

***ADVANCED COURSE ON
MEDIATION & CHILDREN AND ARMED CONFLICT
WITH AN INTERNATIONAL STUDENTS' CONTEST
2024 EDITION***

***Skills for Youth-Led mediation in Conflict
Situations***

***Communication, negotiation and conflict de-escalation techniques
Power dynamics and overcoming resistance in mediation***

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Conflict cycle in business relationships

The elements of conflict

- Each of us can give his/her own definition of the term conflict
- Cambridge Dictionary:
 - *“an active disagreement between people with opposing opinions or principles”*
 - *“fighting between two or more groups of people or countries”*
 - *“a situation in which beliefs, needs, facts are very different and cannot easily exist together or both be true”*

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It can refer to very different contexts (war, emotional situations, relational life, business etc.)

Some distinctions can be made:

- based on the number of people: conflicts between 2 people, between a few (office or circle of friends), between many (members of a party) and very many (between States). We speak of micro and macro conflicts. A conflict that initially involves a few people can progressively extend to involve a very large number of people. This is an element that must also be taken into account in mediation and we must never forget that there may be other subjects, different from those participating in the mediation, who may be interested in resolving the conflict;
- based on the methods of expression: verbal or physical conflict. One can be as violent as or more than the other, just as the harmful effects can be equally serious and long-lasting;

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- based on external visibility: latent or manifest. In the first case, it may happen that, at the beginning of the mediation, the parties formally maintain good relations and then, as the process progresses, they begin to express, with ever greater violence, their positions of disagreement. This problem arises, in particular, in long-term relationships, contractual or working, in which the parties cannot express their real positions as this would make the existing collaborative relationship impossible. Therefore, the occasions for disagreement are multiple and repeat themselves, accumulating and thus aggravating the conflict;
- based on the interaction between the parties: when the resolution of the conflict essentially depends on the behavior of the parties, it is necessary to consider the reactions they could have. They could distance themselves from each other, thus avoiding resolving it together. Or they could argue, each trying to impose their own solution, establishing a real competition. Another hypothesis is that they try to prevent the other from achieving his goal, without taking into account their own (obstructionism). Another hypothesis is that both have this attitude, aimed at destroying the other's claims and not at a motivated confrontation (clash).

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As can be easily noted, these are situations in which the conflict is increasingly harsh. Furthermore, it can increase without the parties themselves being able to control it (escalation).

It is therefore necessary to examine all the elements available and compare them with the indications just mentioned in order to allow the mediator to measure the conflict rate.

In these conditions, it therefore appears extremely difficult to give a precise definition of conflict.

The mediator should try to identify and interpret the conflict in order to have as many elements as possible useful for finding the way to help the parties find an agreement.

The elements indicating the presence of a conflict can be:

- divergence of interests;
- scarcity of resources;
- resentment;
- communication difficulties.

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Divergence of interests: occurs when the interests and needs of the parties are in conflict with each other. Generally, two subjects that are in competition tend to conflict more than others. For example, two companies that are in competition with each other. The interests do not necessarily have to be economic in nature (decisions on holidays between colleagues...).

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Scarcity of resources: occurs when a good that is considered necessary by many parties is available in limited quantities and is not sufficient to satisfy everyone. In these cases, we even speak of a fight for survival.

If one subject is indebted to another for a sum of money, the conflict will be more bitter the more accentuated the creditor's need for money.

If there are two companies that source raw materials from the same supplier, the conflict will not exist as long as the raw material is available to satisfy the needs of both, but if it is not sufficient, the conflict will be inevitable.

The element that plays a determining role is not the objective scarcity of raw materials but the simple fact that the parties perceive it as such. The parties may also have a different perception in relation to their situation. And this aspect is very relevant for the mediator.

It is not sure that the scarcity of raw materials generates a conflict: for example, if the parties agree to divide the available materials and join in order to search for others.

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Resentment: these are negative emotions that exist between two or more subjects and can vary in intensity, from simple antipathy to hate.

For the external observer, the emotional aspect of a conflict is usually the most easily perceived.

And this aspect is very important, even if often underestimated, even in commercial disputes, in which it is thought that the only relevant aspect is the economic one.

