

# **Mediation in university communities: the experience of the Complutense University of Madrid.**

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“**T**he natural human tendency to solve a conflict by choosing between two opposed positions can liberate us from the internal disorder, but it does not reveal the deepest truth... Truth is not static, as an answer, but dynamic as a relationship. It is not a result, but a process. Truth is neither one thing nor the other, but the vital interaction of both of them”.

Brian Muldoon<sup>1</sup>

Conflict is inherent to human nature and, therefore, it is present in all the expressions of our life (family, friends, neighbouring relationships, work...) and at all levels of human behaviour: intrapersonal, interpersonal, and group. Talking about conflict means referring to common situations of coexistence and of human relationships in which values, needs, wishes, expectations or interests are, or are perceived as, opposed. In this sense, we appropriate ourselves of the definition given by RUBIN y PRUIT<sup>2</sup> as “perceived difference of interests, or believing that the present aspirations of the parties cannot be simultaneously achieved”.

Therefore, perception, interdependence, and incompatibility must be present so that we can talk about conflict.

We agree with most part of the doctrine<sup>3</sup> about the need to acknowledge a “universal concept of conflict” covering all those clashes between countries,

between members of a family, of a society or a community, each one of them with its specific differences, but considering them as species of a higher kind. For this reason, the general theory of conflict we are going to study now can be applied to the conflicts aroused at the core of university communities.

We also start from the idea that conflict is a multi-dimensional situation, so it must be approached as such from a multidisciplinary perspective.<sup>4</sup>

If we stick to the conflict definition appearing on the Diccionario de la Real Academia de la Lengua Española (Dictionary of the Royal Spanish Academy), what we should understand is: “1.-The hardest part of a combat.2.-Moment in which the result from the fight is uncertain.3.fig. Antagonism, struggle, opposition.4.fig. Combat and anguish of the spirit. 5.fig. Predicament, unfortunate situation having a difficult solution”. However, in spite of how the conflict is expressed, it cannot be understood as a negative process, it rather is at the root of personal and social changes. Thus, it avoids stagnations, helps establishing both personal and group identities, and allows to learn new and better ways of giving an answer to problems.<sup>6</sup>

We could state that negativity, rather than being in the conflict itself, lies in the way we approach it. Thereby, it is necessary to develop and bet on methods which, like mediation, offer a non-adversary management of conflict, making thus possible its trans

<sup>1</sup>See MULDOON, B.: *El corazón del conflicto. Del trabajo al hogar como campos de batalla, comprendiendo la paradoja del conflicto como un camino hacia la sabiduría*, Paidós Mediación, 8. Barcelona, 1998. p. 263. 2

<sup>2</sup>See RUBIN, J.Z., PRUIT, D.G., and HEE KIM: *Social Conflict: escalation, stalemate and settlement*. (2<sup>nd</sup> Ed.). McGraw-Hill, New York, 1994. 3

<sup>3</sup>See ENTELMAN, R.F.: *Teoría de conflictos. Hacia un nuevo paradigma*, Ed. Gedisa, Barcelona, 2002, pp. 25 and 29. 4

<sup>4</sup>See TOUZARD, H.: *La mediación y la Solución de los Conflictos*, Herder, Barcelona, 1980, p. 75. 5

Espasa Calpe Publishing Company, Madrid, 1984, 20th edition. Similarly, the most used English dictionary, Webster, offers a very similar and traditional definition: “fight, battle, struggle” (Webster, 1966); however, recently the definition has been enlarged and it includes “an important disagreement or opposition of interests, ideas, etc...” (Webster, 1983). Therefore, the definition covers both the physical confrontation and the psychological factors on which it is based. This concept of conflict is closer to the one we state to approach it from

<sup>6</sup> mediation. <sup>6</sup>See SAEZ DE HEREDIA, R., *Análisis y resolución de conflictos. Una perspectiva psicológica*. Servicio Editorial UNIVERSIDAD DEL PAÍS VASCO. Bilbao, 1998.

formation and, if it is the case, its resolution according to the interests of all the parties involved in that conflict.

