

# Kluwer Mediation Blog

## The “Future” of Mediation and Dispute Resolution – and Culture

Greg Bond (Bond & Bond Mediation / University of Wildau) · Wednesday, November 24th, 2021

When I was recently asked to say something about the “future of mediation” for [International Mediation Awareness Week](#), with a focus on dispute resolution and culture, I first got my crystal ball out of the cupboard, dusted it down, and had a good stare into it. Unfortunately, it wasn't working very well and I was unable to repair it. I nearly declined the invitation at this point, as the remit was beyond my perspective.

Then I thought I might say something that is based on the present and the past of mediation, and it would probably be both a reasonable assumption about trends, on the one hand, and wishful thinking concerning the future on my part on the other.

One scenario might be that mediation will soon no longer have a market, as people and organisations will learn to prevent and amicably resolve conflict disputes well, while judicial systems around the world will be independent, efficient, trusted, affordable, and accessible for disputes that require a third-party ruling. This being hopeful, I speculated as follows:

If I look back on developments around the world over the last decade then I would say that mediation is gaining ground, and that in future it will continue to gain ground. We have seen mediation legislation all over Europe, bringing mediation more firmly into the judicial system than before, and similar developments around the world, as well as in international law. We have seen mediation becoming better known by people who are not in the field, and it is mentioned in the media with greater frequency. We have also seen mediation training continuing to grow, and entering schools and universities. Awareness has increased, and usage too, though perhaps not as much as some might wish.

When I look further back, I choose to go to the 1990s, when the first critical authors began to ask about mediation and culture. This took place in the context of the mediation movement in the United States, where David Augsburger, John Paul Lederach, and Kevin Avruch each published books asking as to the relevance of the mediation model that was prevalent in the States at the time for mediation around the world and across cultures.<sup>[1]</sup> It is notable that these writers were none of them lawyers, but Christian pastors, anthropologists and sociologists.

To simplify their arguments, they compared the American interests-based mediation model with a professional and detached third-party neutral at its centre (as a rule a white male lawyer, as Avruch put it) to traditional models from other parts of the world. They concluded that we need to beware

not to posit the Western model as the norm, as dispute resolution outside of the courts is far more diverse and offers different methods and approaches, not least concerning the third-party intermediary. Implicitly, this was a critique of a form of neo-colonialism, in which Westerners export their mediation model through training programmes. Today, more than thirty years later, it is still worth critically addressing the universality of the linear phase model of mediation based on interests, confidentiality, and third-party neutrality, and in particular asking whether this suits cultural paradigms that are based less on individuals asserting their interests (and rights) and more on collectives and communities of various kinds.

In their critiques, which may be still very valid, these three authors also came to a conclusion that I do not share – at least not from today’s perspective. They were sceptical about interests-based mediation, as – so they argued – the focus on interests led to a neglect of relationships and emotions. The tenet of “separate the people from the problem” meant not taking the people sufficiently into account. I don’t have a backwards-looking crystal ball at all, and if I did I think that that one would be broken too, but I guess that these critics were probably right to criticise the practice of mediation at the time for limiting the scope, but at the same time this critique of a key underlying principle of mediation may have been unwarranted.

Since then we have moved on, and mediation takes place all around the world in settings that are not all alternative to the courts or litigation, are not law-focused or in the shadow of the law, and with conflicts that require dialogue and work on relationships – from peer mediation in schools, to elder mediation, to mediation in neighbourhoods and communities, to workplace mediation, to mediation in the health services, and many others. Mediation is also trained in different settings all over the world. So when we talk about the future of mediation, it would be good to ask what we mean by mediation, and which mediation we mean.

And with this I return to the “future of mediation,” and my wishful thinking, which I base on current trends that indicate that mediation is more diverse now than it was back in the 1990s when Augsburger, Lederach and Avruch criticised the interests-based model. I nonetheless suggest that it is the paradigm shift in ways of addressing conflict that are not based solely on power or rights, but on interests, that remains the potential of mediation in all kinds of different disputes, conflicts and settings, and with all kinds of mediation and dialogue methods. The concept of interests, to which I add the far richer concept of needs, can apply in so many different ways: substantive material needs, relationship needs, needs for self-esteem, community and collective needs, restorative needs, process needs, and no doubt many more. The empowerment that a focus on interests and needs provides, the further empowerment that comes with articulating these, and the opportunities that may come about when mediation is able to help parties and participants better understand their own needs as well as those of the others involved, are all what makes mediation a model for the future. We might – and I hope we do – shape and promote a further diversifying of dialogue based on interests and needs in mediation models and practices around the world in diverse settings and in different cultures.

In spite of this optimism, I do need to close on a frustrating note. I do not think that my wish for growing awareness of the diversity of mediation and a focus on needs and interests in dispute and conflict is going to go any way to getting my crystal ball back in order. It all remains, therefore, very speculative.

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### References[+]

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