Instead, it is always necessary to remember that the parties in a dispute are, even if entrepreneurs, professionals etc., always human beings, with feelings and emotions.

When there is resentment there is not always conflict. Two companies can collaborate even if the owners can't stand each other.

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Communication difficulties: this occurs when the parties are unable to communicate and exchange information, thus creating misunderstandings, misinterpretations and misunderstandings.

For example, if an engineer uses technical and difficult-to-understand terms, the company that has entrusted him with the task of designing a new office may misunderstand what he has been told and, in any case, believe that he is not a good professional.

When there is no communication, there is often no understanding, no clarity and therefore there may be suspicion. As a result, conflicts may arise.

In reality, a lack of communication should not be the only reason for the birth of a conflict, but sometimes it happens. It may happen that there are communication difficulties in various types of relationships, nevertheless conflicts do not always arise.

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For example: one of the two partners/friends of a company tells the other that he intends to sell his shares in order to change his life and dedicate more time to his family. The other, in order to meet him halfway, despite the difficulties he will have to face in making up for the absence of the other partner, accepts, paying the friend the value of his shares. The company then begins to have difficulties. The two meet and the former partner tells the other that he has started working for a competitor, receiving a good salary. The partner decides to take legal action against the other.

In reality, if the former had told the latter that he wanted to leave the company because he could no longer handle the stress that entrepreneurial activity entails and because he preferred to work for others, perhaps the conflict would not have arisen. The company's difficult situation also influences the birth of the conflict. Therefore, there are: misunderstanding, resentment, scarcity of resources.

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In essence, therefore, the mediator should try to identify the elements and conditions typical of a conflict in order to identify its causes and characteristics. By doing so, he will be able to help the parties to dialogue, to understand the reasons for their disagreement and to find the most convenient solutions for both.

What are the reactions that the parties can have in relation to a conflict?

- Confront the other party and therefore the conflict;
- Ask the other party to respect the rules that govern that particular relationship;
- Ask a third party to rule on the matter.

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In the last two cases, the parties use external aids (the rules or the judge) in order to resolve the conflict. If, however, they remain within the context of the conflict, their behavior will become decisive:

- each party could try to obtain the best possible result, taking into account only their own interests and not those of the other. This would lead to a competitive attitude, which is very common especially when it is possible to determine the amount of the sums/values at stake.
- one party could try to reach a halfway solution. This is a compromising attitude and is often confused with a conciliatory one. It is certainly a positive attitude in view of resolving the conflict, but it is not always sufficient;
- they could accept the other party's requests, giving up their own. This is the surrendering attitude;
- to avoid finding themselves in unpleasant situations, they could avoid addressing the problem, hoping that the initiative will be taken by the other party. Passive attitude that is different from the surrendering one. The other's requests are not accepted but the solution is expected to come from others;
- to avoid the problem, he/she could give up his/her own demands (escape);
- he/she could dialogue with the other party, seeking his/her own interests and those of the other party, in order to verify the possibility of finding a solution that satisfies both (cooperative attitude, problem solving).

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There is no relationship between the behavior of one party and that of the other and each could behave differently.

Just as each can change attitude along the way.

Behaviors often depend from the character and instinct of the people.

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There are then a whole series of external elements that can influence the development of the conflict and the behavior of the parties:

- environmental factors: the environment in which the mediation takes place is not comfortable and the parties do not feel at ease. In this case they could become nervous and make the mediator's work more difficult;
- time: too little or too much time could have a negative impact;
- cultural factors: cultural differences can make dialogue and understanding difficult;
- human factors: gender and age can have an impact;
- personal factors: they see things differently.

In conclusion, the mediator must identify the causes from which the conflict arises, the ways in which it manifests itself and the attitude that the parties can take.

If the parties are unable to manage the conflict alone, this can be done by the mediator as an impartial third party.