One of the fundamental questions when studying conflicts is to analyse its elements, because the factors prevailing in its origin and development will be essential for its resolution. In this way, people, the process, and the problem are the elements which, when interacting with each other, appear in and give shape to any interpersonal conflict.<sup>7</sup>

In fact, in order to approach conflict under the best conditions, it is essential to know how many people are implied, up to which extent, which role they play, and the degree of interdependence among them. We must also bear in mind that conflict, since it is a process, is developed throughout time, with rising and descending phases that gradually progress. Consequently, knowing the point where the conflict is provides information crucial for its resolution.

Quite often the conflict is experienced as the expression of a problem that needs being satisfied, which implies that its resolution must find alternatives covering the needs of all the involved parties. Undoubtedly, approaching conflicts in a cooperative way offers more solid guarantees for the continuity of the parties' relationship and, therefore, a compliance with the negotiated agreements larger than with a competitive model.

If we start from the idea that conflicts happen in interaction systems, which means that they develop within a frame in which two or more people communicate, we must take into account that the parties to a conflict tend to think that the main difference separating and confronting them is based on the content. However, the capacity and the opportunity that the mediator has to help the parties reach an agreement is

based, essentially, on the possibility offered by the parties to intervene their communication by modifying how it is carried out and, consequently, allowing the mediator to give a redefinition of the relationship in order to progress towards the conflict's resolution.<sup>8</sup>

The relationship, information, interests, structural or values conflicts form the so called "conflict circle". According to MOORE,<sup>9</sup> if we analyze the conflict from these categories, we can state what causes the fight, identify the prime sector, and evaluate whether the cause is a real incompatibility of interests or a perception problem of the involved parties, which may help develop a strategy to solve the conflict with a bigger possibility of success.

Other keys that determine the conflict's characteristics are: the needs which, according to many people, are the base of behaviour;<sup>10</sup> the perception, which can be understood as the process through which we interpret the reality around us; the communication and the transactional analysis, which refer to the importance that our way of expressing ourselves has for conflicts' management and resolution; attitudes; behaviour and culture.

We understand that an effective conflict management undoubtedly demands positive attitudes concerning both personal communication and the nature and conceptualization of the conflict itself. For this reason, instead of considering it as a threatening entity or as something negative, it can be an opportunity to improve the creativity and the development of people and their relationships, no matter which kind of relationship (of course, work relationships too).<sup>11</sup>

Mediation allows us to transform conflicts because it helps cope with the problems in a collaborative way and because it implies a change of approach: instead of worsening the other party's alter

7 LEIDERACH J.P.: *Enredos, pleitos y problemas. Una guía práctica para ayudar a resolver conflictos*. Ediciones Clara-Semilla, Comité Central Menonita. Guatemala, 1992.

8 In line with it, See LINK, Delfina, "Mediación y comunicación", pp. 135 a 151, in GOTTHEIL, J. and SCHIFFRIN, A. in *Mediación: una transformación en la cultura*, Paidós Mediación, n° 3, Barcelona, 1996.

9 What is understood as conflict circle is the theory that graphically represents in this way the kind of "problems" that usually affect conflicts. As for this, the most complete presentation is the one made by Louise E. Samrt and Bernard S. Mayer from CAR associates, at COPRECA's annual conference in 1989. Even though this theory was created by Wehr in 1979, and usually attributed to MOORE, who developed and improved it.

10 Vid., due to its remarkable interest, the classification of conflict causes and the possible interventions to do in each case, compiled by MOORE, Christopher W.: *El proceso de mediación. Métodos prácticos para la resolución de conflictos*. Ediciones Granica S.A., Buenos Aires, 1995. p. 62 and following.

11 Authors such as MASLOW consider that the needs originate the behaviour and they hierarchically classify themselves according to their importance (physiological needs, security, social needs, esteem, self-realization). In this way, the needs higher in the scale will not become the origin of behaviour until the lower ones would not be satisfied enough. In a society where an important amount of people have their basic needs covered, the unsatisfaction of social secondary needs becomes the determining factor of behaviour and conflicts. Being acknowledged, the valuation of actions, and belonging to a group become so important that they may originate clashes.

