Argumentative and other communicative strategies of the mediation practice

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Submitted to the
Faculty of Communication Sciences
University of Lugano

for the degree of
Ph.D. in Communication Sciences

December 2008

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The present research has been conducted at the Università della Svizzera italiana

Officially submitted to the Faculty of Communication sciences, Università della Svizzera italiana, in December 2008

Abstract

The success mediation is experiencing in several societal domains (Sander 1979; Moffitt and Bordone 2005) is mainly bound to the possibility that this practice offers to find a win-win solution that truly meets the parties' interests (Princen 1992a; Menkel-Meadow 2005).

This possibility is exclusively supported by *communicative* instruments and, specifically, by means of *argumentation*. In mediation, in fact, the parties are competent and responsible for the decision on the conflict, while the mediator not only intervenes as a third neutral, but he/she is also not held and not authorized to advance proper standpoints or arguments in favour of a specific outcome (van Eemeren et al. 1993): what he/she is in charge of doing is to stimulate parties to discuss reasonably, to motivate them to find a solution of the conflict, and to keep trace of their zones of agreement.

Indeed, what the mediator properly does is helping the parties' assumption of an *argumentative attitude*; in fact, in successful mediation, two conflicting individuals, entrenched in an escalating spiral of hostility, become co-arguers, able to tackle their differences of opinion by means of reasonable discussion.

A relevant question becomes, thus, understanding *how* mediators can help and foster such a radical change in the parties' attitude and how this actually contributes to the happy fulfilment of the mediation goal, namely to the resolution of the conflict.

In order to answer this question, the present dissertation has been organized along two main research focuses.

First, a comprehensive *ontological framework* of mediation conceived of as an *interaction scheme* (Rigotti and Rocci 2006) has been reconstructed. This framework allows considering all relevant factors and their relations in the context of the mediation script from its origin, namely some form of conflict (Yarn 1999), to its short-term and long-term outcomes. Its elicitation has required a conceptual analysis of mediation based on a reasoned interdisciplinary synthesis of different scientific approaches (see among others Wall, Stark and Standifer 2001; Herrman, Hollett and Gale 2006).

Second, using this framework as a term of comparison, an argumentative analysis of mediation has been proposed, based on empirical evidence of a corpus of successful cases. The analysis shows how mediation encompasses a macro-text of argumentative discussions that allows the fulfilment of the pragmatic goal of conflict resolution. The mediator's argumentative activity emerges, in particular, in relation to a wise management of the *topical potential* (van Eemeren and Houtlosser 2002). Mediators have a determinant influence in setting up the parties' discussion, in particular in relation to the creation of an "argumentative space" based on a sound *confrontation stage* and to the analysis of the parties' conflict and of the relationships it jeopardizes (in

the *opening stage*). As the discussion proceeds, parties progressively manage it themselves, by assuming an argumentative attitude.

A key to explain the parties' change is constituted by the consideration of their *interests*. Some moves allowing to evoke interests, like *presupposition accommodation* (Greco 2003; Cigada 2008), have emerged in the analysis. In this way, the present research explains how, through argumentative means, mediators manage to focus on interests rather than on the parties' claimed positions (Fisher, Ury and Patton 1991), not rarely discovering that these interests are not incompatible but even mutually inclusive.

These outcomes represent actual advances in the theoretical understanding of mediation and in the investigation of the role played in this practice by argumentative processes. They also provide a basis to design aware conflict resolution interventions.

"Quello quello cos'è, mamma?"

Questa, Giacomo, è la tesi della mamma.
Non è colorata come il libro della fattoria; non ci sono le
mucche che tornano dal pascolo e la rana (cra cra) nello
stagno e il cavallo grigio nascosto dietro l'albero.
Ma è stata scritta per te ed è dedicata a te…

Acknowledgements

Table of contents

1 Introduction

> *"There are enough human problems to go around;*
> *what is needed are more problem solvers who care, not*
> *just about winning, but about really solving the problems".*
> (Carrie Menkel-Meadow)

1.1 *From disputants to co-arguers: a change of attitude*

"Man hat nur die Wahl zwischen Vernunft und Gewalt" (we can only choose between reason and violence): Karl Popper's well-known remark is particularly appropriate to identify the two extreme poles in the paradigm of responses to conflict available to the humankind. Disagreement, disputes and conflicts are actually facts of life that touch everyone's experience. And violence could be interpreted as a possible way out of these problems; indeed, one might be tempted to eliminate the problems themselves by eliminating the persons who are supposedly creating them and who, therefore, become adversaries or enemies.

Yet, as Popper suggests, there is a less brutal alternative to tackle problems, face disagreement, and solve conflicts: the use of human reason in dialogue, namely, the adoption of an *argumentative* attitude. In this relation, human societies have elaborated different civil practices to cope with conflict, from juridical systems, to alternative approaches; all of these approaches are based on the ideal principle of finding a reasoned solution to it and ideally meeting the parties' desire for justice and legitimacy (see par. 2.1.).

Amongst these different practices, mediation emerges as particularly relevant from the point of view of the parties' reasonable engagement in the process of conflict resolution: in fact, it is based on the intervention of a third neutral who helps parties discuss their conflict without affecting their role of individuals competent and responsible for the solution they can co-construct. The very structure of mediation, thus, foresees that the resolution of the conflict must emerge from the reasonable discussion of the disputants themselves, rather than being imposed by some external authority. The third neutral intervenor, in this framework, is conceived of as somebody who helps the development of the discussion without assuming the task of making a final decision. Clearly, in this sense, mediation is based on an optimistic view: human beings are assumed as able to reach a reasonable consensus by means of the use of reason in dialogue. In this relation, as Cicero remarked in the opening statements of his *De*

inventione, although it is true that, sometimes, communicative and argumentative means can be used to deceive or manipulate, an attitude of optimistic confidence in these means is justified by the fact that, in the large majority of cases, they allow sound and positive developments of the human society[1].

A peculiar trait of mediation, in this sense, is the *movement from conflict to consent* that this practice allows, through which two parties that have been in conflict restart to communicate and to be confident they can reasonably discuss and agree on a mutually satisfying solution to their problem. Counterintuitively, conflicting individuals abandon their adversarial and hostile attitude and arrive to assume the counterpart as a reasonable interlocutor, able to weigh a satisfying solution. This change in the parties' attitude, which in mediation truly represents a turning point towards the resolution of the conflict, is made possible by the help of the mediator who, discretely but decisively, makes it possible to parties to speak together and discuss a reasonable solution.

The current success of mediation as a conflict resolution professional practice with a wide range of applications and the enthusiasm of practitioners and parties who have experienced it can be considered as a sign of the possibility that this practice offers to disputants to restore jeopardized relationships by means of the use of reason in dialogue.

A significant event that has witnessed the growing interest for mediation is constituted by the recent decision of the Nobel foundation to award the 2008 Nobel Peace Prize to Martti Ahtisaari "For his important efforts, on several continents and over more than three decades, to resolve international conflicts". This decision is surely to be understood in the framework of Athisaari's personal merits in relation to his interventions in difficult conflictual situations[2]. Not less importantly, however, this choice signals a progressive societal interest for mediation, which allows intervening in extremely delicate situations thanks to its structure based on the parties' argumentative co-construction of the solution.

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[1] Cicero's remarks are worth quoting in their original formulation. Among other positive aspects bound to the use of reasonable discourse (*eloquentia*), he quotes the possibility of estinguishing conflicts: "Saepe et multum hoc mecum cogitavi, bonine an mali plus attulerit hominibus et civitatibus copia dicendi ac summum eloquentiae studium. Nam cum et nostrae rei publicae detrimenta considero et maximarum civitatum veteres animo calamitates colligo, non minimam video per disertissimos homines invectam partem incommodorum; cum autem res ab nostra memoria propter vetustatem remotas ex litterarum monumentis repetere instituo, multas urbes constitutas, plurima bella restincta, firmissimas societates, sanctissimas amicitias intellego cum animi ratione tum facilius eloquentia comparatas".

[2] See http://nobelprize.org/ for the motivation of this award. The choice of Ahtisaari as a Nobel laureate, indeed, has provoked controversial reactions at the political and cultural level. However, without discussing here the appropriateness of this choice, it is important to consider that the motivation of the prize clearly shows an increasing social awareness on the crucial topic of conflict and of its resolution.

Indeed, since its original establishment in North America in the seventies, mediation has really been part of a social movement requesting to have swift and tailor-made justice processes, which could truly respond to the involved parties' requirement for a just treatment that can really meet their needs, interests and desires (Menkel-Meadow 2001: 922). And the potential of mediation has been often identified in the parties' possibility to control the outcome of the resolution process. In other words, parties are competent and responsible for the decision over the settlement of their conflict. It has been often pointed out that, as a consequence, mediation offers the possibility of reaching a *win-win solution*, namely of a solution based on integrative justice, of which all parties can benefit (Princen 1992a). Such solution, being co-constructed by the parties themselves, can ideally meet their true interests and allow maintaining their relationship, or even reconstruct it on a new and more solid basis. Not rarely, mediators themselves, especially if they are former lawyers, testify to this possibility offered by mediation; sometimes it becomes the reason for their personal and professional "conversion" from adversarial litigation to mediation (see Menkel-Meadow 2001 and Friedman 1993, whose remarks on this topic are reported in Chapter 3, footnote 87).

But probably many of the individuals and groups who at the beginning fostered mediation within the movement of the Alternative Dispute Resolution (ADR) methods (see par 2.3 for a brief historical survey of their establishment) were not completely aware of the *communicative difference* implied by this practice, namely of the extent to which the reasonable exchange of arguments taking place in a happy mediation process contributes to the settlement of the conflict. Indeed, the study of mediation, also performed in the perspective of an evaluation of the real-life practices of today's society, shows the relevance of its communicative component: in mediation, communication plays an essential role, as the whole process is managed by means of a discussion between the mediator and the parties (Folger and Jones 1994: ix). Even more specifically, the argumentative dynamics, i.e. the endeavour to reasonably found the decision about the resolution of the conflict, constitutes the very kernel of the communicative exchange in mediation (van Eemeren et al. 1993). Interestingly, mediation is configured as a practice with a high "argumentation rate"; its voluntary nature[3], which could be interpreted as its weak point, turns out to be its real strength, because parties are protagonists of the rational foundation of their decision, which is not the case with several other methods and practices of conflict resolution. In fact, as already mentioned, only in the case of mediation conflicting parties make a shared decision on their own conflict, by communicating on their problem and, specifically, by

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[3] Even in those cases in which trying to recur to mediation is established by law as mandatory, it is however not mandatory to arrive at a solution through mediation. See Chapter 2 for some examples of actual practices.

arguing with each other in order to establish what the best solution may be. They are thus engaged in a process of weighing arguments in favour of one or the other solution and discussing them together, and trying to understand each other's reasons with the help of the mediator, in an ideally reasonable fashion (Herrman, Hollett and Gale 2006: 22).

Now, thinking about conflicting parties, it can be figured out that it might be really difficult for them, who are entrenched in conflict and have been quarrelling for a long time before entering mediation, to engage in an ideally sound argumentative discussion. However, quite unexpectedly, sometimes, in cases of successful mediation this happens and parties really learn to manage their problem themselves by means of a reasonable discussion.

In these cases, during the course of the parties' communicative interaction, their respective attitude evidently changes. If we compare the discussion of two parties at the beginning and at the end of a mediation session respectively, a difference emerges in the fundamental style of communication, as for example in the parties' capacity to stick to the issue of the resolution of their conflict rather than accusing each other, to listen and talk directly to each other, and to leave room for the other parties' reasons. The brief excerpts presented in Table 1, taken from one of the cases that are going to be analysed in Chapter 6[4], represent a paradigmatic example of the parties' change. The involved parties are, beside the mediator (M), a university professor, Philip (P) who has been accused of harassment by a student, Ann (A), enrolled in an academic program he is responsible for. The first column reports an excerpt of the parties' discussion at the very beginning of the case, while the second column refers to a more advanced stage, coinciding with the final minutes of the session.

A) Parties at the beginning of the session			B) Parties at the end of the session		
6	P	Well I really don't know what the basis of the whole thing is a:: (.) bunch of UNFOUNDED nonsense ah:: (.) I really (.) [don't know why we are here	338	A	=I mean I want to forget it Professor Ford I I
7	A	[Well that's a bit strange=	339	P	[( )
			340	A	[I'm not going to go around looking for things↓
8	P	=putting me in just an AWFUL situation some WILD allegations being made=	341	P	Okay well that's what it seemed to me that you were sort of out to get me I must say that's how I perceived it at the (.) start of
9	A	=Ya			
10	P	A:nd (.) [and so ( ) past coming and:: (.) I really don't know what	342 I	M	Does it seem that now↑
11	A	[So I'm just (.) one of those CRAZY women/ (.) you're a victim of (.) some loony single mom	343	P	Well I (.) no I've got a bit more understanding (.) no
			344	M	All right
12	M	Ann (.) tell me (.) what's the basis for the allegation=	345	P	Eh: (.) no I had thought she was a nice student and she's a good student and (.) now I have a lot of regret that this took place but (.) eh

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[4] This case is analyzed in paragraphs 6.1.1 and 6.1.2.

13 P	=Well paranoia ( ) a lot of [paranoia		(.)
		346 A	[I still am nice/
		347 P	[I understand now that (.) what she's saying has a lot more genuineness to it than I perceived it I thought that they were a lot of wild allegations and she was trying to get me for some reason and I didn't know why (.) so I understand now this (.) this (.) boundary business that it's a
		348 M	Okay all right
		349 P	That it has been a ( ) trouble (.) but hopefully she understands (1.5) that (.) that there was nothing (.) more intended by it than than than eh (3)

Table 1: Example of a comparison between the parties' discussion style at the beginning and at the end of a mediation session.

Roughly speaking – a detailed analysis will be presented in Chapter 6 – at the beginning the conflict is still in its salient phase and the parties' statements even fuel it (see turns 11 and 13 in particular). Contrariwise, at the end of the session the parties show mutual understanding and respect (turn 347), while the conflict is conceived of as something in the past that should not hinder the future continuation of their relationship (see turn 345 in particular).

Evidently, the parties experience a change of attitude, moving from disputants to interlocutors involved in what could be almost defined a problem-solving discussion (van Rees 2003), where all the parties contribute to the resolution of a common problem. This change of attitude is associated to the progressive resolution of the conflict, namely to the pragmatic goal of the mediation practice.

As the excerpt considered in the second column of Table 1 is taken from the end of the process, there is seemingly no proper exchange of *arguments* in the parties' communicative exchange. Indeed, by taking into account larger portions of co-text, this passage is surely to be considered a particularly happy case of a concluding stage of an argumentative discussion[5], in which parties have agreed on a solution, but they also set the basis for mutual trust and for the continuation of their discussion. In this sense, this passage suggests that parties have changed their communicative style by means of their engagement as co-arguers.

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[5] In terms of an argumentative analysis, this passage can be reconstructed as part of a *concluding stage* of a critical discussion (van Eemeren and Grootendorst 2004), where the parties' difference of opinion is resolved. Moreover, in this case, as their difference of opinion was bound to a proper conflict, parties, after having resolved their specific problem, also express their reciprocal trust that will constitute a basis for the prolongation of a serene relationship between them.

Within this framework, the *mediator* role emerges as fundamental. Mediators, in fact, being the facilitators of the parties' communicative interaction, act as the architects of their argumentative discussion. The parties' change of attitude can only happen thanks to the mediator's continuous interventions, which aim at establishing a reasonable setting for the parties' argumentative discussion (van Eemeren et al. 1993: 19). And, apparently, the progressive constitution of the parties' argumentative attitude brings an essential contribution to the resolution of the conflict. The very activity of arguing, indeed, is oriented towards the reasonable resolution of *differences of opinion* (van Eemeren and Grootendorst 2004), namely of disagreements and conflicts of opinion.

The change of attitude that the parties experience seems to be strictly bound to the change in their relationship, which is progressively re-established and somehow renewed on the basis of the argumentative exchange that guarantees for the possibility to reasonably discuss possible problems also in the future.

Yet, as it has been already pointed out in the literature, the mediator role presents a *paradoxical* situation in this relation (see Aakhus 2003 in particular and the other argumentative studies presented in par. 3.2.2.2.). In fact, albeit mediators are a crucial factor in the definition of the parties' argumentative discussion, they are however far from corresponding to the traits of canonical arguers. In fact, mediators are expected to contribute to the discussion without however expressing personal standpoints about any specific resolution pattern and without advancing arguments in support of given standpoints[6].

Such a paradox brings to light the relevance of the *context* (Rigotti and Rocci 2006) and, in particular, of the *activity type* in relation to the development of the argumentative discussion (van Eemeren and Houtlosser 2005). Indeed, the paradox in which the mediator is entangled, as well as the constraints and opportunities deriving from it, are a direct consequence of the context in which the argumentative discussion is embedded. It is therefore particularly important to understand the nature of a mediation process, its goals and phases, in order to elicit the role that argumentation plays in it and, in particular, how argumentation can help fulfil the pragmatic goals of mediation.

The mediator's argumentative paradox, in particular, is strictly bound to the nature of mediation. In fact, it appears to be entailed by the mediator's mandate as an agent in the *agency relationship* he/she is involved in with the parties. The concept of agency relationship, first introduced in finance (Ross 1973) and later in economy and other social sciences, proves to be an eccellent conceptual instrument to explain the crossing

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[6] Indeed, this paradox might also have hidden the relevance of argumentation in this practice. Significantly enough, to my knowledge, argumentation is not introduced in the training of mediators. However, some openings seem to be present in the domain of Online Dispute Resolution practices (see Lodder and Vreeswijk 2004 and the discussion in par. 2.4.1).

of commitments deriving from institutional roles and individuals' desires in organizations. Agency theory, in fact, analyses the interpersonal relationship between a *principal* – someone who has a goal, and delegates its realization to someone else – and an *agent* – who is in charge of realizing the principal's goal in exchange of some form of remuneration. This theory offers a very realistic view on a usual form of human relationship bound to various interactions that is typically institutionalised by a form of *contract* (Eisenhardt 1989, see also par. 4.2.2.3). In mediation, the mediator is hired in order to help parties find a reasoned and reasonable solution but, at the same time, is expected not to actively engage in the discussion – at least not at the same level as the arguers. An implication of this paradox follows on the side of the parties: as said, differently from what happens in other conflict resolution practices, in mediation parties are responsible for the critical evaluation of arguments about the resolution of their conflict, namely they are protagonists of the argumentative discussion.

1.2 Whether and how argumentation supports the pragmatic goals of mediation

The above-outlined framework let us grasp the essential and delicate role played by argumentation in the achievement of the goals of mediation. As it has emerged, during successful mediation processes conflicting parties experience a sort of change of attitude which brings them to become co-arguers engaged in a discussion over the resolution of their problem. Such change in the parties' attitude appears impossible to be achieved by means of the engagement of parties themselves who, normally, at the beginning of a mediation process, are somehow locked in their respective positions and, thus, exposed to danger from the potential escalation of their conflict. Therefore, it appears that this change in the parties' communicative and argumentative status and attitude can only happen thanks to the mediator's intervention.

The parties' conversion, moreover, can be said to have a direct influence on the fulfilment of the mediation process goals. In fact, parties learn to become co-arguers by discussing on the resolution of their conflict; and, if they learn to engage in a sound argumentative discussion, they acquire the means to reasonably solve their problem. In case of success of a mediator's intervention, thus, the achievement of an argumentative attitude on the parties' side coincides with the possibility for them to solve the conflict.

Now, this coincidence results interesting, but its dynamics happens to be scarcely investigated. What does it mean *concretely* to manage an argumentative discussion, to help parties create an argumentative space, without being a co-arguer? How does this happen? And how does this contribute to the resolution of the process?

These questions entail a double research focus for the present investigation. On the one hand, in fact, in order to understand the relevance argumentation can have for the goals of a mediation process, it is necessary to specify the ontological structure of a mediation process, namely its constituency in terms of roles and relations (what will be called the *scenario* of mediation) and the *"script"* of a successful mediation process, through which these relations are modified. As it will be shown, although different approaches have contributed to shed light on various aspects of a mediation process, a proposal for a comprehensive ontology, such as the one needed for the present research, lacked.

A first set of results of this research is thus expected to encompass a *conceptual analysis* of the mediation process oriented towards the elicitation of its pragmatic goals in the framework of its ontological traits.

Once having obtained this ontological framework of mediation, it will become possible to achieve a second set of results of different nature, reached through the design of an analytical research based on empirical data, which aims at understanding the role of argumentation in the achievement of the pragmatic goals of a mediation process. In this part of my work, the correspondence between the pragmatic goals of mediation and the parties' conversion into co-arguers will be verified and analyzed in its internal dynamics, considering in particular the salient moves that would support it. In other words, the analysis focuses on the problem of how two (or more) individuals that are entrenched in a conflict can become co-arguers and co-responsible for a process of critical and well founded (in a word, *reasonable*) decision making. The mediator's intervention in this process will be investigated in its paradoxical task of facilitating argumentation between the parties without arguing directly; particular attention will be devoted to the mediator's help in set the boundaries of a dialectically sound argumentative discussion.

The role that argumentation plays in mediation must be investigated by analysing how the argumentative discussion is structured, whether and to what extent it corresponds to the ideal standard of a *critical discussion* and which roles the parties and the mediator play (van Eemeren and Grootendorst 2004). Within this framework, particular attention must be devoted to the mediator's argumentative intervention, which, as said, is at the same time paradoxical and decisive. Therefore, the mediators' contribution to the set up of the parties' argumentative discussion will be considered, by verifying in particular whether and how they help parties to structure an argumentative discussion, and whether and how they help parties construct sound argumentations both at the level of their anchoring to valid argumentation schemes, or *loci*, and at the level of their correct and effective link to shared premises (Rigotti 2006; see Chapter 5).

Answering these questions means grasping the specific argumentativeness of the mediation practice. More in general, this kind of study can contribute to the

understanding of the specific role that argumentation can play in the development of human interaction in structured social practices.

1.3   Structure of the dissertation

The present research aims at understanding how argumentation helps fulfil the pragmatic goals of mediation, namely how it supports the resolution of a conflict. An essential turning point in this relation has been identified in the parties' change of attitude that brings them to become co-arguers, thus assuming the task of discussing about their conflict. In order to tackle this issue, the research design and consequently the structure of the dissertation have been articulated into two main sections, corresponding to two types of objectives. A first section is constituted by a framework-building component aiming at a conceptual analysis of mediation. This component, moving from the tenets emerged from the interdisciplinary study of the literature on mediation, aims at eliciting the essential aspects of this practice, in terms of involved roles and agents, constitutive relationships and development of the conflict resolution process. Beside the careful analysis of the various approaches to mediation, considered in its specificity in relation to other ADR practices, and taking into account its numerous contexts of application, it is necessary to in-depth consider two notions that constitute as many fundamental knots in mediation, namely *conflict*, which originates the need for mediation, and *context*, which is constituted by the net of relationships that parties are involved in and that are endangered by conflict. This first section is expected to result in the construction of a mediation ontological framework, which makes it possible to understand the essential features of this practice in a pragmatic perspective that accounts for the development of the conflict resolution process in this practice.

The latter section of the dissertation aims at analysing the argumentative strategies of mediation and their role in relation to the mediation ontology emerged from the former part. More specifically, this component aims at verifying the peculiar traits of argumentation in mediation, in particular in relation to the parties' change of attitude which constitutes the essential defining trait of mediation and thus the original source of interest of the present investigation. What is considered here, in particular, is the structuring of the argumentative discussion that the mediator operates, and which allows the parties to convert into reasonable co-arguers from being opposing adversaries.

In other words, in the first section (Chapters 2-4), the main objective is defining what is mediation, how it works, and what its main process specificities are. The second section is oriented to verify how the mediator's paradoxical help to the parties is realized in actual moves that contribute to set up and manage an argumentative discussion. These moves will be analysed in order to discover those knots that show to have a particular

argumentative salience in relation to the pragmatic process of mediation; in other words, attention will be paid to the intersections and possible synergies between the development of the mediation process and the phases of an argumentative discussion (see the results expounded in Chapter 6 and 7). For this purpose, it is necessary to rest on a comprehensive account of the ontology of mediation, which emerges from the first part of the dissertation. At the same time, it is necessary to introduce instruments for the argumentative analysis of the discussion occurring in mediation (Chapter 5).

The structure of the dissertation mirrors the above-outlined design of the research project.

In particular, the research opens (Chapter 2) by considering the very origin of mediation, namely the problem of conflict and the various (violent or non-violent, more or less institutionalised) responses that individuals and societies can give to it. In particular, as a conflict resolution practice, mediation is progressively assuming the role of an institutionalized alternative to court adjudication. An overview of mediation within the framework of the ADR methods, as well as a survey of the contexts of application of mediation, is presented – from family mediation (including divorce and child custody conflicts) to the mediation of business and employment issues; from interventions in organizations of various types (likes hospitals and schools) to the complex mediation of issues concerning different social groups, like environmental or political issues; eventually, to the more delicate and somehow still experimental applications, such as intercultural mediation or victim-offender mediation. Moreover, the progressive developing of mediation as an object of scientific and professional relevance is discussed. The relevance of mediation as a professional instrument employed to resolve conflicts and as an object of study is brought to light; at the same time, by means of an accurate analysis of the uses and applications of mediation, it is possible to start to elicit the essential features of this practice. Such features emerge by considering what could be called the *communicative structure* of mediation (the parties involved, their role in the communication process, the exchanges foreseen between them). This structure can be drawn from the historical development and the present establishment of mediation in relation and in opposition to the other ADR practices. In particular, the comparison of mediation with other conflict resolution practices shows important similarities and differences. For example, beyond the juridical specificities bound to the use of mediation (Breidenbach 1995; Parkinson 1997), it is possible to consider that the structuring of the communicative process envisaged in mediation has no equivalent in the other ADR practices. Some essential features of mediation also emerge from the survey of its application contexts, which allow to distinguish the context-bound and the practice-invariant features of mediation beyond the different applications.

The analysis of the mediation features is necessary in order to progressively construct a framework for mediation that can serve as a basis for the argumentative

analysis. Following this aim, in Chapter 3, the various approaches to the definition of mediation are thoroughly examined and compared. Goal of this chapter, which completes and systematizes the preceding one, is to prepare the basis for the construction of a mediation framework, in which the pragmatic structure of this practice can emerge. This goal requires to adopt an interdisciplinary approach as to the object of mediation, since different disciplines represent as many points of observation on the object of mediation; these may privilege the development of the mediation process (like in argumentation studies), but also the contextual constraints which mediators must consider, for example the juridical framework (as juridical studies do) or the relevant aspects concerning the parties' interpersonal relationship (it is the case, for instance, of psychological studies). Indeed, mediation has raised a strongly interdisciplinary interest. In fact, if the single studies only rarely present an interdisciplinary perspective, when looking at the picture of the studies in mediation as a whole, it proves to be a very complex mosaic of multidisciplinary contributions, which go in different directions: from the analysis of the context of mediation, to the definition of the strategies at the mediator's disposal, to the specific focus on communicative and argumentative aspects.

In literature, an increasing awareness of the mediation practice is present. On the one hand, there is a long tradition of professionals' reflection on mediation codified in precept-based texts, such as handbooks and other forms of training materials. On the other hand, since the 80s in particular, a stream of theoretical studies on mediation has started. In the second stream of studies in particular, which often moves from the dissatisfaction with infinite lists of precepts and techniques "for all seasons", these precepts are evaluated and inserted in the framework of a more comprehensive account of mediation, including the consideration of its essential components and relationships, both at the proper level of the practice itself, and at the level of the larger institutional and societal context that may be affected by the results of this conflict resolution method. Several approaches, in this relation, aim at reconstructing the *scenario* of mediation, insofar as they elicit the relevant roles (at the individual, group and institutional level) that are present in mediation, amongst which the most important are clearly the mediator and the parties, but also, for example, other third parties that can be affected by the process (like children in a divorce case, see Wall, Stark and Standifer 2001), or the organizational or institutional context in which the process occurs (Herrman, Hollett and Gale 2006). These studies also elicit the essential relationships between these roles, which are present before the process, during the process and afterwards (ibid.). These relationships can concern the mandates bound to the different roles, but also the rapports in which the parties and the mediator are involved. The parties' *interests*, bound to desires, values and aspirations (Carnevale 1986) emerge as a crucial element to be considered when analysing the relations between the different roles (Fisher, Ury and Patton 1991; Patton 2005) and examining the possible outcomes of the

mediation process (see in particular Wall and Lynn 1993; Wall, Stark and Standifer 2001).

Yet, in order to analyse the argumentative dynamics in mediation and the mediator's role in the structuring of the parties' argumentative discussion, it is also necessary to account for the *script dimension* of the mediation process; both scenario and script must be considered in order to understand the pragmatic structure of this practice (Kovach 2005).

The integration of the scenario and script perspectives constitutes the basis for constructing an ontological framework of mediation, including all the essential elements of this practice and considering their dynamic development.

A proposal for the conceptualization of an ontological framework of mediation is proposed in Chapter 4. This chapter is conceived as the hinge of the whole research: in fact, while concluding its framework-building part, it constitutes the point of departure of the argumentative analysis presented in the second part (Chapter 5 and 6).

The ontological framework of mediation is constructed, on the one hand, on the basis of the approaches drawn from the literature and examined in Chapter 2 and, more specifically, in Chapter 3. On the other hand, however, it relies on the careful analysis of two notions that emerge as crucial to understand the mediation practice, namely *context* and *conflict*. The proposed model of context is drawn from communicative research (Rigotti and Rocci 2006). In order to shed light on the notion of *conflict*, which suffers from semantic unclear uses in literature and is however universally considered as the essential presupposition of any *conflict* resolution practice such as mediation and the like, a semantic analysis founded on empirical evidence will be integrated. Such analysis aims to shedding some light on the process of generation of conflicts, by which two parties who are previously involved in some form of serene relationship start to think that the counterparty is an obstacle hindering the realization of their own interests. Interests, conceived of in a broad sense including desires, expectations, needs, are certainly at the origin of conflict because one decides to fight if he/she is determined not to lose what he/she is fighting for. At the same time, however, they can be hypothesized to be also the propulsors that bring to the resolution of a conflict: the resolution must somehow respond to a deeper level of interests or it would be felt as unreasonable by the parties. Not coincidentally, as remarked in the opening statements of this dissertation, the success of mediation is bound to the fact that it allows considering the parties' interests in the formulation of a resolution to the conflict.

After obtaining the first results concerning the conceptual analysis of mediation, and before facing the argumentative analysis of this practice, whose basis will be a corpus constituted by the transcripts of mediation interactions, it is necessary to introduce the rationale for the analytical part of this dissertation. In this relation, Chapter

5 aims at reconstructing a reasoned set of theoretical and methodological instruments, mainly stemming from argumentation theory, but integrated with some aspects taken from semantics and pragmatics, able to bring to light those levels and dimensions according to which the corpus is interrogated.

Now, the focus of the present research, namely the investigation of the dynamics that make the parties' change of attitude from disputants to co-arguers possible, and the mediator's intervention in the structuring of their argumentative discussion, requires a complex research design, which is illustrated in the final part of Chapter 5, together with more specific research questions that, resting on the results of the first section of the dissertation and, in particular, on Chapter 4, orient the argumentative analysis of the corpus. Specifically, the research is subdivided into two main steps. In the former, the salient argumentative passages of mediation that correspond to advances in the mediation process are identified by considering a selected part of the corpus. In the latter step, the research questions are revised and specified on the basis of the results obtained; in particular, some salient moments and moves are identified. Moving from these specific questions, a punctual argumentative analysis can be performed on a larger evidence basis.

Chapter 6 reports the core of the analytical component of the present investigation, consisting in the detailed presentation and discussion of the results of the analysis in the two above-expounded steps foreseen by the research design.

Finally, the seventh and closing chapter briefly highlights the most significant results of the present investigation concerning both the conceptualization of an ontological framework of mediation and the analysis of the role that argumentation plays in the fulfilment of a mediation process. Moreover, this chapter intends to open the way to future possible developments of the present research, based on the evaluation of its main achievements and of its limits, and considering both the theoretical level of analysis of mediation and its possible outcomes at the level of professionals' education.

2   Mediation and its social role

This chapter intends to illustrate, moving from the problem of conflict and from the different practices and methods that human beings have elaborated to confront it, the relevance of mediation in today's society, specifically focusing on the role of mediation within the so-called Alternative Dispute Resolution (ADR) practices. Such relevance is even highlighted if the rich past traditions and the manifold present revivals of informal mediation practices are considered as well. On the one hand, the specific traits that distinguish mediation from other techniques of conflict management and resolution are brought to light. In particular, it will be shown that the "argumentative specificity" characterizing this practice makes it a *unicum* in the ADR panorama. On the other hand, in order to show the social relevance that this practice assumes, the numerous presently available applications of mediation to conflicts of different natures are discussed. Such relevance not only explains the spreading of professional training courses all over the world, but also motivates the multidisciplinary interest in mediation as a scientific object of study, to which the increasing in number of academic offers at the undergraduate and graduate levels corresponds.

2.1   *From conflict to conflict resolution practices*

"Like it or not, you are a negotiator" (Fisher, Ury and Patton 1991: xvii). The opening statement of this volume on negotiation and conflict resolution, which has had and is still having an enormous fortune for its groundbreaking indications, highlights the ubiquity of negotiation in an individual's life. Now, negotiation needs to be applied so frequently because disagreement, conflicts of interest, interpersonal disputes, and other forms of conflict are equally frequent in human interaction, and human beings have to face and settle them as productively as they can. Indeed, conflict is a *problematic* event which, as such, requires to be managed. More precisely, it is somehow natural to think about how to resolve it, because conflict shakes and endangers the existing relationships. It triggers alliances and oppositions that polarize the parties' positions; it creates a situation of precarious rapports that may block any constructive initiative[7]. It focuses all

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[7] In this relation, notice that conflict between two agents may also be exploited for somebody else's strategic goals. For example, in relation to the recent conflict between Georgia and Russia over the independence of Ossetia, the Italian ambassador and political commentator Sergio Romano has observed that the internal ethnic opposition in Georgia was deliberately created by the Soviet power in order to avoid initiatives of independence by Georgia itself. In particular, Romano argues, it was Stalin who, when re-defining the boundaries of the "republic" of Georgia, also included a part of the

attention and energy on the parties' reciprocal endeavour to hinder the realisation of each other's desires.

Be it a interpersonal dispute over the division of a heritage or an international conflict over the recognition of the independence of a new state, conflict throws the human subjects involved in it in a state of uncertainty, encompassing the fear of losing every positive value that characterized the pre-conflictual phase and of being forced to renounce to one's desires – in the worst case, of being annihilated. Such fear, which has a rational origin, insofar as it derives from the consideration of actually possible outcomes of conflict, clearly encompasses a strong emotional component, which can entrench people and overwhelm them, and which becomes more and more decisive if the conflict is protracted (Deutsch 2006: 29).

For all the implications that conflict may have, it is natural, as announced above, to try to resolve it and re-establish a situation of durable and serene relationships, where constructive initiatives are possible, where trust and hope are established and where news that come unexpected can be good news. Thus, quite ingeniously, the human kind has elaborated different ways to cope with conflict. Before tackling briefly with them, however, it is worth considering that the event of conflict can touch and endanger people's relationships at different levels. For the moment, the feature of conflict that has been highlighted above – its nature of an event capable of jeopardizing the existing network of human rapports – will suffice as a rough approximation of its definition. The genesis and dynamics of the conflictual event, however, require to be further investigated in order to fully understand mediation (see in this relation the conceptual analysis presented in Chapter 4).

At the one extreme, one finds the solution represented by wars and other forms of physical elimination of the adversary party, which thereby becomes an *enemy*. These forms can really constitute a way out of conflict as, by physically eliminating adversaries, one can actually manage to eradicate a problem. Needless to say, eliminating the persons involved in a problem may prove effective, but is a rather brutal method of resolving the problem itself[8].

Yet human beings strongly desire not only to close conflict but also to have the possibility of saving valuable relationships and to live in a stable and friendly environment. Not every way out of conflict is equally considered fair and satisfying. In

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Ossetian population. In this way, he could make sure that the internal ethnic conflict in Georgia would have hindered any secessionist initiative by Georgia; in this way, moreover, the central Sovietic power, based in Moscow, remained the supreme arbitrator of internal conflicts, thus consolidating its influence on Georgia and other so-defined republics (see the intervention by Sergio Romano on *Corriere della Sera*, August 10, 2008).

[8] I will not discuss here whether war is always avoidable or not. Its brutal nature remains evident in all cases.

this relation, the authors referring to the research centre named Program on Negotiation (PON) based at Harvard University have elaborated a model of conflict resolution (which will be discussed in Chapter 3) in which they identify the notion of *legitimacy* as constitutive of the disputants' interests. Legitimacy is the need of receiving a fair treatment in conflict resolution and getting to a fair outcome (Patton 2005: 281). It probably can be interpreted not only as the wish for an equitable distributive solution, but also as encompassing the desire that the solution can be the basis of future stable, well-ordered, and durable relationships, based on mutual trust and respect. In Patton's terms, legitimacy is to be considered "one of the most powerful human motivations" (ibid.).

It could be argued that war and, in general, violence, is opposed to those methods of conflict resolution that take into consideration legitimacy as an interest of all subjects involved in conflict[9]. The latter methods are at the origin of peaceful relationships and dispute resolution systems in all civil societies (see Grossi 2003[10]), the most important and well-known of which is surely the juridical system.

However, the juridical systems organized and managed by the State are not the unique instruments that societies have at their disposal to resolve disputes (Grossi 2003: 36-37 and *passim*). Various interventions on conflict, more or less formalised, are admitted and fostered, among which a particularly significant position is occupied by those practices that, as mediation, foresee the intervention of a third neutral subject who is in charge of re-establishing a legitimate and possibly serene order. Interestingly, the dispute resolution instruments developed by the civil societies are all based on communication and, more specifically, on the reasonable weighing of arguments that

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[9] The formal and informal codes based on revenge are on a cline between violent approaches to conflict and the codification of a juridical system.

[10] Grossi discusses an interesting analogy between *law* and *language*, which both are to be considered institutions that regulate the social dimension of the individual subject; the former being a means to allow effective communicative activities, and the latter being a means for peaceful coexistence in society (Grossi 2003: 27). The fact that law (and all the forms that the juridical system may assume) are to be considered institutions, the author argues, highlights their embeddedness in society. Law is an institution whose "natural realm" is society, it is a necessarily history-bound experience, guided by the goal of the individuals' peaceful cooperation and of the mutual respect of their freedom in their communal coexistence: "Vogliamo cioè sottolineare […] che il diritto […] appartiene alla società e quindi alla vita, esprime la società più che lo Stato, è il tessuto invisibile che rende ordinata la nostra esperienza quotidiana, consentendo la convivenza pacifica delle reciproche libertà. È, insomma, identificabile in un vero autosalvataggio della società" (Grossi 2007: 6). Grossi, however, also warns against the possible risks of absolutizing positive law imposed by the State; law, in this case, becomes almost autonomous from its goal of being a legal *order* of society. Now, Grossi's interpretation of law is particularly illuminating for the study of mediation and other forms of dispute resolution like the ADR practices. Indeed, if the subject of law is society rather than the State, it is possible to acknowledge the various and manifold sources of law that are present in the civil society; such "private" forms of law are established by communities that want to preserve some relevant value by means of rules or even proper codes (see pp. 36-37 in particular).

ideally bring to a sound persuasion. Indeed, *reasonableness*, rather than rationality (on the role of reasonableness as a philosophical foundation of argumentation see Chapter 4) is the key to understand societies' civil answer to conflict, and it is the reason why argumentation plays a fundamental role in these practices, as it will more clearly appear in Chapter 3 and 4.

Mediation is historically attested as one of these practices of conflict resolution which complement the function of a juridical system in a civil society. Mediation is present as an informal practice employed to privately resolve conflicts of interpersonal nature in families, small communities, between friends, and so on. But the crucial importance that mediation may have is becoming increasingly acknowledged even in more formalised contexts. Nowadays, indeed, we assist to a progressive institutionalisation of the mediation practice as a juridically valid and recognized alternative to court in a variety of contexts, from interpersonal disputes in all sectors of the social life, to inter-group and international conflicts concerning for example commercial transactions or inter-state relations. It is worth briefly examining the historical development of mediation and the progressive social awareness of its validity as a form of dispute resolution at many levels of human relationships.