Characteristics of conflicts

- Conflicts alter normal human relationships, to the point of causing their interruption or, in any case, making them more complex and difficult
- The negative consequences almost always have negative consequences on people's emotional sphere: consider not only conflicts that arise between relatives and condominium owners but also those between entrepreneurs or in any case between subjects who are not involved in a personal capacity but in their capacity as representatives of a company or other legal entity. Even in such cases, in fact, the subjects who must manage the conflict are always human beings and, as such, will have great difficulty remaining cold and detached, without being influenced by their own emotions and the character that distinguishes each person

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- Negative consequences are also produced from an economic point of view. Just think of two entrepreneurs who, linked by a long-term contractual relationship, cease to fulfil the obligations they respectively assumed or two partners who, due to the conflict that has arisen between them, are no longer able to manage the company. In all these cases, the conflict not only does not allow the parties involved to draw the profit they expected from the relationship in question, but it can also be a source of further losses since to reach a solution to the same, which often does not satisfy either party, they will have to wait a long time and bear considerable costs.
- In essence, therefore, the conflict hinders human relationships and, often, also economic ones. For these reasons, we are always looking for tools that allow us to prevent and/or resolve conflicts with satisfactory solutions, quickly and at low costs.
- Therefore, the need to prevent and manage conflicts in the most effective and appropriate way emerges.

Lack of awareness

- The parties' purpose should be, in principle, to resolve disputes in a fast and cost effective way, so that the saved cost can be used more profitably to productive business activities
- The main problem is that there is a significant lack of awareness among users, lawyers and all parties involved

Prevention of conflicts

- Prevention generally takes the form of the use of negotiation and behavioral techniques:
 - suitable for developing the capabilities of the subjects involved in order to reduce potential factors and sources of conflict;
 - aimed at establishing company procedures to constantly monitor the correct execution of each contract, in such a way as to promptly identify any non-compliance;
 - aimed at promoting contacts between the parties involved to address the risks of a conflict as promptly as possible;
 - to facilitate dialogue, communication, mediation and, in general, all those activities and initiatives aimed at strengthening trust between the parties involved.
- In essence: it takes the form of stimulating attention to the possible onset of the conflict, so that, as soon as facts and circumstances arise that may lead to the prediction that the relationship with the partner (customer, supplier or other...) may degenerate, it is ensured that the conditions for a reasonably satisfactory continuation of the relationship are re-established.

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When the dispute finally arises, it will therefore be necessary to identify the most suitable instrument, taking into account all the relevant circumstances, such as:

- type and nationality of the parties involved
- scope of the relationship
- state of the relationship
- interest in maintaining the relationship
- value of the dispute
- supporting documentation
- legal validity of the respective reasons
- real interests and needs of the company
- possible alternatives: the so called BATNA (Best Alternative To a Negotiated Agreement) and WATNA (Worst Alternative To a Negotiated Agreement)

Mediation

The goal of mediation is for a neutral third party to help disputants come to consensus on their own. Rather than imposing a solution, a professional mediator works with the conflicting sides to explore the underlying interests under their positions. Mediation can be effective at allowing parties to vent their feelings and fully explore their complaints. Working with parties together and sometimes separately, mediators try to help them find a resolution that is sustainable, voluntary, and nonbinding.

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Advantages:

- Limited time and costs compared to other instruments
- Guarantee of confidentiality
- Simplicity, flexibility and adaptability of the relevant procedure
- Continuation of relations between the parties
- Flexibility of the solution: the parties are free to settle the dispute with a wide range of solution, respecting mandatory rules and public order
- The parties play the main role
- The parties maintain control over the resolution of the dispute

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Limits:

- starting mediation does not guarantee the parties that an agreement will be reached
- it can fail when there is an imbalance between the parties
- the mediator does not provide legal assistance to the parties
- it fails when one of the parties does not behave cooperatively
- it fails if one of the parties is in bad faith

THE EXPLORATORY PHASE

Identifying the interests of the parties.

- In the initial phase of each negotiation, each party formulates a request to the other: the parties' "positions". The "position" is what the party (rigidly) states it wants at the beginning of a negotiation.
- Initially, however, it is difficult to understand whether or not these positions correspond to the real needs of the parties, that is, what the parties really want to obtain from the negotiation.
- It is therefore necessary for the mediator to deepen his knowledge of the relationship in order to identify the interests and needs that underlie these positions.
- When we talk about "interest" we are referring to what the party really wants, which is often very different from the position.