12 SARRADO SOLDEVILA, J.J Y RIERA ROMANÍ, J.: "El conflicto como genuina oportunidad de reconocimiento, revalorización y fortalecimiento interpersonal". *Revista de Conflictología*, n° 2.

natives for a distributive negotiation, we can increase the possibility of having common benefits that may be shared.<sup>13</sup>

The social perception of conflict and the aim to solve it have been at the root of modern mediation conceptualization, in the sense that it is widely considered as a resource to achieve important social targets. The satisfaction given for solving conflicts through agreements; the conflict transformation and the opportunity of personal and social growth through “empowerment” and “recognition”;<sup>14</sup> or looking for an agreement with a stronger emphasis on communication and interaction between the parties through new narrative techniques, are models that ascribe a new end to mediation from a different concept of conflict<sup>15</sup> (e.g., as a problem or as an opportunity).

As we all know, conflicts can be solved in different ways, being the jurisdictional sphere the most common when answering to legal conflicts. Nevertheless, the proliferation of laws, the new conflict typology, the complexity of lawsuits and the increase in claims have questioned the efficiency of the judiciary system to efficiently attend to the citizens’ demands.

The recognition and consolidation of conflict resolution methods that prove to have important advantages all over the world as opposed to the traditional systems (they clear courts, save time and money, increase the participation of actors and, therefore, their responsibility, making it possible their relationship afterwards), complement the jurisdictional procedure, improving thus the access to justice. In this way, together with formulae of heterogeneous composition, such as solving conflicts through a third person making decisions on behalf of the parties with more or less participation from them (either the judiciary proceedings or arbitration), the formulae implying self-composition, called ADR (Alternative Dispute Resolution) are becoming more and more relevant and mediation outstands among them.

Facilitating the access for the ones to be judged to the most appropriate system to solve their conflict means to warrant, to a large extent, the effective judicial tutelage provided for by the article 24 of the Spanish Constitution

The conflicts’ resolution non-adversary systems cannot, and must not, try to substitute neither the law courts nor the disciplinary organizations, even though they can “help” them with the issues. These systems also have a specific sphere, since the conflicts solved by the ADR, in many cases, would have never reached the ordinary courts (e.g., for economic reasons, formalities, and time needed), and a particular value can be identified in them: they are methods of civil participation that necessarily involve the parties in “their process”, which engages them with the result. For this reason, also, it is worth promoting them.

Finally, they are litigation resolution methods that must be available for a modern society, without exempting the State, and therefore the Administration, from granting a fair and efficient judiciary system and preserving jurisdiction as the “ultima ratio” to which all citizens may have recourse to solve their disputes.

The larger participation of individuals in decision making, inherent to the ADR, together with the flexible and quick characteristics of the mediation process, which largely adapts itself to the constant changes occurring at all levels, are some of the reasons why these systems have been more developed in the last decades of the 20th century and why they go on with their consolidation and spreading at the beginning of the 21st century with higher intensity. They are, thus, being implemented in such different spheres as the civil, the criminal for minors and adults, the educational, community, intercultural, or organizational. We underline the pioneering experience held at the Universidad Complutense to develop mediation as a system for conflicts’ cooperative management.

Mediation is a cooperative system for conflicts’ management and resolution which, through a volunteer, confidential, and non-judiciary process, facilitates the communication between parties so that they can set up their common interests on a viable and stable agreement that would be satisfactory for both of them. Such process is facilitated by the mediator, an impartial and neutral third party, appropriately qualified and without capacity to decide.<sup>16</sup>

The axis and essence of mediation are formed by the principles that stand as the immutable structure

13 See LINK, D.: *El valor de la mediación*, Ed. AD-HOC, Buenos Aires, 1997., p. 24. 14 Vid FOLGER, J, and BUSH, A.: “Ideología, orientaciones respecto del conflicto y discurso de la mediación”, in FOLGER, J and JONES, T.: *Nuevas direcciones en mediación*, Paidós mediación nº7, Buenos Aires, 1997.