2.2   A concise history of formal and informal practices of mediation

The story of mediation is certainly longer than the one of the ADR movement. The rationale for this practice coincides with the discovery of the fact that, often, when conflicts are particularly exacerbated and prolonged in time, the parties in conflict are no longer able to talk to each other directly and need some help in solving their issue and, possibly, in restoring their relationship. A third party who is not personally involved in the issue can thus be of use because they may be able to see things in a more detached and reasonable way. Such awareness arose long time before the origin of the ADR movement (Duss-von Werdt 2005).

Thus, In European history in particular, two institutions have successively been involved in mediation processes between nations and other political institutions: the Venetian Republic[11] and the Vatican (Princen 1992b). Vatican diplomacy already had a strategic function in the first centuries after Christ. Later on, both the Vatican and the Venetian Republic were asked to send their ambassadors to help in international

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[11] Mattingly (1937: 423-426) analyzes the role of the Venetian *consuli missi* as one of the first diplomatic institutions linked to the practice of sending resident ambassadors. The establishment of this institution followed the peace of Westphalia (1648); but Venice, mostly for preserving its commercial relations, elaborated a system of foreign diplomatic embassies and a network of diplomatic relations more than two centuries before. Such system also included mediation activities.

disputes. Today, the Pontifical diplomacy still holds a significant mediatory function on an international level (along with a few other institutions, such as the U.N.). For instance, a relatively recent case, the Beagle Channel conflict between Argentina and Chile, is often quoted as a particularly successful example of international mediation overseen by the Vatican in the years between 1978 and 1984[12].

There is a wide range of interventions conducted by Vatican diplomacy and Venice at various levels. An example which is particularly significant as it involved both institutions, is constituted by the mediation process following the Thirty Years War[13]. This process, eventually concluded with the Westphalia treatise in 1648, was enabled by the tight collaboration between the Venetian ambassador Alvise Contarini and the Pontifical envoy Fabio Chigi[14] (who later became Pope Alexander VII) both of whom were officially sent as mediators (Contarini 1864; Feldkamp 1998; Repgen 1998; Duss-von Werdt 2005).

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[12] The success of this mediation is also proven by its durability through time. Benadava (1989: 50) who, by the way, was one of the Chilean negotiators at the time, observes that the parties accepted the final agreement (the *Tractado de Paz y Amistad*) giving the islands to Chile, but maritime rights to Argentina, as the definitive solution to their issues ("la solución completa y definitiva de las cuestiones a quel él se refiere"), and committed themselves to not putting forward incompatible interpretations later. The agreement ended a long controversy concerning the Beagle Channel, a small strait separating islands of the Tierra del Fuego archipelago in extreme southern South America. The channel in itself only hosted three little islands of no value; but, of course, its strategic positioning was interesting for both Argentina and Chile, which both wanted access respectively to the Pacific and to the Atlantic oceans. Rights over who the channel belonged to and its navigation rights were left ambiguous since Spain divided the land into the two countries. In 1971, Argentina and Chile requested arbitration from the International Court at Le Hague, under the auspices of Britain's Queen Elisabeth II. When, in 1977, the arbitration award arrived Argentina refused to accept it, considering it an invasion of state sovereignity. Such a reaction was the origin of a period of tension between the two countries, which brought them close to a real war in December 1978. The Argentinian army would have invaded the islands on December 22, but due to unfavorable weather, the invasion was delayed for two days. In the meanwhile, the Vatican, which had been previously contacted as a possible help for the resolution of this conflict, sent its envoy to South America. This allowed the climate of the crisis to be mitigated; and, finally, from March 4, 1979, proper mediation was started, overseen by Pope John Paul II, who sent his envoys, Cardinal Antonio Samoré up to 1983 and, after his death, Cardinal Agostino Casaroli, there. The mediation process was long and complex; in the end, the final treaty was signed on November 29, 1984 in the Reggia Hall next to the Sistine Chapel in Vatican City. The most extensive and detailed studies on this mediation were conducted by Thomas Princen (see in particular Princen 1992a: 133-185).

[13] The significance of this episode has been highlighted in particular by Duss-von Werdt (2005), who devotes a detailed analysis to the work of the two main mediators, respectively sent by Venice and by the Vatican, Alvise Contarini and Fabio Chigi (see pp. 33-51).

[14] Contarini (1864: 25) describes his collaboration with Chigi in terms of complete trust: "…E passò poi tra di noi nel rimanente pienissima la confidenza, così religiosamente conservata nell'uno e nell'altro, che le parti non hanno potuto giammai favi breccia, ancorché l'abbiano più volte tentato: onde si sono talvolta espressi, maggior esser l'unione tra i mediatori che quella dei plenipotenziari d'un medesimo principe, che tutti con li loro colleghi ebbero brighe e diffidenze, con altrettanto pregiudizio dei proprî padroni, quanto l'unione dei mediatori fu profittevole ai trattati".

Outside European history, mediation is attested as an informal practice that has developed into formal dispute resolution systems also in other traditions. In particular, James Wall and colleagues have devoted a series of studies to mediation in some non-Western contexts, which aim at connecting the modern mediators' techniques now applied in different countries with the respective ancient cultural and religious roots that are present in these countries. In particular, a first study (Wall and Blum 1991) surveyed community mediation in China; the study was then repeated in South Korea (Kim, Wall, Sohn and Kim 1993), Hawaii (Wall and Callister 1995), Japan (Callister and Wall 1997), Malaysia (Wall and Callister 1999) and Thailand (Callister and Wall 2004).

Mediation has been and is applied also *beyond* the framework of institutionalised ADR practices. Even nowadays, informal mediation is practiced in multiple social contexts and realities. In this sense, mediators are much more widespread in our society than one may think: relatives who help solving family conflicts[15], friends who intervene to restore relationships at risk of being damaged, etc., are all clear examples of informal mediators. Sometimes, being a mediator is also one of the aspects of a job that is differently denominated. For example, managers who try to maintain good rapports and collaboration within their team even if they are not officially expected to address these aspects, school directors, sometimes even policemen, all are examples of informal mediators who often find themselves involved in conflict resolution processes. To sum it up, both one's personal attitude and one's employment can make for an informal mediator. This is worth noting because there is an underworld of informal mediation practices that are highly beneficial to the construction of society, but cannot be labelled as part of the ADR movement, and in which the involved mediators probably do not define themselves as such.

Surely, he/she who works as an informal mediator must be an authoritative person whom both parties trust enough to allow his/her to intervene in the conflict. Indeed, trust plays a huge role also in formal mediation; in informal cases, it is only bound to the mediator's personal qualities and does not normally depend on formal training. A person's authority, of course, depends on surrounding and personal relationship; thus informal mediators normally "work" for a specific community, like an office or another working place, a family, but also a small town, or a cultural community. The stronger the community ties are, the more this form of self-regulation of conflict is possible. In the literature about this topic, there is a lot of evidence about mediation in religious communities. Folberg and Milne (1988: 4) quote, for instance, a

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[15] Here, everyone has examples to bring. However, just to mention a case taken from the history of Ticino, Count Francesco Saverio Riva, who lived in Lugano during the XVIII Century, was known for his disposition towards conflict settlment: "Fu molto utile alla patria, che lo stimava assaissimo, nel disimpegnare e comporre massime tra parenti e amici le liti co' saggi suoi consiglii, e colla sua destrezza e sagacità" (Oldelli 1807-11: 156, qtd. in Schnyeder 2004: 150).

passage from one of St. Paul's letters inviting Christians to solve their disputes within the community rather than addressing the external juridical system[16]. The case of the Swiss Confederation is particularly representative and interesting in this relation, as its patron Saint, Nicholas of Flüe, is well-known for its mediation interventions at the civil and political level. In particular, he is well-known for having prevented a civil war and having resolved the endless discussions of the Cantons meeting at the Diet of Stans in 1481 (Journet 1980). Since, after that moment, the first Latin Canton (Fribourg) was united to Switzerland, Saint Nicholas may be also interpreted as having helped foster the mediative attitude of the multicultural Switzerland[17].

Similarly, in other religious traditions, it is reported about the meditative role of religious figures; see for instance Wall and Callister (1999) regarding the role of Imams as mediators in Malaysia[18].

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[16] In Corinthians 1.6, Paul's reproach seems to be an hymn for responsibility in conflict resolution, as he condemns those Christians who refuse to assume the burden of handling disputes and entrust external judges to handle the situation on their behalf: "3 Do you not realise that we shall be the judges of angels?-then quite certainly over matters of this life. […] 7 No; it is a fault in you, by itself, that one of you should go to law against another at all: why do you not prefer to suffer injustice, why not prefer to be defrauded?".

[17] In this relation, Durrer (1917-1921: xxix, q.td by Journet 1980: 205-206), describes Saint Nicholas as *the first confederate patriot*: "On peut affirmer que frère Nicolas fut *le premier patriote confédéré*, en ce sens qu'il fit prévaloir pratiquement et théoriquement l'idée d'une commune patrie suisse, indivisée et débordant les préoccupations des intérêts cantonaux". The author significantly remarks that such kernel of a free confederation can be assumed as the basis for a pacific alliance between the European peoples: "L'œuvre de paix du Convenant de Stans, en permettant concrètement la création d'une libre confédération d'Etats souverains, qui n'ont d'autres limites que celles que leur impose la conservation de la paix, ouvrait de lointaines perspectives sur la possibilité d'une alliance pacifique des peuples de l'Europe, fondée sur des bases analogues".

[18] The role of the imam is generally that of a mediator for the interpersonal conflicts occurring in the community that refers to him, in particular in relation to family conflicts. As witnessed in an interview with the author (July 2008) by Radouan Jelassi, one of the two imams active in Lugano, probably the most interesting challenge an imam is faced to in the present society is mediating intercultural conflicts, particularly if the community he is responsible for is placed in a non-Muslim country. In this case, Jelassi says, the most important principle that an imam should follow is that of finding a reasonable adaptation of the cultural implications of the Islamic religion to the different cultural context that one faces in a foreign country. In particular, as an imam, he devotes much attention to three categories of mediative interventions. First, he carefully prepares and follows couples engaged in mixed marriages, either constituted by a Muslim man and a Swiss woman, or by two Muslims coming from different countries. In these cases, even minor cultural differences (concerning, for instance, cuisine) can escalate into proper conflicts. Second, misunderstandings and conflicts can arise from the inability of one party to understand the other party's reasons, even because of linguistic differences or ignorance of local customs and rules. In this case, the imam serves as an interpreter, for instance between the local institutions (schools, hospitals, the police, and so on) and his followers, thus helping to prevent violent conflictual situations. Finally, some conflicts, which could indeed also affect monocultural communities, concern the very implications of the Islamic faith to the facts of the real life. In this relation, Jelassi reports of the very delicate case of a man wanting to separate from his wife because she was abused during the war in the ex-Yugoslavia. In this case, Jelassi maintains, it is part of an imam's task as a mediator to use his religious authority in order to explain to the husband

In general, in relation to disputing parties, the mediator represents the community itself and thus guarantees the support and help of the community to the parties in order to restore a reasonable attitude one to another. Here, an example taken from a novel will be of use in understanding the kind of relationship that can be established in a cultural community between an informal mediator of this kind and conflicting parties. The well-known novelist Chaim Potok movingly describes a dispute resolution intervention in one of his works, *My name is Asher Lev*, published in 1972. The dispute occurs within the Hasidim community in New York (Brooklyn) between Asher, a Hasidim boy with a prodigious aptitude for painting, and his father, who has devoted his entire life to the spreading of Orthodox Judaism among Jews and is a political advisor to the Rebbe, the spiritual leader of the community. Asher's father, together with many members of the community, considers art a waste of time or, worse, a manifestation of the "Other Side", the realm of the demonic. Asher is in overt conflict with his father because he refuses to abandon painting; in fact, though being very young, he already feels his artistic creativity as a manifestation of God's mercy that should not be wasted. At a certain point, the Rebbe himself wants to meet Asher personally. In a concise yet intense conversation, the Rebbe "mediates" between Asher's family and the young painter himself by showing that Asher's and his father's ways of living can be reconciled and that their conflict does not cancel the love that they feel for each other (Potok 1973: 168):

> " 'Asher.'
> 'Yes, Rebbe.'
> 'A life should be lived for the sake of heaven. One man is not better than another because he is a doctor while the other is a shoemaker. One man is not better than another because he is a lawyer while the other is a painter. A life is measured by how it is lived for the sake of heaven. Do you understand me, Asher Lev?'
> 'Yes, Rebbe.'
> 'But there are those who do not understand this.'
> I was quiet.
> 'There are those you love and who love you who do not accept this. Asher, to honour your father is one of the Ten Commandments.'
> 'Yes, Rebbe.'
> 'I give you my blessings, Asher Lev son of Reb Aryeh Lev.'.

Then the Rebbe, as a practical follow-up to his intervention, finds a master for Asher, who will teach him the fundamentals of painting. In this way, he legitimates Asher's professional decision in front of his father.

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that his woman cannot be considered guilty from the religious point of view and, in any case, she would not deserve to be punished twice.

Now, of course, the Rebbe could not be hired in a modern mediation centre because of his undoubtfully interventionist way of proceeding. What it is important to point out, however, is the deep mediative attitude underlying this whole passage: the Rebbe interprets the controversy between Asher and his father, which is already escalated, as an unreal conflict in God's eyes. He also recalls the deepest interests of the parties, who are both suffering from this conflict, by restating (and, thus, putting to the fore) their reciprocal love which is not hindered by the conflict: "those you *love* and who *love* you". Finally, the Rebbe suggests a reasonable solution to the struggle. The Rebbe's role, however, is not that of a judge[19], because the final decision on the parties' relationship is up to them – as the rest of the story demonstrates.

2.3   1976: the "Big Bang" of Alternative Dispute Resolution practices

But mediation, today, is more than an informal practice and a non-institutionalised way of peacefully handling conflicts. It is attested as a professional practice of conflict resolution applied in various contexts. This acknowledgement has given rise to the category of the Alternative Dispute Resolution (ADR) techniques. These techniques are defined *alternative* in relation to the ordinary juridical system. Under this label, techniques such as negotiation, arbitration, mediation itself, and "hybrids" such as med-arb, are included (Moffitt and Bordone 2005). In mediation, in particular, a third party (the mediator) intervenes in a conflict, in order to facilitate a reasonable discussion between the opposing parties because they are no longer capable of negotiating directly, but are nevertheless committed to trying to find a solution.

The establishment of ADR practices is relatively recent, actually having begun in the 1970s. In general, these practices have had a positive response from society[20]; some governments have started fostering their introduction. The origin of the ADR movement is located in North America (U.S. and Canada), but the establishment of ADR practices has also spread to Europe and other continents[21]. In order to understand the relevance of

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[19] Also his reminding them of the Ten Commandments is not to be interpreted as the imposition of a rule to be followed regardless of a person's feelings, but as a way of recalling the common belonging to a community which is as a larger family for both Asher and his father, and in which both of them are respected in their deeper desires.

[20] Significantly, as mentioned in the introduction, the Nobel Prize 2008 has been awarded to Martti Ahtisaari with a motivation that witnesses the increasing social awareness of the importance of dispute resolution practices: "For his important efforts, on several continents and over more than three decades, to resolve international conflicts" (see http://nobelprize.org/nobel_prizes/peace/laureates/2008).

[21] De Palo and Harley (2005: 469-470) discuss the potential and the challenges of mediation in Europe with a specific focus on the situation in Italy. A quite up-to-date review of the developments of mediation worldwide is offered in Alexander (2003).

ADR in Europe, it is worth considering that the European Commission, after having launched studies in this topic at the end of the 1990s, published the *Green Paper on ADR in Civil and Commercial Law* in 2002; in 2004, the *European code of conduct for mediators* was presented while, in 2008, a new directive on this topic was adopted. In the United States, the Uniform Mediation Act was established in 2001 in order "to draft proposed legislation and/or court rules on various aspects of mediation that states may consider adopting to help bring more clarity and uniformity to the mediation process, while at the same time improving the quality and practice of mediation in the United States"[22].

When considering the historical development of the ADR practices, a milestone is found in Harvard legal scholar Frank Sander's 1976 lecture "Varieties of dispute processing" (republished in Sander 1979; see also Menkel-Meadow 2005: 19). Sander had the merit of introducing the idea that a just process of dispute resolution was not limited to the state-governed juridical system; he suggested that a variety of alternative dispute resolution processes (such as arbitration and mediation[23]) could be used according to the different specific goals of settlement and according to the characteristics of the dispute (Sander 1979: 83-84; Sander and Goldberg 1994). The introduction of the concept of a paradigm of dispute resolution processes to the academic world is probably Sander's most important contribution; Sander pointed out that the instrumental nature of the juridical system is in all cases subordinated to its goals of being a dispute resolution system. Thus, when the juridical system turns out not to be adequate to reach its aim, finding *alternative* means for obtaining the same goal – like, in this case, alternative dispute resolution methods – turns out to be a reasonable possibility[24]. Sander's 1976 lecture has thus been considered "a Big Bang of modern dispute resolution theory and practice" (Menkel-Meadow 2005: 19)[25] and has become a foundational text for the research on alternative dispute resolution practices[26].

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[22] See respectively http://ec.europa.eu/civiljustice/adr/adr_ec_en.htm and http://www.pon.harvard.edu/guests/uma/.

[23] Some applications of arbitration and mediation were already present in the U.S., especially in the field of labor disputes (Menkel-Meadow 2005: 21).

[24] See Sander (1979: 67): "By and large we lawyers and law teachers have been far too single-minded when it comes to dispute resolution. Of course, as pointed out earlier, good lawyers have always tried to prevent disputes from coming about, but when that was not possible, we have tended to assume that the corts are the natural and obvious dispute resolvers. In point of fact there is a rich variety of different processes, which, I would submit, singly or in combination, may provide far more "effective" conflict resolution".

[25] Recently, a special section of *Negotiation Journal* 22 (4) has been devoted to "Frank Sander and his legacy as an ADR Pioneer". See in particular Moffitt (2006).

[26] It happens sometimes that a programmatic discourse becomes inspirative for the foundation of an entire branch of study. This happened, for instance, in the field of research in *nanotechnologies*, which still recognizes as its foundational text the lecture that Richard P. Feynman gave on December 29th 1959 at the annual meeting of the *American Physical Society*, significantly titled "There's plenty of room at the bottom" (I thank Carlo Morasso for having suggested me this example of a foundational

On a professional level, the ADR challenge was taken very seriously by two main groups of stakeholders. The former group was made up of judges who at the time were questioning the ability of the legal system to process all cases in a reasonable amount of time and with reasonable monetary expenditures. The latter set of stakeholders was "a more amorphous social movement" whose members "sought greater party control and participation in dispute resolution" (Menkel-Meadow 2005: 19). Some reasons of different nature can justify such a success[27]. First, in comparison to the ordinary juridical system, each person's deep interests and desires are specifically considered. In the case of mediation, this is particularly relevant, given the fact that the parties remain responsible for their decisions; moreover, a mediated solution is often a win-win solution, whereas a judge's decision tends to create winners and losers, and, in this sense, blocks the conflict without really resolving it. Second, in several countries, "traditional" juridical systems are overwhelmed by an excessive number of procedures which usually impose an extremely high economic burden on involved parties.

2.4 Mediation and other ADR practices: the special "thirdness" of the mediator

In comparison to other dispute resolution practices, mediation is distinguished by the specificity of its argumentative dynamics which are mirrored in no other dispute resolution practice. At a first approximation, the key for understanding the role that argumentation plays in mediation can be found in the apparently controversial figure of the mediator. A mediator is hired by the parties to help them reason together in order to find a solution to their conflict, but seems not to actively participate in such reasoning, since his role as a neutral facilitator hinders him from suggesting any concrete proposals in regards to the resolution of the dispute. In what follows, an overview of the fundamental characteristics of ADR techniques will be presented, which not only

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text in a scientific community). Something very similar happened to Sander's lecture, which proposed the powerful image of a "Dispute Resolution Center, where the grievant would first be channeled through a screening clerk who would then direct him to the process (or sequence of processes) most appropriate to his type of case" (Sander 1979: 84). This idea inspired the metaphor of a "multi-door courthouse", where different approaches to dispute resolution could be practiced; such metaphor, being indeed based on the relation between goal (resolving disputes) and means (various dispute resolution practices), has stimulated scientific research on alternative dispute resolution.

[27] See also Breidenbach (1995: 30): „Die Attraktion des (Grund-)Gedankens einer gütlichen Verständigung und die (unterstellte) Überlastung der Gerichte sowie die dadurch verursachte zunehmende Dauer und Kostenbelastung gerichtlicher Verfahren sind universale Gründe für eine Alternativen-Diskussion".

permits the situating of mediation within the context of conflict resolution methods, but also more clearly elicits the specific role that argumentation plays in this practice.

First of all, the term *alternative* needs further analysis. The ordinary juridical system tends to host a conflict "resolution" practice, *litigation* or *adjudication*[28], which is the backdrop on which all ADR practices are compared and contrasted. Litigation involves two or more parties each represented by a lawyer who tries to persuade a third neutral subject (a judge and/or a jury) to agree with the position he/she is in charge of supporting. It is important to remember that, in many cases, litigation is the best solution possible. It goes without saying, for instance, that applying mediation or other ADR practices in the field of penal justice is a very delicate question and though there are significant ADR initiatives in this field – like victim-offender mediation – these processes have to be extremely controlled and are often questioned and criticized[29].

Particularly tied to the business environment (commercial disputes, construction issues, etc.), the so-called *mini-trial* consists in a sort of private theatrical representation of a court or, better, in a simulation of a court process, that the parties agree to perform as it may offer them the opportunity to reflect on how their case would end up if they really decided to opt for litigation and go to court (Sander and Goldberg 1994). The exact form of this simulation can vary according to the various types of legislation; typically, attorneys for each party make summary presentations to a panel consisting of a neutral advisor and non-lawyer representatives from each party who possess settlement authority. The representatives then attempt to negotiate a resolution, often with the aid of the advisor's expert opinion. The neutral advisor who oversees a mini-trial is often a former judge or an individual versed in the relevant law. A mini-trial can bring parties to mediation if they think that it would be the best solution to their problem; but parties can also decide not to settle their dispute and go to court in the end. This practice is not very well-known because mini-trials are often kept secret, as they usually involve big companies[30]. Mini-trials are principally used in the U.S. while in Europe it tends to be less popular.

As for argumentative dynamics, the mini-trial, being a representation of a court, maintains its organisation and decisional structure: the case is presented by the parties' representatives and then evaluated by some judging authority. Being a theatrical representation whose judgment is not legally binding, the mini-trial works as

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[28] Both terms refer to the court-based dispute resolution process; the term *adjudication* refers to judge's perspective, while *litigation* refers to that of the parties.

[29] In Switzerland, for instance, the possibility of mediating has been introduced in 2007, but it is limited to juvenile penal law.

[30] However, Hall (1994) describes a mini-trial procedure used in the context of a business dispute in detail.

presentation of a possible world which is part of the paradigm of the potential ways of handling the parties' conflict. The underlying argumentative principle (see the discussion in par. 5.2.4) is bound to a principle of opposition and, in particular, to a logical rule which may be formulated as follows: *within a paradigm of alternatives, it is convenient to choose the one that best suits one's interests*. In other words, according to the advantages and disadvantages that the foreseen solution has for the parties, they can decide whether this possible world is positive for them or if finding another solution through negotiation or mediation would be better.

Arbitration is probably the most well-known and widespread ADR practice, and often the strongest alternative to mediation in a number of fields, including contract arbitration, labour arbitration, and international arbitration[31]. Arbitration "is a process by which a private third-party neutral renders a binding determination of an issue in dispute" (Cole and Blankley 2005: 318). Though arbitration is considered alternative because is out of the institutional juridical system, from the point of view of the reconstruction of the argumentative dynamics between the involved participants, it may be said that no difference can be found between a judge and an arbitrator. The arbitrator, in fact, listens to and reconstructs the parties' stories in order to make a final binding decision (the arbitrator's *award*) on how to resolve the dispute. However, in comparison to the institutional court dispute resolution process, arbitration offers more flexibility, because parties can often choose their arbitrator(s), who might also have a background different from law studies. Parties can usually decide on other procedural issues – thus tailoring the arbitral process for each particular dispute (ibid., p. 319)[32]. In some forms, a board of three arbitrators is formed where each party chooses an arbitrator and then the two selected arbitrators choose a third together. Such flexibility allows arbitration to finish in a shorter time than adjudication with a written award which generally cannot be appealed. These characteristics explain the success of arbitration in all fields, as, for example, in the construction industry, where the time required by the processes within the juridical system could cause the failure of projects or enterprises. Not surprisingly,

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[31] Arbitration is also the first ADR practice that was established in the U.S. In 1920, the first modern contract arbitration law passed in New York, and in five years was followed by other fifteen analogous laws in as many states. By that time, Congress enacted the U.S. Arbitration Law, "which remains the basic commercial and maritime arbitration law" (Barrett and Barrett 2004: 81). Moreover, in 1926, the American Arbitration Association (AAA, see www.adr.org) was founded; nowadays, it is the leading provider of commercial arbitration services in the U.S..

[32] Such flexibility is typical of arbitration since its origin. Barrett and Barrett (2004: 17) quote the first Irish commercial arbitration law (enacted in 1698). According to this law, merchants were allowed to choose arbitrators who shared their travel and commerce knowledge: "It may be lawful for all merchants, traders and other desiring to end by arbitration any controversy, sute or quarrels – for which there is no other remedy but by personal action or sute in equity, to agree that their submission of the matter to the award or umpirage of any person or persons should be made a rule of any of his Majesty's courts of record, *which the parties shall chuse*" (emphasis added).

one of the most famous cases of international arbitration in the construction industry is that of the building of English Channel tunnel, in which French and English companies collaborated. In the project, it was decided that any dispute arising during its construction would have been settled by a Dispute Review Board through arbitration (Redmond 2007). Parties were obliged to accept the dispute review board's awards and proceed with the building process; thereafter, they could appeal these awards to a court, but this second passage was not allowed to block the development of the project[33]. It has often been recognized that one of the major advantages of arbitration is the fact that, in any case, it guarantees some sort of resolution of the dispute (Ross and Conlon 2000). In this case, the tunnel was completed with success in 1997.

Negotiation is the only ADR practice that in principle does not foresee external interventions in the conflict, but which the parties try to manage themselves. Differently from all other dispute resolution practices, negotiation is normally applied when the dispute has not yet become an extreme conflict because it presupposes that the parties are able to deal with each other and speak to one another.

When the parties are not single individuals but are constituted of groups of persons, in general, a representative from the group is chosen to negotiate with the counterpart. This is the case, for instance, of commercial negotiation and of international negotiation between countries[34].

The most prominent studies on negotiation have originated from the research group called *Project Of Negotiation* (PON, www.pon.harvard.edu), founded in 1980 by Roger Fisher, officially recognized by Harvard University in 1983 and now based at Harvard Law School and involving numerous schools and departments in the Boston area. The Harvard model of negotiation is currently considered to be one of the fundamentals of the study of conflict resolution practices. This model was first introduced in the foundational work called *Getting to Yes* by Roger Fisher and William Ury in 1981 and was further elaborated on in the updated version of this research (Fisher, Ury and Patton 1991) as well as in a number of other publications (see in particular Susskind, Mnookin, Fuller and Rozdeiczer 2003; Patton 2005). The strength of the Harvard approach lies in its introduction of a concept of negotiation, called *principled negotiation*, which presupposes the possibility of finding an agreement that truly respects the parties' interests through direct communication between the parties themselves. In other words, the hypothesis underlying the model is that human beings

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[33] I owe the description of the details of this mechanism to Tim Hardy, Head of CMS Cameron McKenna's Litigation department (London), who presented it during a workshop at the V World Mediation Forum international pre-conference in Crans-Montana on September 7th, 2005.

[34] In the latter case in particular, one of the crucial points becomes choosing the right representative for negotiation, as Meyer (2004: 114-115) shows discussing the Oslo negotiation process between Israelis and Palestinians.

are able to express their interests, work in order to realize them and, when possible, find options that consent mutual gains. Negotiation (including bargaining) is thus deprived of any negative moral judgment, and becomes the practice enabling such an encounter of desires.

In *mediation* a third party neutral, the mediator, intervenes in the conflict in order to help parties reach a mutually agreeable resolution (see Kovach 2005). The process of mediation, in its institutional form, is normally concluded with a written agreement that is legally binding. Differently from negotiation, mediation foresees the presence of a third party who does not assume one of the conflicting parties as constituency, but work as a third neutral. The mediator is thus equally distant – or, as it is sometimes said by mediators themselves, *equally close* – to each party. In contrast to arbitration, the mediator has no power to impose a conflict resolution outcome on the parties and he does not aim at suggesting any decision to them. For this reason, the mediator's role has often been described as the role of a "facilitator" of a resolution process which is co-constructed by parties who know their conflict and are responsible for the content of their discussion, whereas the mediator only has to guarantee its form (Haynes and Haynes 1989: 3). The role of the mediator, however, is not any easier, and his/her engagement is not less involving. Being responsible for the process, the mediator must not only guarantee that the parties communicate in their usual modality – be it more or less constructive – but that the *quality* of their argumentative discussion is provided for (Greco 2005a). While the mediator helps parties discuss, he/she is confident that "verbalising individual positions and stories provides the speaker and listener with an opportunity to develop a greater understanding of underlying needs and to stimulate higher-level reasoning" (Herrman, Hollett and Gale 2006: 22).

As in negotiation, thus, the resolution of the conflict is expected to emerge from the parties' discussion. But in the cases handled through mediation, the conflict has already escalated so much that it is not possible for the parties to handle it without external help. Hence the intervention of a third neutral, whose function is intrinsically paradoxical: though being the catalyst (possibly) allowing the resolution of the conflict, in fact, the mediator does not personally contribute to the co-construction of a given resolution. His/her role is limited to helping parties find their own way to a reasonable discussion and conflict resolution. Within this narrow manoeuvring space, the huge value of the mediator's work appears as allowing blocked communication and common reasoning to restart and offering the possibility of re-establishing endangered relationships.

As already mentioned, the practice of mini-trial can turn into mediation if parties wish to. Thus, it is clear that ADR practices are not necessarily mutually exclusive, but can be combined if parties feel that their initial choice did not work with their case. In

this respect, some hybrid forms have been introduced, such as *arb-med* and *med-arb* (Ross and Conlon 2000). The distinction between these two procedures depends on the different temporal combination of the mediation and arbitration practices; different sequences imply different levels of a party's control over their decision, therefore these two procedures differ consistently. Med-arb, probably the most common hybrid form of ADR, consists of a first mediation phase followed by arbitration if mediation fails to secure an agreement by a predetermined deadline (ibid., p. 417). Arb-med is opened by an arbitration hearing; the arbitrator's award, however, is not disclosed to the parties unless they cannot reach an autonomous agreement through mediation (ibid., p. 418). Both procedures present specific strengths. According to Ross and Conlon (2000: 425), arb-med has a higher motivational capacity on the parties who feel they may lose control over the the outcome if they do not find a mediated solution, whereas med-arb is less costly and time-consuming and provides a higher level of compliance with the eventual arbitrated decision.

Finally, the particular role of the *ombudsman* must be illustrated. As other ADR forms, ombudsman services precede the ADR movement and have been incorporated in it in the last decades. The origin of the ombudsman service is found in the Swedish constitution dated 1809 where it was conceived as a service to citizens who could so pursue grievances against the executive and administrative offices of government. The ombudsman model then migrated to other Scandinavian countries and, in the 60s, to the U.S. (Stieber 2000: 50-52). Similarly to arbitrators, ombudsmen are third parties who are asked to intervene in a conflict that cannot be managed directly by the parties involved. They listen to the parties' view on the conflict, try to interpret their needs and, in the end, give a recommendation for conflict resolution which is similar to the arbitral award, except for the fact that parties may not be compelled to follow it[35].

From the point of view of argumentation, the ombudsman's recommendation is thus an argumentative text that presents a solution and tries to support it with reasons based on evidence from the case at hand. The final decision on the conflict depends on how much the parties have been persuaded by this recommendation.

Since the recommendation must be based on their knowledge of the case and not only on the parties' presentation of it, ombudsmen are generally given the investigative power necessary for giving a clear picture of the case they are evaluating and are responsible for making recommendations for the improvement of conflict management practices within the organization they work for (Shelton 2000: 89-90). In this sense, ombudsman work, ideally, has effects in the long run, helping to prevent structural

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[35] One of the critiques that can be made against the ombudsman system is the fact that it is not clear how to define a *successful* intervention (Harrison 2004).

sources of conflict and repeated episodes within the same conflictual relationship (Wagner 2000: 100; van Roosbroek and van de Walle 2008: 299-300).

Often, ombudsmen intervene in conflicts between people who have asymmetrical power relationships, or who are differently positioned in an organizational hierarchy, such as an employer and an employee, a university professor and her students, and so on. In all these cases, ombudsmen's interventions aim at resolving the dispute in a just way. They attempt to do this by presupposing a sort of symmetry between all the parties, based on the assumption that everybody has the right to express his/her reasons and to be treated fairly. In this respect, the ombudsman's intervention is similar not only to arbitration, but also to mediation, since it ideally helps users "restore their dignity and confidence in the democratic process" (Brophy 1998, qtd. in Gadlin 2000: 45). In contrast to mediators, however, ombudsmen tend to be based *inside* an organization (an institution or a company) and provide their services to people working in it; therefore, the ombudsman's service has been defined as an "*internal* dispute resolution mechanism" (Harrison 2004: 313, emphasis added). This possibility is largely exploited by big organizations, like for instance universities[36], states or other political institutions[37], and large companies and institutions, such as banks[38] or newspapers[39]. The internal dependence of the ombudsman, who is an *agent* of the organization, requires that he/she is recognized and trusted throughout the community, which can be acquired from experience and life within the community itself (Shelton 2000: 83). Moreover, the ombudsman, as a third person, must show independence, impartiality, and guarantee confidentiality (ibid). Of course, however, the disadvantage of such an internal system may lie in the fact that when the ombudsman is exclusively hired by the management, he/she might be suspected of having a conflict of interest when asked to make a suggestion against the management itself. In this sense, earning the trust of the employees is a delicate issue. Some corrective measures to this problem have been introduced. For instance, in some North American universities, the ombudsman is jointly hired and paid by the student associations and by the faculty.

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[36] Stieber (2000: 51) reports that the number of ombudsmen in U.S. and Canadian universities exceeds 150 units.

[37] The European Union foresees an ombudsman service to which all European citizens and residents in member states can directly address a complaint (see www.ombudsman.europa.eu).

[38] Since 1993, a Swiss banking ombudsman has been established by the Swiss Banking Association for all complaints raised against banks in Switzerland. In an interview given in 2007 and reported on the Swiss banking ombudsman website (www.bankingombudsman.ch), the current ombudsman Hanspeter Häni declares that "The number of cases has in fact risen continually over the last five years", which indicates the success of this service.

[39] See the website of the Organization of News Ombudsmen: http://www.newsombudsmen.org/. An analysis of newspaper ombudsmen nowadays in different geographical and cultural areas is presented in Elia (2007).

All in all, mediation shows to have, in relation to the other ADR practices, some specific features that, taken together, make it an unicum. The positioning of mediation within the realm of the ADR practices, indeed, is important for the definition of this practice, and has therefore been tackled by theoretical studies (see in this relation the different proposals presented in par. 3.2.1.1.). As a first approximation, it can be said that mediation, differently from negotiation, foresees the intervention of a third neutral in the parties' process of conflict resolution. Differently from arbitration and ombudsman, however, the third has no power to impose a decision; therefore, the parties remain the principal interlocutors in the communication process that may bring to the resolution of the conflict, while the mediator assumes a delicate and discreet role of facilitator. This opens the way to reflect on the power of communication and argumentation, as a successful mediator, by means of pure discursive instruments, is able to catalyze the parties' change of attitude, which allows resentful disputants to become cooperators involved in a communicative discussion oriented towards the resolution of their conflict. In this discussion, the arguments for resolving the conflict are oriented to the parties themselves, who need to be persuaded by them to accept a given solution. This makes communication and, in particular, argumentation, a privileged perspective for understanding mediation.

2.4.1 Conflict resolution goes online: a note

Recently, some alternative dispute resolution methods, in particular arbitration and mediation, have developed in an online mode, based on the use of e-mail, phone[40], chats and videoconferencing (Conley Tyler and Bornstein 2006: 334); these practices are commonly indicated with the acronym of ODR (Online Dispute Resolution). The spreading of this distance approach to conflict resolution had its origin in the context of business (Syme 2006: 346), in which it is still most widely employed, even though some applications also in other fields have been tried (Conley Tyler and Raines 2006). Some of the disputes addressed online are automatically resolved with the use of artificial intelligence applications that help manage the discussion; others request the intervention of human third parties. Though ODR encounters a certain level of diffidence from disputing parties (Nadler 2001) and from many mediators (Raines 2006), its success in a significant range of cases, at least within the business context, is proven. Probably, this sort of diffidence is at least partly due to the introduction of a technological innovation[41].

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[40] Since March 1, 2008 a new service offered in the U.S. provides instant help through conflict resolution by phone. See http://www.instantassist.com.

[41] In front of a technological innovation that is introduced within a community, there is always a percentage of the population that is resistant to it due to different reasons. The process of acceptance and adaptation to innovations has been studied in diffusion theories. For a detailed presentation

The most famous service of online dispute resolution is probably the one related to the online market eBay (www.ebay.com) provided by Squaretrade[42] (www.squaretrade.com)[43]. According to the company website, these ODR services are advertised as convenient because of their of time and money saving attributes: "A cost and time efficient way of solving problems with eBay transactions", whereby "problems are typically resolved in about 10 to 14 days". Of course, these reasons are particularly attractive for disputes that do not involve a strong interpersonal relationship between the parties, who do not normally know each other personally.
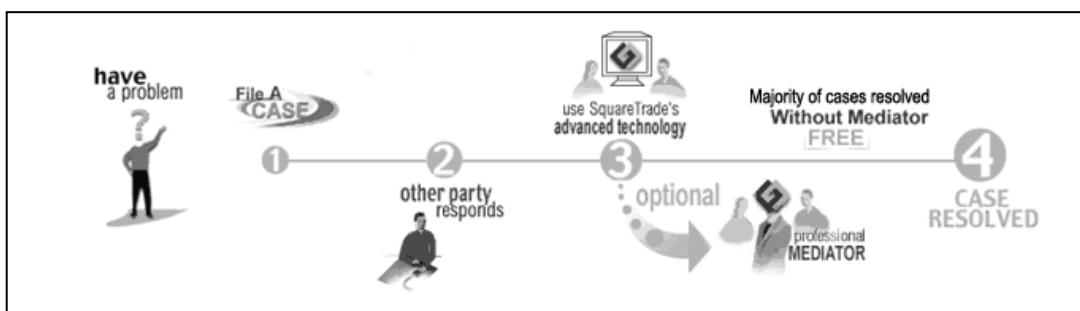
Figure 1: Illustration of ODR procedures for disputes related to eBay commercial transactions provided by Squaretrade (see www.squaretrade.com)

Nowadays, the most controversial topics about ODR concern the "human side" of technology-based dispute resolution and the role of emotions and interpersonal relationships (Hammond 2003; Raines 2005; Raines 2006) as well as the problem of accreditation and lifelong learning of online arbitrators and mediators (Conley Tyler and Bornstein 2006). The significant role of the study of argumentation for constructing effective ODR tools has been discussed in Walton and Lodder (2005), Walton and Godden (2006) and Lodder and Vreeswijk (2004).

2.5 Different contexts of application of mediation

Albeit the underworld of informal mediation practices (see par. 2.1) is a flourishing and dynamic environment that would constitute an interesting object of

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specifically focused on communication technology, which also include ODR technology, see Cantoni and Di Blas (2006: 140-151).

[42] Direct negotiation by the parties, supported by an online tool, is provided for free; mediation is offered in more difficult cases in exchange for payment.

[43] Squaretrade offers its services for disputes between buyers and sellers on eBay, but it cannot handle disputes between clients and the eBay management.

study, the majority of present day studies concerning mediation are focused on *formal* (juridically institutionalized) practices, in particular as applied to *interpersonal*[44] conflicts (Herrman, Hollett and Gale 2006: 21). In part, the relative lack of information about informal practices of mediation certainly makes it difficult to approach them scientifically. Some of them really pass unnoticed. Other ones, like processes of mediation in international contexts, are kept as secret as possible for the sake of their very success (Princen 1992a). However, the focus on ADR techniques, and, within this context, on formal practices of mediation is primarily due to the increasing importance of the alternative dispute resolution methods in various social contexts and at various levels. For the same reason, the present investigation is also focused on formal mediations of interpersonal conflicts.

Although there are several studies devoted to single application fields of mediation, a complete and systematic overview of the whole panorama of mediation experiences is still lacking. Such an overview is nevertheless necessary in order to figure out the social relevance of this conflict resolution practice.