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- By “need”, on the other hand, we refer to the perception that the party has of the need that makes them believe they have a certain interest.
- At the basis of an interest there is a need.
- It is therefore necessary to help the parties to express their real needs and interests, to proceed with a verification and discussion of the same in order to find a solution that reasonably satisfies both.
- It is not at all uncommon for two positions that initially seem distant and incompatible to hide needs and interests that are not so distant and that can be satisfied.
- Not infrequently, however, the parties show reluctance to reveal themselves, exposing their interests and needs and prefer to barricade themselves behind rigid, principled positions. It is therefore necessary to use all the available tools to overcome such obstacles.

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- Furthermore, often not even the parties themselves know what their interests and needs really are and therefore it is necessary to help them discover them.
- The ideal situation is one in which the parties have a collaborative approach, aimed at overcoming obstacles and solving the problem to mutual satisfaction.
- The antithesis is the competitive approach, which implies that both parties aim to obtain the full result and the defeat of the other party.
- In the first, both aim to win without the other having to succumb, in the second, however, the victim of one implies the defeat of the other.

Separation of people from the problem

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Establish a relationship of trust.

It is of fundamental importance that the mediator is able to establish a personal relationship of mutual trust.

A highly developed spirit of observation and a certain behavioral flexibility are required that allow one to adapt to different situations, in view of the desired result.

Establishing a relationship of trust is very useful because:

- you can obtain more information;
- it allows the party to move from their initial positions;
- it allows you to evaluate the positions in a more profound and careful way.

To establish such a relationship, you need to be able to put yourself on the same wavelength as the party, adapting your behavior to that of the other party.

To achieve this result, you can:

- free yourself from prejudices and be willing to receive information about the character of the parties;
- carefully and critically observe the behavior of the parties;
- pay attention to both words and gestures, to body language;
- adapt to the behavior of the parties to get in tune with them;
- evaluate the result of such behaviors a posteriori to verify whether they were successful.

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Know how to listen.

- If the parties realize that the mediator is able not only to listen to them but also to understand them, they will be more willing to not remain anchored to their initial positions and to reach an agreement, giving up something.
- It is necessary not only to hear, but also to listen (understanding the meaning of the words). It is therefore necessary to pay attention not only to the words but also to the tone of voice, to the attitudes...
- This is useful to have more information because the party who speaks, perceiving the interest and attention of the mediator, will be inclined to address the issues in a more open and thorough manner.

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Listening can be disturbed by:

- comparing other people's situations with one's own;
- become defensive because you try to appear to be an expert in subjects you know little about;
- get distracted;
- give judgments or advice;
- have prejudices;
- think about what you want to say instead of listening;
- contradict the other party.

NON-VERBAL COMMUNICATION

As is well known, it is said that only a small part of what you want to say is expressed with words. The rest is expressed with the body, which manifests feelings and emotions.

It is certainly easier to lie with words than with the body.

It is therefore necessary to take into account:

- body posture;
- tone and rhythm of voice;
- distance between the parties.

Useful attitudes of the mediator:

- look the parties in the eye in a friendly manner (no evasive look);
- open, relaxed body posture, leaning towards the other (no stiffness, crossed arms, etc.);
- open gestures in line with what is being said (no fidgeting, drumming, pointing, gesticulating, etc.);
- relaxed face, smiling when appropriate (no clenched teeth, closed lips, etc.);
- full, calm, clear voice (no high, fast tone, etc.);
- stay at the right distance.

SILENCE

Sometimes it is appropriate to remain silent.

- It may happen that there are moments of silence in the exposition of the parties.
- In this case it may be appropriate to respect them, to allow the party to think, to decide what to say, to take their time.
- It may be appropriate to show understanding whenever the silences are caused by anxiety and stress of the party.

INTERVENTIONS

- Depending on the situation, it may be appropriate to intervene with yes, no, I understand, of course.... to invite the other party to continue speaking.

REPEAT AND SUMMARIZE

Sometimes it may be useful to repeat in your own words, without expressing judgments, what you have understood from the other party's presentation, because:

- it allows you to check whether you have understood well;
- it shows that you are listening carefully and that you understand;
- it helps to restore calm;
- it helps to remember and better imprint in your mind what has been said;
- it allows the other party to check whether they have expressed themselves clearly.