15 See SUARES, M.: *Mediación. Conducción de disputas, comunicación y técnicas*, Paidós Mediación, Barcelona, 1996.

16 See GARCÍA VILLALUENGA, L.: *Mediación en conflictos familiares: Una construcción desde el derecho de familia*. Ed. Reus, Zaragoza, 2006.

on which the process and the agreements are to be built. There is a wide consensus regarding the international instruments (Recommendation (98)<sup>1</sup> of the European Council Committee of Ministers, Green Book on alternative methods to solve conflicts in the sphere of civil and commercial law, European Conduct Code for Mediators and the European Parliament and Council Directive 2008/52/CE, May 21<sup>2</sup> 2008, on certain aspects of mediation in civil and commercial affairs...), as well as regarding the doctrine about the cardinal points of this institution, as it is countersigned by the action of Associations and by the Codes of fair practice.

Voluntariness, impartiality, neutrality, confidentiality and professionalism together with willingness, the process flexibility and its very particular character, determine the frame within which mediation must be formed and developed.

*Voluntariness* is determined, as for the parties, according to their right to have access to mediation in order to solve conflicts, which does not prevent them from holding a perceptive initial informative session that does not order them to go on with the process; depending on the mediation service they may have access to, they can even choose the mediator.

In general, people appeal to mediation before starting the judicial proceedings (or disciplinary, according to the UCM experience).<sup>17</sup> However, it may also occur while the judicial proceedings are going on, due to a derivation from the judge or the competent organization or to a request from the parties, which would result in its discontinuation. Once the proceedings are finished, the mediation is also possible when enforcing a sentence or the correspondent administrative resolution.<sup>18</sup>

Moreover, voluntariness must also appear when signing the mediation contract that originates it, in spite of needing minimum contents, and it must also be stated this characteristic of the possible mediated agreement that parties may reach and that exclusively belongs to them, always within the frame of the available law.

This principle is also valid for the mediator regarding the beginning of the process, since he can turn

down his appointment under certain circumstances, and regarding his continuance in the mediation, because he can put an end to the process in case of appreciating lack of willingness or collaboration among the parties, that the settled conditions are not respected, or that the process has turned out to be useless for its purpose, bearing in mind the aspects submitted to mediation. This should not imply the reduction of the mediator's fees, because the process has not developed as planned for a reason for which he is not to blame.

*Impartiality* is another of the driving principles of mediation and is also the demand that can be identified with the mediator's equitable action and not with his lack of imposing solutions, which is something that rather makes reference to the self-composition characteristic of this institution.

The defining lines of this principle<sup>19</sup> are to preserve the parties' equity without siding any of them, to guarantee the balance of power between parties during the process through their continuous legitimating.

In order to have an effective impartiality, the mediator must avoid intervening not only in the cases where his interests are in conflict with those of the parties, but also in those cases where there is or had been a personal or professional relationship with any of the individuals attending the mediation. He could also be rejected for this same reason.

*Neutrality* is intimately linked to the mediator's attitude towards the mediation's possible result and to the fact that his values, feelings, and prejudices would influence neither the process nor the parties' will.<sup>20</sup>

An essential principle of mediation to guarantee the parties' frankness during the negotiations so that they come to a satisfactory end, confidentiality implies the obligation of being reserved about the contents and the development of the mediation process. The mediator is totally concerned by this obligation, the exception being those cases where, together with the parties and under the case's circumstances, he consents to lift the secret about the actions, or those cases in which the law provides for it, since there is a risk of life or there are data revealing a criminal infraction.

17 See annex table

18 See ORTUÑO MUÑOZ, P.: "Mediación familiar", in the book *Tratado de Derecho de familia*. Ed. Sepin. Coord. GONZÁLEZ POVEDA, P and GONZÁLEZ VICENTE, P. Madrid, 2005. p.1125.