Therefore, a synthetic proposal for a classification of the main contexts in which mediation is applied has been elaborated in the present investigation and will be illustrated in the pages that follow. The list of application fields mentioned below follows the terminology that has emerged from practice and from studies in mediation. Such terms, taken as a whole, do not constitute a homogeneous taxonomy; the categorization tends to priviledge those areas in which mediation has been more successfully established. In general, the names tend to highlight either the major issue that has given rise to conflict (like in *business mediation*, or *environmental mediation*) or the context where mediation is applied (like in *family mediation* or *community mediation*).

Generally, in all fields, mediation services can either be offered by individuals (who are frequently lawyers or psychologists) in the form of a private consultation service[45] or they can be completely or partially funded by public institutions which often support mediation centres offering services free of charge or at an affordable price.

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[44] These studies on mediation and other ADR techniques do not exclude in principle the application to the context of international mediation in principle, although the most common field of application chosen in these studies is interpersonal conflict.

[45] Private mediation services are sometimes very expensive, though they vary a lot according to the location of services. For example, the American Arbitration Association reports hourly mediation rates varying from $ 125 to $ 800 depending on the mediator selected, and with a four-hour minimum charge for a mediation conference (see www.adr.org/sp.asp?id=33581). Consider that such rates are in force in the US, where mediation is relatively widespread and well-known. It must be remembered, however, than even if some mediators cost as much as lawyers, if two parties decide to go to a mediator together instead of individually seeing a lawyer, the final consultation cost is cut in a half, as parties normally share it.

Family mediation is probably the most affirmed field of application of mediation[46] (Jones 2005). As reported in Parkinson (1997: 48), the British Legal Aid Board lists the main issues that may be linked to this kind of mediation: (1) whether the marriage/relationship is saveable; (2) divorce/separation; (3) where children should live; (4) arrangements for contact; (5) money/property; (6) accommodation; (7) parental responsibility; (8) other (e.g. contact by grandparents and the equivalent of specific issue orders). This list is worth quoting because it includes both saveable marriages and divorce and separation issues, thus enabling family mediation to work as a way to constructively deal with conflict within a family[47] as well as to manage divorce and post-divorce arrangements. In practice, however, most of family mediation cases refer to *divorce mediation* and *child custody mediation* (which normally takes place some time after the post-separation agreement)[48]. This is probably due to the fact that divorcing couples know that they will have to turn to the external help of the court to proceed, whereas spouses experiencing conflict within their relationship may be more reluctant or shy in seeking external advice before the conflict has irremediably escalated[49]. In comparison to the juridical system, family mediation offers swifter solutions[50] and, most importantly, the parties' empowerment, as they are allowed to manage the outcome of their dispute by themselves (Bailey and Robbins 2005), obviously however, within the boundaries imposed by the law. Empowerment is often a very delicate question in divorce mediation, since parties, although they have broken their marital relationship, want to discuss the best solution possible for the future of their relationship, especially if they have children (Cigoli and Scabini 2004; Marzotto and Tamanza 2004). Even intuitively, it is better that parents find an agreement upon a reasonable solution for their children, rather than having a judge imposing some (more or less abstractly pre-defined…) solution on them.

Almost thirty years of family mediation have proven positive results (Kelly 2004), though mediation does not apply to all possible family conflicts; for instance, in cases of domestic violence, the use of mediation may be questionable (see Parkinson 1997).

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[46] In Ticino, where a real culture of mediation is nowadays slowly developing, the majority of mediated cases are divorce mediation cases. Divorce mediation is practiced at the "Centro Coppia e Famiglia" in Mendrisio and in Locarno, as well as at the "Centro delle Mediazioni" in Lugano.

[47] Interestingly, the well-known conflict resolution scholar Jeffrey Z. Rubin wrote, together with his wife Carol Rubin, a book entitled: *When families fight: how to handle conflict with those you love*, aiming at preventing and managing conflict within a family (see Rubin and Rubin 1989).

[48] Folberg and Milne (1998) and Folberg, Milne and Stalem (2004) present collections of studies on divorce mediation from different disciplinary points of view, and tackling different issues. Haynes and Haynes (1989) and Kressel (1994) report on actual cases of divorce mediation.

[49] Moreover, in several professional traditions and socio-cultural contexts, couples who do not want to separate are sent to family therapy rather than to mediation.

[50] In many countries, in fact, mediated agreements are immediately given legal enforceability by a court order.

Family mediation is used in a number of countries and legislation varies accordingly[51]. At this point, it is important to mention the fact that, while in the U.S. some experiences of mandatory mediation have been tested (the most famous case being that of California, where, since 1981, divorcing couples are forced to try mediation before going to court, see Kelly 2004: 4) in Europe, though family laws depend on single states, the Committee of Ministers of the Council of Europe promoted a Recommendation to the Governments of Member States about family disputes stating, among other things, that mediation should not in principle be compulsory (Roberts 2005: 512-513).

Equally important and widespread is *business mediation*, or *commercial mediation*[52]. Barrett and Barrett (2004) claim that the origin of business ADR in the United States was due to the anti-Federalist stream, and, in particular, to Thomas Jefferson, who believed that the common law system inherited from the motherland was inefficient and unjust in business disputes. Jefferson himself acted as a mediator in some disputes, believing that "the American experiment in self-governance required creative solutions to difficult issues and selfless compromises to bridge differences and discover common ground" (ibid., p. 49).

Important evidence on business mediation in Europe is presented in Singer (2004) and Filler (2006), who consider, in particular, Great Britain, Scandinavian countries, Germany, France and Austria. The introduction of ADR procedures into European business disputes was fostered by the European Commission in 2002[53]. In Switzerland, official rules for commercial mediation were introduced by the Chambers of Commerce in April 2007; these rules, in turn, refer to the European code of conduct for mediators.

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[51] In relation to the variety of legislations on family mediation, it is significant that the latest directive of the European Union on civil and commercial mediation (Directive 2008/52/EC of the European Parliament and of the Council, May 21, 2008) aims at creating a framework legislation for cross-order disputes, but does not interfere with the legislations of the member states on internal matter (see Article 1.2): "This Directive shall apply, in cross-border disputes, to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*)".

[52] In Italy, mediation services in this field (and, often, also in the field of labour-management relationships) often go under the label *conciliazione* (conciliation, see Uzqueda and Frediani 2002: 8). As an example, see the very recently established project *Conciliamo*, promoted by different associations for developing the use of mediation in the area of Milan (www.progettoconciliamo.it). This is probably due to the fact that, in Italian, the word *mediazione* quite naturally recalls above all the so-called "mediazione immobiliare", i.e. the activity of inter-mediation in the process of selling and buying houses.

[53] See the Green Paper on alternative dispute resolution in civil and commercial law, http://europa.eu/eur-lex/en/com/gpr/2002/com2002_0196en01.pdf.

By the way, it is important to distinguish proper business mediation as an ADR practice from the quasi-homonyms business or commercial *(inter-)mediation* and *financial intermediation.* In the former use, a third party intervenes in a business deal (for instance, in the real estate, in the selling and buying of land, agriculture products, and so on) and helps parties negotiate and reach an agreement. Though this practice is indicated with the term intermediation, or even directly *mediation*, it cannot be considered part of ADR practices. In fact, it is applied to cases of conflict of interest which have not degenerated into proper interpersonal conflicts (see the discussion on conflict degeneration in par. 4.2.4). However, such activity deserves to be mentioned since, like proper mediation practice, it partakes in the effort to make two parties' desires and needs be met and recognized

In the latter and quite different use, the term *financial intermediary* is specifically attributed to those institutions, like banks, trusts and insurance companies that allow the virtual encounter between a surplus of capital and an entrepreneurial initiative that needs some funding[54]. In this case, the intermediated parties do not need to know each other; their relationship is normally established only with the financial intermediary, who is in charge of deciding which transactions can be of use for them.

The so-denominated *construction mediation* can be considered a specific case of business mediation concerning construction work contracts. Parties who sign a contract of this kind may choose to include a clause stating that any possible disputes will be handled by a mediator.

Another specific field within economics is constituted by *finance*, whereby the economic exchange is oriented towards the creation of new value rather than to the distribution of given amounts of resources (Barone-Adesi 2002). The specificity of this field of application deserves special mediation projects that take into account this category of conflicts; in this sense, a specific category like *financial mediation* should be introduced. However, the mediation of financial conflicts is nowadays included in business mediation and is not sufficiently recognized. Nonetheless, mediation is actually applied in this kind of dispute, as shown for example in Krivis (2006: 175-184), who describes a case of mediation in a conflict over company acquisitions; in fact, mergers and acquisitions are contexts in which conflicts often arise (Cohen et al. 2006; Palmieri 2008). The importance of conflict resolution for listed companies is also analysed by

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[54] See the articulated and informative definition of *financial intermediary* given in Mishkin (2004:29): "Funds can move from lenders to borrowers by a second route, called *indirect finance* because it involves a financial intermediary that stands between the lender-savers and the borrower-spenders and helps transfer funds from one to the other. A financial intermediary does this by borrowing funds from the lender-savers and then using these funds to make loans to borrower-spenders. […]. The process of indirect finance using financial intermediaries, called *financial intermediation*, is the primary route for moving funds from lenders to borrowers".

Cutler and Summers (1988), who show how litigation expenses can turn into huge financial losses that go beyond the expenses of lawyers and adjudication. Not coincidentally, the American Arbitration Association considers accounting issues within its field of intervention[55], while the Swiss Banking Association established an ombudsman service in 1993[56]. Furthermore, the European Union has established a network, called Fin-net, for resolving cross-border financial issues out of court (see http://ec.europa.eu/internal_market/fin-net/index_en.htm). But mediation in finance, as a whole, remains an underinvestigated field, which has not received the specific attention it deserves.

Employment mediation, or *labour-management mediation* in the U.S. has developed quite autonomously since the early twentieth century. The Commission on Industrial Relations, working in the U.S. between 1913 and 1914, concluded that workers had not received a fair share of the increase of wealth gained in the years between 1890 and 1912 (Barrett and Barrett 2004: 86-88). This situation produced dissatisfaction with work conditions and, in particular, with the way of handling labour-management disputes. In 1917, the U.S. Conciliation Service (USCS) was created with the purpose of mediating labour disputes. However, it was the two World Wars and the labour shortage due to the loss of men to military service which determined an enormous increase in the use of ADR (and, in particular, arbitration and mediation), because it enhanced the employees' negotiation power towards their employers. After the Second World War, the USCS, which had been under the Labor Department, was replaced by the Federal Mediation and Conciliation Service (FMCS), an independent agency. Typical applications of labour-management mediation were the coal mines and railroad construction (Barrett and Barrett 2004); today, however, this kind of mediation is also applied to a number of other areas of work. Part of this field of mediation is labour grievances mediation; in the United States, one of the pioneers of the application of this kind of mediation was Stephen B. Goldberg, who conducted an experimental study in the framework of the coal industry with Jeanne Brett (see Brett and Golberg 1983; Ury, Brett and Golberg 1998a; Goldberg 1989). This category only concerns disputes between employers and employees, while mediation of workplace conflicts normally goes under the category of community mediation (in particular, organizational mediation). A thorough evaluation of the effectiveness of mediation in employment dispute resolution, and an overview of the different applications currently present in North America is presented in Bingham (2004).

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[55] See the document: "Resolving professional accounting and related services disputes — A guide to Alternative Dispute Resolution" by the American Arbitration Association (http://www.adr.org/si.asp?id=4134).
[56] See Footnote 38.

In relation to labour disputes, it is worth mentioning the Swiss example as an unique way of handling conflict in the international panorama. Since 1937, in fact, the *Peace of work* agreement was introduced (initially in the machine and metal work industry), which nowadays regulates labour-management relationships in almost all industrial sectors a negotiation-based cooperative style (Broussolle 2006). The spirit of this agreement intends to focus on the parties' common values that must in any case be preserved despite any union or management contraposition[57]. In other words, parties are committed to actively search for a cooperative win-win solution to their problems, while avoiding violent or hostile behaviours (including strikes)[58]. In this way, "within the OECD, Switzerland turned out to be the country with the lowest labour conflict rate" (ibid., p. 3).

In North America, the label *community mediation* indicates the mediative handling of disputes within a community, for example a neighbourhood[59], a small town, a workplace, an association, and so on. Different kinds of conflict can thus be included in this category, normally covered by civil law; for instance, disputes between private individuals over property rights, like the boundaries of front and back yards (like in the example discussed by Honeyman, Goh and Kelly 2004), the use of a path, or over noise or other forms of harassment conflicts between friends or colleagues, struggles between different groups of stakeholders (e.g. the young people in a small town against the older people) and so on, for an estimated amount of 100'000 mediated conflicts per year in the United States (Hedeen 2004: 101). Some of these conflicts are dealt with by professional mediators offering private services; more often, especially in the United States, these conflicts are dealt with in public centres, usually managed by volunteer mediators, or in specific "community projects" (Nowell and Salem 2004: 400) whose goal is to make justice accessible to everybody[60]. Hedeen (2004) provides a rich overview of the history

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[57] I owe to Mauro Martinoni (interview with the author, August 27, 2008) this interpretation of the peace of work agreement.

[58] Collective labour agreements, sometimes including peace clauses, are a typical Swiss instrument for the maintenance of the work peace. Collective agreements have "a binding power close to a real contract". They do not represent an unstable truce in the framework of labour negotiations. Instead, they represent "a true commitment for a definite period" (Broussolle 2006: 4). Some examples of collective labour agreements are reported in Schweingruber (1979: 14-73).

[59] In Italian, the expression "community mediation" is translated not only with the (unhappy) correspondent *mediazione comunitaria* (or, sometimes, *mediazione sociale*), but also, even more often, with *mediazione di vicinato* (neighbourhood mediation). This mirrors the most common form of disputes that are handled in the Italian context, where different projects of mediation within urban areas have shown to be successful. The most famous case is certainly the Casa di Conflitti (Conflict House) in Turin, where mediation and other forms of conflict resolution are experimented with in the context of urban development, social peace, and integration of foreign communities (see Bertoluzzo 2006).

[60] A very specific use of community mediation is that which involves the police; policemen can, if trained, work as informal mediators of civilian conflicts or send conflicting parties to community

and present situation of community mediation programs in the U.S. while evaluating their benefits as well.

Other cases of this nature are handled informally by third neutral parties not formally trained as mediators who are interested in the resolution of the dispute out of personal or institutional reasons. Cases of this kind are sometimes reported by the media, which acknowledge their importance for the construction of society. For instance, on July 16th, 2007, the Wall Street Journal Europe published an article narrating the informal mediation practice of Sait Sanli, a Turkish former butcher famed for mediating conflicts in his community (Shishkin 2007); Mr. Sanli, reports the newspaper, "charges nothing for his peacemaking services", as his interest in mediation comes from roots of personal experience in conflict and revenge: "You cannot imagine what type of life this is […]. You are always panicking because you think you are going to die". For these reasons, Mr. Sanli, who does not officially work as a mediator, is working to improve relationships in his community. Another case of informal mediation, which is quite well-known within the European artistic world, even though it concluded with the non-resolution of the conflict, is the intervention of the Milanese prefect of police Bruno Ferrante between the members of the orchestra of the Teatro alla Scala and Riccardo Muti, who resigned from the position of artistic director of the theatre on April 2nd, 2005[61] after nineteen years of service, following repeated episodes of incomprehension with the members of the orchestra who opposed his artistic programs[62].

When parties involved in community mediation are constituted by groups, the planning of the intervention must be very careful, because mediators must verify that group representatives are really communicating with their constituents during the entire process. Different techniques can be used in this case, like the so-called *fishbowl system* (Figure 2), where representatives[63] usually sit in an inner circle and talk to the mediators and the other members of the group sit around the outside of the circle and listen to the

mediation centres (Volpe and Phillips 2003); positive results have also been obtained by mediating complaints made against the police by citizens (Berger 2000).

[61] See Corriere della Sera (April 2, 2005), "Scala, Riccardo Muti si è dimesso".

[62] This episode gave rise to a vivid discussion on Italian newspapers. In particular, the *Corriere della Sera* directly hosted a crucial passage of the conflict, by publishing a letter written by Riccardo Muti to the orchestra members (Muti, March 8, 2005). They also reported about the reactions of all the stakeholders (Panza, March 9, 2005; Panza, March 12, 2005 Panza, March 16, 2005; Dubini, March 23, 2005). In particular, the point of view of the orchestra players during one of the crucial phases of the conflict has been reported on the newspaper *Repubblica*, see Zonca, March 12, 2005). Some comments are also reported about the mediation by Bruno Ferrante (Panza, March 21, 2005; Panza, March 31, 2005), who could not avoid that Muti eventually resigned, but also managed to find an agreement with the orchestra players after he resigned (Zonca, April 23, 2005).

[63] Thomas Flucher (interview with the author, July 30, 2008), a Swiss mediator (and the head of *KoMeT - Kommunikation - Mediation - Teamentwicklung, Systemische Organisationsberatung* in Sempach Station- CH) who has participated in a number of complex group mediations, witnesses that, in his experience, it is important to have at least two representatives for each party-group. Indeed, if a group selects a single representative, he/she will be more likely disavowed soon.

discussion. The inner circle, thus, represents the "boundary" of the discussion itself, by selecting its participants. The representatives can speak with their constituents, but these latter cannot take part in the discussion, at least as long as they are outside the circle; sometimes, however, some empty chairs are left in the inner circle, in order to allow external listeners to enter the discussion if they wish to do so[64].
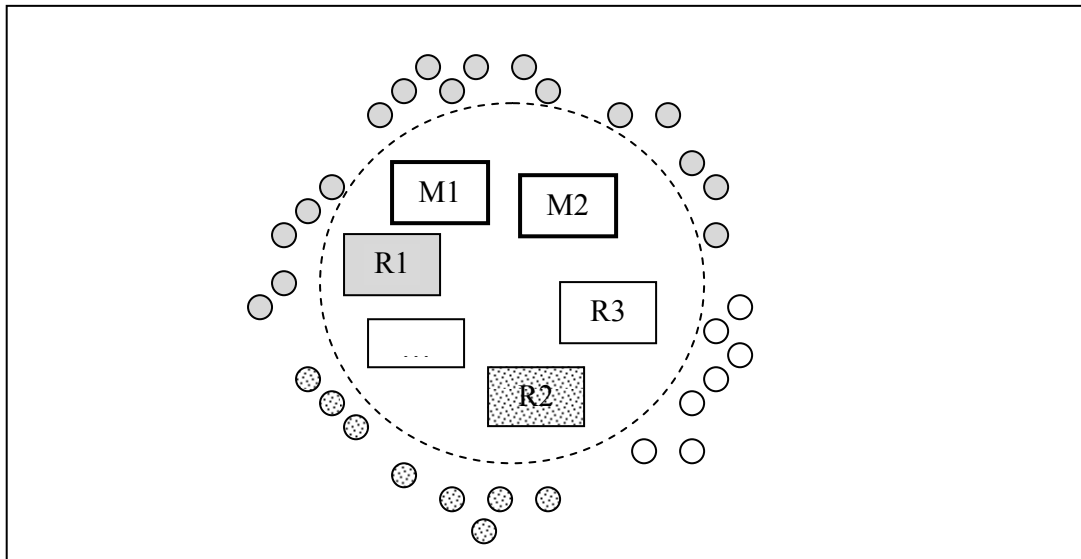
Figure 2: Representation of mediation between groups using the fishbowl system: the mediators (M1 and M2) are in the inner circle with the representatives of the three involved groups (R1, R2, R3), plus one empty chair. The other members of the three groups sit on the outside.

Community mediation, in any case, is a very broad term, which only indicates that the conflict treated through mediation had its origin in a context which can be considered a community: a group of persons bound by some cultural tie, but also by a common goal. In this sense, particular forms of mediation, such as *school mediation*, *organizational mediation*, *health (medical) mediation*, *environmental mediation* and *public disputes mediation* are considered in the present research as sub-categories of community mediation.

Mediation in school institutions has been established in the last two decades in the U.S. as part of a lager program in conflict resolution education (CRE). One aspect that has shaken public opinion in various Western countries in particular is the presence of bullying behaviours of young people. Conflict resolution education programs "have educated children about constructive approaches to managing conflict in their schools and communities" (Jones 2004), among which are problem-solving and *peer*

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[64] Thomas Flucher, interview with the author, July 30, 2008.

mediation[65]; these activities tend to be integrated into the school curricula (see the case of the National Curriculum Integration Project presented in Compton 2002). Research on the introduction of conflict resolution education in elementary and middle schools show seemingly positive results (Bickmore 2002; Jones 2004[66]), which, in some cases, have brought the administrative offices to support these programs. The problem of funding such initiatives, however, remains significant and is often resolved through private initiatives (see the examples provided in Batton 2002; Compton 2002; and Ford 2002).

The need for a constructive approach to conflict, however, is not only perceived in the U.S. In Europe, for instance, different peer mediation programs have been implemented and tested, always in a local and sometimes non-institutionalised way (Guy-Ecabert 2002; Martello 2006).

Furthermore, peer mediation is not the only possible application of mediation in school. In general, when the conflict concerns the families and the teaching staff, from the methodological point of view, it is handled as any other community conflict.

Organizational mediation is a form of intervention within enterprises or institutions, in which the mediator is called to intervene in interpersonal conflicts between the collaborators, which may also influence the success of the organization itself. In this form, mediators often intervene directly by taking care of the broader context of the organization where the conflict between two or more individuals has arisen. In this sense, the conflict resolution intervention may require subsequent steps, whereby mediation is preceded and followed by one-to-one conversations or other forms of colloquia; mediation practitioners sometimes borrow the systemic intervention concept of *Interventionsarchitektur* (intervention architecture) to indicate the delicate phase of planning that precedes the intervention (Konigswieser and Exner 1998; Königsweiser and Hillebrand 2008: 54-67)[67]. A particular context where this kind of

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[65] In the school context, the expression *peer mediation* refers to the fact that mediators are students who are trained to manage disputes among their "colleagues".

[66] Jones (2004) provides a comprehensive description of U.S. CRE's goals and methods as well as of the scientific analyses of the effectiveness of CRE programs; Batton (2002: 492) reviews current legislation on CRE in the U.S.

[67] *Interventionsarchitektur* is a wider process indicating the process of planning of the structural framework of the intervention in systemic business counselling: "Auf der Ebene der Gesamtplanung, der Architektur, sind Entscheidungen zu treffen, was das Ziel der Beratung ist (sachliche Dimension), wer die relevanten Akteure dabei sind (soziale Dimension), wie lange das Projekt laufen soll (zeitliche Dimension), wo die geplanten Ereignisse stattfinden sollen (räumliche Dimension) und welche Symbolik dabei angemessen ist (Königsweiser and Hillebrand 2008: 56). In the case of mediation, the architecture metaphor refers to a mediator's plan that concerns the development of the process of dispute resolution, which can involve private colloquia with the director of the concerned organization and other subjects, a presentation of the mediation practice, and some encounters with the concerned parties after the conclusion of the mediation process, which help them verify how the application of their final agreement works in practice. Even the process of mediation can require internal design: for instance, the mediation colloquia may be subdivided into issues, and the various parties may only take

mediation is often required is those enterprises, indeed very widespread, that are managed and owned on a family basis[68], where interpersonal relationships are intertwined with other relationships (like that of family members that work together). Here, often, different kinds of conflicts arise, for instance between the different generations of co-owners and co-workers of the business in question that require complex mediation interventions.

Health or *medical* mediation is also a form of community mediation which refers to mediation processes taking place in hospitals and analogous institutions. In such institutions, mediation may be required at the organizational level, if the conflict concerns the relationship between colleagues (doctors, nurses, administration etc.), but it can be also strictly related to the core dynamics that justify health institutions as such: the doctor-patient relationship. In the latter case, in particular, medical mediation is applied in cases of medical malpractice which give rise to conflicts between physicians and their patients or the patients' families. Some successful experiences have been reported in the United States in particular, where the mediation of medical malpractices[69] is progressively establishing (see Dauer and Marcus 1997; Liebman and Hyman 2004; Hyman and Schechter 2006). To mention a very-well known example, which can also been considered a pioneer initiative in this field, the *Rush co-mediation model[70]* has been applied since 1995 in the Chicago metropolitan area and a success rate of 80% has been reported (Brown 1998).

Environmental mediation concerns disputes tied to the preservation of the environment (Orr, Emerson and Keyes 2008). In fact, often, environmental respects conflict with urban development or industrial plans, so that the same territory turns out to be sought after for different purposes (see the prototypical cases illustrated in

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part in those issues that are relevant to their activity (Flucher 2008, interview with the author). From the argumentative point of view, designing an appropriate *Interventionsarchitektur* can be interpreted as setting up the fundamental pragmatic conditions of the argumentative discussion that has to be take place in mediation, by selecting its pragmatic goal, its participants, the maximum time that parties have to reach an agreement, and so on.

[68] Rosita Marinoni, the head of the mediation centre Gregory Bateson based in Milan, gave a seminar on this topic on May 10th, 2006 at the mediation centre in Lugano. She reported her experience as an organizational mediator, observing that, in the large majority of her interventions, she had to tackle family conflicts, interpersonal conflicts originating in the workplace, and business conflicts at the same time. See also Marinoni (2001), and Canyameres I Snahuja (2002).

[69] As Liebman and Hyman (2004: 23) report, since 2002, some states, among which Pennsylvania, Florida and Nevada recently introduced specific laws imposing a statutory duty on hospitals that patients be notified by the medical facility after an event that causes serious injury". Mediation can be applied in order to facilitate the settlement procedure following the disclosure.

[70] The Rush model is based on a co-mediation of two lawyers selected in order to generate the highest collaboration possible. The rationale behind this approach is that a lawyer who mainly handles plaintiffs' medical malpractice cases is paired with a lawyer who primarily defends such cases.

Vraneski and Richter 2003). A vivid environmental dispute has developed in Ticino in the last decades – but saw a moment of particularly vivid struggle in Fall 2007 – about the Piano di Magadino, the largest flat area of the canton which covers a wide zone between the lake Maggiore and the town of Bellinzona. This area, since it was drained (mostly in the first half of the XX century), has traditionally been devoted to agriculture and, more recently, to open air sports and recreational activities, so that it is considered "the green lung" of Ticino. For years, proponents of a new road connecting the Locarno airport to the highway and, therefore, substituting a narrow and over-crowded road, have been going head to head with ecologists, farmers, and other stakeholders who contend that this area should be preserved[71]. The conflict was recently "blocked" – but certainly not resolved – with a popular vote on September 30th, 2007[72], whereby it was decided that the current proposed plan for the new road would not be accepted[73]. Afterwards, it was decided to solve the problem through an adjudicative procedure: the Swiss Confederation will decide on the issue (and pay for a new road from the Locarno airport to the highway) by 2010. A mediation intervention, in this case, would have constituted a less coercive possibility of intervention, though it would certainly have been very complex because of the different subjects taking part in the conflict. The presence of a multiplicity of stakeholders is a typical feature of this kind of dispute, as shown by Levine (2005) who has analysed a case of environmental mediation concerning the creation of a natural park in an area traditionally devoted to agriculture in Israel[74]. Not

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[71] The conflict over the mobility policies in this area and their possible consequences on the natural environment has reached the status of a public controversy in Ticino. Not coincidentally, the Cantonal library of Bellinzona has devoted a specific dossier, including the legislative aspects and the political interventions that have contributed to the controversy (see Armari Quadroni 2007).

[72] The topic submitted to the popular vote was a legislative decree whose text (in Italian) is available at: www.ti.ch/generale/dirittipolitici/votazioni/2007/30092007/decreto.asp?menu=3b.

[73] The Government and the Parliament were in favour of the "Variante 95" (the website substaining this position, www.variante95.ch, is no longer available to the public), but they encountered a very strong opposition, in particular, from the association "Via la superstrada dal piano" (www.vialastradadalpiano.ch; see also www.apmagadino.ch). The arguments in favor and against the proposals submitted to the popular vote were collected in a set of arguments (*argumentarium*) offered to the population for their information about the vote (the flyer with the *argumentarium* is available at: www.ti.ch/generale/dirittipolitici/votazioni/2007/30092007/documenti/opuscolo.pdf). The exact results of the popular vote are reported on: www.ti.ch/generale/dirittipolitici/votazioni/2007/30092007/cantone.asp.

[74] The complexity of this case shows how, in this kind of disputes, many issues are present at the same time. Levine (2005) provides a detailed description of the conflict, which is briefly recalled in the following, and a thorough discussion of the methodology used in the mediation process. The Israeli government proposed to create the Nahal Tzalmon natural park in the Galilee region of Northern Israel. The area was mainly privately owned; moreover, three large family groups, among which two were Christian Arab families and one was a Muslim Bedouin family, inhabited the proposed park area. These families traditionally used the soil for agriculture, and opposed the opening of the park which would mean that any exploitation of the land would have to be given up. Moreover, non-Jewish Israeli residents felt discriminated against by the government, which was accused of having privileged the settlement of Jewish Israelis. The contraposition between this group of stakeholders and the State

coincidentally, setting the table for mediation – by deciding who would take part in the discussion – has been one of the more delicate issues in the process (ibid., see in particular p. 50 and pp. 58-61).

Some environmental mediators, such as Lawrence Susskind, contend that the expression *environmental* mediation narrows the scope of their interventions too much, and prefer to use the expression *public dispute mediation*, which not only covers strictly environmental issues (like pollution, preservation of natural areas, and so on) but also conflicts over the allocation of scarce resources, policy priorities on environmental standards, quality-of-life standards (health, security, freedom) and so on (Forester 1994: 311). The boundaries of public dispute mediation, however, are quite undefined; sometimes, it overlaps with political and international mediation or with community mediation, or even with business mediation[75]; probably, the interpretation most likely depends on how much the conflict becomes a public issue for a community[76].

Political conflicts can also be handled through mediative instruments, thus giving rise to the category of *political mediation*. These conflicts can be internal (intranational) conflicts, like civil wars, as in the examples mentioned in Collier and Hoeffler (1998 and 2005) and Reuveny and Maxwell (2001), as well as the well-known case of post-apartheid in South Africa, which was approached with the instrument of truth commissions (Meyer 2004)[77]. More often, they are international conflicts (Lall 1966;

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of Israel resulted in a symbolic but also very material conflict. In the 1980s, Arab-Israeli inhabitants of the region began to plant olive groves wherever they could in order to hinder the government from the possibility of confiscating territories because they were agricultural areas. The Jewish National Fund responded to the olives with pines: they planted pine forests throughout the country, trying to occupy as much soil as possible. This contraposition also became dangerous for the environmental equilibrium of the zone. In the summer of 2000, the Joint Environmental Mediation Service (JEMS), involving Israeli and Palestinian mediators, was hired to mediate this issue. The process lasted two and a half years and resulted in a successful agreement.

[75] For instance, the Public Dispute Program (PDP), which is based at MIT and part of the PON program, foresees different projects about public disputes, among which "several deal with international conflict (i.e. war and peace). Some deal with issues in the workplace. One focuses on business negotiations of various kinds" (see http://web.mit.edu/publicdisputes/pdp/index.html).

[76] In this respect, the role of mass media is crucial, as they can influence "the conflict, the parties, the decision makers, and the public as a whole" (Vraneski and Richter 2003: 245). More specifically, media influence is twofold: it is due, in part, to their role of platforms, which echo and make conflicting parties' positions public; furthermore, media itself can become a party in conflict, by taking a public position and thus exploiting their role of institutional agents in social reality (see Rigotti and Greco 2006a about the twofold nature of the media).

[77] Technically speaking, truth commissions are not mediation interventions, but they may be considered instruments endowed with a mediative inspiration. They are based on a communicative process where selected representatives of the groups that participated in the conflict are asked to tackle the issues that might have given rise to it and to find out which interests and concerns of both conflicting parties are still unresolved. The goal of this group investigation is to find out a possible basis for future collaboration: "Wenn es hier geschafft wird, eine neue Basis des Vertrauens und der

Bercovitch and Rubin 1992; Bercovitch 2002; Touval and Zartman 1985a and 1985b); in this case, mediation takes on the tradition of international diplomacy (see also par. 2.3)[78]. This kind of dispute requires a specific status of the mediator, as well as specific and deep knowledge of the disputants' situation. In this respect, the international mediator is a very specific and delicate figure (see Princen 1992a). The recent experience of the final liberation of Ingrid Betancourt from the FARC felony has indirectly opened a view on the delicate and often controversial work of international mediators. An episode touched in particular Switzerland, as Jean-Pierre Gontard, after having been for years a mediator working behind the scenes between the Columbian government and the FARC, has been accused of having paid the rebels and an investigation has been started in Columbia about his activities[79].

Victim-offender mediation (commonly referred to as VOM) originates from the U.S. victim-offender reconciliation programs (VORP) taking place in the mid-1970s and 1980s (Umbreit, Coates and Vos 2004: 279). The first VORP case was handled in Elmira, Ontario, in 1974 (Zehr 2004: 305). Originally, these programs were not part of the alternative dispute resolution movement; however, they shared the view of this movement, insofar as they aimed at creating a more human and fair justice system in an effort which is part of the so-called *restorative justice* approach[80] (Umbreit 2001); thus, soon, alternative dispute resolution practice began to be experimented with in this field

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positiven Beziehungen zu konstruieren, hat dies auch positive Auswirkungen auf die Makroebene des Konfliktes" (Meyer 2004: 58).

[78] For the high complexity of the case approached by diplomatic corps, traditionally, the term *mediation* in this field refers to a practice in which the third neutral helps parties reach an agreement in a more active way. International mediators, in particular, often suggest possible solutions to the dispute, or help the involved parties write their agreement, while these functions are not so present in interpersonal conflicts.

[79] The official document by the Federal Authorities of the Swiss Confederation in which Gontard's work is defended has been made public on July 15, 2008 (see the press release "Possible investigation against Swiss mediator in Colombia" on the website of the Swiss Confederation). Following the suspects on the Swiss mediator, however, the Columbian government renounced to the Swiss mediation efforts, started about ten years before (see "Colombia: consegnati documenti su Gontard", *Ticino news*, July 10, 2008). Indeed, one of the delicate aspects concerning Gontard was certainly his partly ambiguous role of a mediator officially sent by the Swiss government, but who was not part of the government itself (see Schira on the *Giornale del Popolo*, July 7, 2008). In the classification proposed by Bercovitch (1992), mediators of international disputes can be *individuals*, *states* or *international institutions* (Bercovitch 1992); this episode, however, seems to suggest that the boundaries between these categories can be fuzzy, and that this could turn out in a problem for the management of mediation itself. Gontard, in fact, was a trusted individual with an official link to the Swiss government, but he was not the foreign minister nor had he any other official charge.

[80] Restorative justice moves from the idea that justice is not just defining who is right and who is wrong, but also trying to restore, as much as possible, human relationships; it tends to focus on individuals' stories and reasons (see Umbreit 2001 for a discussion of this topic).

as well. The main reason for the introduction of VOM is the belief that "traditionally, victims were left out of the justice process" (Umbreit, Coates and Vos 2004: 287); on the one hand, this produced negative effects on their satisfaction with the justice system, while, on the other, it also took away the offenders' possibility to understand the consequences of what they had done: "the offender seldom noticed that his/her actions had an impact on real, live people" (ibid.). Indeed, the "power of encounter" (Zehr 2004: 305) between victims and offenders allowed by VOM enhances satisfaction with the judicial outcome (Umbreit, Coates and Vos 2004). Certainly, VOM, in comparison to other applications of mediation, is a more delicate process and requires careful planning; often, for instance, the parties' encounter is preceded by pre-mediation sessions.

In the U.S., two-thirds of cases referring to VOM are misdemeanours[81]; the remaining third are felony cases (ibid., p. 284). A large majority of programs involves juvenile offenders (ibid., p. 283). In Europe, legislation on VOM varies widely; in Switzerland, for instance, VOM was introduced at the Federal level on February 1st, 2007, but it is limited to juvenile crimes.

Intercultural mediation is a quite broad category including those conflicts – sometimes denominated *ethnic* conflicts – that, though they may be included into at least one other application field, are characterized by a strong presence of an intercultural dimension between the parties and/or the mediator and the parties, whereby the mediation process is significantly affected.

It has been noted (Avruch 2003: 352) that cultural factors in mediation have only just received the necessary attention[82]; today, some studies on culture and mediation are available, particularly based on case studies and lessons learned.

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[81] Volpe and Strobl (2005) explore the (not so frequently successful) use of VOM in cases of September 11 related conflicts (such as anti-Arab harassment) occurring in the U.S.

[82] This observation seems to be confirmed by the caution with which some international programs dealing with conflict tackle the issue of culture. Consider, for example, the Development Assistance Committee (DAC) Guidelines "Helping prevent violent conflict" published in 1996 and updated in 2001 by the international Organization for Economic Cooperation and Development (OECD). Now, this organization is vocationally devoted to the promotion of economic expansion and world trade in member and non-member countries (see Article 1 of the convention signed in Paris on December 14th, 1960, which came into force on September 30th, 1961). The DAC is a specialised committee within OECD having to do in particular with "past, current and potential violent conflict" (OECD 2001: 3). It is stressed that the guidelines primarily focus on collective conflicts among groups within or across nations and, to some extent, they also cover state violence against groups and individuals (ibid., p. 13). Such situations are quite likely to involve cultural issues. Indeed, the "promotion of multiculturalism" (ibid., p. 19) is included in the recommendations of the guidelines. However, a marginal role is given to this variable in comparison to other ones, such as the economic or institutional environment. In OECD (2001: 88) it is said that "ethnic, religious and cultural differences, in themselves, seldom cause conflict", but they can "offer fertile ground for political exploitation" in cases of "heightened tensions resulting from socio-political conflicts". This view on

Indeed, conflicts including significant intercultural dimensions are particularly interesting for investigating the potential of mediation as pacifist resolution to the dispute, as they often exclude other adjudicative solutions, involving deep issues that concern the parties' identities. It is often the case of protracted and difficult conflicts which require high commitment also on the side of the mediator (Broome and Murray 2002; Lowry and Littlejohn 2006). From these studies, it clearly emerges that the adequacy of mediators' cultural competence and their capacity of dealing with cultural issues represents an important step towards conflict resolution (Herrman, Hollett, Gale and Foster 2001: 145; Honeyman, Goh and Kelly 2004; Greco 2005b).

Indeed, often, in the case of protracted intercultural conflict, the mediation experience is a long process involving steps and techniques that are not used in other fields. For example, the organization of *workshops*[83] where representatives of the parties in conflict are invited to talk to each other and express their reasons is frequently used (see the examples presented in Lowry and Littlejohn 2006; Noel, Torfin Shoemake and Hale 2006; and Desivilya and Gal 2003). The organization of such workshops often rests on a widely accepted interpretation of Allport's (1954) notion of *contact hypothesis*: according to this view, favouring contact between opposing parties decreases the insurgence of prejudices[84]. In some cases, adversary parties do not take part in the same workshop, either for external constraints imposed by the conflict context (see the Cyprus case described by Broome and Murray 2002, in particular pp. 80-83) or because mediators do not believe that the contact hypothesis is fitting the conflict in question. Church, Visser and Sheperd Johnson (2004), for instance, criticize the application of the

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cultural identity as subordinate to other (socio-political) factors seems to need a more in depth exploration.

[83] Beyond the use of workshops, other methodological experiences have been reported in relation to intercultural mediation, such as university programs ideally based on intercultural understanding (Bacani 2004) and media broadcasts like TV cartoons for children (Shochat 2003).

[84] Indeed, it must be said that Allport's view on contact and prejudice is more complex and more interesting. The author declares that "merely assembling people without regard for race, color, religion, or national origin" does not automatically eliminate prejudice (Allport 1954: 261). On the opposite side, casual and superficial contacts in contexts in which "segregation is the custom" seem to increase prejudice rather than dispelling it (ibid., p. 263). The exact formulation of the so-called contact hypothesis is the following: "Prejudice (unless deeply rooted in the character structure of the individual) may be reduced by equal status contact between majority and minority groups in the pursuit of common goals. The effect is greatly enhanced if this contact is sanctioned by institutional supports (i.e., by law, custom or local atmosphere), and provided it is of a sort that leads to the perception of common interests and common humanity between the members of the two groups". The hypothesis, though supported by some (experimental) evidence, remains, really, a hypothesis. As such, it would be interesting to test it further. It is certain that it provides some interesting insights, like the focus on a common goal and the search for a common humanity.

contact hypothesis to the intervention in Northern Ireland and propose the organization of single-identity workshops[85].