It means reformulating what has been said in a more orderly and complete way, without adding or taking away anything.

You can start with: "If I understand correctly..." and ask for confirmation of this at the end.

REFLECTING EMOTIONS

This can help you to make the other party understand that they have been understood correctly.

This can be done by saying:

- it seems that your problem is that.....;
- you were saying that you were angry because.....;
- can I stop you for a moment to check that

QUESTIONS

Questions are very important but should be used with caution.

It is better to avoid:

- rhetorical questions, because they express a point of view (e.g. don't you think it's better than...?);
- questions that ask several things at the same time, because they create confusion and don't allow you to think.

Closed questions: they aim for a precise answer (what price did you agree on?) but you shouldn't overdo it because otherwise it becomes an interrogation.

Open questions: they invite you to talk, explore (what do you think about...?)

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Examples of questions:

- Ask the other party for examples: this helps you understand better;
- Ask for clarification: "does this mean that...?";
- Ask to develop an answer better: "what exactly do you mean by...?";
- Ask questions about personal reactions: to get emotions and feelings to come out "How would you react if...?";
- Focus attention on one point: "what is the most important issue for you?";
- Precede the question with a reflection or reformulation: "You said you were angry for this reason. Are there other reasons that...?";
- Hypothetical questions: "What would you think if...?";
- Circular questions: "How would the other party react if...?";
- Rephrase the questions in another way;
- Ask the party to rephrase the questions in another way;
- Ask to verify what one party understood of what the other said.

CONFRONTATION

It means contrasting the behavior of a party in order to have more information and to make the party see aspects that it had not considered.

It must be done with great caution and after having established a relationship of trust with the party.

It is useful because it allows you to:

- Identify alternatives;
- Change the perception of the situation;
- See things more clearly;
- See implications that were not seen before;
- Adopt a new and more objective point of view;
- Reevaluate presumptions.

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It can be very useful to overcome an obstacle, when there are unclear aspects.

For example, in the case of:

- Digressions: “you first said that... and now you seem to say that...”;
- Interpretation of experiences and sensations: “it seems that you think that... and instead that is not the case”;
- Not realizing the consequences of a behavior: “you did not think that by doing this.....”;
- Rigidity on a position: “your offer is always the initial one, so it shows that you do not want to find a solution...”.

Useful and constructive provocations:

- Indicate new perspectives: “what do you think if.....?”;
- Show understanding: “I can understand your reaction.....but”;
- Have new solutions evaluated: “what do you think was the reason why this happened and you do not think that is why it happened?”.

It is better to act on the strengths of the party rather than on the weaknesses.

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SEE AND EVALUATE FROM DIFFERENT POINTS OF VIEW

Seeing a situation from different points of view is very useful because it allows you to acquire more information and therefore solutions.

It is therefore necessary to put yourself in someone else's shoes.

It is also necessary to help the parties to see and evaluate situations from different points of view.

It helps to move things along and, once the parties have freed themselves from their initial position, it makes it easier to identify a solution.

ATTITUDES THAT FACILITATE

Empathy: “*THE ABILITY TO SHARE SOMEONE ELSE’S FEELINGS OR EXPERIENCES BY IMAGINING WHAT IT WOULD BE LIKE TO BE IN THAT PERSON’S SITUATION*” (Cambridge Dictionary).

You need to put yourself in the other person's shoes to understand other people's experiences and feelings.

In doing so, you need to remain yourself, put aside prejudices and mental reservations, and enter into the other person's experience.

This procedure helps to communicate to the other person that you understand their point of view and facilitates the establishment of personal relationships, of trust.

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Respect: accepting the other person as they are, without judging.

To show respect:

- Listen carefully;
- Avoid judgments and evaluations;
- Adopt a friendly attitude;
- Communicate understanding;
- Encourage and help the parties.

It helps create a relaxed atmosphere and puts the parties at ease, so that they open up more.

Sincerity and transparency

It means being honest with yourself and making the parties understand.

You have to set a good example for the parties.

To do this, you need to:

- Be relatively spontaneous;
- Do not have excessively constructed behaviors, tied to the role you play;
- Be open.

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THANK YOU FOR YOUR ATTENTION