOM) AS A STORY**

DOM is not a model as such but of course, again, it tells a story, a story about “development”.

To “develop” means:

- Link to what there “is” and to what the clients bring in;
- Offer perspectives and a frame to the clients in which they can search and dig and find in themselves new or forgotten strengths and potential;
- Offer them the invitation to respond to these unveiled strengths and potentials and to use them in their situation
- In order to create an new situation;
- Allowing them to clarify their conflict and to build a tailor-made solution for their problem.

In DOM, development is central as is the openness of the mediator to embrace the approach of a model or of different models so as to meet the needs -on that specific moment- of both the conflict and the clients.

This DOM story uses the specific power of different mediation models. The more mediation models/stories it contains, the better it can link with the conflict story of the clients and create an open space to work in a connecting way.

The main question will be: “What mediation model/story does this conflict need and do these clients need in this particular situation and in this particular moment?”

In other words: which mediation model/story enhances the development of what people exactly need at this specific moment to come out of their conflict?

Diana Evers has found out, from her long experience, that the development-oriented mediation (DOM) encompasses three levels: the small mediation, the medium mediation and the large mediation. These small-medium-large connotations do not indicate in the slightest way a difference in importance or value of the conflicts. It only shows how deep, large and wide the conflict has grown, how escalated it is and what clients need to develop to take responsibility for the conflict and the way to handle it.

## **CHAPTER 2: THREE MEDIATION STORIES**

If as a mediator, we wish to help our clients in a development-oriented way, we have to start *from what the client offers, from what there “is”*.

The story the clients tell us is very important for them, obviously, and for us as well because, based on what they say/think/feel/do, we discover in what best manner we can assist them so as to enhance something new and constructive within them.

In each one of the three mediation stories, the small, medium or large story, the author examines following topics:

1. What is the issue/conflict at stake? And how far has the conflict escalated?
2. What is the situation of the clients?
3. What mediation story (S-M-L) links the best to these clients in this conflict?
4. How, as a mediator do we assist them in this particular case?

With the help of the “escalation stairs” (or gradation) of Friedrich GLASL and the four dimensional model of the context of a person (the contextual approach of NAGY), the mediator can explore with the clients where they are right now and what they exactly need to develop to move on with each other.

## **THE SMALL STORY: the issue as a solvable problem**

### 1. The issue as a solvable problem

Each conflict contains two components: the content and the relationship between the protagonists.

If people stay on the level of negotiation, discussion, points of views, arguments, ... without or with few emotional and relational twists, one can say that the escalation grade is low (even if discussions can be fierce and harsh).

The conflict is in a rational phase. The same goes for a conflict in which people deliberately want to keep the conflict “cold” or for conflicts in which parties absolutely strive to obtain a win-win solution or in which they want to search for a rational, quick and efficient solution.

### 2. The situation of the clients

What do clients need? To connect to their question is to connect with what they want to learn in order to solve their own problem.

Importance again is given to the story the clients tell: they present themselves as rational beings and look the same way to their opponents; they have a specific perception of the situation and are willing to adjust that perception if reasonable arguments are presented; they are willing to broaden their mind and envisage other options, and they expect the same from the opponent side. Focus is on the issue, not on the emotions. They look at the future, concentrate on interests, less on values, emotions and vulnerabilities. They look for a win-win outcome. They stand firmly on a rational ground and are capable as well to listen to the arguments of the other and to take them, if reasonable, into account.

What those clients need is a path, a method and skills to reach a win-win solution, in a short period of time and with efficiency, with the aim, very often, to keep the relationship going.

### 3. Mediation as a method

The small mediation is the perfect answer for this kind of clients. They inform each other about their interests, their possible solutions, they negotiate in collaboration and they search to reach an objectively **fair** solution and, on top, they learn new skills to solve conflicts with a low escalation grade.