Intercultural mediation in a proper sense must be distinguished by the so-called linguistic-cultural mediation, which is a practice of conflict prevention which has established, especially in Europe, mostly in the health[86] and educational domains (see Castiglioni 1997 and Martello 2006 respectively). The linguistic-cultural mediation is conceived of as an enrichment of an interpreter's work, whereby the interpreter is not only requested to translate from one language to another, but also to bridge the two cultures whose corresponding languages he/she is translating. This attitude, which could be understood as cultural sensibility, often also includes the ability of preventing potential intercultural conflicts, and helping parties understand each other's reasons. Such an endeavour is however on the boundary of the proper mediation practice, since it cannot be understood as an intervention aimed at resolving conflicts.

2.6   Scientific and professional approaches to the study of mediation

2.6.1   Disciplinary perspectives

The ADR practice of mediation as an object of scientific investigation has been approached from a variety of disciplinary perspectives. Scholars coming from different disciplines had different reasons for being interested in conflict resolution and different issues have raised their attention. In general, however, a certain connection between the theory of mediation and practical spin-offs can be envisaged in the majority of disciplinary areas. This situation mirrors the fact that mediation emerged as part of a social movement with the intent to change the reality of dispute resolution. Here, all the major disciplines dealing with mediation and their major concerns and acquisitions will be briefly examined.

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[85] Church, Visser and Sheperd Johnson (2004: 250) argue that different reasons, in general, may render the contact hypothesis inadequate for a specific conflict. Most importantly, they claim that ignorance is not the sole cause of conflict. Furthermore, in the specific case of the Northern Ireland conflict, a sort of "politeness" would hinder direct conversations on the problematic issues: "There is a widely acknowledged, culturally embedded reticence to speak about things that would recognize identity or difference" (ibid.).

[86] Castiglioni (1997: 18-19) highligts the connection between linguistic-cultural mediation and the integration of foreign citizens: "La necessità della mediazione linguistico-culturale si iscrive in un quadro che contempli l'inserimento a più livelli della popolazione straniera, di cui l'aspetto sanitario rappresenta sicuramente un fattore fondamentale. Tuttavia l'esperienza di altri paesi europei insegna che la necessità della mediazione linguistico-culturale non si riduce a questo ambito, ma si estende a tutti gli aspetti che riguardano una politica complessiva di inserimento della popolazione immigrata".

In introducing their recent *Handbook of dispute resolution*, Moffitt and Bordone (2005: 5-6) quote the following disciplinary fields as relevant to mediation: law, psychology, ethics, economy, mathematics and, in particular, game theory, anthropology and sociology, history, journalism, political science and theology. Menkel-Meadow (2005: 13) adds international relations and peace studies to this list. Journalism is quoted, in Moffitt and Bordone's (2005: 6) view, because of "the important role(s) of the media in shaping the views of those in disputes".

Juridical studies have been primarily interested in mediation as an Alternative Resolution Practice. As already stated, many of the ADR pioneers, like Fuller, saw ADR as a real *alternative* to an overwhelmed and, sometimes, unjust justice systems. As a consequence, the fields of application that have much interested law scholars are those in which mediation offered a real possibility to the court: first and foremost, divorce and child custody mediation, where several lawyers felt frustrated from a process that in any case seemed only to produce unhappy outcomes (Breidenbach 1995; Friedman 1993)[87]; but also, for reasons of swiftness and manageability, commercial and business mediation (Bühring-Uhle, Kirkhoff and Scherer 2006) and employment mediation (Brett and Golberg 1983; Ury, Brett and Golberg 1998a; Goldberg 1989). Because the role played by interpersonal relationships is of primary importance in family conflict and the conflict is difficultly resolved without taking the whole set of desires and concerns of the individuals involved into account, family mediation (in general, including non-divorce issues, and also mediation of conflicts in family businesses) has raised the concern of psychologists (Haynes and Haynes 1989; Parkinson 1997; Kelly 2004; Cigoli and Scabini 2004; Marzotto and Tamanza 2004; Saposnek 2004). For analogous reasons, community mediation (Bertoluzzo 2006; Nowell and Salem 2004), in particular in the education domain (Jones 2004) has also been approached from the psychological perspective. The focus on the relationship between the parties, approaches such as *transformative mediation* (Bush and Folger 1994), and the adaptation of therapeutic

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[87] In this relation, see the narration of Gary J. Friedman, a former adversary lawyer who then "converted" to mediation (Friedman 1993: 4-5): "After practicing successfully in this [adversarial] mode for five years in the early seventies, I began to grow increasingly disheartened, particularly when I saw the human costs of the litigation process – relationships seemed only to be worsened by the adversary experience. I often felt estranged from my clients, even after what was clearly a 'win'. Though the results were usually what I considered good, the clients often felt dissatisfied. Something was missing – for both of us. I wanted to be interrelating with clients on a level of mutual respect, but I began to see that the more wholeheartedly I acted on their behalf the more disempowered they became. [...] Another thing that disturbed me about the litigator's life was the high value placed on negative human qualities. Fear of losing face, of just plain losing, or of being sued by the client often seemed to be at least as powerful a motivator as the search for justice. But even worse, aggression, defensiveness, and blame were the main currency I dealt with as a lawyer, both in the way I approached opposing lawyers and in my interactions with my clients. And truth – which in my personal life I valued above all – was often considered irrelevant".

techniques based on the systemic approach is typical of psychologists tackling mediation. More in general, social psychologists have contributed to shedding light on the dynamics of interpersonal conflict (Deutsch 2002; Zittoun, Perret-Clermont and Carugati 1997; Grossen and Perret-Clermont 1994; Light and Perret-Clermont 1989; Perret-Clermont, Carugati and Oates 2004; Rijsman 2007; Arcidiacono 2007; this contribution is further discussed in par. 4.2.2.4.).

Commercial and business mediation, together with their "indoor" application in organizational mediation, also benefit from studies in the organizational and business fields. Economic studies tackle, in particular, the advantages of mediation in comparison to litigation (Cutler and Summers 1988); they also provide accurate reviews of the present situation of business mediation in different countries (Singer 2004; Filler 2006). Moreover, studies in economics helped developing theories of negotiation based on mathematical accounts, such as game theory, which contribute to a quantitative study of decision-making practices under conditions of uncertainty. These studies have sometimes been integrated, in particular, in the study of international disputes (Hopmann 1996).

Sociologists take the alternative dispute resolution methods into account when they concern positive social dynamics (such as restorative justice, see Zehr 2004), as it is often the case in community mediation, environmental mediation, public policy mediation, etc. (Volpe and Philips 2003; Volpe and Strobl 2005).

As already mentioned, scholars in political sciences address the application of mediation in the field of international relations in its various forms (Lall 1966; Bercovitch and Rubin 1992; Bercovitch 2002; Princen 1992a and 1992b; Touval and Zartman 1985a and 1985b).

The communicative dynamics of the mediation activity have been deepened in particular by argumentative studies (see par. 3.2.2.2.) Critical argumentation, indeed, shows to be the core component of the parties' decision making over the resolution of their conflict. From the point of view of the contextual interest, argumentative studies are transversally oriented, in that they are not interested in the dynamics of single fields of application of mediation, but rather tend to focus on the general communicative and argumentative dynamics bound to the figure of the mediator.

2.6.2   Towards the birth of a unitary research and teaching field

The following synoptic table summarizes the disciplines studying mediation in relation to their specific fields of application and the specific issues on which they elaborate.

58

	Most "typical" application contexts	*Main issues tackled*
Juridical studies	Family mediation; penal mediation; commercial and business mediation	Alternativeness (juridical status of the ADR practices), advantages of mediation in comparison to other forms of dispute resolution, educational background of mediators.
(Social) psychology	Family mediation; community mediation (school mediation), VOM	Conflict, restoring relationships.
Economics and finance	Commercial and business mediation, financial mediation.	Economic advantages for individuals, corporations and other institutions; conflict in corporations, mergers, etc; rationality of economic agents in conflictual situations.
Sociology	Community mediation, social dispute mediation	Restorative justice, social effects of mediation
Political sciences	International mediation, political mediation, social dispute mediation	Conflict, negotiation, role and personality of third parties in international processes, power issues.
Argumentation	Family mediation (divorce mediation), community mediation, business mediation. Virtually all fields	Quality of argumentation and quality of mediation. Mediators' communicative instrumentation for fulfilling their task.

Table 2: Disciplines approaching mediation, typical application contexts and main issues tackled

Recently, the various approaches to conflict resolution illustrated above have begun to converge into a more systematized multidisciplinary – if not yet truly interdisciplinary[88] – paradigm of studies of the conflict phenomenon and of the different ways of handling it. Such a multidisciplinary effort has produced outcomes both at the scientific and at the educational level. In the former, different scientific journals, such as the *Negotiation Journal*, the *Journal of Conflict Resolution* and the *Conflict Resolution Quarterly* (formerly: *Mediation Quarterly*), feature contributions from different disciplinary areas. In addition, they encourage the dialogue between the academic and the practitioners' worlds. Furthermore, some online providers have steadily increased their reliability as sources of information on conflict and conflict management; generally speaking, they collect materials (case-studies, articles, etc.) from various disciplinary

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[88] Rigotti and Rocci (2006: 156) distinguish between *multidisciplinary* approaches, which offer "an interesting aggregate of different points of view", and *interdisciplinary* approaches, which aim "at building up and realising an epistemological design, ideally corresponding to the deep nature of the object". Ideally, the multidisciplinary orientation that conflict resolution studies are assuming today can be viewed as an intermediary step towards the establishment of a well-thought interdisciplinary approach.

areas. Prime examples are the website of the already-mentioned PON consortium (http://www.pon.harvard.edu) and the *Conflict Resolution Information Source* (CRInfo, to be read as "See our info", http://www.crinfo.org/), which is provided by the *Conflict Information Consortium* based at the University of Boulder, Colorado (see http://conflict.colorado.edu/). Other websites offer gateways to specific conflicts; for instance, resources on the Northern Ireland conflict can be found on the website of the *International conflict research* project of the United Nations University and the University of Ulster (INCORE, http://www.incore.ulst.ac.uk/), or at *Conflict Archive on the INternet* (CAIN, http://cain.ulst.ac.uk/), also based within the University of Ulster.

At the educational level, as Moffitt and Bordone (2005: 7) observe, the interdisciplinary perspective on conflict is very productive: "students can now study the disputing process in programs explicitly aimed at dispute and conflict resolution at both the undergraduate and graduate level at a number of institutions". This is particularly evident in North America, where courses on conflict resolution are nowadays quite numerous. The first institution that established a major in this field in 1982 was George Mason University in Virginia which now offers an undergraduate program, two graduate certificates, a master of science and a doctoral title in the subject. To mention another significant case, the schools participating in the PON consortium, all located in the greater Boston area, for the 2007-2008 academic year offered a total of 99 of courses on conflict resolution at the undergraduate, graduate, and continuing education levels. Moreover, three of the member schools (the University of Massachusetts Boston, the Cambridge College and the Brandeis University) offer interdisciplinary degrees or certificates in conflict resolution. But these examples are not rarities; in fact, degrees in dispute resolution and conflict management are nowadays offered by numerous universities not only in the United States and Canada, but also in Europe and, increasingly, in other areas of the world.

2.6.3   Professional careers: how to become a mediator

Gisela[89] is an adversarial lawyer who has been working with family law for about ten years in Lugano, Switzerland. During her second maternity leave period, just concluded, she has been reflecting on the fact that, often, approaching family conflicts

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[89] Gisela and Rudi are imaginary persons whose interests and motivations, however, are well representative of real people approaching the practice of mediation in today's society in Switzerland. Switzerland, in turn, can be taken as a paradigmatic example of the situation of mediators' professional training in Europe. The situation in the U.S. and Canada differs under the profile of the more established spreading of the mediation practice, but the contents and procedures of mediators' training are comparable.

through an adversarial procedure does not help involved people restore their relationship or, in case of divorce or separation, at least to keep it in terms of reasonable cooperation in order for the children to grow up in a serene environment as far as possible. She decides, thus, to reduce her working percentage and enrol in a mediation course. She attends the courses promoted at the Swiss University of Applied Sciences in her hometown. As a lawyer, she has one of the most frequent backgrounds of the participants in such courses, together with former psychologists; a few other participants come from other educational backgrounds (human and social sciences, economics, and so on).

After a training program of globally 360 hours (about 45 days), subdivided into a general course introducing the mediation attitude (164 hours) and a specific course on family mediation (196 hours), Gisela will obtain the title of "family mediator", recognized by the Swiss Confederation. Such title responds to a European quality standard elaborated by the European Forum of Family Mediators. The very title of *mediator*, indeed, is not legally protected today; in the present moment, various national and international organizations for mediation are collaborating for defining quality standards and providing accreditations that can help regulate the market of mediation offers[90]. In this relation, the situation with family mediation is more advanced, also given the large spreading of this practice; the European Forum of Family Mediators has set quality standards that are today applied by mediation associations in different countries. Business mediators are often accredited by the chambers of commerce, and thus follow a different path for acknowledgement of their practice. Much more confuse is the situation with other applications of mediation (community mediation, penal mediation…): in these cases, there is a title of generalist mediator which is recognized by the Swiss Confederation, but has no clear status as for its international acknowledgement. Moreover, family mediators automatically receive also this title, and can work as generalist mediators, while the reverse is not possible.

Rudi, a professional working in the field of insurance companies, has decided to start the mediation training at the same time as Gisela. As the kind of conflicts he has to deal with are mostly of business or community nature, he has no interest for a family mediation course, for which, by the way, he would also lack the necessary professional background[91]. He decides to get the specialisation in business and public dispute

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[90] In Switzerland, the issues of international acknowledgement of mediation training programs and quality standards are tackled in particular by the Federation of the mediation associations (www.infomediation.ch, see in particular the rules about the quality standards for mediators: http://www.infomediation.ch/cms/fileadmin/dokumente/de/Reglemente_und_Weisungen/anerkennreg l_dt_07.pdf).

[91] In order to get the title of family mediator, candidates must prove to have been working with families at least for two years before the beginning of the training program. This rule *de facto* limits

mediation. He is therefore only going to obtain the title of generalist mediator; but the current uncertain situation as for the certification does not bother Rudi too much. In fact, he does not intend to leave his current job and become a full-time mediator. On the opposite, he has realized to need mediation competences to deal with the cases he is confronted with in his professional practice.

Gisela and Rudi will thus follow a series of courses and intensive seminars, whose faculty is composed of experienced mediators; some of them may have academic experience and/or may have publications about mediation, but they are primarily required to be engaged in successful professional practices. In a field where human qualities are at least as relevant as technical skills, experience is a valuable source of inspiration for professional training. Faculty members normally partly rely on the literature of codified mediation techniques, and partly integrate it with personal reflections deriving from their own practice and from their educational and cultural background.

The courses that Gisela and Rudi will follow in the introductory program tackle a number of issues ranging from the history of mediation, to the negotiation and mediation techniques, to theory of conflict, to law issues, up to ethical and personal qualities required by mediation. As for communication techniques and skills, they are universally acknowledged as a fundamental aspect of mediators' toolkit; nonetheless, mediators teaching in professional courses rarely have some background in communication studies. Argumentation, though recognized in the literature, is not at the moment included in any professional course[92]. Specialisation programs focus on the selected context (family, economy, etc). In general, the teaching style is strongly oriented to a learning-by-doing modality, including role-playing simulations, case studies, and other exercises.

Once obtained the title of mediator, one has to keep up-to-date with continuing education seminars, and is expected to attend about 100 hours every three years. The continuing education offer is very rich and diversified, and, at the European level, also includes an international Master of Advanced Studies in conflict management, mediation and negotiation based in Switzerland, at the Institut Universitaire Kurt Bösch in Sion (www.iukb.ch); different institutions from all over Europe are collaborating to this program[93].

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the access to family mediation specialisation courses to lawyers, psychologists or social workers. Other candidates (for instance, teachers) are normally excluded.

[92] However, some of the software for Online Dispute Resolution are starting to consider argumentative dynamics (Lodder and Vreeswijk 2004).

[93] FernUniversität Hagen (DE), Katholieke Universiteit Leuven, Faculté de Droit (BE), Université de Sherbrooke, Faculté de Droit (CA), Les Heures – Universitat de Barcelona et Universidad de Murcia (ES), Université René Descartes-Paris 5 et Université Lumière Lyon 2 (FR), Università Cattolica di Milano, Facoltà di psicologia, Centro Studi Ricerche sulla Famiglia (IT), Université du Luxembourg (LU), Universidade Lusófona de Humanidades e Tecnologias (PT).

The focus on Gisela's and Rudi's respective possibilities of professional education gives a general view of the state of development of mediation in Switzerland and Europe. The development in North America is more advanced; nonetheless, the challenges and opportunities of mediation in that area are equally characterizing a situation in continuous progression. Legislations, requisites, certificates and training may also vary a lot depending on the application field and on the local law. The same is true for other areas of the world (South America and Asia in particular) in which mediation is acquiring a more and more well-defined juridical status. In general, dialogue and confrontation between practitioners belonging to different geographical, cultural and legal traditions is guaranteed not only through national professional organizations, but also thanks to international associations. Two prominent examples of associations regrouping a large number of mediators are the World mediation Forum (http://www.worldmediationforum.org) and the Association for Conflict Resolution (http://acrnet.org/). Each of them proposes regular conferences for all members to exchange experiences and reflection on their practice.

Recently, an original instrument that could be used for the education of new mediators has been proposed by a group of scholars who have been concentrating on a job-analysis[94] of the mediator's profession, in the endeavour of finding those techniques and strategies that are actually used and considered relevant by practitioners themselves (Herrman, Hollett, Gale and Foster 2001; Herrman et al. 2002[95]). This research is based on the consideration that "until now, we lacked detailed descriptions of what mediators do, what they need to know, and the skills they need" (Herrman et al. 2002: 45). This perspective, thus, represents a complementary approach to the definition of the constituency of mediation, which is elicited from the essential knowledge and skills that mediators should possess.

The specific method of the job analysis performed in these works, which are unique from the methodological point of view in the panorama of mediation studies, is based on Foster (1998), and encompasses mediators compiling diaries based on their direct experiences of cases (the methodology is described in Herrman et al. 2002). The analysis is mainly focused on knowledge that mediators feel important for their job and on skills, associated to such knowledge, which they consider necessary for a good

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[94] Job analysis is widely used in human resources management for the description of skills, knowledge and duties related to a particular job. It is used for evaluating the relevance of a specific job to the goals of an organization and in personnel selection. Of course, the more a job is established, the more the job analysis is invariant. In our case, the method is applied with a research purpose, as it is used to identify what the mediator's job is by asking to those who work as mediators.

[95] These articles report on a research project –"The Mediator Skills Project" – based at the University of Georgia, which also ended up in the preparation of an exam for testing mediators' knowledge. Such an evaluative effort, however, is perceived by the authors themselves as needing further development (Herrman et al. 2002: 44).

exercise of the practice. The adopted perspective, thus, is that of an internal meta-analysis of what mediators do and what they perceive as important.

A summary list of the results, presented in Herrman, Hollett, Gale and Foster (2001: 141), is reported in the following table:

Knowledge areas	Skill areas
Administrative Practices and Procedures	Administrative
Personal Skills and Limitations	Mediator Error Correction
Mediation Models	
Mediation Process	Mediation Process Management
Problem Solving Techniques	Problem Solving
Interpersonal Dynamics	Relationship Management and Encouragement
Theories of Social Change	Critical Thinking
Conflict	
Communication	Communication
Information Gathering	Information Gathering
Solution/Agreement Formation	Dealing with Information
Cultural Issues	Cultural and Diversity Competency
Power and Control	Power and Control
Inform/Disseminate/Educate/Teach	Education and Dissemination of Knowledge
Alternatives to Mediation	
Knowledge of Resources Outside of Mediation	
How to interact with People Outside of Mediation	
Ethical Issues	Ethical Issues

Table 3: Herrman, Hollett, Gale and Foster 2001:141.

64

3 Approaches to the conceptual analysis of mediation

In history, as seen in the previous chapter, mediation has been present in various and more or less institutionalized forms. By means of the analysis of the historical and present uses of mediation in its relation with other ADR practices, and of its current applications to a number of different contexts and types of conflict, some of the essential features of this practice have emerged. Amongst these features, for example, the fact that parties remain responsible for the resolution of their conflict and, as a consequence, at the communicative level, they are equally engaged in an argumentation process in which they constitute the ultimate decision-makers.

The analysis of the essential features of mediation should be further developed in order to arrive to a comprehensive ontological framework of this practice, which will be proposed in Chapter 4. Such framework, as announced in Chapter 1, constitutes a necessary basis to analyze the role and structuring of argumentation in mediation.

Now, a relevant source that can help in this task is constituted by all the approaches that, by reflecting on the mediation practice, aim at eliciting its essential (ontological) features and, somehow, to model it.

In fact, the establishment of professional mediation practices has been followed by a progressive process of awareness acquisition not only of the social relevance of this practice, but also of its specific features and of its possible role in the panorama of approaches to conflict management. On the one hand, as it will be shown in par. 3.1., the reflection on the practice has been elaborated from professionals themselves who, on the basis of their own experience matured in years of work with the parties, codify their remarks, normally concerning those strategies and techniques that they consider more effective in relation to the goal of resolving a conflict through mediation. At the level of textual production, the natural fruit of this kind of reflection is constituted by diaries (see a historically relevant example in Contarini 1864), how-to-do-it books, manuals and other forms of precept-based collections of practice-guiding tools. This type of literature has been having an enormous success since the origin of the ADR movement; first, because it has been the first occasion for society to start reflecting on the practice of mediation. And, second, because, still now, the professionals' remarks on their experience constitute a valuable source not only for the training new mediators, but also in relation to more theoretical approaches to the practice of mediation.

With the time, in fact, and in parallel with the scientific interest for conflict resolution studies and with the flourishing of academic proposals on this topic, a stream of theoretical and methodological reflection on mediation has started to be elaborated, and is nowadays well-established. The second part of this Chapter (par. 3.2) will offer an overview of these studies, which all can be said to contribute to the construction of an *ontology* of mediation by highlighting the essential factors that constitute this practice. In

particular, as will be shown in what follows, a comprehensive ontological framework of mediation will include a *scenario* of this practice, encompassing the individuals involved in the process and their relationships, in terms of institutional roles and interpersonal rapports (see par. 3.2.1); but it will also consider a *script dimension*, constituted by the development of a standard mediation practice (3.2.2).

Now, when considering models of mediation, a main problem comes to light: the single contributions, in fact, rarely present an endeavour to construct a comprehensive framework of mediation. Often, such models analyse in detail some specific aspects and thus they could be considered partial accounts of this practice; furthermore, the different theoretical proposals are put forward without, in the majority of cases, engaging in a real scientific confrontation[96]. In this sense, examining the various proposals requires the effort of comparing and organising them into a framework of mediation as comprehensive as possible, by focusing in particular on their commonalities and complementarities.

3.1   The precept-based approach: collections of practice-guiding tools

Since the beginning, the practice-driven reflection on mediation has been characterised by a focus on the strategies and techniques[97] employed by mediators in fulfilling their tasks within the process of conflict resolution. Being oriented to practice, in fact, this reflection tended to be conceived of as a training tool for mediators, and therefore included the relevant tools necessary for a satisfying conduction of a mediation practice. In this sense, this kind of approach, characterising the first systematisations and elaborations on mediation as part of the ADR movement, is strongly precept-based.

Significantly, as Barrett (1999) remarks, one of the first analyses of the mediator's job, written in early 1953, namely a report of the U.S. Federal Mediation and Conciliation Service (FMCS) in Detroit, consisted in a description of mediation techniques listed in order to explain the constituency of the mediator's work. These

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[96] Herrman, Hollett and Gale (2006:19) remark that: "The literature unfortunately lacks consensus with respect to definitions of key concepts and variables. A panoply of conceptual and operational definitions acts as a rich resource and a source of confusion for scholars and mediation practitioners. The array of scholars and practitioners writing about conflict resolution and mediation from so many disciplinary backgrounds and experiences produces a sense of fragmentation".

[97] A certain terminological variation is present in literature: some works refer to mediator *techniques*, others to *strategies*. In general, it could be said that both of these terms refer to possible mediators' purposeful behaviours (actions or set of actions) aimed at fulfilling his/her task. The term *strategy* refers to a plan elaborated in relation to a particular initiative, differently from *technique*, which indicates an instrument used within a strategy.

techniques were elicited by three young FMCS mediators stationed in Detroit[98] from a survey conducted on 23 mediators active in their area (which included Michigan and Indiana). As Barrett (ibid., p. 219-220) remarks, "the fact that FMCS mediators wrote *anything* in those early days of the professional mediation field is itself remarkable. For the most part in that era, mediators were too involved in 'doing' to reflect much on what it was they were doing"[99]. But it is also significant, we might add, that what they wrote was a list of *techniques*, elaborated on the basis of the standards of practice and intending to become a sort of handbook for mediators[100].

Beside this first investigation, the first decades of spreading of mediation have been characterised by numerous handbooks, manuals and other volumes dealing with the reconstruction of mediators' instrumentation of techniques and strategies (see for instance the informative works by Lall 1966[101] and Maggiolo 1985[102])[103]. The fact that such lists of strategies and techniques are proposed in practical handbooks and other professional texts is not coincidental. In fact, these accounts flower on long-lasting professional experiences, thus presenting the best practices of mediation as it is actually exercised nowadays. In this sense, the main purpose of this type of models is that of providing some instrumentation for the training and continuing education of mediation's practitioners. Krivis (2006: 313) indicates the main goal of these approaches by means of a clear metaphor: "Keep these tricks and techniques in your hip pocket and pull them out

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[98] The names of the three authors are David Tanzman, Irvin Gerard and Irving Paster (see Barrett 1999: 227, endnote 3). However, when they submitted the report to the regional director, they decided to remain anonymous and titled the document: "Report on the federal mediator: His responsibilities, functions, and techniques" (ibid., p. 220).

[99] Barrett (1999: 220) argues that a significant reason for the reluctance to write anything about mediation depended on the FMCS tradition of hiring mediators with little formal education and generally without college education. He remarks that the three authors of the report were indeed college-educated.

[100] Unfortunately, such aim could not be realised because of an inconvenient due to the unauthorised spreading of the report, which brought to the consequence that several mediators were embarrassed by clients who, having read the report, were able to identify the techniques they were employing. Thus, the regional director of the FMCS ordered to return all the copies of the unfortunate report which underwent a sort of *damnatio memoriae*, being also cancelled from the FMCS *Annual Reports* of those years (Barrett 1999: 221). J. T. Barrett rediscovered this document and reconstructed its story on the basis of a few copies that "survived".

[101] Lall's analysis of mediation techniques is drawn from his reconstruction of some major cases of international conflicts resolved through mediation (see Lall 1966: 84-100).

[102] See the author's preface (Maggiolo 1985: xvii) for understanding the object and purpose of this work: "This volume is a distillation of the experiences and techniques which the author has used in his cases spanning over 33 years as a full-time professional mediator. It is an attempt to assist not only those who contemplate entering this most challenging and dynamic field but also to articulate some of the approaches and techniques used by many practitioners".

[103] A comprehensive collection of the strategic moves at the mediators' disposal as they are listed in literature is offered in Wall (1981) and in two further developments of this work: Wall and Lynn (1993) and Wall, Stark and Standifer (2001).

when needed". But these approaches not only represent a precious heritage to new generations of professionals, but also a first attempt of reflection on mediation.

Now, there is a certain degree of consensus about mediation techniques and strategies; in other words, it could be said that, along the development of the practice, a sort of canon has been silently agreed upon; indeed, many correspondences can be found in different models. For this reason, considering an illustrative example is sufficient for giving quite a representative picture of this category. In this relation, the systematisation of Touval and Zartman's (1985a; 1985b) strategies that Bercovitch (1992:16) proposes as "the best taxonomy for the student of international mediation"[104], being actually quite comprehensive and detailed, largely represents this canon.

Within this taxonomy[105], strategies are organised into three main categories: *communication-facilitation* strategies, *formulation* strategies, and *manipulation* strategies. The first category includes those mediator's strategies that are explicitly understood as constitutive of the communication process. Some of them indicate direct interventions on the management of the discussion as for its themes and for the clarity and completeness of the information exchanged; for example, "identify issues and interests", "clarify situation", "supply missing information", "offer positive evaluations" and "allow the interests of all parties to be discussed". Other strategies describe in more meta-communicative terms the kind of relationship between the parties and the mediator that mediators have the task of fostering, based on trust and mutual understanding: "make contact with the parties", "gain the trust and confidence of the parties", "arrange for interactions between the parties", "avoid taking sides", "develop a rapport with parties", "develop a framework for understanding" and "encourage meaningful communication".

The remaining two categories are not explicitly labelled as communicative, though it is difficult not to link them to the management of the communication process, though considered from a more external (quasi-organizational) perspective. In this relation, in particular, *formulation strategies* can be reinterpreted as structuring factors of the communicative environment. Some of these strategies refer to the physical setting of the discussion: "choose meeting site", and "control physical environment". Others, like "control pace and formality of meetings", "establish protocol", "suggest procedures", "control timing", "deal with simple issues first", "structure agenda", "keep process focussed on issues" and "highlight common interests" refer to the structuring of the temporal and institutional environment of the discussion. Finally, some strategies take

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[104] The focus on international mediation mirrors both Touval and Zartman's as well as Bercovitch's major concern. Indeed, the relevance of this model as a training tool also touches other fields of application.

[105] The following list is taken from the systematisation of Touval and Zartman's approach presented in Bercovitch (1992). In presenting it, I have tried to highlight communicative implications of the listed strategies.

into consideration the parties as participants to the communicative interaction ("keep parties at the table"), considering in particular the emotional distress they may be experiencing ("reduce tensions" and "help parties save face").

The last category is constituted of *manipulation* strategies, i.e. of strategies aimed at changing the status quo of the conflict and founding a renewed relationship between the parties[106]. Amongst them, one can find strategies that are close to be very punctual communicative moves or speech acts like: "take responsibility for concessions", "make substantive suggestions and proposals", "make parties aware of costs of non-agreement", "suggest concessions parties can make", "help negotiators to undo a commitment", "supply and filter information", "reward party concessions", "press the parties to show flexibility", "promise resources or threaten withdrawal" and "offer to verify compliance with agreement". Other strategies are rather interpretable as subordinate communicative goals: "change parties' expectations", "help devise a framework for acceptable outcome" or "change expectations".

Some evaluative remarks need to be made on this account. First, as noticed above, and not surprisingly given the nature of mediation, also several of the strategies falling under points (2) and (3) turn out to be either constituted by communicative moves (like "suggest procedures" or "promise resources or threaten withdrawal") or by more articulated activities which are largely supported by communication (like "help parties save face" or "change expectations"). Some non-communicative actions like "choose meetings site" and "control physical environment" refer to the setting up of the environment for the parties' discussion, which is normally very much cared for by mediators (and is of particular relevance in international mediation). Clearly, while some techniques concern the very facilitation of the parties' discussion, other refer to the wise argumentative management of the communication process (like "deal with simple issues first"). In fact, the role of communication and, in particular, of argumentation, appears to be distinctively more significant than suggested by the labels of this taxonomy, and should be specified by means of thinner categories. Such a situation can be frequently observed in this kind of models, in which, often, some suggested moves, though they are not justified from the theoretical point of view, turn out to constitute, indeed, fine argumentative moves. Consider for instance the so-called *storytelling* technique proposed by Krivis (2006: 316):

"Tell the parties a story about another case or a similar situation. Use this technique to create an emotional connection you can build on during the negotiation, or to give them a reflection (positive or negative) of how their case might turn out".

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[106] In this use, the term *manipulation* is therefore deprived of any negative connotation.

From the argumentative point of view, such a move constitutes an argument exploiting a particular logical pattern, properly an *argument scheme*, which is based on a relation of *analogy* or *comparison* (Garssen 2001: 92) i.e. on the implications that can be drawn from the similarities between two situations. The strength of the comparison between the case in question and other similar situations handled by the mediator has a direct consequence, i.e. that of making the parties understand how their dispute may end (with good or bad outcomes respectively), given the principle of analogy. Indirectly, this move is, of course, suggesting to change the parties' behaviour; this suggestion is based on another type of argument scheme, founded on the reflection on alternative (positive or negative) possible worlds and on their implications. More specifically, as we will see more precisely in the argumentative analysis presented in Chapter 6, if parties are behaving in a way that will hinder the resolution of the conflict, the evoked logical principle is the following: "if a certain behaviour is undesirable (because it brings to undesirable outcomes), it should be interrupted". On the opposite, if parties are behaving positively, the principle is evoked according to which "if a certain behaviour is positive, it should not be interrupted"[107].

Another particularly important aspect arising from the argumentative analysis of this move concerns the construction of the mediator's *ethos* through a *causal* argument scheme[108], based, more in particular, on the relation between the effect and the efficient cause: in fact, recalling cases dealt with in the past directly points at the professional and human experience that the mediator is a carrier of; and this could certainly increase his/her authority as a conflict resolution professional.

All these aspects can be brought to light and further understood by means of accurate argumentative analyses. However, such level of reflection on the proposed techniques and strategies is not common in how-to-do-it studies of mediation. This probably represents the most evident limit of this kind of approaches[109]. It should be

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[107] The logical principles underlying the inferential structure of arguments represent, indeed, one of the most relevant topics tackled by the theories of argumentation. A detailed proposal at the theoretical and methodological level will be expounded in Chapter 5.

[108] Garssen (2001: 92) remarks that "In argumentation based on a *causal relation*, an event that is mentioned in the argument is presented as the cause of what is mentioned in the standpoint – or the other way around – while the standpoint is defended by showing that the latter is the result of the former – or the other way around. By presenting an accepted fact in the argument as something that leads to the event that is mentioned in the standpoint (or as something that is the result of that event), the acceptability of the arguments is transferred to the standpoint". In this particular case, the specific kind of cause which is evoked is the *efficient* cause, namely the mediator's professional skills and experience, which will produce good effects, i.e. a good mediated outcome of the dispute resolution process. It is widely acceptable that when the producer of a certain "product" (be it a physical product or even a communicative product, like a mediation process) is of proven experience, the product can be expected to be of good quality.

[109] In this relation, see also Jacobs (2002: 1405): "While there is a voluminous literature providing guidelines and general descriptions of appropriate mediator conduct, enacting the specifics of

considered, however, that in order to more thoroughly analyse the relevance of mediation moves from the argumentative point of view, it is first of all necessary to know what moves professionals actually value and employ. In this sense, the elicitation of mediators' techniques based on real practices is precious to the analyst of argumentation.

3.1.1   Strategies that define mediator profiles

In the framework of precept-based approaches, a significant stream of reflection has brought to the definition of different mediator "styles" corresponding to human and professional profiles determined on the basis of the strategies and techniques that mediators prevailingly adopt on the job (Brett, Drieghe and Shapiro 1986). In general, these reflections have a twofold prevailingly pragmatic goal: namely, on the one hand, to provide a classification of mediators that may help disputants and/or institutions to hire mediators who are appropriate to their case; and, on the other hand, to help mediators themselves increase their professional awareness by reflecting on their strengths and weaknesses[110].

The reflection on mediators' styles was initiated by the very-well known *grid model* proposed by by Riskin (1996), which in fact represents an attempt to specify the mediators' "profiles" or "characters" on the basis of the techniques they prevailingly adopt. The author declares to have introduced this grid out of different reasons. First, he claims that, in a time where the practice of mediation was less standardised than it is today, he wanted to "supply a vocabulary and set of concepts for distinguishing among disparate processes that were commonly called mediation" (Riskin 2003); in this relation, the model declaredly aims at the description of existing practices rather than at their evaluation. Then, the author also claims that the model could serve more practical reasons, such as help parties in conflict select a mediator, and mediators understand their work better; more, it should help program administrators in the selection and training of mediators and, in general, guide government organisations regulate the mediation practice (ibid.). The pragmatic fall-outs of this model, defined in the latter set of objectives, probably partly explain its success.

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mediator talk remains essentially a matter of applying commonsense reasoning and tacit knowledge about how language in interaction works".

[110] In this relation, some auto-evaluative tests have also been elaborated in order for mediators to discover their prevailing style. See for instance the following one: www.directionservice.org/cadre/krivis2.cfm.

The original structure of the model was based on two fundamental variables, corresponding to *continua* rather than to dichotomies (binary oppositions): the *role of the mediator* and the *mediator's definition of the parties' problem* (see Figure 4).

Role of mediator
EVALUATIVE

EVALUATIVE NARROW	EVALUATIVE BROAD
FACILITATIVE NARROW	FACILITATIVE BROAD

Problem definition NARROW (left)   Problem definition BROAD (right)

Role of mediator
FACILITATIVE
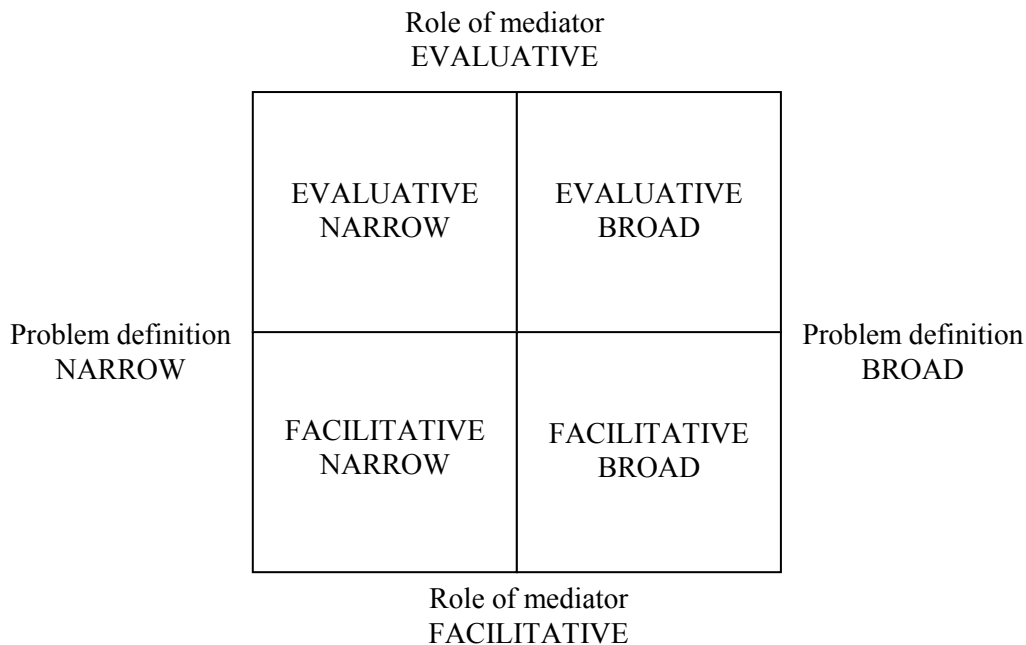
Figure 3: Riskin's grid model (from Riskin 1996)

Evaluative mediators tend to give their opinion about the possible outcome of the dispute or about alternative outcomes that may be realised if parties choose to leave mediation; in order to do so, they rely, in general, on their experience, as in the example provided by Krivis (2006) analysed in par. 3.1. At the other extreme, a facilitative mediator would leave such reflection to the parties and only facilitate it through questioning, but without proposing explicit judgments.

This continuum (evaluative-facilitative) is crossed with another variable referring to the interpretation of the problem, i.e., so to say, to the "area of implications" of the parties' issue that mediators allow considering. On the one hand, a narrow interpretation would only refer to the *casus belli* that has given rise to conflict (e.g. an episode of non-compliance with a business contract). On the other hand, a broad interpretation would include other related issues, like the impact of the problem on the parties' future business and interpersonal relationship; or the impact on other similar cases, on society, and so on (see the example provided in Riskin 1996).

The crossing of these two variables gives rise to a grid model which encompasses four quadrants corresponding to as many mediator profiles (see Figure 4

above). Some specific strategies are typically associated to each profile, as the following table (presented in Riskin 1996) shows:

Evaluative narrow	Evaluative broad
Urges/pushes parties to accept narrow (position-based) settlement	Urges/pushes parties to accept broad (interest-based) settlement
Proposes narrow (position-based) agreement	Develops and proposes broad (interest-based) agreement
Predicts court or other outcomes	Predicts impact (on interests) of not settling
Assesses strengths and weaknesses of each side's case	Educates self about parties' interests
Facilitative narrow	Facilitative broad
Helps parties evaluate proposals	Helps parties evaluate proposals
Helps parties develop and exchange narrow (position-based) proposals	Helps parties develop and propose broad (interest-based) proposals
Asks about consequences of non-settling	Helps parties develop options that respond to interests
Asks about likely court or other outcomes	Helps parties understand interests
Asks about strengths and weaknesses of each side's case	

Table 4: Strategies associated to each mediator profile (Riskin 1996)

Among the various objections that have been raised within the vivid discussion triggered by this model (see for instance Stulberg 1997), many authors have pointed at the fact that some of the strategies mentioned here do not correspond to the normative ideal of what a mediator should do (which is properly represented, they claim, only by the "facilitative broad" profile). Riskin, however, anticipated this objection by declaring his merely descriptive aim, the basis for his study being the actual reality of

mediation practices[111]. More in particular, the author claims that normative reflection on mediation cannot avoid taking the actual professional developments into account.