19 The last tendencies in mediation show that, instead of talking about impartiality, it would be more in line with the essence of the institution to talk about "multi-partiality".

20 Perhaps, only by being conscious that we are not neutral, bearing in mind the background of each mediator as a person who has lived and lives his own experiences, we can-must try to be so.

For the rest of cases, the mediator's confidentiality will be submitted to the Good Practice Code.

As a consequence of this principle, the mediator could have recourse to the professional secret if he were asked to testify. He could not act either as an expert, because that principle prevents him from stating a report about a situation in which he may have acted as mediator; and all this in spite of being a professional from the technical teams that may intervene also in other cases as an expert.

The quality of the mediation process and of the mediating institution itself is conditioned upon the qualification of the mediators carrying it out. *Professionalism* is acknowledged as the fundamental principle for all the international instruments concerning this issue. The public authorities must foster and promote the mediator's training, making sure that there is a minimum warranty as for his competence.

The mediator's training is a key element to consolidate the mediation. However, the heterogeneous criteria followed by the laws passed up to now in Spain make it difficult to define not only the mediator's profile in his initial education (they usually are lawyers, psychologists, graduates in social work, social assistants, social educators, pedagogues, although there should not be a limit in number) and in the specific training he must have for this purpose (amount of hours, content, practices); but also to define which institution must impart such training (universities, professional associations, public centres); which organization must prove that capacity (organization created for this purpose within the corresponding department, at the autonomous region); and whether the free movement of workers is violated or not.

Despite the power given to professional associations by the laws, which would justify the idea that it is a specialization of the different professions, the idea of considering mediators as a unified profession is getting stronger, with a defined set of knowledge, abilities, and standards, in spite of having emerged and developed from multi-disciplinary roots.

The need to set up specific rules guiding the mediators' actions, in line with the principles of integrity, neutrality, impartiality and professionalism, and regulating their responsibility must find its place within the frame of a Good Practice Code, apart from the Spanish law, beyond the general rules of behaviour from the different professional associations.

*In short*, we can state that mediation is a non-judicial process of conflicts' non-adversary management and resolution. It has some inherent principles that are part of its essence. It has a self-composition and volunteer character that provides the parties with all the power to decide, which is what makes it different, together with other characteristics such as the agreement's lack of execution force. But it has the binding decision of arbitration, a system of heterogeneous composition but also extra-judicial. The intervention of the mediator is essential for the mediation as he sees to it that the parties may get closer concerning their interests and, if they wish to, come to agreements. But in no way does he impose, suggest, or give advice about the solution.

The application of mediation to conflicts' management and resolution at the universities is closely linked to the need to generate new intervention dynamics in front of conflicts; in contexts where the organizational, educational, working and even familiar aspects are intertwined and demand a global answer.

Just as we pointed out previously, if conflict is inherent to the human nature, the university is not only affected by it, but, being a community with a defined identity, it generates its own conflict dynamics, becoming thus a magnificent "conflict laboratory" and long-lasting daily relationship between people and groups with different functions, the diversity of roles assigned to the members of the university community or the limitation of resources can be a source of conflicts that influence on the labour and personal relationships of the Community's members. All these conflicts need a specific intervention, which does not necessarily imply that it should be done through the disciplinary system. Undoubtedly, this process is necessary, but it is not enough if we want to come to solve the underlying conflict, since we must work with values, needs, or modifying organizational structures according to the parties' interests. And the university system has not been designed for that purpose. The introduction of mediation and the rest of ADRs<sup>21</sup> has a global character and spreads to all the spheres in society. Therefore, if the university intends to be close to the society within which it exists, it cannot turn its back to the most democratic and participative methods to solve conflicts which, being complementary to the traditional ones, offer more cooperative processes.

21 The initials ADR ("Alternative Dispute Resolution"), are also known as M.A.R.C. (Méthodes Alternatives de Résolution de Controversies) or MASC (Métodos alternativos de solución de controversias).

