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The Concept of Mediation

Mediation can be characterised as conflict resolution by the involved parties with the help of a neutral agent, who is referred to as the mediator. This is, in short, the essence of mediation. Of course in practice it is more than just this statement, and it often acts upon complex principles, but let us start with introducing the roots of its methodology.

Where Does Mediation Come From?

When I co-operate with assessment centres for new mediators who apply to them for training, I am often asked, “Is mediation something new?” And my answer is “no.” Throughout all the different eras, people have communicated with each other; they have argued and quarrelled. And most of the time they have looked for patterns of problem-solving, often with help from outside: a wise woman or man, a medicine-woman or man, or an elder member of the community.

The concept of mediation we now teach in Germany and Austria was explored in the 1970s in the United States, where it came with increased Chinese immigration. In China, namely, 90 per cent of conflicts are solved by means of mediation.

In the United States, mediation is perceived to be a useful alternative to litigation and is considered to be a model to relieve the workload of the courts. Thus the first mediation settings took place in divorce cases and in labour grievances.

Since that time mediation has developed in the United States enormously, primarily with the objective of saving money. Companies like Toyota or Motorola have lowered their court expenditures by 75 per cent in the past years, and mediation is in many companies part of the contract between employer and employee, but also between partners in business.

Germany started to apply mediation in divorce cases in the early 1980s; Austria has been developing its mediation scene and culture for about 10 years. This year a mediation law was passed in Austria, which should be regarded as a great achievement, and it

might be claimed that through this, mediation became an integral part of the established legal system of Austria.

It should be seen, however, in connection with the lawyers' interests: the little hopeful "flower" of mediation began to blossom, but it also might represent a danger for the established legal system. The law, on the other hand, might bring more acceptance for mediation as a means of reaching common satisfaction. The future will tell.

Why Mediation and What Assumptions Lie Behind?

First of all, social conflicts are increasing in all fields of social connections; the individual process increases while the social process decreases. Therefore, there is a need for professional tools of conflict resolution and alternative dispute resolutions besides legal solutions. It is also an issue of costs.

The basic assumption behind the concept of mediation is that *dispute is healthy; not solving a dispute is dangerous*. The reason for conflicts is very often not that people do not want to solve their conflicts, but rather that they just do not know how.

Conflict parties are, so to speak, experts as for their situation and also in the field of potential solutions. Outside judges may not take into consideration all relevant aspects. Solutions for the future are more solid if emotions, accumulated on the basis of the situation, are part of the process. Relating to each other throughout the dispute is helpful for finding solutions.

Commitments which the parties themselves take part in forming make them more responsible for the result and have a higher acceptance rate. Mediation is neutral, confidential and non-therapeutic; these facts encourage more people to accept it. Tools of negotiation one learns during the mediation process may help in other situations of life too.

How Does Mediation Work?

We speak about a mediation process if two parties in a conflict want to find a solution with the help of a neutral outside person, a mediator. The mediator takes care of the process; the involved parties take care of their topics and contents.

All parties must be listened to in a mediation setting; this might mean that perhaps after the first session, more people should be invited to participate if it is discovered that they are also concerned. The setting is neutral and conceived as an alternative to court proceedings; mediation and court proceedings are mutually exclusive.

Parties are responsible for themselves and join the mediation voluntarily. The aim of mediation is to find a commitment that fits all parties. In practice this should mean that there are two or more winners and no loser. Finding consensus is the solution.

The framework for mediation is thus: a neutral person sits in the middle; all parties take part in the mediation; there is no litigation; the participants are self-responsible; they take part voluntarily in the process; and they reach a solution by full consensus.

Stages of Mediation

In the stage of *pre-mediation*, a basic setting is created which enables the parties to mediate. This may turn out to be the hardest part of the job. From personal experience I would claim that once the conflicting parties are willing to sit together around the same table, and the mediator is well trained in her or his job, they normally find a solution.

Making the opposing parties mediate is the key for conflict resolution. Maybe this is something that conflicting religious groups should spend more time on, in getting the parties ready for the table, and then let the professionals do their work.

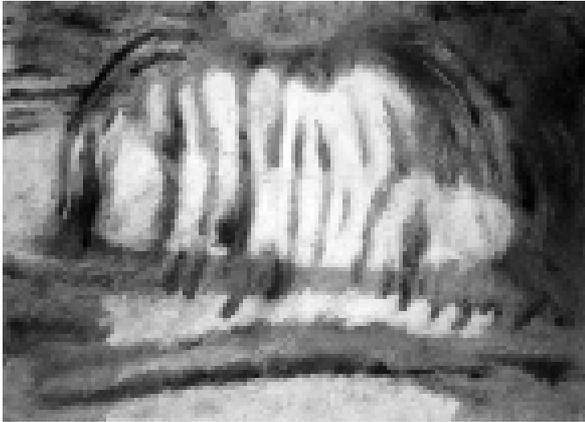
Normally, one of the parties contacts the mediator. Personally, however, I prefer if the other party (parties) contact me too. In some cases it was helpful for me as a mediator to contact the other party and invite them for mediation, but these steps largely depend on the situation. As the bottom line, we can say that all the involved parties must be willing to mediate and try to find a solution that fits for all of them.