Moreover, as the author himself points out (see Riskin 2003), the variables are not to be interpreted as dichotomies but as continuum-lines; therefore, identifying a precise mediator profile is necessarily an approximation[112].

Apparently, on the practical level, the model has served the particular purpose for which it has been created[113]; this shows that, however perfectible it might be, knowing the mediators' personal orientations (their profiles) is useful for practical purposes such as selecting a mediator[114]. More recently, the content of Riskin's proposal, which has become a renowned tool in the mediation professional environment, was also enriched by a third category, namely the *transformative* profile or style of mediation. Based on Bush and Folger (1994), transformative mediation stresses the features of mutual empowerment and recognition by the parties. The values of transformative mediators can be also interpreted as a restoring of the original attitude of facilitative mediators (Zumeta 2000) with a special focus on the parties' relationships in terms of mutual recognition.

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[111] See Riskin (1996): "I do not aim in this article to favor one type of mediation over another, although, like most mediators, I incline toward a certain approach. Instead, I hope to facilitate discussions and to help clarify arguments by providing a system for categorizing and understanding approaches to mediation. I try to include in my system most activities that are commonly called mediation and arguably fall within the broad definition of the term. I know that some mediators object to such inclusiveness, and fear that it will legitimize activities that are inconsistent with the goals that they associate with mediation. Although I sympathize with this view, I also disagree with it. Usage determines meaning. It is too late for commentators or mediation organizations to tell practitioners who are widely recognized as mediators that they are not, in the same sense that it is too late for the Pizza Association of Naples, Italy to tell Domino's that its product is not the genuine article. Such an effort would both cause acrimony and increase the confusion that I am trying diminish. Instead, I propose that we try to categorize the various approaches to mediation so that we can better understand and choose among them".

[112] Consider, for instance, that *evaluating possible alternative outcomes* and *asking parties to evaluate them* are two different – but not so different – ways of making parties reflect on possible worlds that can be more or less advantageous for them. Moreover, as Riskin (2003) observes, mediators may adapt their strategies to the single cases they deal with or even modify them in accordance with the evolution of the discussion.

[113] Riskin (2003) reports that his model has been employed in the training of mediators and "has been used to help regulate the practice of mediation, to help parties select mediators, to help mediators understand their own approaches and to help organizations understand the mediation programs with which they are involved".

[114] Brett, Drieghe and Shapiro (1986: 283), who have been working in particular on labour conflicts, argue that the same mediator may decide to change or at least adapt his/her style in accordance with "their assessment of the likely outcome of the case, and their beliefs about what techniques are most effective in bringing about each type of outcome".

3.1.2 Framing and reframing strategies

Works centred on *frame analysis* constitute a specific trend in relation to the study of mediation techniques, since they are explicitly focused on the communicative dynamics of mediation[115]. Differently from the models considered in the previous paragraphs, this perspective has mainly an analytical purpose, since it aims at deepening how frames determine the successful development of a dispute resolution process. As a practical fall-out of this analytical endeavour, some conclusions have been proposed at the level of mediator training. Indeed, frame analysis is probably the theoretical account on communicative techniques in mediation that has been best received by practitioners, having been applied to a number of case studies and professional experiences (see for example Elliott et al. 2002; Shmueli and Ben-Gal 2003; Gerardi 2004; and Matukaitis, A. F. 2005)[116].

A general problem affecting this stream of study is the lack of clarity as for the very concept of *frame*. In fact, there is no univocal definition of frames in literature (Shmueli and Ben-Gal 2003: 212). Frames are originally conceived of as cognitive structures or cognitive resources (Goffman 1974) through which people interpret and organise reality[117]. Some more recent perspectives, stemming from a communicative interest, link the study of frames to issue development in conversation (Putnam, Wilson and Turner 1990: 133). The latter, indeed, has shown to be the most productive perspective applied to mediation studies (Drake and Donohue 1996; Shmueli and Ben-Gal 2003).

According to Drake and Donohue (1996: 302), frames are "transient communicative structures disputants build around conflict issues during each turn at talk". On the one hand, it appears that frames can be identified by looking at the disputants' communicative behaviour: "A frame is the particular quality assigned an issue by the negotiator's *linguistic choices*" (ibid., p. 301, emphasis added). Such a definition,

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[115] Beyond this approach, other aspects of communication have been sporadically tackled, such as, for example, about the mediators' awareness and wise management of metaphors (Cohen 2003; Smith 2005; and Jameson, Bodtker and Jones 2006).

[116] More specifically, at the level of practice, frame analysis is bound to the so-called *transformative approach to mediation* (Folger and Bush 1994: 15), that has been already mentioned as it gave origin to a specific mediator style (see par. 3.1.1). The transformative approach focuses on conflict as an opportunity for change and encourages the mediator to consider each communicative move as a valuable opportunity for promoting change. The major concern of these studies on mediation, thus, is the mediator's communicative competence, conceived of as the set of techniques that he or she can appropriately employ in the mediation process. Within the possible techniques, particular detailed analysis has been attributed to the wise manipulation of *frames*. The problem of frames is thus tackled as part of mediators' communicative competence.

[117] More specifically, according to the interpretation proposed in Grossen (2001: 61), the concept of frame defines the individual's endeavour of making sense of events and "framing" them into a contextual situation.

however, remains open to various interpretations, as it is not clear what "transient communicative structures" properly are.

Despite this difficulty, however, frames are certainly bound to the *definition* (in linguistic terms) that parties give of their problem. Frame analysis, thus, has the merit of highlighting that the linguistic characterisation of reality is never neutral, because the definition that one gives of an issue is always deeply connected with the interpretation of that issue and, thus, with the value attributed to it[118]. In this relation, a possible interpretation of frames that takes into account their communicative value can be dared: specifically, frames can be interpreted as pragmatic predicates, in some way mirrored in the individuals' communicative moves, which connect issues to the deepest premises of the subjects' reasoning (properly speaking, *endoxa,* see par. 5.1.1.), i.e. indicating why a certain issue is relevant to the subject proposing it or accepting to discuss it. The activity of framing, in this sense, would coincide with the individuals' selection of the relevant premises that allow them making sense of the issue they are confronted with and evaluate it.

In order to clarify this interpretation, let us re-interpret in terms of frame analysis a very famous dispute, i.e. the biblical narration of the two women bringing a baby in front of King Solomon, each claiming to be the baby's mother. The issue Solomon was faced with was the following: "Who does this baby belong to?". Solomon, in a provoking vain, framed the dispute in terms of a problem of justice, by proposing the two women to "share" the baby by physically cutting it in a half. The first woman accepted this framing of the dispute, which was clearly an unreasonable way out of the problem. The second woman, i.e. the one who was eventually recognised as the real mother by the King, declined the offer by saying that she preferred to lose her baby but have its life saved. For her, the issue was not to interpret as a problem of distributive justice but rather of compliance with a relevant value: the life of her baby had to be preserved (1 Kings 3:16-28).

This very free interpretation of King Solomon's judgment intends to demonstrate how the parties in conflict can frame the same issue very differently and what significant consequences these differences can have. The interpretation of frames here delineated allows connecting this kind of analysis to an argumentative perspective on mediation,

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[118] The works on *persuasive definitions*, introduced by Stevenson (1938), though not directly addressed to framing and reframing, deserve to be mentioned in this relation, because they opened the way to the study of persuasive effects of linguistic definitions. In particular, Stevenson argued, definitions that modify the conceptual meaning of a word but maintain its "emotive meaning" (i.e. the positive or negative judgment associated to them) can be used to change the direction of the people's interests (ibid., p. 331). A contemporary example of this kind of definitions which also shows the connection with framing can be found in the debate over abortion, which can be defined as a problem of the women's freedom or can be framed as an issue of life. For a detailed discussion on persuasive definitions and their argumentative uses, see Macagno (2007), in particular pp. 130-185.

because frames categorise the deepest parties' premises which their reasoning stems from, as the case of King Solomon exemplifies[119].

As a further example, it is worth considering Shmueli and Ben-Gal's (2003) analysis of an environmental conflict in Israel (the Kishon River conflict[120]) on the basis of framing tools, which makes clear how the identification of frames prevailingly used by parties can be of help in the identification of their disagreement as well as of potential zones of agreement. The authors, indeed, were asked by the local institutional authorities to prepare a conflict map concerning the dispute over pollution of the Lower Kishon River Basin, and they did it on the basis of frames. As a prime example to understand the value of frames, the frame that the authors name "issues" can be considered in this case. This frame characterises the definition of the substance of the parties' problem. The authors comment as follows:

> "The Haifa municipality declared: "The Kishon is polluted. It must be cleaned and restored, while the Rowing Club had this to say: "Due to the pollution, the club has difficulty functioning and is in a serious crisis, on the brink of closure" (ibid., p. 224).

It is clear that the different ways of framing the problem identify the parties' perspectives: for the Haifa authorities, pollution of an urban area *is the real problem*, while for the rowing club pollution *is the cause of the real problem*: the financial crisis of their business. In this case, thus, analysing the different uses that parties make of frames helps understanding their different relations with what is ascertained or taken for granted and what is the problem at issue. In Chapter 6, by the way, several examples, taken from the corpus compiled for the present research, show how different definitions of an issue may hinder the parties' reciprocal understanding.

Now, two assumptions underlie the literature on frames in mediation:
1. Individuals select a dominant frame in presenting issues, which can also be unconscious for them (see Drake and Donohue 1996: 302).
2. Frames of conflict can be identified and classified.

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[119] Millen (1994: 275) addresses the same issue though not using the term *reframing* but that of *coordination* in the communicative management of mediation. In analyzing a mediation case concerning disagreement over a car repair service, he observes: "For the customer, the settlement would 'count as' a way for her to minimize the financial loss of the entire incident. For the mechanic, however, the settlement would 'count as' accepting blame and responsibility for negligent services".

[120] The authors report that the Lower Kishon River Basin, a river which passes through the Haifa metropolitan region, has been polluted for years, despite the efforts of the authorities to regulate this situation. The problem has raised the concerns of a number of other stakeholders (environmentalists, fishermen, and a rowing club) who oppose the authorities themselves and the industries that are considered responsible for the pollution (in particular six chemical and petrochemical companies). See in particular Shmueli and Ben-Gal (2003: 220-221).

Concerning point 1, it is important to say that such a claim is neither really supported by evidence, nor is it clear what "presenting an issue" means, since the analyses of real case-studies often present the shift from one frame to another one during the discussion, or the same person referring to more than one frame in the same dialogue (see ibid., pp. 308-309).

In relation to point 2, it is also to be noticed that categorisations of frames significantly vary from one study to another, as they are constructed inductively. Drake and Donohue refer to Wehr (1979: 20), and use the four categories[121] he identifies in his *conflict mapping guide*: (1) *fact-based disputes* (concerning what is or what was); (2) *interest-based disputes* (focusing on future desires and aspirations); (3) *value-based disputes* (evaluative attitude of defining what is right and what is wrong); and (4) *relational disputes* (bound to the emotional ties between disputants). Other categorisations are to be found, for instance, in Shmueli and Ben-Gal (2003) or in Grey (2006). The rationale behind such categorisations, however, is often not specified. Their validity resides, according to Drake and Donohue (1996: 298), in their "heuristic and pragmatic value" in interpreting conflicts.

Two main techniques are associated with framing which have the goal of providing a better understanding of conflict and, as a further consequence, a basis for intervening upon it. The first one is the relation between *frame convergence* – i.e. parties' implicit agreement upon using the same frames for referring to the dispute issues - and the successful outcome of the conflict resolution process. Drake and Donhoue do not claim that frame convergence is the reason for the success of conflict resolution strategies (ibid., p. 309), but they show that there is a correlation phenomenon, insofar if there is a certain frame convergence, agreement is more likely to be achieved. These results emerge from the analysis of 21 transcribed divorce mediation first sessions (averaging one hour and 373 talking turns), conducted in Indiana (US) by four volunteer mediators[122] (ibid., p. 298). Convergence is obtained, according to them, when mediators maintain *control*[123] over the dispute (ibid., p. 306) by monitoring the parties' use of

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[121] Wehr uses the term *issues* rather than *frames*; these latter, however, are conceived of as broader categories regrouping issues.

[122] It might be interesting to signal that these mediators have received (minimum) 40 hours training, which would be considered insufficient for the present standards.

[123] Evidence on the relation between mediators' control of the interaction and the successful outcome of the mediation process is provided in a study focused on the notion of *communicative competence* in the mediators' professional practice (Donohue and Weder-Hatfield 1988). In particular, communicative competence is defined here as "The knowledge of appropriate communication patterns in a given situation and the ability to use the knowledge" Cooley and Roach (1984: 25, q.td in Donohue and Weder-Hatfield 1988). This definition opens the way to interpreting communicative competence as the ability to use appropriate techniques or strategies. Therefore, from the definition, the authors derive three main communicative strategies to be employed by mediators: (1) The *control*

frames and orchestrating convergence – indeed, a discreet but very active role. Reframing tactics, indeed, "are intended to take the information already given and restructure it in a more usable form" (Donhoue, Allen and Burrel 1988: 10).

Other accounts remark that, in order to foster the success of the conflict resolution approach, mediators may rely on the technique of *framing* or *reframing*. Gray (2006: 193) contends that this technique is "a social[124] accounting process designed to establish interactional fairness and to increase changes for resolution among the parties". More in particular, when mediators reframe issues for the parties, they introduce "a different way to make sense of the same circumstances" (ibid., p. 195), thus "helping parties reinterpret their circumstances, their counterpart's motivations, the range of possible solutions, and/or their own helplessness" (ibid), so that new possibilities of conflict resolution may emerge. Some of the relevant issues that mediators are often in charge of reframing have been identified in this study (ibid., pp.194-200):

(a) *The process of dispute resolving*: mediators help distinguish mediation from other dispute resolution methods the parties are more accustomed to;

(b) *Issues of justice and fairness*[125];

(c) S*ubstantive issues*, i.e. issues concerning the contents proper of the dispute;

(d) *Dispute resolution alternatives*, i.e. helping parties in reflecting on a comparative account of other possible dispute resolution methods;

(e) *Identity concerns*: "Mediators need to construct social accounts in which disputants' self-image, history, and/or group legitimacy is not only protected from threat but also acknowledged and honoured" (ibid., p. 199).

Now, approaches based on frame analysis, on the one hand, do not identify the particular communicative techniques or moves that mediators should employ, at the

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strategy (gaining control of the interaction through its structuring); (2) The *involvement* strategy (increasing each disputant's involvement in the process, to encourage collaboration); and (3) the *consistency* strategy (promoting consistency, to develop the mediator's trustworthiness). From these strategies, Donohue and Weder-Hatfield have elaborated research questions that have been tested on a corpus of twenty pre- and post-divorce custody-visitation disputes (50% successful and 50% unsuccessful). The methodology of this research consisted in analyzing the transcripts of the mediation sessions with quantitative parameters, such as the number of utterances by mediator/by each party, and qualitative parameters, identifiable with language intensity. Language intensity is defined as a quality of language that indicates the degree to which a speaker's attitude toward x deviates from neutrality (where x can be a person, place, idea or object, see Donohue and Weder-Hatfield 1988: 303). The results show that these three strategies are actually associated to more successful mediation practices.

[124] Here, the concept of *social* is to be intended as referring to an interpretation of the facts *shared* by the parties, as opposed to possible personal interpretations.

[125] Here, mediation provides the parties with the opportunity of explaining the reasons of their actions: "By encouraging parties to explain the circumstances or the intentions behind an act, skilful mediators can then propose a reframing that redirects disputants' attention from blaming to prevention of future injustice" (Gray 2006: 197).

micro-level of the construction of their intervention, in order to reframe issues. On the other hand, the study of frames seems to be performed quite independently from the consideration of the specific dispute at hand and from its contextual surrounding. Both these research directions, however, would substantiate these approaches with clear indications for research and practice, and are therefore indicated as desirable[126].

3.2   The theoretical and methodological reflection

The approaches illustrated above are focused on the dynamics of the discussion properly occurring during mediation and, in particular, on the precepts on which mediators can base their job. Indeed, approaches exclusively focused on techniques and strategies show heavy limits, as they do not take into account the purposes for which these techniques are applied; in other words, they do not consider the *function* of these techniques in the context of the dispute.

For instance, in proposing a framework for the study of international mediation, Bercovitch (1992: 18) critically observes that, although a lot of literature has been focusing on mediators' tactics and strategies, these latter cannot be applied irrespectively of circumstances in which mediators operate: "Mediation in general, and international mediation in particular, is not merely an exogenous input that can be applied uniformly and indiscriminately to all disputes". More specifically, the *context* of mediation (rules, beliefs, attitudes, behaviours and symbols, see ibid., p. 4) shapes the possible strategies of intervention. Indeed, the relevance of context was not ignored by Touval and Zartman (1985a and 1985b), who already suggested that their list of strategies be completed by an account of the nature of the dispute and the resources and interests of the mediator[127], although this suggestion only remained at the level of a warning. This warning is shared by Menkel-Meadow (1984): "What is astounding about the conventional literature on tactics and strategies is the assumption of universal applicability. Strategic exhortations are offered without reference to how negotiations might vary in different contexts or

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[126] While introducing their volume *New directions in mediation* (1994, eds.), Folger and Jones offer a programmatic view of the components of a communication research on mediation. These authors claim that communication research on mediation should include: (a) Analysis of verbal interaction at a micro-level, i.e. at the level of simple message sequences (ibid., p. x); (b) Social construction of meaning in the interaction (ibid.); and (c) Influence of the social context (ibid., p. xi) where mediation takes place.

[127] Touval and Zartman (1985a: 28) claim: "Our discussion in this article is based on the assumption that the context of international relations, and in particular its power politics, has a major effect on international relations". Thus the authors restrict the mediators' roles to three functions: communicator, formulator and manipulator. But the link between the context and the specific techniques proposed is not defined in their model.

under different circumstances, such as under the influence of various clients' desires". Even a practice-driven reflection, as that of John Haynes, indicates as one of the key assumptions for a productive mediation practice that "The mediator tailors his strategies to his situation; they are not applied in 'cook-book' fashion" (Haynes and Haynes 1989: 3). However, in all these cases, specific indications about the way in which these strategies are adapted to the situation lack. The approaches that are going to be listed in what follow ideally aim at filling this gap by collocating strategies and techniques in a wider framework of mediation.

Some approaches elicit the constituency of mediation by identifying the relevant interagents and institutions involved. In general, the description of interagents is made in combination with the elicitation of their reciprocal relations. The approaches that make explicit the constituency and relations of mediation model this practice by presenting its *scenario* (see par. 3.2.1.). To the modelling level of the scenario, a *script* dimension is also added by some approaches (see par. 3.2.2.), which focus, in particular, on the pragmatic structure and on the communicative dynamics of the mediation process.

Only if taken all together, including the procedural dimension, the approaches considered here can be said to bring to an *ontology* of mediation. Therefore, the attitude chosen in presenting the different approaches to a model of mediation is to highlight positive contributions and strengths of all models in relation to the aim of eliciting the ontology of mediation. Critical points will be advanced, but the general aim is that of finding hints to reconstruct what is essential to mediation as for its constituency, relations and process.

3.2.1   The scenario perspective

The approaches which will be considered now aim at constructing a *scenario* of mediation, in which the strategies and techniques employed during the proper mediation sessions tend to be collocated in a more comprehensive ontology of mediation. Some of these studies are focused on the very nature of mediation as an ADR practice and on its analogies and differences with other conflict resolution practices (see in particular par. 3.2.1.1). Other studies aim at specifying the constituency of mediation, namely the interagents involved in it and the essential relationships of institutional and interpersonal nature that bind them. These studies also provide a picture of the preceding factors determining the choice of mediation and of the possible outcomes of this process (see par. 3.2.1.2 - 3.2.1.5).

In describing the scenario of mediation, some crucial concepts, such as *conflict*, *relationship* and *interests* (see par. 3.2.1.2 in particular) emerge as determining the specificity of mediation and the development of the mediation process itself.

3.2.1.1 Mediation within the ADR practices

A first stream of theoretical reflections on mediation aims at positioning this practice within its natural "relatives", i.e. between the other ADR methods. Various categorisations and taxonomies of ADR practices are proposed (sometimes only *presupposed*) in the theoretical approaches to mediation. Indeed, specifying mediation's characteristics means outlining its constituency, namely the proper traits distinguishing it from other functionally close practices. For this reason, it is useful to reconstruct taxonomies that reflect the major approaches to this topic. Such taxonomies will be constructed here through the tool of the *Arbor porphyriana* (Porphyrian tree)[128], a tree-structured way of defining the constituency of notions by means of eliciting their genus and specific difference. The arbor porphyriana is thus a tool for conceptual clarification of notions that allows inserting each concept in the network of its relations with other close concepts. Therefore, in view of a positioning of mediation within other ADR practices, this way of proceeding appears particularly suited.

A very common way to categorise methods of dispute resolution is based on the consideration of the parties' *control over the outcome* that they allow. In this perspective, albeit slightly different focuses are possible, all approaches recognize negotiation as the pure case of self-settlement based on the parties' complete control over the process and the outcome or solution of their dispute.

Here, it is imperative to start with the very well-known approach proposed by the Program on Negotiation (PON) based at Harvard, whose origin and structure has been already mentioned in Chapter 2. The name *Program on Negotiation* would seem to suggest that the focus of this research program is limited to negotiation as an ADR practice. Indeed, PON scholars consider negotiation not only as one of the dispute resolution practices, but also, with a slightly different meaning, as a basic process that is present also in other conflict resolution practices; mediation, in this sense, would be a species of the genus of negotiation, involving a third person with the special role of facilitating the parties' interaction[129]. This offers a first characterisation at least of some of the ADR practices, namely negotiation and mediation, which is considered as a form of facilitated negotiation (see Figure 5). The negotiation-based processes are opposed to the adjudicative processes, which can be more flexible, like arbitration (Rudolph Cole and Blankley 2005) or more structured, like litigation (Seul 2005):

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[128] Porphyry (c. 232 AD - c. 304) is known in particular for his commentary to Aristotle's *Categories*. His representation of the definition of concepts has been also reported and commented in Petri Hispani Summulae logicales 2.10 (see Bochenski 1947: 18).

[129] See Patton (2005: 279): "Negotiation can be defined as back-and-forth communication designed to reach an agreement between two or more parties with some interests that are shared and others that may conflict or simply be different".
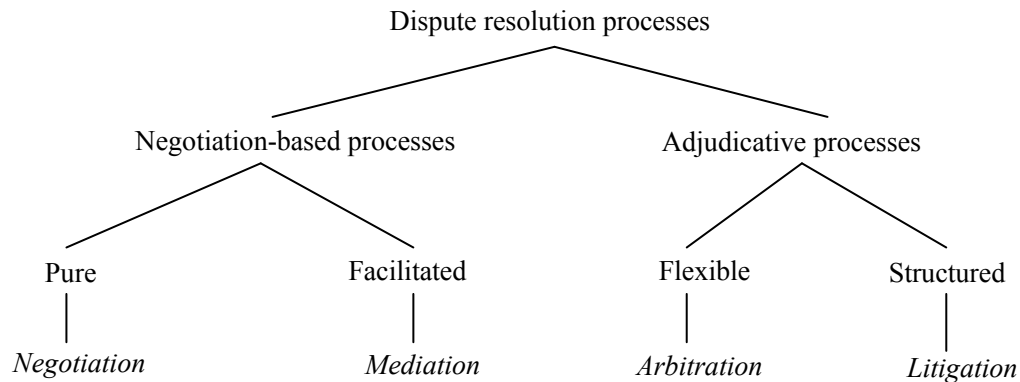
Figure 4: Categorization of conflict resolution processes according to the Harvard (PON) model

A very limpid categorisation of ADR practices that inherits the same conceptualisation of negotiation is offered in Uzqueda and Frediani (2002: 4). In the authors' view, a crucial concept is represented by the dichotomy *negotiated-imposed* which constitutes the first important distinction between dispute resolution methods. In a negotiated (self-settling, non-adversarial) order, one can have a practice, like mediation, in which conflicting parties are assisted by a third neutral; or a pure form of self-settlement represented by negotiation itself. In an imposed (hetero-settling or adversarial) order, we find the pure form exclusively represented by court settlement and other more numerous mixed forms, of which the authors only mention the case of arbitration[130]. The representation of this taxonomy can thus be the following:

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[130] Why arbitration is considered a mixed form is not specified; we might argue that it depends on the fact that parties can contribute to chose their arbitrator(s) and thus maintain part of the control over the process, as described in Chapter 2 of the present work.
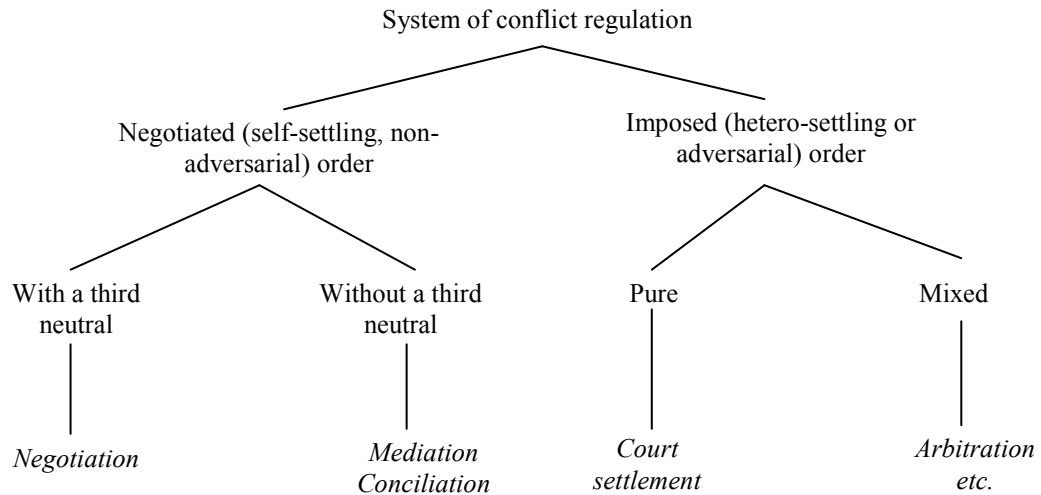
Figure 5: Categorization of conflict resolution practices according to Uzqueda and Frediani (2002)

A slightly different interpretation is proposed by Goldberg et al. (2007: 3). In this case, negotiation is also considered the only practice that allows the parties' control of both the process and the solution of their dispute, while the introduction of a third neutral brings to entrust him/her the control of the process (like in the case of mediation) or of both the process and the solution. In the latter case, one can have a private form of settlement like arbitration[131] or a court-based form like adjudication[132]. The definition of mediation does not substantially deviate from that of Uzqueda and Frediani, although in this approach its difference from negotiation is more explicitly marked, being identified in the parties' lack of control over the process.

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[131] Here, arbitration is considered for its nature of hetero-based settlement, while the fact that it allows the parties some control over the process is not focused on.
[132] Adjudication is here considered together with ADR practices for its functional value of conflict resolution method.

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                        Dispute resolution processes

        Parties control process and              Parties lack some control
                  solution

                                        Parties do not          Parties do not
                                        control process         control process
                                                                 and solution