Definitely, mediation offers an important educational opportunity to those who take part in it, since it implies an important learning both from oneself and from the other, as well as new ways of interact. For this reason, an educational institution par excellence such as the University cannot waste the opportunity to influence on one of its main functions, with this methodology. This is a task to be carried out by the whole university Community with a view, also, to offering a better service about conflicts' resolution programs in certain University Campuses<sup>22</sup> with excellent results. Those experiences usually go together with the conflicts' resolution programs and include the following objectives: preventing dysfunctional conflict; optimizing the management of the conflict and that of the change processes; and educational purposes. However, up to the present, none of them has developed a comprehensive mediation program as the one implemented at the Universidad Complutense de Madrid (UCM) in the last years.

Thereby, the bet on mediation that the Universidad Complutense has been doing since 2004 includes different action lines that we call "Developing Actions At The UCM To Implement a Peace Culture System". Their scheme is as follows:<sup>23</sup>

### **1. PREVENTION THROUGH TRAINING**

1.1. *Awareness actions*, through courses on abilities and techniques on cooperative management of conflicts addressed to members of the Administration and Services Staff as well as to Teaching and Researching Staff. The aim of this training is to foster those abilities among the boards responsible for other employees as well as the rest of members of our Community, so that the approach to conflicts would be closer and to avoid the conflict's growth.

1.2. *Qualification of the Mediation Team* through the Expert in mediation (UCM's academic qualification - 350 hours, practices at the SIMA and at the Mediation Service of the UCM).

### **2. ACTIONS IN CONFLICTS' COOPERATIVE MANAGEMENT**

2.1. *Interventions in mediation processes* (If the circumstances allow it and within the frame of Administrative Law)

2.2. *Management Technical Support* cooperative support in conflicts, as far as it is requested by any person or organization from the UCM.

### **3. MEDIATION SPREADING.**

3.1. Leaflets to make known the system and its advantages.

3.2. Publications about this issue on different media: radio, newspapers, and Tribuna Complutense.

3.3. Organization of conferences to spread mediation, with well-known professionals of this issue, addressed to university members as well as to the boards of other institutions different from the university interested in this subject.

The important development experienced by the above mentioned work in its different aspects has been essential for the approval of the Instituto Complutense de mediación y gestión de conflictos (IMEDIA - Complutense Institute for Conflicts' Mediation and Management), by the Governing Council of the University, held on the 26<sup>th</sup> February 2007, and by the UCM's Social Council, held on the 29<sup>th</sup> March 2007. According to the Rector agreement of June 27<sup>th</sup>, 2008, the mediation project and the UCM's Mediation Service depend on that Institute, gathering thus under such organization all the actions carried out at the UCM concerning mediation. The mediation service is therefore offered to all members of the University Community and derivation protocols have been set up between IMEDIA and the Services Inspection as well as with the University Ombudsman Bureau of the UCM, in order to grant the mediation service for those organizations and for the people appealing to them. The implementation of this experience in our University Community, which serves as a model for other universities (with which agreements are being signed to help them implement it and supervise its creation and putting into practice), aims to provide the UCM with efficient mechanisms for the democratic formulation of coexistence patterns transcending society and linking them to the quality and excellence concept that our university defends.

All in all, it is about sharing between all of us this constant work of building bridges to comply with the objectives of each institution. After all, our health and our work, the present and the future depend on it. ■

22 In Spain it is noteworthy the Centro Universitario de Resolución de Conflictos (University Centre for Conflicts' Resolution), UPV, and the Universidad Ramón Llull (Centro Pau y Treva -Centre Peace and Truce-). It is highly developed in some universities of the United States. 23 To have further details about the development and the results of the mediation program at the UCM in the last 4 years, see

[http://www.ucm.es/info/ucmp/pags.php?COOKIE\\_SET=1&tp=Inspección%20de%20Servicios&a=directorío&d=0002431.phpm](http://www.ucm.es/info/ucmp/pags.php?COOKIE_SET=1&tp=Inspección%20de%20Servicios&a=directorío&d=0002431.phpm).