### 4. The role of the mediator

His main role is to keep the clients close to the issue and to the procedure, relying on the cognitive intelligence of the clients; his questions will be mainly exploring so as to put all information on the table, creating hence, in order to make it possible, a safe, trustworthy, neutral and competent environment.



## THE MEDIUM STORY

### 1. “The issue is not the problem, but your relationship is” (Donald MAC GILLAVRY)

Conflict here is an emotional and relational confrontation between people who do not agree with each other on a specific issue. The conflict moved beyond the rational level to a relational and emotional one.

Some characteristics that come back very often:

- The goal is not a win-win solution but to have the “right” on one’s side;
- The problem moves from the issue to the person;
- More issues are added along the way;
- Each one of the parties is convinced that the other needs to change;
- Outsiders are needed as coalition partners to strengthen points of view;
- Less communication and more monologues;
- Less listening and more expression of reproaches;
- The process is worsening the relationship;
- The past is at the centre of the discussions, less the present and future;
- Their cognitive intelligence is lost
- Their emotional intelligence (=knowledge of own emotions, regulation of own emotions, recognition of the emotions of others, coping with relations, see GOLEMAN) is obscured;

What the conflict needs is a safe and trustworthy environment in which parties can be heard deep down. The conflict needs a place of “stand-still” in order to be clarified, heard, expressed and understood, with the aim to make the problem discussable again and ready to be solved.

It is obvious from the story told by the protagonists that the middle story might be much more efficient because:

- The conflict won't stop if each one of the parties wants to "win" and make the other "loose";
- The conflict shows how the consequences of the conflict burden the personal well-being of all the clients: in fact they want to get rid of the problem but they have no clue about how to start this;
- The conflict has escalated and needs an approach based on empathy and understanding.

## 2. The situation of the clients: they learn to connect with themselves and with the others

The rationality is gone far off, jeopardising the possibility for the clients to find the way out by themselves. Self-help is very difficult if not impossible and clients need more than a negotiation method and the use of a series of skills, like in the small story. They loose grip on their situation and often hide this behind a façade of threatening and harsh language.

They need a neutral connecting language, focused on mutual understanding, and an honest dialogue. Clients need to get in contact again with their capacity to empathy and understanding, to "touch" what there is going on at that moment, to "speak out" and dare ask for the kind of recognition they need in order to be able to move on further and to reconnect with the other, at least a little bit to start with.

They need to find the thread again with what lives inside them and to understand why their emotions are so high by learning to ease the pain and the confusion through naming their emotions and their underlying needs. They need to reconnect with what they succeeded to do in the past that worked rather well and what they need to un-cover and un-lock, in order to move forward. It is very important to assess whether they agree to do this uncovering work with themselves and with each if a potential agreement later

is to be made possible. Do they agree to question themselves and to examine some of their behavioural patterns? Are they willing to search the right words for their emotions and needs and to express them clearly to the other, so as to advance on their own and possible common road, whether they obtain recognition or not?

### 3. Mediation as a dialogue

The mediation will try to bring people on an empathic level again, each party giving and receiving understanding in order to make a new connexion possible again. The dialogue leads to the construction of a “we”, a community beyond the problem.

The focus of this mediation lies on the dialogue between the parties. The solution of the problem is postponed until the relation is clarified, untied, unblocked. The accent is placed on the here-and-now and on what they especially need to get the talking on the rails again.

### 4. Mediator as guide of the process

The professional’s main job is to work process-oriented: at this stage, the process itself is more important than the result. The mediator needs the necessary patience to bring clients in the here-and-now, with the trust and confidence necessary to calm down the situation. The basic position of the mediator will not be anymore to be neutral but to be “more-sided-partial”(an attitude or a working method developed by Nagy), which means that he can fully identify himself and listen in depth and acknowledge the feelings of one party and subsequently fully of the other, according to the time each party needs. This basic position means that the mediator is capable of seeing the person behind his destructive and aggressive behaviour and that he can link in an empathic way with each one of the parties. He searches for the efforts and good intentions of both parties and can give recognition and understanding to each one of the parties involved. This basic position offers

the possibility to the clients to show themselves vulnerable, however, in a safe environment.