                                                          Court-based        Private

        Negotiation                      Mediation      Adjudication       Arbitration
```
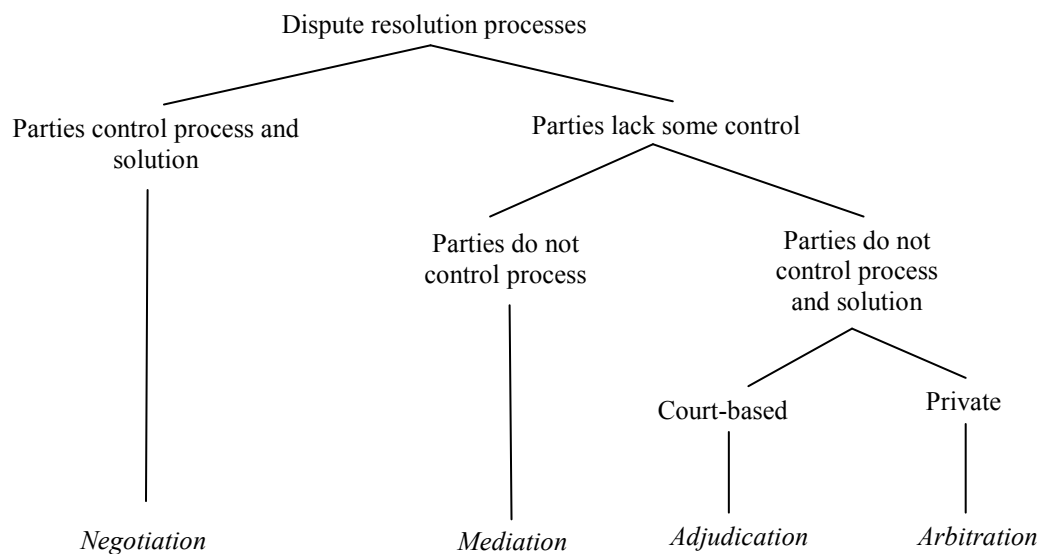
Figure 6: Categorization of conflict resolution processes according to Goldberg et al. (2007)

Yet, as Goldberg et. al (2007: 6) remark, the focus on the parties' control of the dispute resolution method is not the only possibility to distinguish among the various practices of conflict resolution. They refer to the proposal by Ury, Brett and Goldberg (1988b), based on the *goal* of the resolution practices, which the authors categorize as: reconciling the disputants' underlying interests, determine who is right, or determine who is more powerful. The three criteria are not equivalent, in that, as the authors remark, in general, reconciling interests "costs less and yields more satisfactory results" than the other two choices (ibid., p. 4)[133]. Thus, a hierarchy of selection criteria is established which helps determining a corresponding classification of dispute resolution practices. In particular, disputes are resolved on the basis of power in violent approaches like fights, strikes, and so on. They are resolved by establishing who is right, typically, in the procedure of adjudication. Negotiation and mediation may be oriented to offer the possibility to settle conflicts by reconciling interests, namely those "needs, desires, concerns, fears – the things one cares about or wants" and which "underlie peoples' positions – the tangible items they *say* they want" (ibid., p. 5).

Indeed, such remark is particularly interesting because it suggests that the constituency of mediation needs not to be confined to its feature of allowing parties to maintain the control over the outcome of their dispute, although this is certainly a relevant aspect of this practice. At a closer look, maintaining the control over the results

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[133] Determining who is right, in turns, costs less and yields more satisfactory results than determining who is powerful (ibid.).

of the dispute may be interpreted as the parties' possibility to monitor that their real interests are met.

Beyond the characterisations explicitly found in literature and illustrated above, on the basis of the overview of dispute resolution practices presented in Chapter 2, at least other two characterisations can be added that result particularly relevant to understand the specific difference of mediation from other practices, and the significant role that communication plays in it: the degree of escalation of the conflict and the parties' participation to the reasoning supporting a certain decision over the resolution of the conflict.

The first variable is the *escalation of the conflict*. It should be considered, in fact, that the choice of an ADR practice also depends on the type of conflict to be faced and, in particular, on its *escalation*. In fact, it is not always possible to handle a conflict by direct negotiations when the parties have reached a certain degree of interpersonal hostility and communication is difficult or impossible. Thus, ADR practices can be distinguished in two categories[134], defined by the type of conflict they are tackling: those practices that intervene when the conflict has already escalated and parties are no longer able to treat it by themselves (mediation, arbitration, ombudsman, minitrial) versus practices used to handle more manageable conflicts (negotiation).

The second variable, which directly refers to the argumentative process, is the parties' *participation in the reasoning supporting a certain decision on the resolution of the conflict*. Here, ADR practices can be distinguished as for the subjects involved in the argumentative process and, in particular, those who are responsible for making a final decision and, thus, become the addressee of the persuasive process encompassed in argumentation. In negotiation and mediation, parties are co-arguers[135], because they are directly involved in an argumentative discussion oriented towards the resolution of their problem. In arbitration, ombudsman, and in the non-alternative dispute resolution called adjudication, on the opposite, parties (or they attorneys) direct their argumentative discourses towards the persuasion of the person who will make the decision (be it an arbitrator, ombudsman, judge or jury). Let us imagine an arbor porphyriana of ADR practices based on the argumentative dynamics:

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[134] The intervention of a third neutral defines a very precise distinction between these two categories and signals a certain degree of conflict escalation. However, the degree of escalation of conflict can vary even between, for instance, mediation and arbitration; in fact, some conflicts are too escalated to be treated by mediation, while the decision of an arbitrator can be accepted as a solution. In this sense, one could imagine a continuum ranging from easily manageable conflicts to intractable conflicts and categorize ADR practices along this continuum.

[135] In mediation, the parties' argumentative discussion is facilitated by the intervention of the mediator, but their role of co-arguers is not modified.

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                        Conflict resolution practices


        Parties are co-arguers                          Parties argue for some
                                                        external decision-maker


    One-to-one              Facilitated
    discussion             discussion


    *Negotiation*            *Mediation*                    *Adjudication*
                                                            *Arbitration*
                                                            *Ombudsman*
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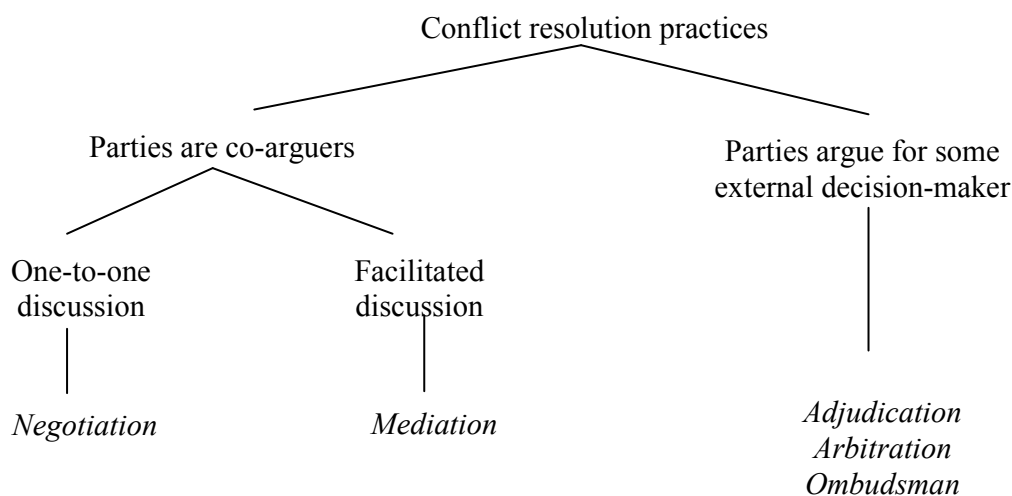
Figure 7: Categorization of conflict resolution processes according to their argumentative dynamics

3.2.1.2   The Harvard model of principled negotiation

In the previous paragraph, we have seen how negotiation can be considered a basic form of dispute resolution that can be implemented in mediation through the help of a third neutral. Here, thus, it becomes relevant to understand some of the features of negotiation that may prove useful also to understand the ontological constituency of mediation. For this purpose, the Harvard model of "principled negotiation" will be briefly recalled, which has already been mentioned on various occasions for its merits in defining basic principles of conflict resolution (such as the notion of *legitimacy*, see par. 2.1.) and for its current research and education relevance (see par 2.6.2.).

The model of principled negotiation, which is at the basis of Harvard research and of the numerous teaching activities at the graduate, postgraduate and continuing education level (Susskind, Mnookin, Fuller and Rozdeiczer 2003), foresees seven basic elements of any negotiation interaction: interests, legitimacy, relationship, alternatives and BATNA (Best Alternative To a Negotiated Agreement), options, commitments, and communication (Patton 2005: 279-285). They are conceived of as the aspects that all negotiators must consider in order to create an effective process of conflict resolution[136]; some negotiator techniques are associated to each one of this elements.

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[136] Some authors, starting from Bush and Folger (1994), have criticized the applicability of the Harvard model to mediation, labelling it as "the problem-solving approach", and contrasting it with the "transformative approach" or "narrative approach" (derived from narrative therapy) to mediation

1. *Interests* are the underlying desires of people involved in negotiation. The model highlights that interests do not coincide with positions, i.e. with the parties' standpoints concerning what they want; at the level of strategies, thus, a negotiator must be able to "focus on interests, not positions" (Fisher, Ury and Patton 1991: 4-5), in order to get a solution that can really satisfy the parties. As a note, it might be added that interests are the very drive that makes people take a position within a negotiation and, more or less directly, motivates them to get involved in a dispute. As said in Chapter 2, this model presupposes that the goal of negotiation is to meet the parties' interests as far as possible.

2. *Legitimacy* has been introduced in this dissertation (par 2.1.) as a crucial notion characterising civil approaches to conflict resolution. Legitimacy is focused on as a "special category of interests" (Patton 2005: 281), mirroring "one of the most powerful human motivations" (ibid.): the need for justice, i.e., in other words, the wish of receiving a fair treatment and of getting to a fair outcome. This is, by the way, a general concern presupposed by all dispute resolution practices, including, ideally, litigation. Concerns about legitimacy influence the negotiation outcomes that parties are ready to accept.

3. *Relationship* reminds negotiators that no agreement can be abstracted from the reality of the human relationship established by the parties (and their negotiators).

4. *Alternatives and BATNA.* Negotiators must be aware of parties' alternatives to a negotiated solution to the dispute[137], namely of the possible worlds that can be opened if they do not reach a mediated agreement. In particular, the BATNA, i.e. the "Best Alternative To a Negotiated Agreement", defines the boundary that makes the resolution of the dispute meaningful for each party. In fact, if a party is sure that he/she will win the case in court, he/she may be not interested in alternative dispute resolution methods.

5. *Options* are the possible alternative outcomes of the dispute that emerge during the process of negotiation, i.e. the alternative possible worlds that can be activated by

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(Winslade and Monk 2001). The transformative approach starts from an antirealist stance, and is not interested in the content of the dispute, but in its reconstruction by the parties. Indeed, from the study of the event of conflict (see Chapter 4), it is clear that the real content of the conflict and the parties' personal reconstructions should not be opposed, but must be tackled together for conflict resolution. Moreover, the description of the Harvard model given by these authors is quite simplistic, and, thus, not complete, since it does not consider its attempts of considering the parties' relationship, and the role of interests in the construction of the individuals' identity. However, transformative approaches to mediation have the merit of focusing on the restoration of the parties' relationship, which is, indeed, one of the challenges of mediation in comparison with adjudication but also with other ADR techniques such as arbitration. Furthermore, the emphasis on the narrative aspects has brought scholars belonging to this approach to study communicative aspects of mediation (Folger and Bush 1994).

[137] The practice of minitrial is one of the ways to explore possible alternatives, as it aims at giving a reasonable picture of what would happen in court.

one or another solution of the conflict. Within the Harvard model, only "positive" outcomes are considered options; in other words, alternatives (like the BATNA itself) that lead to a non-negotiated solution, or possible solutions that do not emerge in the process, are not considered options.

6. *Commitments* are decisions on options. They might be interpreted as proper commissive speech acts performed by the parties, which constitute the progressively increasing basis for the agreement.

7. *Communication.* In the Harvard model, it is conceived of as "the process by which parties discuss and deal with the preceding six elements of negotiation" (ibid., p. 284). Interestingly, thus, according to this model, communication is an overarching activity encompassing all other elements and making them possible.

Now, though the seven elements listed here emerge as relevant to the process of negotiation, a critical remark on the list as a whole is still necessary. In fact, it seems to lack a common *principium divisionis*, insofar the seven elements have different relations one to another; this leads to wondering whether this account can really be considered a comprehensive and justified model. In order to enhance the explanatory force of the model, the respective relations between the seven elements might be reconstructed as follows (though this representation does not mirror the one given in Patton 2005, see in particular the scheme on p. 295):
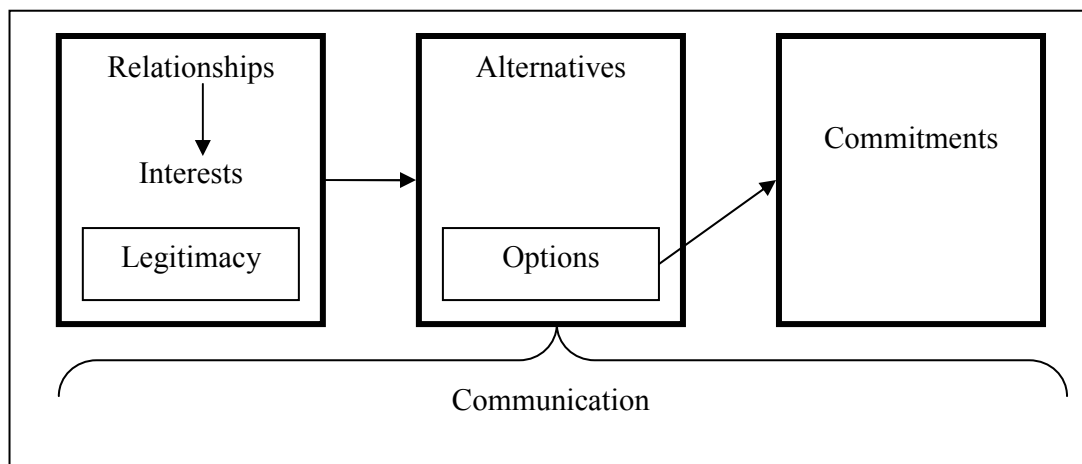
Figure 8: The Harvard seven elements model of negotiation revisited

As anticipated above, legitimacy is one of the most important interests; whereas options can be interpreted as possible alternatives at the parties' disposal. Interests, which are bound to the parties' relationships, lead them to seek for alternatives to conflict; options are those alternatives that go in the direction of conflict resolution and

emerge during the process of negotiation. All together, alternative and options constitute the parties' reasoning on alternative possible worlds at their disposal and on their correspondence to their interests[138]. Options bring the parties to commit themselves to proposals and counterproposals. Relationships and, in particular, relationships between the parties, define their interests, by setting the values that they want to preserve. At the same time, relationships are built through the negotiation process; in particular, commitments specify changes in the parties' (and mediator's) relationships. The whole negotiation process is enabled by communication[139].

3.2.1.3   Carnevale

The model proposed by Carnevale (1986), which in particular stems from the study of international mediation, represents a first attempt to specifically focus on the essential traits of the mediation *scenario*. This model is focused on "how mediators can achieve their own objectives while maintaining the disputants' acceptance of their involvement" (ibid., p. 41). Carnevale links the choice of available strategies to the mediator's analysis of the conflict situation and, in particular, of the parties' pre-existing relationship.

According to the mediator's perception of the area of alternative possible win-win solutions for the parties, named in this approach their *common ground*[140], and to how much the mediator values the parties' aspirations or benefits, he or she can choose a strategy for intervention.

If both criteria result *low*, the mediator can choose to *press* parties in order to force them to acknowledge restrictions on their possible alternatives. The higher the mediator's authority is, the more pressure he or she can put on parties.

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[138] Here, it is interesting to compare Rocci (in press).

[139] Even in this case, not much is said about how communication should be managed; it seems to be a natural process inspired by the negotiators' innate skills.

[140] The use of the expression *common ground* is quite different from its use in linguistic pragmatics and argumentation theory. Common ground is, in Carnevale's terms, the set of potential agreement alternatives fitting both parties' desires and aspirations. The larger the common ground is, the more the mediator can insist on an *integrative* strategy, trying to find out win-win solutions that may be accepted by the parties. The notion of *common ground* linked to pragmatics and argumentation, which is assumed in the present work, refers rather to the communicative presuppositions of the interaction. Common ground (see Clark 1996; Stalnaker 2002; Greco 2003) is constituted by the set of knowledge, beliefs, values, expectations, desires, etc. that two or more interagents engaged in a communicative exchange (a) share and (b) are aware of sharing. In a mediation process, the common ground might be constituted of common values, concessions, knowledge about the conflict, etc.; correctly exploiting common ground as a basis for the parties' agreement is one of the mediator's crucial communicative tasks. Although the latter concept of common ground does not overlap with the one previously mentioned, it might include it, if some potential agreement alternatives are already known by both parties, for instance because they have already been discussed.

If the common ground seems to be wide, whereas the output of the dispute with regard to parties' satisfaction is not a main concern for the mediator, the latter can simply choose not to intervene (*inaction*), assuming that the parties will be able to resolve the issue themselves.

If, on the contrary, the common ground level is low, but the mediator considers the benefits of the parties to have a high value, he/she can try to compensate the sacrifice of finding a settlement with other forms of rewards directly provided by him/her[141].

If, finally, both the mediator's perception of common ground and his/her evaluation of the parties' aspirations reach a high level, the mediator can engage in the strategy of *integration*. Integration is a form of cooperation with the parties in trying to find out win-win solutions that parties may be unaware of.

The graphical representation of the model is the following (ibid., p. 53):
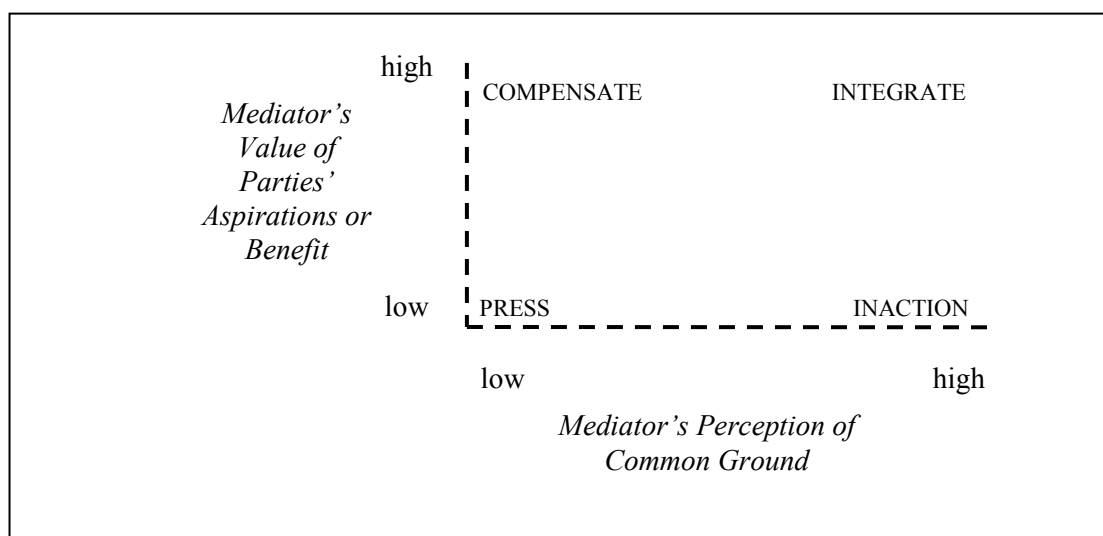
Figure 9: Carnevale's Mediator Strategic Choice model

Some observations are necessary about this perspective. First, the four strategies are not equivalent at the level of mediation. Integration, compensation and pressing can be considered strategies concerning the mediator's attitude towards the conflict, whereas inaction blocks mediation at its very origin. Secondly, Carnevale focuses on the general strategies available to the mediator. How these strategies affect the actual tactics he or she can use in his or her intervention remains rather indefinite, although the author briefly tackles the mediator's tactics (ibid., pp. 47-48). Beneath different tactics,

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[141] It has been the case, as the author reports, of some powerful international mediators, as Jimmy Carter at Camp David (ibid., pp. 46-47).

Carnevale mentions the control of communication, but nothing is said as to what it is aimed at and how it can be achieved.

3.2.1.4 Wall

James Wall's account of mediation is based on a comprehensive effort of literature review, published in three phases, two of which include the collaboration with other authors (Wall 1981; Wall and Lynn 1993; Wall, Stark and Standifer 2001). Such work is remarkable under the point of view that it is certainly, together with the important proposal by Herrman, Hollett and Gale (2006), which will be discussed in the next paragraph, one of the most extensive reviews of the literature on mediation available until now. In fact, in a scientific stream of research in which many approaches are relatively auto-referential, these two proposals are distinguishable for their effort of theoretical confrontation.

Wall's model is intended to be a "structure for a systematic categorization of the current mediation techniques" (Wall 1981: 158), although it is limited to the consideration of the studies dealing with strategies and techniques of mediation., As such, this survey explicitly tries to answer to the problem of how to situate the huge set of strategies and techniques listed by the literature[142] in a mediation scenario. The goal of this model is intended to be "the underpinning to a framework for future mediation research" (ibid.).

Indeed, the scenario of mediation, which is proposed in Wall (1981) and Wall and Lynn (1993), and updated in Wall, Stark and Standifer (2001), consists of two different models. The first one, called *mediation's paradigm*, is a quite static picture, focusing, in particular, on the most relevant interagents involved in the process of mediation (see Figure 11). In particular, the parties (negotiators' constituents) and the subjects willing to mediate the dispute (mediator's constituents) are imagined to be respectively represented by two negotiators (as it is often the case in processes of international mediation) and an individual working as a mediator. Therefore, the narrow "mediation system" is constituted by the mediator himself and the two negotiators. In this case, defining the constituents of the negotiators and of the mediator himself

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[142] In Wall and Lynn (1993) about 100 techniques are identified and listed. The selection of these techniques appears to be based on very broad criteria; more precisely, the notion of *technique* is never directly defined within this review, and seems to be associated to a quite uncertain meaning. Indeed, Wall lists, among the mediator techniques, communicative acts such as in "claims to be a source of information (Wall 1981:171), "highlights negotiators' common interests" (ibid., p. 172), together with activities such as in "acts as a sounding board for negotiators' tactics" (ibid., p. 173), non-communicative actions as in "allows no communication" (ibid., p. 171), inference processes at the cognitive level as "interprets the complexity of issues" (ibid.), and even events such as "creates an audience effect with his presence" (ibid., p. 173).

becomes particularly relevant, because it allows defining the *agency relationship* (the notion was introduced in par. 1.1. and will be further expounded in par. 4.2.2.3) to which they respond, and therefore also their "mandatory" goals. Third parties are also considered as possible determinants of the process. The mediation techniques taken from the literature are associated to each of the relationships between these interagents.
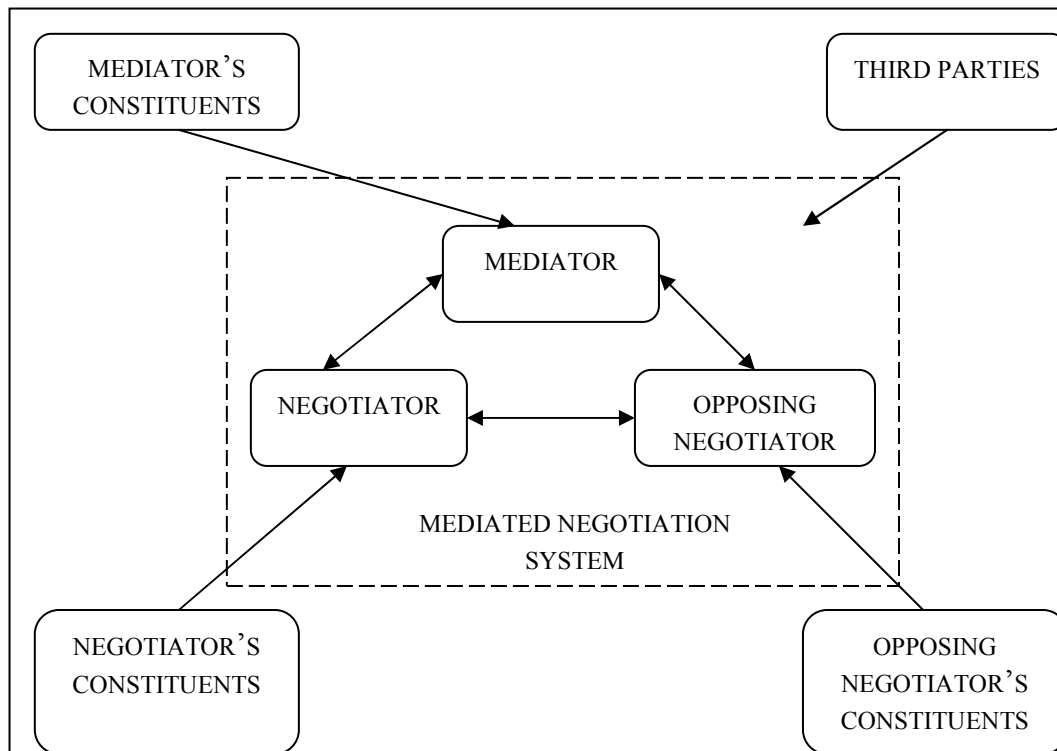
Figure 10: Mediation's paradigm, Wall (1981:159)

In the following works (Wall and Lynn 1993; Wall, Stark and Standifer 2001), Wall and his colleagues propose a sequential model of mediation, called the *mediation framework*, which does not contradict, but somehow presupposes the representation of the main interagents presented above (Figure 10). This more recent model shows the development of the mediation process and the factors influencing it, as represented in Figure 11[143]:

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[143] Here, the latest version of the model, which presents some refinements, has been adopted (Wall, Stark and Standifer 2001: 372).
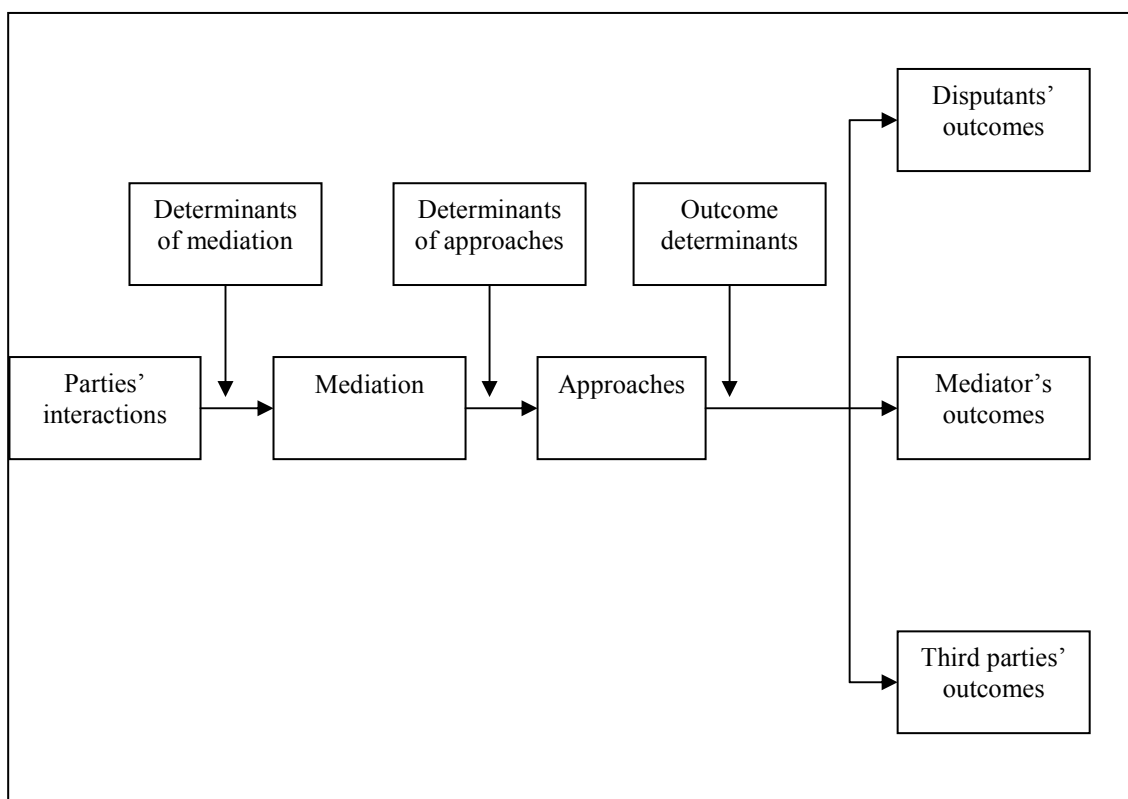
Figure 11: "The mediation framework" proposed by Wall, Stark and Standifer (2001: 372)

What is particularly worth noticing is the collocation of the mediation process proper and of the *approaches* (conceived of as sets of techniques) in a more comprehensive framework that takes into account both the situation preceding mediation (the parties' interactions and the determinants of mediation) and the outcomes of the process. *Parties' interactions* is a category referring to the relationship pre-existing the mediation intervention, which can be more or less cooperative. According to the level of their previous cooperation, parties may decide not to use mediation, either because their conflict is not escalated, or because they prefer to fight rather than to resolve their conflict (Wall and Lynn 1993: 164). Between these extremes, a range of possible interactions that allow for a mediative solution is available. With *determinants of mediation* the authors refer more specifically to the parties' and the mediator's decisions to enter the mediation process. *Mediation* and *approaches* are strictly bound; the former concerns the specific kind of mediation domain (community, marital, and so on, see Wall, Stark and Standifer 2001: 374), while *approaches* refers to the techniques adopted by the mediators during the process, which are influenced by different *determinants of approaches*. The process of mediation is then expected to produce outcomes respectively concerning all the essential interagents: the mediator, the parties and third parties who

94

are indirectly affected by the dispute (like children in relation to conflicting parents, or neighbour states of countries in war).

Now, two aspects are of particular relevance in this framework. First, the focus on outcomes, an issue which Wall, Stark and Standifer (2001: 380) describe as "the most bountiful arena for the past decade"; and, second, the relation between mediators' approaches (techniques and strategies) and the context in which these are employed.

The problem of outcomes, indeed, is an open issue to research on mediation at the moment. Indeed, in comparison with other ways of dealing with conflict, defining what a successful mediation is represents a delicate task (Pearson d'Estrée et al. 2001). First of all, in general, as conflict threatens human relationships, the implications of conflict and the results of conflict resolution are delicate and difficult to measure[144], as measuring the "health condition" of a human relationship is not simple. What can be measured, at least in standard cases of formal mediation of interpersonal conflicts, is the parties' compliance with the signed agreement (Long 2003; Kelly 2004; Li 2001[145]). However, such data could turn out to be poor or at least insufficient to grasp the value that restoring an endangered human relationship can have[146]. Even if limiting the problem to this restricted measurement, however, a problem arises as to the evaluation of the *durability* of the agreements stipulated within mediation. Some studies have tackled this point by contacting parties a while after their mediated agreement, and asking them whether it is still functioning (Meierding 1993). In the case of child custody mediation, in particular, accessing data on the durability of agreements becomes relatively easier, because even successful agreements often need to be rediscussed after some time, for example as children grow up, or even if other factors intervene (like one of the parents willing to move to another city, see Haynes and Haynes 1989). In other fields, however, critics argue that too few efforts have been made to study the effects of mediation after a relevant amount of time (Malhotra and Liyanage 2005: 911). In the specific context of conflict resolution education, some research has been done about the effects of mediation programs on the parties' acquisition of instruments allowing them to deal with future conflicts (Bickmore 2003; Burrell, Zirbel and Allen 2003; Compton 2002).

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[144] Given this difficulty, some scholars prefer to speak of *conflict management* and avoid the term *solution*.

[145] Li (2001) also takes into account the cost-effectiveness advantage provided by mediation, in particular applied to the business field.

[146] Many mediators, in fact, would agree that their intervention can be defined successful even if parties, although they have not been able to reach an agreement within the process, find a personal solution out of the formal boundaries of the practice (Tamara Erez, interview with the author, June 24th, 2004); the same is true in the case of divorcing couples entering a child custody mediation process and then discovering that they want to try to continue their marriage. In this cases, however, gaining measurable information on the resolution process outcomes becomes difficult even for the involved mediators.

The second significant aspect highlighted in this model concerns the relationship between the context of the dispute and the mediators' choice of techniques. Wall, Stark and Standifer (2001: 377) describe the context in terms of (1) the environment and the interested parties within such environment, (2) the mediator and (3) the disputants. Such description elaborates on a proposal already presented in Wall (1981), where the author, in line with his effort of providing a framework for further research, also considers the importance of studying the specific contingent effectiveness of each technique, i.e. its effectiveness in the context of the specific case where it is employed. As Wall explains (ibid., p. 177),

> "Crossing the techniques with the contextual factors provides a matrix of potential hypotheses as to whether or not each mediation technique is effective within the delineated negotiation contexts".

To this purpose, Wall proposes a matrix in which all techniques are correlated to various possible contextual factors (negotiation context, nature of negotiation); see the following table:

Mediation technique – Negotiation context Matrix

	Negotiation context		
	Relative experience of the negotiators (equal vs. unequal)	Whom negotiators represent (constituents vs. no constituents)	Nature of negotiations etc. (One shot, repeated, sequential, serial, multiple, or linked)
Mediation techniques Clarifies situation Misrepresents situation Establishes protocol Lays out perceptions Interprets complexity of issues Informs negotiators as to how similar problems have been handled previously Makes negotiators aware of relevant information Finds and supplies relevant information … … …			

Table 5: Wall's mediation technique-negotiation context matrix (Wall 1981: 176)

Such an effort provides a first answer to the critiques made to those professional approaches only listing techniques without specifying their contextual relevance, which is an observation generally made by scholars concerned with a theoretical reflection on mediation (see par. 3.2.).

It must not be neglected, however, that a fundamental problem affects Wall and colleagues' approach, which is related to an attitude of uncritical eclecticism. In other words, mediator strategies and techniques are elicited without taking into account their *quality* and their intrinsic validity. Thus, as it also appears from the limited extract of the list presented in Table 5, mediator techniques such as in "distorts information" (ibid., p. 171) and in "clarifies situation" (ibid.) are considered as equal, despite their clear unbalance from the point of view of the communicative and social quality. Therefore, a problem also arises as to the meaning of "effectiveness", because one might ask in which sense a manipulative technique like distorting information should lead to an outcome that is really in line with the goal of the mediation practice and with the parties' desires and concerns.

3.2.1.5   Herrman, Hollett and Gale

One of the most recent models proposed in literature, and probably the most comprehensive in terms of identification of the constitutive factors and relationships that give origin to the mediation scenario has been proposed by Herrman, Hollett and Gale (2006). This model, which, as the one proposed by Wall and his colleagues, derives from a comprehensive synthesis of the literature on mediation[147], delineates the essential factors of its scenario, aiming at specifying variables that can be used in further research. More specifically, it aims at offering a basis on which different hypotheses can be tested by scholars of mediation, and, at the same time, which can serve practitioners in understanding the process they work with (ibid., p. 20). It is, thus, a temptative systematization of the literature, which asks for further research-based and empirical verification.

Differently from Wall and colleagues, these authors not only consider the literature on mediator strategies and techniques, but aim at taking into account all relevant factors of the mediation process mentioned by studies in conflict resolution. Indeed, the wide scope of this literature review and the strong systematisation effort turns out to constitute the strength of this approach – which has been rightly named by the authors *the comprehensive mediation model*. However, as noticed for the approach

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[147] The authors explicitly mention their intention of following Wall's steps as concerns the level of specificity of their model in the description of mediation (ibid., p. 22).

by Wall and colleagues, the attitude underlying the model is quite eclectic and not critically founded, as it lacks, in general, to indicate criteria for a systematic and precise assessment of the reliability of the sources found in literature[148].

The model is organised following a timeline, subdivided into four steps (T_0, T_m, T_1 and T_2 respectively, see Figure 12). However, it does not aim at encompassing the temporal dynamics of the mediation process; rather, it highlights the constitutive factors of mediation that result relevant to each temporal phase. T_0 represents the phase antedating a proper mediation intervention (ibid., p. 24); it can be said that it aims at including all those contextual factors that will interplay during the mediation process, such as the disputants (their personal characteristics, their beliefs and attitudes), the dispute and its characteristics, and the institutional context[149] in which the problem occurs (ibid., pp.31-32).

T_m represents the very core of the mediation process, i.e. the moment in which the parties and mediator's discussion is developed. Here, all the variables listed concern the type of parties' attitude that the mediator must be able to promote in order to happily fulfil his/her institutional role. The authors categorize such variables into four sub-groups: *factors that prime readiness* are bound to the participants' (both parties and mediator) personal attitude and to their feeling comfortable in the discussion. Part of this category are mediator empathy, feeling heard and understood, also at the level of perceptions and feelings, the clarity of the mediator's discourse and the parties' feeling of being responsible and efficient during the process[150]. *Procedural factors concerning mediation conditions* include the respect of the institutional characteristics of mediation and of the mediator's mandate, like active participation by the parties, procedural clarity, global fairness, interactional fairness, mediator neutrality and mediator process control. *Procedural factors concerning the problem-solving process* are linked to the characteristics that the communication process in mediation are expected to have: active negotiation, talked-about issues and needs, and formulate options. Finally, the *procedural factors concerning decision-making* describe the issue of the parties' control over the outcome which, as previously said (see par. 3.2.1.1.), strongly distinguishes mediation from other ADR practices[151].

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[148] Moreover, as the authors themselves point out, the model is *testable* but it has not been *tested* yet; in fact, it appears that both the relations between the different factors and their relative weight would need to be specified through further research.

[149] This last variable includes the degree of institutionalization of the mediation process itself: its sponsorship, governance structures, policies, goals, the possibility to access it by all segments of the concerned population, the acquired data on its efficiency, and others.

[150] A negative factor, namely hostile environment, is also considered in this category as an element that could frustrate all mediator attempts to create a positive attitude.

[151] In this relation, the balance between two opposite aspects has to be considered: the clients' possibility to shape the decision and the mediator-driven closure (ibid., p. 43).

T1 and T2 represent the mediation outcomes, respectively on the short- and on the long-term. Beyond considering the change in the disputants' beliefs and attitudes after the mediation process (including their satisfaction with the process itself and their attitude towards the future of their relationships), *short-term outcomes* encompass the description of the resolution of the conflict and of the institutional conditions of the mediation process (efficiency, effectiveness, comparable costs). Very importantly, *long-term outcomes* include post-mediation evaluations of the disputants' beliefs and attitudes and the consideration of durable changes in their relationships[152]. Moreover, on the long run, the durability of the agreement is also considered together with its effects on the wider context, like the fostering of restorative justice and the parties' reduced recidivism (ibid., p. 53).

Figure 12 below (reproduced from ibid., p. 24) represents all the mentioned variables linked to the temporal phases in which they result particularly relevant:
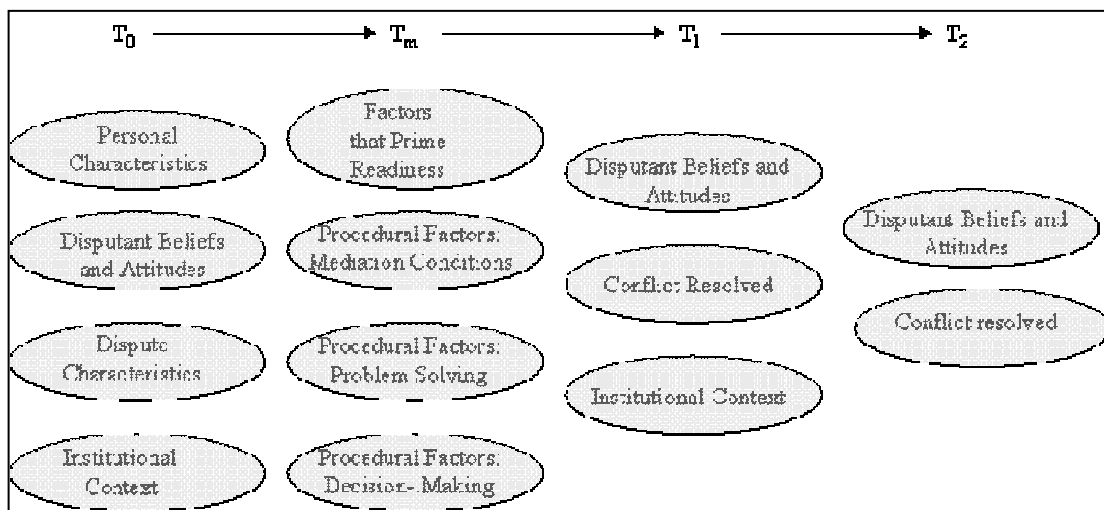
Figure 12: Herrman, Hollett and Gale's comprehensive model of mediation

In comparison with Wall and colleagues' framework, two aspects show to be of particular relevance in this scenario.

First, the phase preceding the mediation interaction proper is more precisely specified in its constituency. In particular, two factors emerge as relevant. The former consists in everything concerning the mediator's and the parties' personal and interpersonal characteristics, including the disputants' beliefs and attitudes (for instance,

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[152] As said when considering Wall, Stark and Standifer's (2001) model (see Figure 12), evaluating the long-term durability and effectiveness of mediation can be a quite delicate task; Herrman, Hollett and Gale quote however some studies that have tried to measure the improvement in the parties' interactions (ibid., see in particular p. 53).

their willingness to participate in the process, their expectations and motivations, and so on). The latter concerns the institutional (restricted and broader) context where the mediation process takes place, i.e. the type of program in which mediation is inscribed, the geographical area, etc. The influence of context is considered as essential in the model. As the authors put it:

> "Any form of conflict resolution occurs in a social context – within a family, a group, a community, a nation – that encompasses techniques, symbols, categories, rules, and values relating to conflict and conflict resolution" (ibid., p. 22).

The dispute characteristics, i.e. the nature of the conflict that has arisen (including legal constraints, and institutional/interpersonal relationships and dynamics touched by it) are also specified in the definition of the antecedent factors, which turns out to be of particular relevance for understanding the proper mediation dynamics.

Second, the model also sheds more light on the importance of considering the outcomes of mediation on the short and long term. Coherently with the consideration of the dispute context, outcomes on the institutional context (beyond the modification of the parties' attitudes) are also considered. Indeed, the consideration of the possible changes at the level of the institutional context opens the way to the study of possible beneficial effects on the prevention of future conflicts in those environments in which a mediation has succeeded.

All in all, the *comprehensive model* offers an enormous effort as for the identification of variables relevant to the construction of a mediation scenario, but the interplay of such variables during the phases of the mediation process is neglected. Thus, it is quite a static model which can offer a scenario of mediation but not its process, which would be however necessary for a complete ontology of mediation that can be useful for the study of communication.

3.2.2   The script perspective

The construction of a scenario of mediation, to which all the different approaches considered in par. 3.2.1 contribute to some extent, is essential to understand the main factors determining this process in terms of the individual involved, their institutional roles, their relationships, their motivations and the reasons why they get involved in mediation and, finally, the expected outcomes. These aspects, indeed, are connected; they can be understood in the framework of the process that implements the *pragmatic*

structure of mediation, namely the script dimension of this practice, which turns out to encompass some specific salient knots.

3.2.2.1   Stage models of the mediation interaction proper

The process dimension can be added by considering the *stage models* of mediation, which indeed give a dynamic representation of the pragmatic dimension of the mediator's mandate, i.e. they make all the passages of a correct mediation process explicit.

Not coincidentally, the elicitation of the stages of the mediation intervention proper is one of the issues that have been extensively tackled in literature, because it is of immediate use for the training of mediation professionals. The enumeration of stages is elicited by taking into account the practitioners' activities and is, thus, descriptive; however, it also tends to become normative, since the description acquires the authority of a list of stages fixed during decades of practice. Although, of course, there are many individual variations, the fundamental structure of a mediation process is quite universally acknowledged and has given rise to the so-called *stage model* of mediation. Here, the recent version presented in Kovach (2005) is presented as a quite comprehensive picture of the current practices of mediation[153] (see Table 6).

The *preliminary arrangements* normally include all those aspects that do not directly concern the proper mediation process. Several mediators are used to presenting a sort of contract before the beginning of the process, which includes fees, the selection of the mediator, and other meta-issues.

In many cases, the mediator presents, in a more or less detailed way, an *introduction* to the practice of mediation and its possible advantages[154]; within this

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[153] Notice that, as Kovach observes, the succession of the phases is only ideally linear, because each phase can be repeated during the process See Kovach (2005: 306): "I break mediation into these stages *not* to suggest linearity, but rather to highlight some of the important things that happen in most mediations". In this way, Kovach also responds to critiques on more naïve versions of stage models that are based on strict temporal linearity (see the critiques advanced in Antes, Turner Hudson, Jorgensen and Kelly Moen 1999).

[154] The mediator's introduction normally makes the reasons for using mediation as an alternative to court explicit to the parties; in other words, it points at the advantages of mediation in comparison to other dispute resolution techniques. Here, two examples of introductory discourse can be mentioned. The first example is the beginning of a transcription of an actual family mediation session taken from a corpus of transcripts (around 1 hour each) from three different mediation agencies in western and southwestern American cities, which Scott Jacobs kindly allowed me to study (see Jacobs 2002: 1405 for a more detailed description of the corpus): "I'm going to begin by telling you, about this process and and why you're here and what we can hope to accomplish by your being here. Um, before, you go before the court to present your case or instead of hopefully, um, you come here to the conciliation court and our job is to assist you to see if you can talk through some of your issues, and work out a

phase, the rules of the process (number of sessions, time, communication rules, etc.) can be discussed. Of course, the more the clients are accustomed to this process, the less such an introduction is necessary. In some cases, in fact the introduction seems not to be present.

The following phases may be more or less separate, depending on the application context and on the mediator's style. The parties (or their representatives) can make *opening remarks* through "an uninterrupted presentation of their views of the case or dispute" (Kovach 2005: 307). Kovach (ibid.) also mentions the possibility of explicitly foreseeing a phase of *venting*, which allows parties express their deeper emotions; this phase is often diluted throughout the process.

In other cases, the parties' views of the case emerge, together with further information about the conflict and its context, through the mediator's questioning (*information gathering*); the mediator also tries to concentrate on the parties' interests beyond their announced positions (*issue and interests identification*). The identification of issues allows the mediator to perform an activity of *agenda setting*, where he/she may propose to tackle some issues before others; the mediator's choice is guided by his/her perception of what the best order is for achieving the resolution of the conflict. These

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plan for your children, whereby they can be with you the father and you the mother. Um, because although you're getting a divorce from each other, you're not getting a divorce from your children, and your children need both of you, and the plan, the job before both of you is to work out some plan, where they can be with you as their mother and they can be with you as their father um, so if that could be worked out here, then (you could) write up an agreement, a plan, that you two have come up with with my assistance, and then that becomes an order of the court, and enforceable, in other words you have to live up to then what you've agreed to do. But you have a right not to agree to anything in here, and if you do not then you go on before the court and (put) on your case and the judge makes an order, and then (…) a law in your family and you are required to live up to that. Um of course I encourage you as much as possible to try and work things out here because then this will be an agreement that you two have devised, and you know your children and yourselves much better than any judge ever will".

The second example is taken from Friedman and Himmelstein (2007): "Lasciatemi descrivere più dettagliatamente il mio approccio alla mediazione. L'obiettivo qui, in realtà, è di vedere se posso aiutarvi a prendere delle decisioni, basate su cosa è più importante per voi, lasciandovi alla fine in una situazione più vantaggiosa per entrambi rispetto a quella che otterreste con una causa giudiziaria. Come vi ho già detto per telefono, voglio che sia chiaro per entrambi che non ho alcun potere decisionale. La porta è sempre aperta, nessuno è obbligato a rimanere qui se gli sembra che non abbia senso. Non posso farci niente e anche se potessi non lo vorrei. La mediazione funziona perché pensate di essere sulla stessa barca e che questa è la rotta giusta. Non farò il giudice, siete voi i giudici, e se giungete ad una soluzione che sembra giusta ad entrambi, allora abbiamo terminato il nostro lavoro, altrimenti non avete perso niente se non il tempo e il denaro che avete speso, anzi investito in questo processo. Esistono ovviamente delle tensioni, ci sono delle divergenze tra di voi. La mia speranza è che lavorando insieme potremo giungere ad una soluzione che tenga conto di cosa sia importante per ogni parte senza che l'altra debba sentire di aver dovuto rinunciare a qualcosa che le sembra importante. Ci sono un'infinità di modi per procedere, ma preferisco che si lavori riuniti tutti insieme per cercare di capire a fondo la dimensione del problema, e poi cercare di trovare la soluzione che risponda al meglio agli interessi di entrambi".

tasks can in some cases be fulfilled through individual colloquia with the parties, called *caucus*, or *shuttle mediation*; in particular, this technique is largely used in international mediation, or in particularly difficult cases of commercial mediation or, again, in delicate processes such as victim-offender mediation (see par. 2.5.). Other mediators, especially tackling interpersonal conflicts, refuse to meet the parties separately, in order not to risk losing their trust (Friedman 1993: 7).

Apparently, the most creative part of the process follows the first explorative phase: the mediator guides the parties through the *option generation* of possible solutions, the *reality testing* of the reasonableness of these solutions, and through *bargaining and negotiation*, which can translate the parties' desires into practice through an ideally serene interaction. In the end, when the mediation process has happily concluded, an *agreement* is reached, which normally includes a written contract (if necessary, revised by a lawyer). The mediator may also help the parties predefine the conditions of application of their agreements, and, in some cases, foresee some further facilitative intervention in the implementation phase.

Preliminary arrangements
Mediator's introduction
Opening remarks/Statements by parties
Venting (optional)
Information gathering
Issue and interests identification
Agenda setting (optional)
Caucus (optional)
Option generation
Reality testing (optional)
Bargaining and negotiation
Agreement
Closure

Table 6: Stages of the mediation intervention (Kovach 2005: 36)

3.2.2.2   The argumentative approach to mediation

A specific approach to the pragmatic dimension of mediation is represented by argumentation studies on mediation, which tackle the mediation process in its communicative constituency. In this sense, argumentation represents a unique perspective on mediation, as for its specificity of analysis and for its capability of

explaining the proper communicative dynamics by which and thanks to which the pragmatic goals of a mediation process are fulfilled.

The argumentative approach to mediation can surely be considered a field in development, whose foundational studies, however, have shown promising insights to the understanding of the core dynamics of mediation (see in particular van Eemeren et al. 1993). The argumentative interest in mediation arises from the awareness of the significance of argumentation in the context of the communicative interaction giving shape to the mediation process[155]. Indeed, the parties' task, i.e. making a decision on the resolution of their conflict, necessarily involves critical reflection and evaluation of each other's arguments. The final decision, however, does not only depend on a rational weighing of arguments, but must also take into account the parties' emotional and interpersonal involvement in order to guarantee that the solution is made in the context of a discussion characterized by *reasonableness* (van Eemeren and Grootendorst 1994, 2004; see also par. 5.2.1.). The communicative process in mediation, thus, is oriented towards a typically argumentative task, and largely constitutes an argumentative discussion.

Not coincidentally, a series of studies in argumentation have considered mediation as a relevant field of study (van Eemeren et al. 1993; Jacobs 2002; Jacobs and Aakhus 2002a and 2002b; Aakhus 2003, van Eemeren and Houtlosser 2005, Walton and Godden 2005, Walton and Lodder 2005; Greco 2005a, Greco Morasso 2007)[156].

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[155] Aakhus (2003: 270) observes that "the dispute mediator is just one example of an important class of work in society organized around the practical art of creating and maintaining forums for argumentative discourse, especially as realized in professional roles, institutions, organizational routines, and technology".

[156] The communicative dynamics of mediation have not been extensively and systematically tackled except for this stream of study on argumentation. A relevant exception coming from the linguistic field is represented by a German project held at the *Institut für deutsche Sprache* (IDS) in Mannheim in the years between 1983 and 1988. This project was devoted to the empirical analysis of conversations labelled as *Konfliktschlichtung* (conflict settlement) interpreted as complex patterns of actions and texts (Nothdurft 1995b: 5). The results of this project were based on about 30-40 conversations taken from different conflict resolution practices bound to various institutional contexts (family, business, work relationships, and so on, see Nothdurft 1997: 4-5; Schröder 1997). The conflict resolution practices involved are, in general, quite similar to mediation, insofar they involve the intervention of a third neutral with the aim of helping parties find a solution. The rights and duties of this third neutral vary enough according to the institutions concerned. Remarkable features of this project are the thorough description of the institutional context where the selected conversations take place (see in particular Nothdurft 1995a); a careful analysis of the mediator's moves at the level of *elocutio* (see in particular Nothdurft 1997); and the elicitation of typical moves that can be said to constitute the pragmatic structure of the conflictual discussion in institutional settings, at least in its initial constitution (in particular the accusation made by the one party, and the justification of the opposite position presented by the other party, see ibid.). Some observations are also made on the parties' argumentation (ibid., p. 149 and ff.) but, in general, the project does not take into account the argumentative dynamics promoted by the third neutral in order to help parties find a solution to their conflict. Moreover, the analysis seems to be more complete and results appear more generalizable concerning the first phase of the conflictual discussion (the confrontation between the parties, and the