1. Contracting

After the introductory getting-to-know-each-other, the concept, the process and the fundamental rules of mediation have to be explained. In the meantime, the mediator assesses mediability. The most important established fundamental rules are the following:

One has to listen to the other party and let the conflict partner talk without interruption. No offences are permitted. The parties shall treat each other with respect. The mediator controls and manages the process; she or he might interrupt, if necessary.

There is no litigation during the mediation process. Everything is confidential in the process. After a commitment with all parties on how to deal with each other in the upcoming process of mediation, the mediator starts to gather issues and topics of the dispute.



2. Developing Issues

Each person has the opportunity to describe the issues from her or his point of view. The mediators do not evaluate; they just listen and try to understand, sum up or ask, if something seems unclear to them.

This means that the mediator also gathers a lot of information, identifying areas of agreement and disagreement. At this stage the parties sometimes get impatient. But each statement takes time, and all the statements have to be heard. The fundamental rules must be respected during the period of presenting statements as well.

3. Resolving the Conflict

What lies behind? is the question for this phase of mediation. Here the mediator helps the parties to find out what needs and interests are the reasons for their positions. Everything that might be important should be discussed. The mediator guides the parties through this phase with the relevant skills and techniques of asking and intervention, which she or he is trained in.

The conflict parties come into more contact with each other and they begin to notice that at this stage they also deal directly with

each other, whereas previously they always used the mediator as a channel of communication with the other party. The aim of this phase is for each person to understand her- or himself, and later on also to understand her or his conflict partner, and their differing views as well. Together they identify reference points and work on their disagreements.

4. Reaching Agreement

Next, it is necessary to find, develop and evaluate options. Most of the time this is accomplished by using the technique of brainstorming, which means gathering all the proposed suggestions for solutions first, without evaluating them. Then, each option is considered and evaluated from all points of view, choosing, testing and revising them.

5. Concluding

The last stage is the finding of solutions for all parties. Most mediators write down agreements in an advisor's review, and after reading, clarifying, thinking it over and finalizing, all parties sign it and agree, affirming it. Some commitments need time to find out, if they work; therefore another meeting after a certain time often makes sense.

The Good Mediator

The good mediator must be respected and accepted by all the participating parties. The mediator does not have interests in the result of the mediation. She or he is positively neutral, is there for all the parties, not just for one of them.

The person can be close to the parties but not too close (like sister, brother, wife, husband, boss or friend). The mediator does not judge or evaluate and takes all interests seriously. She or he is responsible for the process, not for the contents, since the solutions come from the parties, not from the mediator. The person helps the parties to express their feelings, emotions and ideas.

She or he takes care of the balance between the parties. She or he also treats the contents of the mediation confidentially: after a failed mediation, she or he cannot be the lawyer of one party in court. A good mediator makes sure that commitments go through a thorough reality check. The person can stop the whole mediation if the process gets out of control.

In Which Conflicts Can Mediation Prove Helpful?

Mediation is helpful in conflicts where direct discussion has been unsuccessful, or where no solution is in sight. It is essential in cases where there the relationship of the conflicting parties is going to continue in the future (like with parents, neighbours, in a workplace or in different communities).

It is useful in settings where all parties in the conflict want a solution, and where the most important parties or all the parties actually can take part. The solutions should be more complex than just a simple yes or no. In the case of nuclear energy, for instance, a yes or a no will be really hard to mediate, but a debate on the topic with mediative facilitation might be very helpful.

The imbalance of power should not be too heavy. There has to be enough time to negotiate. The parties should be able to speak for themselves and express their views. They should not be ill, abused or mistreated (although there are special mediators for these problems, with special techniques).

Claudia KAPPACHER studied communications and political science, worked as a journalist for ten years before she became a mediator. She lives in Wien, Austria, with her husband and three children. She does mediation in the fields of divorce cases, neighbour disputes, in working processes and in schools. She has been a trainer for mediators for six years and wrote several articles about mediation in Austria. Her email address is office@talkwork.at.

Susannah SCHMIDT

Review of Justice and Reconciliation:

The Legacy of Indian Residential Schools and the Journey toward Reconciliation

In 2002, when I was working as co-ordinator of the Canadian Student Christian Movement (SCM), I spent two precious days with Marie-Jeanne Coleman (née de Haller) who as a young woman worked as a travelling secretary in Europe for WSCF following World War II.

As we sat at the Colemans' cottage, looking out to Lake Ontario, which flows into the Atlantic Ocean via the St. Lawrence River, we talked about the visions of young women, which become the visions of old women, and vice versa, for reconciliation and peace.

I was struck that for Marie-Jeanne, and for many Christians of her generation identifying with Western Europe, reconciliation was first known in reference to transformation following the chaos and turmoil of World War II and the Holocaust.

For myself, while my perceptions have roots in the tragic horrors of World War II, I first encountered reconciliation as a living problem when I began the journey of awakening to the reality of genocide in the Americas. With other SCMs, and with other people in the Canadian ecumenical movement, I have been involved in a journey of facing this reality and coming to understand what it means today and for the future.

Canadian Residential Schools, Colonialism, Reconciliation

I first came across the United Church of Canada's 2001 resource *Justice and Reconciliation: The Legacy of Indian Residential Schools and the Journey Toward Reconciliation* (JR) when as SCM staff I was considering how ecumenical youth could engage with the legacy of colonisation in Canada.