The mediator accompanies the process, helps clients to get back on their own grounds and express what their emotions, needs, expectations, wounds are and bit by bit create this understanding with the other party. The mediator brings parties to see their own part in the emotional confusion and in their relational complications. He stimulates them to self-reflexion and to understanding the relationship. Once this is achieved, the mediator can help the clients to tackle the issue, to find solutions and he can offer them a small mediation story in order to solve the concrete problem.

## THE LARGE STORY

If parties reach a high level of escalation in their conflict, we touch the deepest layers of our human being, from where everything might become possible, from the greatest achievements to the worst destructions.

The large story is the one appropriate in a completely escalated conflict (1a). It might be used as well in case of a resolved conflict that needs rounding off (1b).

### 1a. Conflict as an existential crisis: beyond reason and beyond emotion.

Often it is said that conflicts in a war phase cannot be mediated anymore. The conflicting parties have only one goal and that is to win, if necessary by destroying the other, be it by destroying themselves as well if that is the only possible way.

Destroying the other will never give back one's full unity, though. Destruction means always one's own destruction, at least partly.

In the Large story, the conflicts concern internal fight, own polarities, duality and shadow sides, which, against all odds, claim unity and connectivity. It is one's whole humanity that is at stake. The fight is going on outside the belligerents but in reality it is the mirror of the fight inside them. And yes, it even might be a fight to the death.

It is a story about the essence: do parties, in the end, choose dead or life?

### 1b. Conflict to finalise something

In non-Western communities, mediation is very often closed and finalised with forgiveness and peace rituals (open apologies, exchange of gifts, smoking the pipe of peace, dancing and singing together). Those communities know that besides the solution and the ending of the conflict, the relationship needs to

be restored in a process of reconciliation in order to be able to continue living together after the conflict has been settled.

The same is valid for people that years after a conflict and a subsequent breach of contact, are searching to establish a connexion again. The distance in time and in space has often appeased somehow the tensions/conflicts but they never went away fully and even unconsciously kept them awake, unsatisfied. The story, in order to appease the deep down self, needs to be re-written. Rewriting the story is a healing process for oneself, for this generation and for the next one (especially in family related conflicts). Those stories ask for the large mediation story in order to transform the opponents and through them the others around them.

## 2. Clients make existential choices

2.a. When clients are stuck in a fight or a war, they don't possess the conflict anymore: the conflict possesses them. They cannot stop the escalation anymore by their own means. And sometimes even the contact with their better self seems vanished. The fighter is confronted with a void, with a loss of himself. His existential question is who he is in this conflict? Is he really that aggressive and capable of the total destruction?

He has the choice to either surrender himself to this appeal of total destruction or re-connect with the better self, the one who is not that destructive.

2.b In the other situation, there might be the need of a final clarification in the sense of offering excuses to the other party. These parties (or at least one) reach the understanding of their own part in the conflict and the escalation of it, maybe they even recognised a habitual pattern of behaviour in the same kind of conflicts with the same kind of people? They may be ready to question themselves, search what they can change within themselves instead of searching to change the other.

Maybe they can even move more forward and desire to seek forgiveness (to themselves and to the others) and to receive forgiveness, not necessarily in the open but sometimes just in their hearts. It is the difficult road of abandoning the position of victim, in order to embrace the position of taking up responsibility for one's own part in the conflict. And maybe when there is this desire to rebuild a relationship, clients might wish to restore, to repair, to reconcile, and to try friendship again. And if this is not possible, they might want to learn how to let it go so that it does not burden anymore (or at least substantially less) their further life.

### 3. Mediation as a path towards forgiveness, reconciliation and peace

The large mediation story can offer the possibility for people to take new existential steps in their life, with questions such as “Who am I in this conflict? What do I want with this conflict? And what do I do with the conflicting relation, including both the relationship with myself and with the other?”