More specifically, the majority of argumentation studies devoted to mediation up to now have focused on the specific mediator's contribution to the argumentative discussion[157]. Definitely, the mediator's role can be interpreted as an argumentative one – or, more precisely, as a co-argumentative one -, as he/she assumes the delicate task of helping parties engage in a critical discussion that they could not manage alone, in order to find a reasonable solution for a difference of opinion that they could not solve by themselves. In fact, the mediator "triggers" an argumentative discussion (hence the often employed metaphor of the mediator as *catalyst*) in a context in which it would be blocked or, at least, made extremely difficult by the previous dynamics of conflict.

In this relation, van Eemeren et al. (1993: 119), in a study that can be considered to be the first investigation specifically focused on the argumentative nature of mediation, noticed that the mediator is involved in argumentative interaction because he/she is in charge of helping parties reasonably discuss their issues in order to find the most reasonable solution for them. In this sense, the mediator's role precisely respects the fundamental aim of any argumentative discussion, which can be defined, in pragma-dialectical terms, as reasonably resolving a difference of opinion (van Eemeren and Grootendorst 1992; 2004). In particular, van Eemeren et al. (1993: 19) remark that the mediator's intervention is crucial for the correct development of the critical discussion because parties would be unable to conduct a critical discussion by themselves:

> "They [mediators] must remain impartial with respect to competing positions and uninvolved in the advocacy of those positions, but the resolution of differences may be seemingly blocked by unjustifiable proposals, evasion of issues, bogus objections, and the like. If one of the disputants persists in these practices, the mediator may be faced with the choice of "taking sides" or letting the process become a mere contest of wills [...]. And while mediators must be substantively neutral and leave the disputants to identify issues relevant to their dispute, if left unrestricted, disputants may get lost in squabbles, personal recriminations, and irresolvable differences of opinion that sidetrack discussion and block progress".

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presentation of the problem), while the development of the discussion towards the resolution of the conflict is less clear. Despite these possible limitations, however, as for its dimensions and for the specificity of the linguistic analysis, this project is certainly remarkable. However, it is relatively unknown to conflict resolution scholars. Sadly enough, one is tempted to think that its publication in German has undermined its fortune.

[157] Only a few analyses constitute an exception, focusing on the parties' argumentation (Cisterna Rojas 2007).

The situation of mediation as a realm of argumentative discussion may be defined as "non canonical" (Greco Morasso 2007), and paradoxical (see Chapter 1). In particular, such a paradoxical argumentative situation (see also van Eemeren et al. 1993: 119; Jacobs 2002: 1405) arises from different concomitant causes. On the one hand, the mediator, as said, differently from the canonical arguer, cannot have a personal standpoint to support with arguments, but must remain neutral with respect to the decisions made by the parties (on the central role attributed to neutrality see Jacobs 2002: 1405-1407), though engaging in the enhancement of the discussion's reasonableness[158].

On the other hand, the parties also have a peculiar status in relation to their role of participants to the argumentative discussion. If they are in a way pre-committed to the resolution of the dispute, because they have normally chosen to enter the mediation process[159], and willing to engage in a discussion in which they have the responsibility of making the final decision, they may nevertheless refuse to behave in a reasonable way or be unable to set up a discussion in line with standards of reasonableness (van Eemeren et al. 1993; Aakhus 2003). In relation to this last feature of the conflicting parties' potentially uncritical behaviour, van Eemeren et al. (1993) and Aakhus (2003: 267) speak of mediation as a field where it is possible to test the model of critical discussion under "less-than-ideal conditions", thus integrating the theoretical model with insights from the argumentative reality[160].

Yet the study of the argumentative dynamics characterising mediation has not merely originated as a test bench for theoretical models of argumentation. It primarily aims at improving the understanding of the mediation practice. In this relation, the argumentative studies of mediation have developed into two distinct but related directions.

The first direction is centred on the *quality* of the mediator's intervention (Jacobs and Aakhus 2002a: 30; Walton and Lodder 2005: 75). Quality is defined on the backdrop of a theoretical model of argumentation that can be specified by taking into

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[158] In this relation, Aakhus (2003: 269) speaks of an "ironic position" of mediators, which makes mediation exemplary of a class of interactions where parties to argumentation work under less-than-ideal conditions (van Eemeren et al. 1993: 174).

[159] Mandatory mediation may create even more problems, because disputants, albeit compelled to show up at the (first) mediation sessions, may refuse to assume a communicative behaviour consistent with the aim of this practice.

[160] Some studies, interpreting critical discussion as a narrower concept (a type of communicative practice rather than an ideal model of the argumentative discussion), claim that the mediator's chief goal is finding a practical settlement of the conflict, and, therefore, he or she intervenes in a general framework of bargaining, which often does not match the ideal model of argumentation; it has been noticed that critical discussion, however, plays a subservient role also within this framework as a means for critically testing parties' standpoints and arguments (Jacobs and Aakhus 2002a; Walton and Lodder 2005).

account the specific contextual conditions imposed by the activity of mediation. A first essential condition of argumentation in mediation is, as it has already been pointed out in discussing the positioning of mediation in relation to other ADR practices, the fact that the parties remain the legitimated decision-makers of the argumentative discussion and, thus, they should be the protagonists of argumentation and be really persuaded of the reasonableness of the final solution, which should not be imposed onto them by the mediator.

The model of a critical discussion may work as a normative grid for analyzing the reasonableness of the moves and, thus, overall, the quality of the argumentative management of the practice in question; as Aakhus (2003: 285) puts it, critical discussions is "a blueprint for the dialogue to be realized". A similar function of the argumentative model of a critical discussion has been implemented for the evaluation and improvement of problem-solving discussions (van Rees 2001; 2002 and 2003) and of legal argumentation (Feteris 1999; 2005), also in relation to the special role of third neutral assumed by the judge (Feteris 1987; 1993).

As mediation is an argumentative activity that is performed under less-than-ideal conditions (van Eemeren et al. 1993), the evaluation process must take into account the implementation and embeddedness of the ideal model in real-life contexts, which shape the opportunities of argumentation (van Eeemeren and Houtlosser 2005; Rigotti and Rocci 2006; Rigotti 2006). Evaluating the reasonableness of mediators' moves is thus a delicate process involving the consideration of the aims of a proper critical discussion as it is inserted in the concerned contexts. Some of the observations made by Aakhus (2003: 282-283) on the "puzzle" of mediators' moves is to be interpreted in this sense, as specifying that some apparently uncritical and irrational moves may at a closer look be interpreted as reasonable in regards to the final aim defined by their professional task.

In regards to the topic of quality, a further research tradition also deserves to be mentioned, inaugurated by Walton and Lodder (2005) and Walton and Godden (2005). These studies, focusing in particular on Online Dispute Resolution[161], aim at identifying the various dialogue types (Walton 1998) occurring in the practice of mediation and other conflict resolution practices and discuss their implications at the argumentative level.

Secondly, the literature on argumentation in mediation has focused on different communicative strategies and techniques that mediators may exploit to fulfil their task within the boundaries imposed by the practice. This concern directly derives from the consideration that the paradoxical argumentative role that the mediator's contribution is expected to fulfil entails the necessity of performing it through an appropriate

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[161] ODR studies, in particular stemming from the juridical perspective, show to be a particular receptive field for the integration of the argumentative component into the study of conflict resolution practices (Lodder and Vreeswijk 2004).

communicative instrumentation. Indeed, the complexity of the paradoxical task that mediators assume is inevitably mirrored in the use of complex communicative strategies (Jacobs 2002: 1404, 1407 and *passim*). In this relation, mediators' reflection on the discourse strategies at their disposal still needs further development (van Eemeren et al. 1993: 119).

In regards to the different techniques mediators may employ, much of the analysis has focused on the specific role that certain speech acts (Austin 1962; Searle 1969; van Eemeren and Grootendorst 1992) play at the level of the argumentative reconstruction of the mediator's activity. The most interesting results certainly derive from the study of the activity of asking *questions* (van Eemeren et al. 1993; Jacobs 2002; Greco Morasso 2006); the importance of questions is, by the way, acknowledged also by renowned professionals of mediation involved in the reflection on their practice (Duss-von Werdt 2005: 223; Fong 2005).

A comprehensive study of the value of questions in mediation is a delicate task, as the speech act *question* – that, by the way, does not necessarily coincide with the interrogative linguistic form – may fulfil different pragmatic and argumentative functions (Gobber 1999; Gobber 2007). Although further research on this topic is still required, a fundamental aspect of questions has been identified by Jacobs (2002: 1411, 1413) as a specific way to contribute to the argumentative discussion without contradicting the mediator's function and, in particular, his/her commitment to neutrality[162]. More specifically, Jacobs point out that certain questions "may get the respondent to commit to answers that could serve as common premises for arriving at some conclusion" (ibid., p. 1411). On the same line, Greco Morasso (2007) has shown how the mediator, by asking questions to the parties, may suggest them possible arguments for resolving their conflict. As such arguments must be in any case verified and accepted by disputants themselves, the mediator's contribution emerging from this kind of questioning can be interpreted as that of a "heuristic advisor" (ibid.)[163].

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[162] See Jacobs (2002: 1411): "But questions are also a common means whereby mediators perform many of the tasks that could have been accomplished more directly by just making arguments, gifinv directions, or otherwise rejecting or accepting disputant standpoints. […] The advantage of this technique is that, through their answers, the disputants are the ones who make the assertions so that the mediator has not publicly advocated any standpoint or committed himself to any particular argument (van Eemeren et al. 1993; Jacobs 1989)".

[163] The analyses performed indicate the main traits of the mediator's questioning and their argumentative implications without, however, analysing in detail all the possible functions of questions. Particularly interesting would be the communicative and argumentative study of the so-called "circular questions" (Fong 2005), which are one of the devices taught in numerous mediation professional courses as valuable tools.

Beyond questions, which are also quantitatively predominant in the mediator's way of talking (ibid.), other techniques have also been identified, such as *reformulations* (van Eemeren et al. 1993). Reformulations may fulfil different communicative and argumentative tasks, among which *summarising* and *equivocal advocacy* (Jacobs 2002: 1414 and ff.).

The analysis of mediators' recurrent speech acts does not only take into account the linguistic and communicative levels but, more specifically, considers the argumentative implications of the presentational devices within the mediator's strategic manoeuvring (van Eemeren and Houtlosser 2005); in other words, these analyses aim at highlighting the argumentative impact of the mediator's linguistic choices.

Still with an eye on the argumentative relevance of communicative moves, some authors have begun to study not only specific speech acts, but also the level of management of the argumentative discussion, in particular in relation to the management of issues. In particular, Aakhus (2003) describes some argumentative strategies by which mediators can help parties exit situations of *impasse* as particularly critical moments of the mediation discussion. In fact, impasse moments constitute real breakpoints in the argumentative discussion, as "the impasse moves contradict the fundamental values of critical discussion" (ibid., p. 282); thus, mediators must find ways to re-trigger the disputants' involvement in the argumentative discussion or accept that it is unhappily concluded. In relation to this kind of situations, mediators' creativity in continuously reopening argumentative spaces emerges as crucial. Aakhus identifies and focuses on three main strategies: *redirection* (to other issues), *temporising*, and *relativising* (the importance of the parties' issues and arguments which may turn out to be misleading with regard to the aim of conflict resolution). From the examples analysed by this author, it emerges that strategies reflect complex set of moves that the mediator may perform in trying to obtain the aim of resolving the impasse. A similar perspective is also assumed by Jacobs (2002), who also touches the level of issue management while analysing the implications of questions and reformulations.

From different angles and with different purposes, studies in mediation are progressively more and more oriented towards the construction of an ontology of this practice. The task of constructing a single and comprehensive framework for the understanding of this practice is a challenge to be enthusiastically met, given its significance for understanding the argumentative dynamics of mediation by eliciting the pragmatic structure of this practice. A comprehensive ontological framework of mediation, as the one that will be proposed in the next chapter, necessarily takes into account both the *scenario* of mediation (in terms of essential factors and relations) and the *script* dimension, focusing on its pragmatic structure.

4 Towards an ontological framework of mediation

Taken as a whole, the different models dealing with the constitutive aspects of mediation show that, in order to understand this process, it is not sufficient to consider the dialogic exchange between the two parties and the mediator. On the opposite, it is important to consider the factors logically determining it and those following from it as well, i.e. to take into account the whole process from its presuppositions to its results. As emerged in the previous chapter, indeed, the scenario of mediation also involves reflection on the determinants of the choice of mediation (in terms of the individual's interests and of the institutional constraints) and of the implications of the mediation process on the social reality in which parties are living, including all types of short-term and long-term outcomes that can be envisaged. To this, as emerged by considering the stage-models of mediation, the script dimension must be added. By focusing on the dynamic development of mediation, the script dimension allows considering its pragmatic structure, in which the various phases and aspects emerged in the scenario are ordered towards the fulfilment of the specific goal of this practice, namely the resolution of a conflict.

As a working hypothesis for constructing an integrated ontological framework of mediation that takes into account all the aspects emerged in the previous chapter, let us assume, as a point of departure, the proposal by Herrman, Hollett and Gale (2006) to which we owe the identification of the main categories of *antecedents*, *process* and *outcomes*[164] (see par. 3.2.1.5.). To this, as shown in Figure 13, a specific focus on the process is represented by the arrows suggesting a sequence of steps oriented towards the mediation goal:
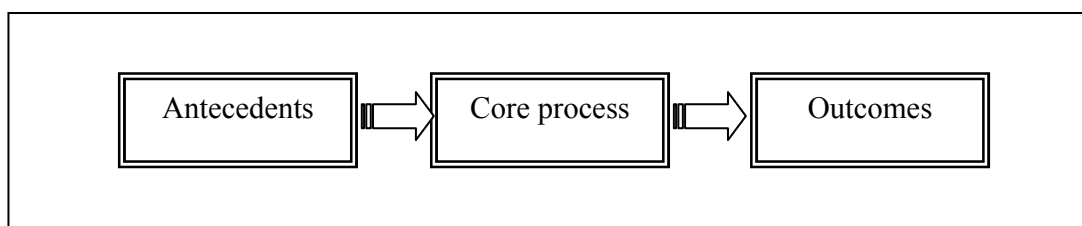
Figure 13: Main factors of mediation (adapted from Herrman, Hollett and Gale 2006)

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[164] In Herrman, Hollett and Gale's model, outcomes are subdivided into short-term and long-term outcomes. For the purpose of identifying the general structure of this practice, however, it is possible to consider the category of outcomes as a whole.

These categories are sufficiently broad and relevant to encompass all the factors emerging in the mediation models proposed until now, and can constitute a clear and solid basis – so to speak a backbone – to set up a framework of the mediation practice.

Concerning the specific content of each of these categories, they have been studied in literature with different degrees of depth and specificity.

a. Many studies, as seen, are focused on the core process of mediation; they identify its various phases (Kovach 2005) and elicit the main techniques and strategies that mediators employ in order to fulfil their task (Lall 1966; Maggiolo 1985; Touval and Zartman 1985a and 1985b; Wall 1981; Wall and Lynn 1993; Wall, Stark and Standifer 2001). In some cases, such techniques have been associated with precise mediator profiles (Riskin 1996, 2003; Herrman, Hollett, Gale and Foster 2001). It also emerges that the kernel of the mediation process is represented by the proper communicative interaction between the mediator and the parties, which includes a series of strategies and techniques that help parties discuss. The emergence of argumentation should be identified in this very kernel, in which the mediator, in a discreet way, makes it possible for the parties to engage in an argumentative discussion oriented towards the resolution of their conflict (see par. 3.2.2.2.).

b. The problem of outcomes has attracted interest for its implications at the level of evaluation of mediation in comparison to other ways of dealing with disputes (Meierding 1993; Pearson d'Estrée et al. 2001). The field of mediation studies, however, is perhaps not completely mature for this kind of analysis. In fact, a thorough evaluation of mediation effects presupposes the accurate identification of the logically preceding phases and of their relations. In particular, although it is clear that antecedents have an influence on the core process, the specific nature of antecedents still deserves further investigation; moreover, their relations both to the core process and to outcomes have not been adequately brought to light.

c. Concerning the antecedents, the current picture of mediation studies brings to light some constitutive aspects of an ontology of the pre-mediation phase. In particular, the main interagents – the parties (and their possible constituents, see Wall 1981) and the mediator – have been singled out. Furthermore, some factors and relations have been identified, such as the personal relationship between the parties (Wall, Stark and Standifer 2001; Herrman, Hollett and Gale 2006), as well as their beliefs and interests (Patton 2005) and the mediator's perception of such beliefs and interests (Carnevale 1986). As a whole, the parties' relationship is also influenced by the institutional context (Herrman, Hollett and Gale 2006; Wall, Stark and Standifer 2001). The definition of the parties' relationship preceding the mediation intervention must also include the identification of the conflict that has endangered it. The role of conflict as presupposition of the mediation intervention is more or less implicitly present in all models, as mentioned in Herrman, Hollett and Gale (2006). In fact, by means of an adequate analysis of the different notions of conflicts it is

possible to distinguish amongst as many conflictual events (interpersonal or intergroup disputes, intractable conflicts, proper wars, and so on) and intervene properly on them.

Clearly, it is crucial for the understanding of the mediation process itself to consider the antecedents, the relationships between mediator and parties and between parties themselves, including the conflict that has brought them to mediation. More specifically, it turns out to be of extreme importance for setting up the framework of opportunities and limitations of the mediator's argumentative strategy (van Eemeren and Houtlosser 2005). In fact, mediation by definition aims at possibly restoring a relationship that is endangered by a conflict.

The relevance of this aspect, however, is often mentioned rather than analyzed in depth. The present state of the research clearly indicates the necessity to further clarify it in order to understand the scope of the mediation action. In particular, amongst the antecedents that have been singled out, two factors require further definition:

1. On the one hand, as said, the mediator works with conflicting parties that he or she will help to "transform" into co-arguers. Conflict, thus, emerges as the essential presupposition of the mediation intervention and, as such, is a concept that should be investigated in its relation with the subsequent mediation discussion proper in order to understand the role of argumentation and how it allows moving from conflict to consent.

2. The parties' relationship emerges as the factor that is endangered by conflict itself. Such relationship is thus the value that parties entering mediation want to preserve or restore, and at the same time it constitutes the close *context* of the dispute itself. It appears to be affected by factors of various nature, from individual attitudes to external institutional variables and constraints.

Before trying to represent a comprehensive mediation framework, thus, it is necessary to further investigate the two categories of antecedents represented by the parties' *relationship* and the *conflict*. First, a model for understanding the parties' relationship as the inner layer of the *context* of the mediation intervention will be proposed; within this framework, it will be possible to investigate the implications of the insurgence of a conflict.

4.1   The parties' relationship: reconstruction of a model of context

The mediation intervention is by nature oriented towards the reinforcement and almost the saving of an endangered relationship. People entering a mediation process are

looking for a reasonable possibility to solve their problem without its consequences affecting their relationship so much as to bring to wider losses (roughly speaking, from emotional, to interpersonal, social, but also economic losses) or – worse – to a deterioration process irrationally enlarging the original issue. This concern is proper of a divorcing couple however wanting to share their parental responsibility as friendly as possible, but also for two companies wanting to limit the consequences of a business problem and maintain their commercial relationship in the future, or for a manager working to keep serene rapports on his/her workplace despite personal differences among employees. In sum, the relationship originally binding parties in conflict can be of different nature – more or less tight, more or less friendly, more or less institutional, more or less imposed from external constraints – but the intended purpose of mediation, in all these cases, is to recreate a reasonable framework for the interaction between the parties who are experiencing a problem in their relationship.

Understanding the nature of the parties' relationship, thus, emerges as fundamental in order to specify the goal of the mediation process. Such relationship is to be interpreted as a constitutive factor – probably the most prominent one – of the context of mediation. Indeed, the context is constituted by a network of relationships within *social reality*[165] which have a relevant influence on conflict history (Wehr 1979) as well as on the practice of mediation, on its methods and applications (Bercovitch 1992; Touval and Zartman 1985a and 1985b; Menkel-Meadow 1984). In the case of conflict resolution, the kernel of the context is represented by the parties' relationship, which is however embedded in and surrounded by larger portions of social, cultural, juridical, political, economic… context, being in turn a weave of relationships.

The model proposed in Rigotti and Rocci (2006) turns out to be particularly fitting for the aim of understanding the factors constituting the parties' relationship(s), which represent the surrounding (starting point and context) of the argumentative discussion taking place in mediation. This model can be profitably integrated into an ontological framework of mediation, as it proves to bring important advantages to the understanding of this practice.

First of all, Rigotti and Rocci's model allows bridging the antecedents and the core process of mediation. Such a model, in fact, has been conceived of as a model of the context *of communicatio*n. This means that the perspective of this model is internal to the problem of understanding and evaluating communicative events[166]; the model, in fact, aims at analyzing the contextual influences on communicative events. Therefore,

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[165] The term is assumed from Searle (1995).
[166] More properly, the approach is explicitly situated in the tradition of research bound to the language sciences, which have shown the context to be "an essential factor in the processes of the production and interpretation of speech acts, but also is integral to the constitution of meaning itself" (Rigotti and Rocci 2006: 157).

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such an approach is particularly suited for eliciting the connection between the parties' relationship, i.e. the most relevant antecedent contextual factors, and the proper argumentative interaction occurring in mediation.

Furthermore, this model accounts for the institutionalised and formal aspects of the parties' relationship as well as for their personal rapport, which both must be taken into account in conflict resolution initiatives. The significance of the parties' personal relationship is highlighted in particular in studies concerning family mediation (Cigoli and Scabini 2004), while other approaches tend to bring to light the constitutive nature of the institutional context surrounding and shaping the parties' roles (in terms of work roles, routines, hierarchy, and so on). The institutionalised context does also include the wider social and juridical context in which the conflict resolution intervention is embedded (Herrman, Hollett and Gale 2006). Both dimensions are interrelated and intertwined, though their relative weight may surely change depending on the type of mediation intervention. Significantly, in fact, in "hybrid" situations such as family businesses, the interplay between these two aspects is to be carefully considered by the mediator (Marinoni 2001; Canyamares I Sanahuja 2002).

Besides, the relationship between the parties, including all its complex interplay of juridical, social, and personal aspects, is anything but a static situation. On the opposite, it is a growing process which is significantly modified in the moment in which the disputants enter the mediation process. At this moment, in fact, they accept to assume the role of parties willing to find a solution to their conflict by means of mediation and thus the role of symmetric and equally empowered co-arguers (even if their professional relationship implies a different hierarchical status). Moreover, the very presence of the mediator changes the structure of the interaction. As it will more clearly appear in the argumentative analysis of some mediation cases in Chapter 6, the presence of a third interlocutor shows to have an extreme relevance in promoting dialogue between the disputants and in helping them set up their discussion in a reasonable fashion.

It is thus worth illustrating the model of context emerging in Rigotti and Rocci's research, and try to clarify its implications for the understanding of the mediation process.

On the basis of a semantic analysis of the term *context*,[167] then specified to encompass the context of communication, context emerges as having "an 'objective' or

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[167] On the basis of the analysis, context emerges a covering a relational predicate (*to be the context of*) connecting the context (x) and the contextualized (y). A first observation concerns the nature of states of affairs of both x and y, which can belong to the same world or to different worlds. In particular, the contextualized can belong to the real world or to a possible one (ibid., p. 159). About the semantic content proper of the predicate, a relationship of mutual relevance has been identified between x and y, so that "the contextualized can be properly understood only if its context is known. In fact, the context gives the contextualized its *meaning*, in the sense that it allows us to assign the contextualized the actual function it has in relation to the immediately relevant surrounding totality" (ibid., p. 162).

constitutive dimension" (ibid., p. 166; see also Perret-Clermont 2006: 183). On the one hand, in fact, the performance of given communicative moves depends on the satisfaction of a series of contextual requirements. On the other hand, the context represents the target directly affected by the communicative move, as any communication is oriented towards a *habit change* (see Rigotti and Rocci 2001: 48), whose effects overflow the mere communicative dimension, permeating the social world, including the subjects involved in communication, and also the physical reality[168].

The authors propose a model focusing on the constitutive aspects of the context of communication, which is synthetically represented in the following figure:
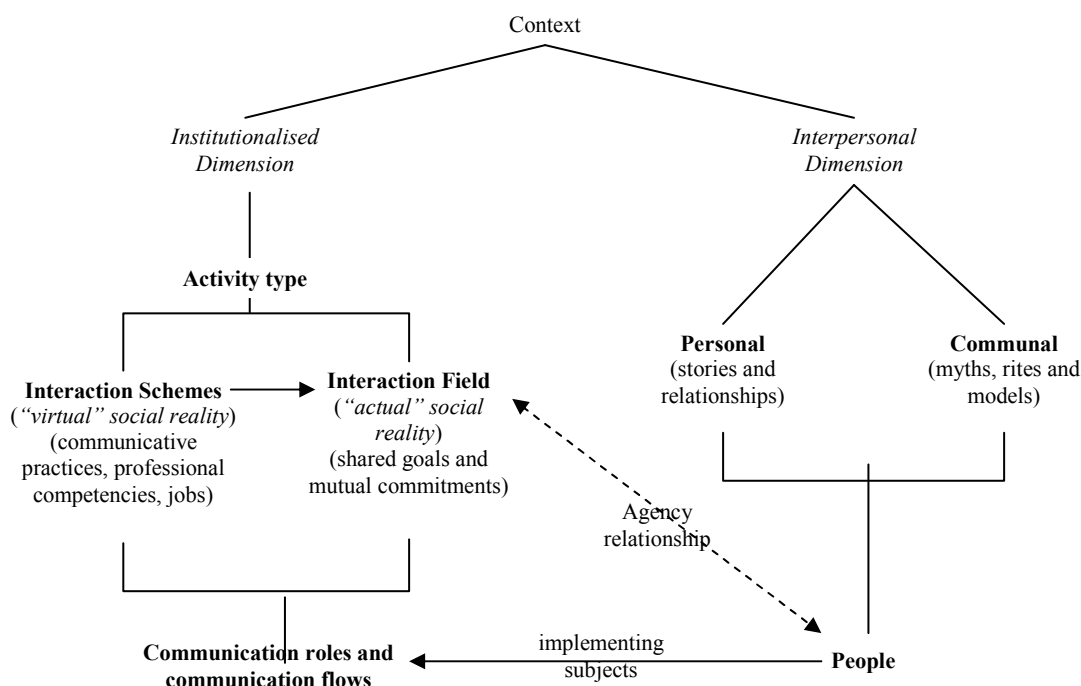
Figure 14: The model of context (from Rigotti and Rocci 2006)

As it visually appears from a first glance at Figure 14, the notion of *context* includes two equally relevant dimensions: the institutional and the interpersonal dimensions. Starting with the former, it is possible to situate mediation and analogous practices. In fact, in Rigotti and Rocci's terms, practices like mediation can be ascribed to the notion of *interaction schemes* which are defined as:

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[168] In terms of the speech act theory (Searle 1969), this corresponds to the *perlocutionary effects* of a speech act.

"…Culturally shared 'recipes' for interaction congruent with more or less broad classes of joint goals and involving scheme-roles presupposing generic requirements. *Deliberation, negotiation, advisory, problem-solving, adjudication, mediation, teaching* are fairly broad interaction schemes; while more specific interaction schemes may correspond to proper 'jobs'" (ibid., p. 173).

In fact, if we consider the activity of mediation as the intervention of a third neutral facilitator in a conflict, this can be understood as an interaction scheme. Nowadays, as illustrated above, mediation has also become a proper job in the field of ADR practices – which does not exclude the presence of informal practices having the same communicative structure, in other words inhering to the same interaction scheme.

An interaction scheme like mediation can be implemented in a series of *interaction fields*[169]. An interaction field is defined as "that piece of *social reality* where the communicative interaction takes place". As shown in Chapter 2, mediation has become a common interaction scheme in a number of interaction fields, from family mediation, to victim-offender mediation, and so on (see par. 2.5.). Albeit the fundamental features of the interaction scheme remain the same throughout its application possibilities, the interaction field contributes to the definition of the actual communication context:

"In order to obtain an actual context I need to map an interaction scheme onto an interaction field where real commitments are present. To do so the roles of the interaction scheme need to be made correspond to compatible roles in the interaction field. For instance, the interaction scheme of lecturing is mapped onto the interaction field of the University of Lugano to obtain the full context of my teaching" (ibid., p. 173).

In fact, while interaction schemes are virtual competences, interaction fields are pieces of social reality. Interaction schemes cannot be experienced but by seeing them at work in different interaction fields; mediation, thus, does not exist *per se*, but it is applied to specific conflicts arisen within as many interaction fields. In this relation, applying mediation to a business or to an international dispute is different because the social reality underlying the two institutions is different. This may also bring to slight changes in the actualisation of the interaction scheme, as seen, for instance, when describing victim-offender mediation or organisational mediation (see par. 2.5.). Indeed, the connection between interaction schemes and interaction field is so tight that they

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[169] According to Rigotti and Rocci (2006: 173): "The same interaction schemes can be found in different interaction fields: for instance we can find deliberation by a board of directors in a business and deliberation by a city council in public administration". The notion of activity type corresponds to an interaction scheme applied to a precise interaction field, for instance mediation in business, parliamentary debate, and so on (see later).

have been considered together as giving rise to the so-called *activity types*. The notion of activity type has been presented in Levinson (1979/1992) and developed within the argumentative studies by van Eemeren and Houtlosser (2005; 2007). An activity type is "a fuzzy category whose focal-members are goal-defined, socially constituted, bounded, events with constraints on participants, setting and so on, but above all on the kinds of allowable contributions" (Levinson 1979/1992: 69)[170]. Some examples of activity type given by Levinson, such as *jural interrogation*, or by van Eemeren and Houtlosser (2007: 172), such as the *Dutch criminal trial*, clearly show the merger of interaction scheme and interaction field within this notion. As the present investigation concentrates on mediation, Rigotti and Rocci's account, which allows distinguishing these two components, has been chosen in order to have a clear picture of what depends on the interaction scheme in question, i.e. on mediation, and what depends on the interaction fields upon which it is mapped.

The implementation of interaction schemes within interaction fields generates a network of *roles* that are linked to each other through corresponding *communicative flows* (Rigotti and Rocci 2006: 172). Roles depend both on the interaction field and on the interaction scheme: for instance, in the process of mediation between an organisation manager and a group of employees, the respective working roles (manager-employee) are defined by the structure of the organization (the interaction field), while the roles of parties and mediator are derived from the interaction scheme. Communicative flows are repeated (stable) occurrences of communicative activities involving two or more roles which are required by the interaction scheme involving these roles. *Teaching* establishes a communicative flow binding the teacher and the pupil roles; in mediation, normally, there are communicative flows that precede the mediation intervention and that the mediator must be capable of discovering.

Distinguishing between different interaction fields is made possible because each interaction field is defined by "specific (hierarchically organized) shared goals" (ibid., p. 172), which define the interagents' mutual commitments and relations. The ultimate goal is the *raison d'être* of the interaction field itself. Roughly speaking, goal of a business, for instance, is that of making profit for allowing the welfare of those working in it; goal of a hospital is providing medical assistance to patients; goal of the educational system is to educate people… and so on. The hierarchy of goals cannot be subverted without changing the nature itself of an institution-organisation: if the main goal of a certain hospital becomes that of making profit and that hospital, thus, decides to accept only those patients that allow the realisation of this goal, its very nature becomes questionable.

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[170] Van Eemeren and Houtlosser (2005; 2007) have brought to light the activity types' feature of providing constraints on the arguers' possible moves in real argumentative discussions.

Up to now, the dimension of context that has been illustrated refers to *institutionalised relations* between the interagents involved in communication, insofar it touches their roles within the respective interaction fields (organizations, institutions, etc.) and within various practices (as the role of mediator). It must not be neglected, however, that these roles may be implemented – and *are* implemented – by real human subjects, who do not constitute, as Rigotti and Rocci (2006: 174) underline, simple "fillers" of their institutional roles. Human beings precede and overcome their roles, in that their have desires, interests, and goals, exceed what is expected by the institutionalised context where they operate. A conceptual instrument for understanding the relation between individual goals and goals imposed by the institutionalised dimension is constituted by *agency theory* (see par. 1.1.; a more detailed discussion will be proposed in par. 4.2.2.3).

As Rigotti and Rocci (ibid., pp. 174-175) observe, two "types of interpersonal solidarity" take place; the former concerns interpersonal relationships between the individuals (Muller and Perret-Clermont 1999), while the latter concerns the link of individuals to the community, i.e. their "cultural" identity. Both types of solidarity are to be taken into account in mediation. At the interpersonal level, the individuals' stories, their representations of their relationship, their frames are to be taken into account. When a mediator enters a conflict, he/she has to be aware and respectful of these dynamics – think, for instance, about a family conflict, or to a conflict in a classroom. Moreover, the *cultural* context (ibid), concerning the communal identities of individuals, which creates *myths*, *rites* and *models* (Cantoni 2004; Cantoni and Di Blas 2006: 234-237) also influences the possible proceeding of mediation[171].

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[171] According to Cantoni (2004), myths, rites and models shape the deep identity of each organisation, conceived of as an interaction field (a business, an institution, and so on); in other words, these narratives define the organizational culture. It is possible to reinterpret these categories and specify their implications for mediators who enter specific interaction fields where a conflict has arisen.

Myths may be about the origin (*archaeological* myths), the goal or mission (*teleological* myths), and the *present situation* of the interaction field. Archaeological myths are oriented towards the past, and answer the need for identifying the "historical origin" of a certain institution. A family business, for instance, may be very well aware of how, at a certain point in time, the grandfather had a business idea and founded a small enterprise… Nations also have foundational myths; if we think, for instance, about the Pact signed by the three original Swiss Cantons in 1291, we identify its relevance to the national identity. Teleological myths are oriented towards the goal that a certain interaction field pursues, and specify the "added value" of its presence in the social reality. Situational myths concern the positioning of one interaction field with regard to the surrounding social reality: these narratives concern, for instance, the positioning of a firm within the market, its relation with competitors, and so on. A mediator who enters an interaction field must be aware of the myths the people involved in the conflict are concerned with. Sometimes, as Cantoni and Di Blas (2006: 234) notice, conflicts may arise from a difference in interpreting the myths themselves – as it may happen, for instance, in mergers and acquisitions, where organisations with different myths have to combine.

Rites concern the usual and unsaid ways of behaving within a certain interaction field. It is typical of interpersonal communication that people, more or less consciously, transmit messages about how one is expected to behave within a certain interaction field. This is often deduced from the behaviour itself

As it can be deduced from these examples, the culture of a certain interaction field is not to be exclusively conceived of as the more crucial and traditional identity of the individual, namely the one pertaining to the community where the individual is grown up: his/her hometown (sometimes his/her nation), his/her religion, his/her linguistic community… Indeed, there are forms of cultural identity that concern different levels of the individuals, as they are involved in more than one interaction field: in a certain sense, an employee "belongs" to the "organisational culture" of the firm where he/she works, but this kind of tie does not comprehensively describe his/her culture, which will be also complemented by other (normally more important) elements. One could imagine culture as a cradle that welcomes the individual into the world, and accompanies him or her into life; various communities position themselves like as many "strata" progressively enlarging the original cradle[172]. The family is normally very close

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of others: for instance, if in a certain firm everyone arrives five minutes late in the morning and this behaviour is never sanctioned, one might be led to think that this is the norm. Or, if in a certain office people are used to going out together for lunch, a newcomer will infer that there is a certain level of friendly ties between his/her colleagues. Interpersonal conflicts may arise that concern these dynamics at various levels: for instance, a newcomer (be her a secretary or even the responsible for a certain division) who is not aware of rites can have a negative impact on the "community" of her colleagues even if she confirms to all written rules. It is well-known that, for instance, where formal rules about smoking indoor at work are not present, informal rules develop on the basis of the workers' preferences. If someone new enters a context where these rules have been established for a long time and tries to change them, he may be at the origin of serious conflicts.

Finally, *models* are persons who "incarnate" (part of) the culture of a certain interaction field. A grandfather who devoted his whole life to the development of the family business may be a model for his children and grandchildren; analogously, a particularly efficient advisor in a bank, a waiter who is very good at communicating with clients in a restaurant… and so on, may be indicated to the other colleagues as developing the "best practices" to be followed. Such a process is quite natural and may produce positive outcomes based on emulation; nonetheless, sometimes it may also be at the origin of competition and conflict.

[172] Of course, I do not claim to thoroughly discuss the meaning of *culture* and its implications here. It its however worth recalling the conceptual approach I rely on in this work, namely the Tartu school of semiotics' comprehensive definition of culture, which brings to light how this dimension is inherent to every human interaction (Lotman and Uspenskij 1987; see also Gatti 2003). Culture is defined by two fundamental aspects. On the one hand, cultural identity implies knowledge of systems of signs that become a grammar for human interaction (languages, symbolic codes, rites, metric systems for dealing with space, time, energy and economic value), and of instruments that allow developing them (technical skills). But having the same cultural identity is not only speaking the same language or sharing some code… People who have the same culture also belong to a community based on the sharing of an "hypertext", conceived of as a network of shared experiences (texts, in a broad semiotic connotation), which include the community's history and "mission" (see the discussion on myths above), its religious faith, its scientific and non-scientific knowledge, values, institutions themselves, and foundational texts. Such a definition of culture is enough comprehensive for accounting for phenomena like organisational culture. It emerges, thus, that single individuals are not "confined" within one cultural identity, but they have different cultural identities that correspond to as many communities to which they belong. Normally, these communities are linked to interaction fields – the family, for instance, is also an interaction field; the community of colleagues will correspond to the

to the individual, thus this identity is very significant to him or her; while the organisation where he/she works is normally less determinant, as shown by the fact that moving to another workplace is often lived by the individuals as a non-traumatic event.

Therefore, culture is a dimension which is always to be considered by mediators who are confronted not only with the so-called "ethnic" conflicts, where the cultural element is evident and preponderant, but also to more "ordinary" kinds of confrontation. The overlapping of different cultural identities is a complex factor that mediators should take into account when entering a dispute[173]. As already mentioned in par. 2.5., for example, mediators working with conflicts in family business must be aware of the multidimensional relationships endangered by conflict themselves (Marinoni 2001; Canyameres I Snahuja 2002).

A more specific consideration of the contribution that this model of context could bring to the study of mediation is still necessary. First of all, from a theoretical point of view, the endeavor of constructing a comprehensive framework of mediation must take into account the fact that the antecedents conditions, in relation to the establishment of an ontology of conflict, incorporate two distinct elements. On the one hand, the context is made of the roles and flows, covered and made vivant by the human beings, mainly bound to the interaction field (institution, business, and the like) in which mediation intervenes. On the other hand, the very fact that parties accept to enter a mediation process somehow changes their "status" and creates new roles, flows and their respective

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interaction field "business" or "institution" where the subject works; the religious community may often be bound to a form of social interaction within an interaction field. Of course, normally, these multiple identities do not make individuals schizophrenic, since the different communities to which the individual belongs are not indistinctly articulated (Rigotti 2005b). On the opposite, as said, culture is to be seen as a multilayer structure for welcoming the baby-human into the world (a "multilayer cradle").

[173] Not much reflection on culture has been produced up to now in mediation studies. Nonetheless, some insightful remarks can be found in literature. As Avruch (2003: 368) observes, "individuals are bearers of multiple cultures"; moreover, the relation individual-culture(s) is based on freedom: "cultures are not "monolithic, integrated, and stable 'wholes', but rather are fragmented, contestable and contested" (ibid.). This is also an opportunity for moving from conflict to mutual understanding, as Lowry and Littlejohn (2006) remark while explaining their experience as mediator in conflict in Maluku, Indonesia, which also involved religious aspects. As the U.S. Institute of Peace provided a grant for a process based on peace workshops in order to promote mediation of the conflict, the participants in the peace process, involving religious leaders from the different communities involved (Christians and Muslims), discovered that their cultural differences could become enrichment for each other. As the authors report (ibid., p. 418), "the group came to see their differences not as a liability but as a positive resource"; they coined the expression *mutual faith* "to mean that one's faith is accompanied by an appreciation of the faith of others". This notion is very relevant, because it refers to the fact that the one person is enriched by finding someone else who is different and by engaging in communication with him/her. Of course, if one accepts the definition of culture that has been presented above (see the previous footnote), these observations, which derive from the context of ethnic conflict, can also be transposed to other forms of conflict mediation.

commitments, which also affect the interpersonal dimension. For example, the chief manager of a business and his/her employee, by discussing their case through mediation, bring to the foreground their nature of human beings with equal argumentative dignity, while the asymmetries of power created by their unequal hierarchical status are not relevant to the mediation discussion. And a good mediator will ensure that the roles created by the interaction scheme of mediation become predominant in the discussion. As a consequence, the goal and characterizing features of the interaction scheme of mediation turn out to constitute an important part of the antecedent conditions that shape the communicative core of the process of mediation itself. Therefore, it should be stressed again that context is not a fixed datum which pre-exists the parties' interactions and is not modified by them. On the opposite, the parties' relationships giving rise to context are modified according to the development of mediation[174].