In this “Place of Effort” “slow questions” are needed (Harry KUNNEMAN, 2012). No solution-focused questions at all, rather questions searching for meaning and sense. Maybe provocative questions are needed in order to search for this intersection between sense and nonsense.

The mediation story that clients need is one touching a truth beyond their own truth, or the truth of the other or of both. Indeed, rather a universal truth that touches each one of us in our essence. It is an invitation to enter in the great perspective ...

### 4. The mediator as a catalyst

This kind of mediation has no rational nor an emotional dialogue, no discussions about problems and solutions. It is an existential terrain. It is very depending on the mediator whether people are willing to enter in that kind of existential mediation when they are in a highly escalated conflict, or when a conflict needs a final clarification or when people after a conflict search to re-enter into contact with their previous/still opponents. It is because this terrain

is so often unknown and unexplored and so “difficult” that a mediator needs to be in contact with his own “existential life questions and decisions” to dare work with these conflicts and issues.

Not that the mediator needs to have known the same issues or problems at stake but that he has known adversaries in life of a very strong nature and that he learned from these experiences until becoming a renewed person.

The main attitude of the mediator is one of “being”, of “being present”, of being a silent witness of what is going on in the clients’ mind, head and heart. The mediator needs an own inner peace and peace with the others around him. He is the person who is not afraid for the insecurity and the risks that accompany existential crises, he accepts his clients the way they are and is fully confident that they will get there too, in their own searching way, going forward and backward, without forcing them in a certain direction nor judging them. He has a catalyst effect for those going through this difficult path of the essence of life itself.

The mediator knows, recognises and acknowledges his own human sufferings and he possesses the necessary compassion for the sufferings of his clients. Clients need to feel that they can and are allowed to fully feel their emotions and questions and that they are capable of going through their ordeal.

The mediator needs to be patient and sweet and be willing to stand next to people when they search their answers to his slow questions, allowing them the time they need.

Mediating in the large mediation story needs Love and Courage and Connexion to the best version of the mediator’s self.



### **CHAPTER 3: FINAL VIEWS ON THE THREE MEDIATION STORIES, SMALL, MIDDLE AND LARGE**

This book has no intention of being an extensive study of this renewed vision on mediation, nor has it said everything there is to be said.

So, here are just a couple of final views.

1. In mediation, autonomy and responsibility is key. It is not the mediator who nor the model that decide what this conflict and these clients need. The mediator just responds with a mediation story that connects with what “is” and the mediator proceeds from there in accompanying clients’ capacity to find their own answers out of the conflict.
2. Beyond the short mediation story, mediation gives time and space to the conflict. Mediation allows notions such as time, attention, room, silence, presence, no forcing, ... In our world of today, problems are seen as disturbing elements that prevent us to move forward on our daily path instead of signals that something needs to be developed and altered. It is not possible to intervene quickly and efficiently if we do not want to create new problems and new conflicts ahead.
3. Mediation is examining the situation by asking questions to oneself and to the other. Comprehension of the situation is needed and questions are a means to get to this understanding. All sorts of questions are possible: exploring questions, in-depth questions, slow questions, provocative questions if necessary... We are not used to ask to ourselves and to others a lot of questions anymore; we leave that to philosophers. The mediator needs some courage to go deeper down in the situation and he will ask the questions while... leaving the answers to the clients.

4. Who says mediation, says connection. When in conflict with others, we feel separated from/opposed to those others. Mediation makes us feel how connected we are and even more, how much we need the others, mostly those ones we are opposed to! We realise as well that others, directly or indirectly linked to this situation, are bearing the consequences of the outcome of the conflict and maybe we will experience that outer peace is only possible when there is inner peace.

**So, is Mediation then more than hype?**

**PART 3 of the book will offer a first insight.**