Moreover, in order to further specify the role of mediation, it is necessary to consider the relation between the structure of interaction fields and interaction schemes. It has been said that interaction fields are distinguished by their main shared goal, and that they present a structure of hierarchically organised goals that ultimately aims at this shared goal. Now, interaction schemes are activated in order to fulfil one of the hierarchically ordinate goals of the interaction field in question. In this sense, for instance, deliberation is activated in those interaction fields in which decisions have to be made by more than a single individual – from parliaments, to boards of directors, even to enlarged families… Mediation, in this respect, has a specific nature. Unlikely deliberation in parliaments and many other interaction schemes, mediation is not constantly activated within an interaction field: it intervenes, as the other conflict resolution practices, in response to the insurgence of a conflict (Greco Morasso 2007). Such definition carries important consequences at the level of specification of this interaction scheme. On the one hand, mediation can be crucial, as its application responds to the goal of restoring the normal functioning of an interaction scheme, or even improving its interactional dynamics. On the other hand, mediation is applied as "firemen's work" in case of conflict, but conflicts are not continuatively hosted by interaction fields (except for some very chronic and difficult situations). This means that such an interaction scheme is not continuatively applied to specific interaction fields, but is a possibility that can be exploited if needed. This turns out to be a very specific feature of mediation, which distinguishes itself from other interaction schemes. In fact, interaction schemes as teaching, curing patients and promoting health, scientific debate, and so on more specifically characterize as many interaction fields (schools, hospitals, research groups or larger scientific communities), as they correspond to their ultimate

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[174] In the psychological domain, a similar remark is proposed by Grossen (2001: 64), who criticizes those approaches considering context as an objective datum which is not modified by the interaction between the individuals.

goal. Mediation, on the opposite, is applied as a means to fulfill a subordinate goal that can sometimes emerge in an interaction field, namely that of eliminating potential obstacles to its wellbeing or flourishing.

Such a nature also determines the fact that mediation can fit the goals of a variety of interaction fields and, as a consequence, it can be applied to conflicts of different nature, as the proliferation of applications of the professional practice of mediation to different institutional and social contexts demonstrates (see Chapter 2).

The nature of occasional intervention that characterizes mediation is highlighted by the fact that the mediator is often an external individual who intervenes in the interaction field with the declared function of activating a specific interaction scheme. In any interaction field, resolving conflicts may be considered a subservient goal in relation to the main goal. In fact, the presence of conflicts may slow, damage, or even hinder the realization of the main goal, by disturbing or destroying the relationships between the interagents.

4.2   Conflict: the starting point of any mediation practice

From the analysis of context just presented, conflict emerges as an event that may endanger the delicate equilibrium of interpersonal and institutional relationships constituting a fragment of social reality, namely an interaction field. Conflict is thus naturally to be seen as a crucial presupposition of a conflict resolution intervention in relation to the preservation of an interaction field. The nature of conflict and its effects on the parties' relationships need thus to be further investigated in order to understand the very object that professionals of conflict resolution have to deal with.

4.2.1   Defining conflict

Indeed, the field of mediation and, more in general, of conflict resolution, is afflicted by a certain amount of ambiguity and confusion about the term *conflict*. Such ambiguity probably derives from the fact that conflict is assumed as an ordinary language term whose meaning seems to be clear, and only rare efforts are made to specify its constituency.

Indeed, it is not rare that the way a certain issue is confronted in the scientific and cultural debate is influenced by the polysemy that the terms and expressions related to it acquire in ordinary language. Now, as ordinary language presents a significant polysemy that often gives rise to ambiguities, sometimes the scientific debate is strongly

affected by these ambiguities, and the necessity for conceptual clarification of terms becomes a primary scientific task for developing a consistent theoretical framework (in this relation, see also Grossen 2001: 59). Some analogous cases, in fact, can be found in other scientific domains; in financial studies, for instance, the word *information* is used in the sense of *data*, mediated or not by the mass-media, and as an equivalent of *knowledge*, understood as true data. When it is said that "information provides competitive advantage", the second meaning is presupposed (since only true information gives real advantage). When, on the opposite, notions like *imperfect* or *false information* are introduced, the "neutral" interpretation of information as unverified data is assumed. Also the term *argumentation*, which has acquired a specific and well-delimitated meaning in argumentation theory, is sometimes evoked, in other branches of study, only in its value of polemizing and quarrelling, and opposed to more conciliating and dialogue-oriented attitudes that would be perfectly consistent with the first meaning. This happens, ironically, in some mediation studies; as in Besemer (1993), for whom *argumentation* and *discussion* are practices in which the stronger point of view tends to be imposed on the better one.

In a similar vain, in studies on conflict and conflict resolution, the variety of approaches and of questions related to conflict can give the impression of an incoherent and even inconsistent picture; many differences do not depend only on the complexity of the issue, but also on the different interpretations of the key-notion of *conflict*. The specification of the ontology of conflict, thus, shows to be essential in order to construct a comprehensive framework of the mediation process. Moreover, since the main interest of the present study lies in the specificity of the argumentative discussion in mediation, understanding what kinds of conditions conflict imposes onto the arguers is of major relevance.

In particular, the lack of clarity about conflict determines the need for a semantic analysis of this term in order to grasp its proper meaning – its constituency – moving from empirical data on the use of this term; this allows defining its role in the mediation process. In particular, the approach adopted here to analyse the ontology of *conflict* is based on a semantic-pragmatic account, namely Congruity theory (see Rigotti, Rocci and Greco 2006; Rigotti and Cigada 2004, pp. 77-111).

Now, before approaching the semantic analysis of *conflict*, the different meanings bound to this term in different scientific approaches will be briefly tackled. Reference is made first of all to studies in mediation and other conflict resolution practices that explicitly focus on conflict; useful insights to the nature of conflict in various other areas of research, such as organization theory, agency theory, and social psychology are also considered. Through this overview, it emerges that the term *conflict* is used in the literature for referring to two distinct and apparently unrelated events.

Besides the identification of these two meanings, the strong connection between them is focused on, by analysing the semantics of the term *conflict*.

4.2.2 Overview of different scientific approaches to conflict

Not only approaches to mediation considered in Chapter 3 but, more in general, all studies in conflict resolution identify the existence of a conflict as a general precondition of the resolution intervention (Moffitt and Bordone 2005: 2-3), and often remark that the analysis of conflict is necessary in order to effectively intervene and manage it. The opening statement of Wehr's (1979) volume on conflict regulation reflects this concern: "To effectively intervene in a conflict to resolve it, one must be able to analyze it properly" (p. 1). Wehr's well-known *conflict mapping guide* has indeed been elaborated as a tool for analysing the context and dynamics of the specific conflict that the practitioner faces. Second, it reflects the hypothesis according to which the situation of *conflict* is a general presupposition of any conflict resolution effort, and, as such, must be analysed thoroughly. About this second concern, different aspects have been brought to light. The *Dictionary of Conflict Resolution* edited by Yarn (1999) highlights two distinct meanings of conflict: *disagreement* and *incompatibility* (p. 113). This text proposes a series of definitions of conflict extracted from previous studies (ibid.) whereby the prevailing meaning is surely that of a disagreement that involves overt hostility between two or more parties. However, it also emerges that such a state of hostility is generated by an incompatibility perceived by the involved parties. According to this second definition, conflict should be considered as "the broader state of incompatibility that may or may not give rise to a dispute" (p. 120), i.e. as an incompatibility between two parties' goals or perceptions. In some cases, such an incompatibility degenerates into a proper dispute, which involves "hostile action and the potential destruction of people and institutions" (Burton 1969: 2, quoted by Yarn 1999: 114). According to this more limited sense, which is at the origin of conflict resolution initiatives, conflict becomes a proper struggle between human subjects. It is clear, thus, that conflict as incompatibility and conflict as struggle emerge as two distinct meanings, which are separately assumed in different scientific approaches. In the analysis proposed here, par. 4.2.2.1 reviews studies focusing on the former meaning, while par. 4.2.2.2 refers to the latter. In par. 4.2.2.3 and 4.2.2.4 two hypotheses are discussed that bring to light the connection between the two concerned meanings of conflict; the first hypothesis is limited to a specific human relation (*agency relationship*), while the second (*socio-cognitive conflict*) provides more general insights on the ontology of proper conflict and on its generation from incompatible points of view.

4.2.2.1   Conflict as a difference of opinion

The meaning of conflict as an incompatibility of positions is acknowledged in some studies, where its positive contribution in the development of knowledge and identity through communication is highlighted. It is the case of the notion of *conflict of opinion*, introduced by Barth and Krabbe (1982: 56) to indicate a perceived incongruity of judgments about the acceptability of a certain statement between different (individual or collective) subjects. This expression turns out to be consistent with the pragma-dialectical use of *difference of opinion*. Van Eemeren and Grootendorst (2004: 21) found their pragma-dialectical theory of argumentation conceiving argumentation "as part of an explicit or implicit discussion between parties who try to resolve a difference of opinion (that may be implicit) by testing the acceptability of the standpoints concerned". In the normative account of the critical discussion proposed by Pragma-dialectics, the *confrontation stage* is defined as the moment in which a party puts forward a standpoint and the opponent either casts doubt on it, or proposes an alternative standpoint (see par. 5.2.2.). The term *confrontation* refers to the viewpoints that give origin to a difference of opinion. More specifically, a difference of opinion, which is at the origin of the confrontation stage, can be defined as the emergence of the fact that a standpoint has not been accepted "because it runs against doubt or contradiction" (ibid., p. 60). A difference of opinion, thus, is clearly to be interpreted as an incompatibility between different worldviews.

If conflict is understood in the "weaker" sense as an incompatibility of positions, it can be regarded as a superior category including differences of opinion, but also differences in the parties' desires, goals, etc. However, if conflict is taken in its meaning of overt interpersonal hostility, the relation between this notion and that of difference of opinion is much more complex. A difference of opinion, in fact, does not per se imply hostility between the carriers of the difference. Indeed, differences of opinion can be handled in different ways; *resolving* a difference of opinion properly means, in pragma-dialectical terms, that parties involved in the discussion "reach an agreement on the question of whether the standpoints at issue are acceptable or not" (ibid., pp. 58-59). In other words, one of the parties can realize that the other one's position is more reasonable, and change his or her mind consequently. This does not concern a settlement of the difference based on compromise, but rather the parties' real persuasion achieved through discussion. However, the pragma-dialectical account also acknowledges the possibility for a difference of opinion to turn into a proper conflict; in these cases, one or more differences of opinion might be involved, and the conflict might be handled in different ways; the solution may be non-communicative – one can decide to physically eliminate his or her adversary without assuming the burden of a communicative solution

– but it can also be achieved by communicative means[175]. In the latter case, an argumentative discussion may be implemented in a variety of activity types (mediation, arbitration or adjudication… see van Eemeren and Houtlosser 2005) properly pertaining to conflict resolution interventions.

In the following paragraphs, some major interpretations of conflict will be focused on, trying to bring to light the most important insights in order to understand what type of event conflict – conceived as interpersonal or inter-group hostility – represents.

4.2.2.2   Organization theory and other macro-approaches

Several studies adopt a "macro" approach for studying the genesis of interpersonal and group conflict. Such an approach is not based upon the analysis of the specific interactional event in which conflict occurs; it rather aims at identifying the structural causes that might generate hostility and conflict. It has the advantage of searching for those variables that it is possible to work upon in order to regulate or prevent conflicts. On the other hand, it results as poor in the *esprit de finesse* with which the actual conflict is considered, and tends to neglect the reasons and motivations of the single individuals, and the role of specific communication moves in the genesis of the conflictual event[176]; it is also not focused on the possible relations between the presence of an incompatibility and the insurgence of a proper conflict.

Organization theory is probably the most productive of these macro-approaches in terms of the study of conflict, considered in particular in organizational settings (Hatch 1997; March and Simon 1958). In this view, conflicts of interest amongst individual or collective interagents are generally (more or less explicitly) considered as bringing to distributive situations, i.e. to situations in which one agent wins and the other loses (Lawrence and Lorsch 1967: 12; Knight, 1992: 14). Generally, however, the process through which diverging interests may bring to overt conflict is neither explained not even explicitly focused on in these studies.

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[175] Indeed, one of the problems faced in third parties' interventions is to find a right time for intervening (Princen 1992: 51-54), because the conflict should not have escalated so much as to have degenerated into a sort of communicative epilepsy (Greco 2005a).

[176] The necessity of arriving at a communicative concept of conflict, i.e. to a description of the communicative moves that signal and characterize the development of a conflict is clearly stated by Nothdurft (1997: 1). Nothdurft's contribution is part of a larger project, titled "Schlichtung – Gesprächs- und Interaktionsanalyse eines Verfahrens zur Regelung sozialer Konflikte", conducted by a research group at the *Institut für deutsche Sprache* in Mannheim in the years between 1983 and 1988 (see footnote 156). This research group has been working on the development of conflict during the conflict resolution discussions (thus, after the initial arising of conflict from a non-conflictual relationship). Nonetheless, some important insights to the very origin of conflict can be found in this work, which probably represents the most extensive research on the communicative management of conflict.

This can be said also of the *economic theory of conflict* (Collier and Hoeffler 1998; Mansfield and Pollins 2001; Reuveny and Maxwell 2001; Sørli, Petter Gleditsch, and Strand 2005; Collier and Hoeffler 2005), which focuses, more in particular, on the dependence of hostility and conflict on the presence of scarce economic resources (Collier and Hoeffler 1998: 571) and on the economic interdependence of nations. Some other accounts, drawing on Marxist philosophy and other *coercion theories* (Wehr 1979: 3) bring the economic theory of conflict to its extreme, claiming that conflict is necessarily present in society, as it is intrinsically connected to the societal structure. The situation of a "fixed pie" of resources is always presupposed in these accounts, whereby the mere presence of different interests necessarily creates conflictual relations (Knight 1992: 8).

4.2.2.3   Agency relationship and conflict

Agency theory, developed in the economic-financial field (Ross 1973; Mann 1997) but also largely adopted in other fields, like theory of organizations, political sciences and sociology, assumes a more specific view on conflict, focusing on a particular kind of human relationship that may give origin to conflict. Agency theory, in fact, analyses the interpersonal relationship between a *principal* – someone who has a goal, and delegates its realization to someone else – and an *agent* – who is in charge of realizing the principal's goal in exchange of some form of remuneration (see also Chapter 1 for an interpretation of the mediator's agency). This theory offers a realistic view on a very usual human relationship bound to various interactions that is typically institutionalised by a form of *contract*. The principal and the agent are both considered as human subjects having their own desires, interests and goals, and behaving consequently. This approach does not see two persons' desires or interests as necessarily opposite to each other, but it takes into account the complexity of the relation between institutional roles and the human subjects who implement those roles. Within this framework, the *agency problem* is singled out, which originates from the non-alignment of the principal's and the agent's goals, which might induce the agent to behave in a way that is not correspondent with the principal's goal. The agency problem (Eisenhardt 1989: 58), in fact, arises when "(a) the desires or goals of the principal and agent conflict and (b) it is difficult or expensive for the principal to verify what the agent is actually doing". The origin of this problem, thus, lies in conflict conceived of as an incompatibility of goals, which might turn out into an overt opposition between the principal and the agent.

The agency relationship is not the only form of relationship that can be established amongst human beings. First, the category of contract is broader than that of agency relationship. There are contracts that cannot be interpreted as forms of agency:

selling or buying a house puts both interagents at the same level, and it is unnatural to interpret the one as the other's agent. Even more clearly, marriage includes a contract signed by husband and wife; but it would be odd to ask who the principal is and who the agent is. Furthermore, not all human relationships are regulated by contracts: in some relationships, the reciprocal commitments are not made explicit and enforced by an external authority. Think, for instance, to friendship, or to the ties linking the members of the same linguistic or, more generally, cultural community, which are forms of communal identity somehow "inherited" by the individual. Indeed, agency is a very specific form of relationship, characterized by a particular type of asymmetry: only the principal enjoys and is interested in the proper aim of the interaction, whereas the agent assumes the principal's goal in exchange for remuneration; remuneration is a subservient goal for the agent in order to reach his or her specific goals. The asymmetry between principal and agent in relation to the goals of the interaction is not mirrored neither in other kinds of contracts, such as the selling and buying of an house, nor in other forms of complex relationships, like the one binding two friends or two members of the same family. In agency theory, on the opposite, such an asymmetry is a characterizing feature: in a doctor-patient relationship, for instance, it is the patient who, as a principal, is affected and cares about the goal of the interaction. Such a characterising feature of agency relationships may become, as said, source of conflicts, given the different nature of interest for the goals of the interaction.

Moreover, in analysing conflicts bound to agency relationships, it is to be noticed that the principal-agent asymmetry, which defines the parties' institutionalised relationship, is often intertwined with other relationships that are not agency-based: just to quote an example, a doctor may become the best friend of a patient, thus assuming the goal of his or her health as a personal concern. Empathy is not part of the agency relationship, but these two dimensions can affect each other: one can decide not to see his doctor any more just because he does not feel comfortable with his character or because his ethical views are unacceptable... vice versa, a problem occurred within the doctor-patient agency – for instance, the suspicion that the doctor is not adequately experienced - can affect the doctor-patient interpersonal relationship. Even a long-lasting friendship can be damaged by such problems, which can also turn into proper conflicts (see the example discussed in Greco Morasso 2007).

In sum, however, even though agency theory does not cover all possible forms of human relationship, and therefore it does not cover all possible contexts for the insurgence of conflicts, it provides a reasonable framework for understanding how differences in the people's interests can lead to real conflict, and how such conflicts can be prevented.

4.2.2.4 From difference of opinion to interpersonal hostility: the notion of socio-cognitive conflict

Conflict resolution studies in the psychological domain have pointed out that human beings feel questioned together with their positions, when these positions result incompatible with someone else's (Cigoli and Scabini 2004; Hicks 2001). In this relation, the notion of *socio-cognitive conflict*, introduced in studies in socio-psychology (Light and Perret-Clermont 1989; Grossen and Perret-Clermont 1994; Perret-Clermont, Carugati and Oates 2004; Zittoun, Perret-Clermont and Carugati 1997), turns out to be particularly illuminating. This term was introduced to explain how children negotiate and make use of situations involving conflicts of ideas to make progress in their development. Such processes may lead to joint cognitive constructions as different points of view come into the discussion: a communicative difference of opinion needs thus to be managed. The empirical research on how children resolve such conflicts lead to considering that it is impossible to find an intellectual solution of the problem without taking into account the social implications of the fact of being in conflict. Any contraposition (child-child but, even more clearly, child-teacher), in fact, implies a psycho-social challenge for the subject, who feels questioned or even attacked on his or her personal position and, in some cases, on him and herself too. The notion of *socio-cognitive conflict*, thus, helps understand how sometimes differences and incompatibilities between individuals' views may degenerate into proper interpersonal hostility. The relation emphasized by the notion of socio-cognitive conflict between the different epistemic positions and the human subjects holding them finds some interesting confirmation in the results of the semantic analysis that will be presented in what follows.

4.2.3 Semantic analysis of *conflict* and related terms

The method which the semantic analysis proposed here relies on stems from a theoretical and methodological approach denominated *Congruity theory* (see par. 5.2.5.1. for a more detailed account). First proposed in Rigotti (1993) as an approach to the analysis of textual sequences, Congruity theory rests on a pragmatic account considering communicative texts as actions, having thus a pragmatic goal; it interprets the whole textual structure as a hierarchy of interconnected predicate-argument structures, which are activated at different (semantic and pragmatic) levels, and which respond to the pragmatic aim of the text (Rigotti and Rocci 2001; Rigotti 2005a). The notion of *predicate* is at the core of the theory, and, from the methodological point of view, the analysis is centred on predicates present in texts at various levels: "A *predicate* is

conceived ontologically as a possible "mode of being", a general notion that subsumes more specific ontological distinctions such as those between properties and relations, states and events, actions and non-actions" (Rigotti 2005a: 78). Such an approach allows analysing texts at the level of simple structures manifested by lexical and syntactic structures (from predicates like "to conflict with", to simple sentences), but it also accounts for more complex structures, like higher-level pragmatic predicates which assume as arguments text sequences, and may have no linguistic manifestation at all. In Congruity theory terms, "doing a semantic analysis means to rewrite natural language utterances in terms of predicate-argument structures" (Rigotti, Rocci and Greco 2006: 259). Within this framework, the semantic analysis of lexical items also takes into account the communicative situation where they occur. In other words, it may be said that this form of semantic analysis is not independent from the pragmatic perspective, as it considers the semantics of lexical items as it emerges from their textual uses.

More in detail, analysing a predicate-argument structure, be it at any level in the text hierarchy, means identifying the conditions that the predicate imposes onto its argument places, namely *presuppositions*, and effects produced in reality if the predicate is true (i.e. if the corresponding mode of being takes place), namely *implications* of the predicate (Rigotti and Rocci 2001). If implications allow specifying the proper meaning of the predicate, presuppositions define the conditions of *congruity* for the predicate to assume specific arguments to cover its argument places[177]. In the present case, since semantic analysis aims at conceptually clarifying conflict-related notions, it is focused on the ontological constituency of these specific modes of beings. The task is theoretically a crucial one – since, as Aristotle warned in the first book of his Topics, if the terms we use are not clearly defined, we risk to be mislead in our reasonings (see the discussion in par. 6.2.3.3.).

Examples of application of the method of semantic analysis based on Congruity theory to clarify lexical predicates and identifying their pragmatic implications have been given in Rigotti, Rocci and Greco (2006) and in Rigotti and Rocci (2006), focused respectively on a central notion of argumentation theory, namely *reasonableness*, and on *context*. As in those cases, the semantic analysis performed here is supported by empirical evidence taken from a 100 million-word corpus of current British English,

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[177] Congruity theory shows to have important similarities with other semantic and pragmatic approaches. In particular, Pieter A.M. Seuren (1998; 2000) analyses the semantics of predicates in terms of *preconditions* (presuppositions) and *satisfaction conditions* (implications). A similar approach to semantic analysis is to be found in Fillmore; see, for instance, Fillmore 1971, where the author analyses verbs of judging, like "to blame", "to criticize", and "to accuse". Moreover, see the works by Igor A. Mel'čuk on the meaning-text linguistic model (Mel'čuk 1997) and on the communicative organization of utterances (Mel'čuk 2001). About pragmatic predicates, see the approaches to text coherence introducing the notion of *relational predicates*, i.e. predicates that take text units as arguments, and impose specific conditions onto them. Different authors speak of *discourse relations*, *coherence relations*, *rhetorical relations*, *rhetorical predicates*, etc..

named the British National Corpus (henceforth BNC), consisting of 3261 written texts from a variety of genres (90 million words) and 863 transcribed oral samples (10 million words). It can be accessed online through a dedicated client called SARA which can carry out sophisticated queries, build concordances and perform standard relative frequency calculations. For the present research, the corpus has been exploited mainly in order to have a complete picture of the actual uses of the words that have been investigated; in particular, the insights gained from the literature on the relation between incompatibilities and interpersonal conflicts are tested against semantic evidence. The results of the semantic analysis are then interpreted in order to elicit their pragmatic implications on the subjects involved in conflict. The goal of the analysis, thus, is reconstructing the ontology of conflict and its implications on human relations; identifying the social relations that are endangered by conflict is in fact the first step towards its resolution.

The term *conflict* is a noun belonging to the category of abstract names, which do not represent *entities* of (possible or real) world, but are rather *names of predicates* or *modes of being*; they can be defined as *depredicative* names (Rigotti and Cigada 2004: 209). Abstract names, thus, may indicate states of affairs, events, actions, but also properties, etc. When semantically analysing an abstract name, it is useful to recall its corresponding predicate(s). In this analysis, beyond the noun *conflict*, the verb *to conflict*, the verbal phrases "to be in conflict", "to enter (into) conflict", and "to bring someone into conflict", and the adjectives *conflictual* and *conflictory* have been analysed.

It might be the case, as it is for *conflict* and its related terms, that a single word covers different predicates, which are distinguished in the analysis by considering the relevant features of (a) number of arguments, (b) quality of arguments (or essential traits of the presuppositions imposed by the predicate onto its specific argument places) and (c) order of arguments (ibid., pp. 95-106). When two uses of the same word differ under one or more of these respects, then different predicates have to be distinguished. In the case of the terms related to *conflict*, two fundamental meanings have been identified through the semantic analysis, which will be illustrated in paragraphs 4.2.3.1 and 4.2.3.2 respectively.

Before facing the specific traits of these two meanings, it might be useful to have a first approach to this family of concepts through its etymology. "To conflict with" derives from the Latin verb *confligo* (*cum* et *fligo*), which can be rendered as "to bump into", or "to collide".

4.2.3.1   Conflict as an hostility between individuals (conflict 1)

The first meaning identified in the semantic analysis closely recalls the etymological value of the considered forms, having to do with a struggle between two or more human subjects (persons or groups of persons), which is characterized by hostility and by the reciprocal endeavour of eliminating one's adversary. As emerging from the BNC corpus, a series of linguistic forms are frequently associated to this meaning. First of all, "to be in conflict (with)" (analysed in the forms: *to be in conflict*, *is in conflict*, *are in conflict*, *was in conflict*, *were in conflict*), which has a durative value, often manifests this first meaning, although this verbal phrase can also indicate the second meaning (see par. 3.2). The ingressive forms "to enter conflict" and "to enter into conflict" exclusively refer to this first meaning; the same is true for the expression "to bring someone into conflict with" (to cause someone's entering into conflict), in which the ingressive is submitted to a causative. The verb "to conflict", instead, is almost exclusively associated to the second meaning, which will be explored in the next paragraph. The very rare occurrences of the verb "to conflict" related to the first meaning can be found in the form "conflicting" (see example IV in this paragraph), which is quite close to the durative value of "to be in conflict". The adjective *conflictual* has brought to light some occurrences of this first value. The noun *conflict*, which makes the event of conflict become a topic, is largely present with this meaning in the corpus, but it can also refer to the second meaning (see par. 3.2).

Some examples in which this first meaning emerges are the following:

(I) He **was** constantly **in conflict with** the religious and legal authorities of his day.

(II) As far as we are concerned, if nurses **are in conflict with** their employer - and they are the least-able section of our society to fight — it is incumbent upon workers to take a stand to support nurses and other workers.

(III) But of all Koresh's dubious activities it was gun dealing that would **bring him into conflict with** authority.

(IV) Clulow and Vincent (1987) describe the role of the Divorce Court Welfare Service as "no-man's land between the interests of parents and children, between the **conflicting** parents themselves, and ultimately between the interests of the State and the individual; the meshing of private complaint and public response".

(V) Before the Gulf **conflict**, about two million Arabs and 250,000 non-Arabs visited Jordan each year.

(VI) While the party contains many who actively seek peace and reconciliation, it would be wrong to think of them in any sense as overcoming the basic **conflictual** components of bloc power in Ireland.

(VII) Hitler had no wish to provoke an armed **conflict** that he was not certain of winning.

All the considered forms can be considered together as reflecting a predicate C1 whose semantic analysis can be formulated as follows:

C1 (x_1, x_2, x_3): Presuppositions: x_1 and x_2 exist; x_1 and x_2 are human (single or collective) subjects; there exists some form of relationship between x_1 and x_2 which is in some degree a cooperative relationship; x_3 is an issue (understood as an object of interest) in which some form of difference between x_1 and x_2 emerges │ Implications: x_1 and x_2's relationship is 'shaken'; a new state of affairs is established, in which the relationship between x_1 and x_2 becomes questionable because of the divergence on x_3; each agent (x_1 and x_2) is committed to hinder that the adversary party obtains the desired good, because this is perceived as the condition to obtain his or her own good.

From the examples reported above, it clearly emerges that x_1 and x_2 can be either individuals or (more or less institutionalised) groups (nurses, like in example II, or nations, as implicitly indicated in example VII). The hostility between x_1 and x_2 – the "parties" in conflict – may be more or less exacerbate, and may involve different degrees of violence, including physical violence; the expression "armed conflict" in example VII indicates an extreme form of physical contraposition which is typical of wars.

It is noteworthy that x_1 and x_2's positions are reciprocal; that means that, in order to have a conflict in the strict sense of the word, both parties need to recognize it. Of course, in the initial phases of a conflict, there might be a situation in which a party feels hurt and the other one does not perceive that; nonetheless, in the proper conflictual phase, both parties are reciprocally hostile. A single person can *fight* against someone who is not aware of it, but nobody can have a proper *conflict* without the acknowledgement of his or her adversary.

As specified in the analysis, the proper meaning of C1 implies that a pre-existing cooperative human relationship of any sort – at least that cooperative relationship which is commonly expected from members of the human kind – becomes questionable, or enters a state of crisis. One could wonder, however, if conflict is always a negative state of affairs, or if, rather, there are some cases in which the relationship that becomes questionable was negative, and, consequently, conflict turns out to be a positive event. Indeed, a human relationship can be considered negative in two (very generally defined) cases. First, if there is a substantial lack of trust (*fides*) between the involved subjects. It is the case, for instance, of a party which betrays the other, or breaks a contract, etc. Second, a relationship may be negative if it does not correspond to the real needs of the involved parties, i.e. it is inappropriate, or incongruous. In these cases, questioning the existing relationship may be positive. C1, however, always implies at least a negative projection of the future, since it constantly develops under the risk of escalating into a violent conflict, thus assuming the form of physical collision.

Particular attention is to be devoted to the identification of the third argument (x_3); this argument, in fact, is so frequently left implicit in the corpus, that its elicitation in the semantic analysis may even seem strained. Indeed, the presence of x_3 can be indicated in a number of different ways.

First, it is sometimes explicitly specified, like in the following example, where the issue is articulately expressed: "*In March 1985, he came into conflict with the Lord Chancellor over an article he had written for the Daily Telegraph on Government pressure on the judiciary to shorten sentences and on the inadequacies of the prison system*". When the main issue of the conflict is expressed, the construction "conflict over" is very frequent. Another less frequent construction found in the BNC corpus to indicate x_3 is "conflict about": "*This concern has been manifest in the debate over intergenerational conflict about access to resources*".

In other cases, the main issue of the conflict (x_3) can be indirectly indicated in expressions like "Northern Ireland conflict", or "Gulf conflict" (example V); in these cases, the indication of the main "protagonists" of conflict (x_1 and x_2) are also indirectly indicated[178]. Here, the main issues and even the conflicting parties of the respective conflicts are assumed to be well-known; thus, the identification of the geographical area is sufficient for metonymically recalling them, and expressions like "Gulf conflict" work as proper names.

Finally, the third argument can be left implicit if the characterization of x_1 and x_2 is specified in such a way that it allows the identification of x_3. If we consider, for instance, example I, the characterization of the second argument ("the religious and legal authorities of his day") turns out to be a clear indication of the kind of issues involved in the conflict, which will be very likely related to religious and legal aspects. Even more clearly, a sentence as *"He had a long-running conflict with the rabbis"*, also found in the BNC corpus, implies the presence of a conflict of religious nature; in fact, if a person, for instance, were a rabbi's neighbour, and he were in conflict with the rabbi over the boundaries of the respective proprieties, we would expect a different characterization of x_2, like, for instance, *"He had a long-running conflict with his neighbour"*, which would sound more fitting in terms of the categories used for describing x_2.

The presence of x_3, however, can be more or less emphasized and specified from case to case. The implications of this fact will be further discussed when tackling the results of the semantic analysis (see par. 4.2.4.).

4.2.3.2 Conflict as a propositional incompatibility (conflict 2)

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[178] Notice, however, that though the syntactic structure of expressions like "Northern Ireland conflict", "armed conflict", or "intercultural conflict" seems equivalent, the specification preceding the name *conflict* may assume extremely different values from the semantic point of view.

The broader meaning of *conflict* as an incompatibility of positions or goals, which is identified in some of the theoretical accounts examined above, also finds correspondence in the BNC corpus. This meaning presents a slight metaphorical connotation, as one is tempted to imagine "conflicting opinions" or "conflicting interests" as two opposite armies fighting one against the other. Concerning its linguistic manifestation, the verb "to conflict", which has been analysed in the forms *to conflict, conflict, conflicts, conflicted*, and *conflicting*, is always associated to this meaning. This verb shows to be used with an atemporal value, analogous to that of "to equal" in mathematical calculations like "2+3 *equals* 5". Occurrences of "to conflict" referred to the first meaning, as said above, can only be found in the form "conflicting", which can be interpreted, in these cases, as "being in conflict". The verbal phrase "to be in conflict (with)" (analysed in the forms indicated above) can also be related to this second meaning; in these cases, the same atemporal value identified for "to conflict" prevails. The noun *conflict* is present with this second value, as it clearly emerges from expressions like "conflict of opinion", "conflict of evidence" or "conflict of interest"; however, the prevailing function of the noun is indicating the event of an interpersonal conflict (C1). The adjectives *conflictual* and *conflictory* are also used with this meaning[179].

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[179] The adjective *conflictual* (25 occurrences in the BNC corpus), and the very rarely occurring *conflictive* (just one occurrence) and *conflictory* (no occurrences in the corpus; some examples have been found in Google) deserve particular attention, as they represent a more complex case and a particularly intriguing one from the linguistic point of view. Since *conflictive* and *conflictory* only present very rare occurrences, the analysis will primarily focus on *conflictual*. *Conflictual* can be considered a *relational-argumental* adjective (Rigotti and Cigada 2004: 231-232). Such adjectives semantically represent a relation between two or more arguments (therefore, they are called *relational*); however, they tend to evoke this relation quite widely and imprecisely, while they tend to make the second argument of the relation explicit (thus the denomination *argumental*). The specific relation between the arguments involved can only be specified according to the context. A typical example of *relational-argumental* adjective is represented by *federal*: "federal law" means "the law that is imposed by the federation", "federal diploma" is a "diploma that is valid in the whole federation", or "whose validity is guaranteed by the federation", "federal palace" is "the palace where the federal assembly (or the federal offices) is (are) hosted", etc. In the case of *conflictual*, the relation between its arguments must also be specified according to the context. Now, in some of the occurrences found in the BNC corpus, like in the following ones, the relation identified by *conflictual* corresponds to the one we have identified as C1: "*While the party contains many who actively seek peace and reconciliation, it would be wrong to think of them in any sense as overcoming the basic **conflictual** components of bloc power in Ireland*"; or "*Only a few writers in international relations (notably Jervis, 1976; Steinbruner, 1974) have seriously questioned the assumption of rationality in state policy making and some more recent works have distinguished bargaining in which the parties are not consciously **conflictual** but are searching for a point of convergence (Raiffa, 1982; Rangarajan, 1985)*". In other cases, the relation corresponds to the predicate C2: "*In this epoch the military elite was subordinate to the political elite, and the economic elite was divided, pursuing **conflictual** economic goals due to the massive expansion of the frontier*". The following use of *conflictory*, found in Google, can be explained with the same interpretation: *Are Marx and Aristotle **conflictory** or reconcilable?* Notice that, in this case, although human beings are apparently covering

Some of the examples in which to this second meaning (C2) has been identified are the following:

(I) *If a State concludes a treaty that **conflicts with** its obligations under an earlier treaty, other parties to the former treaty (although third parties to the subsequent one) can regard that State as remaining bound by its commitments to them.*

(II) *His point of view **conflicted with** the spirit of the age and, despite his example, the glorious art of true fresco died out, its practice being incompatible with the new social attitude to time.*

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the argument places x_1 and x_2, this turns out to be a metonymical use, based on the denomination of persons in the place of their theoretical positions.

Moreover, the adjective *conflictual* covers two further predicates that have not been found in the analysis of the other forms, which will be named C3 and C4 respectively. In both these cases, *conflictual* identifies a one-place predicate. Concerning C3, only one occurrence has been found, which is confirmed, however, by an example of *conflictory* found in Google. This predicate identifies human actions or activities that typically become sources of conflict, like in: *"He stresses the way in which the acquisition of a gendered subjectivity is necessarily **conflictual** and involves struggle"* or in *"This thesis investigates the three so called "**conflictory** speech acts" ("konfliktäre Sprechakte") "reproach", "threat" and conflictory warning"*. In this case, the semantic analysis is the following:

C3 (x_1): Presuppositions: x_1 is a human action or activity │ Implications: x_1 generates conflicts in the sense of C1

Some of the examples in which the value of C4 emerges are: *"If post cold-war Europe is not to be violent and **conflictual** then the sources of rivalry and mistrust need to be addressed head-on"*, and *"However, in Finkelhor's review, several factors emerged as being consistently associated with higher risk of sexual abuse: when a child lives without one of the biological parents; when the mother is unavailable to the child either as a result of employment outside the home or disability and illness; when a child reports that the parents' marriage is unhappy or **conflictual**; when the child reports having a poor relationship with the parents or being subject to extremely punitive discipline or child abuse; when the child reports having a step-father"*. The only occurrence of the adjective *conflictive* found in the corpus can be interpreted as C4: *"This **conflictive** relationship between popular culture and official culture manifests itself in Augusto Roa Bastos's Son of Man, in the life-sized figure of Christ carved by a leper, which, despite the disapproval of the ecclesiastical authorities, is venerated by the townsfolk of Itapé in preference to the stylized crucifix in the local church"*. The semantic analysis of C4 is:

C4 (x_1): Presuppositions: x_1 is a social relation, or, more in particular, a piece of social reality; │ Implications: x_1 is often affected by conflicts.

In this case, the value of C4 highlights the fact that the concerned social reality – which can be more or less institutionalised, i.e. it can be a political entity, or a marriage – has been involved in different and frequent conflicts over a certain period of time. The relational adjective *conflictual*, in this use, acquires the value of a qualifying adjective, expressing the quality of the argument x_1; as such, it also admits of degrees, as the following examples clearly show: "Your marriage has always been more conflictual than mine!" or "After the last events, the political situation in Northern Ireland will become less conflictual".

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(III) *Liz Sayce, MIND's policy director, said the study's general optimism* **conflicted with** *earlier reports.*

(IV) *Egypt protested at FIFA's original date of 28 March as it* **conflicted with** *a religious festival.*

(V) *To the extent that maximising profits* **conflicts with** *the public interest, the solution from this perspective is not to modify corporate objectives, but to strengthen the limiting conditions within which companies are required to operate.*

(VI) *Yet the government as promoter at times* **conflicted with** *the government as regulator, particularly in the area of competition policy.*

(VII) *In this poem, as in 85, the Poet claims that his Muse is 'tongue-tied'; in 76, 102, 103 and 105 he gives* **conflicting** *reasons, all ingenious, why he writes such repetitive or uninspired poetry.*

(VIII) *All of these decisions involve dilemmas in which equally important values* **are in conflict** *and however one resolves the dilemma, potential problems will arise.*

(IX) *The apparent* **conflict** *of evidence is still not completely resolved, but there is a possible explanation.*

(X) *New York publishers echo accusations of a* **conflict** *of interest in the choice of Knopf without prior competitive bidding.*

(XI) *There is an inherent* **conflict** *between the demands of local autonomy and the principle of 'territorial justice', requiring that citizens in different geographical areas secure comparable treatment.*

(XII) *For example, a union representative may feel a* **conflict** *between his need to fulfil a spokesman's role for his constituents, and his need to act responsibly as an employee of the company.*

(XIII) *In this epoch the military elite was subordinate to the political elite, and the economic elite was divided, pursuing* **conflictual** *economic goals due to the massive expansion of the frontier.*

(XIV) *Are Marx and Aristotle* **conflictory** *or reconcilable?* (Example found in Google)

In relation to the number of arguments involved, the predicate C2, which these examples make reference to, only foresees two arguments (x_1 and x_2). Its semantic analysis can be formulated as follows:

> **C2** (x_1, x_2): Presuppositions: x_1 and x_2 are two possibile states of affairs (propositions);
> Implications: x_1 and x_2 are incompatibile, i.e. mutually exclusive.

In order to clarify the nature of the states of affairs which might conflict in the sense identified here, it might be useful to recall the real arguments covering the argument places x_1 and x_2. The set of arguments found covers: points of view (*example II*); theories, statements, reasons, arguments (*examples III, VII, IX and XIV*); obligations

(*example I*), rules, duties, roles (*examples VI and XII*), codes, laws, principles; goals (*examples V and XIII*), interests (*examples X and XI*), needs, values (*examples IV and VIII*).

This meaning of *conflict* brings to light the mutual exclusiveness of x_1 and x_2, which implies the need for a solution which can be of different types: if we are in front of "conflicting evidence", we might need to further investigate in order to discover which pieces of data correspond to reality; if we face an incompatibility of goals of values, a pragmatic decision is needed, which should be made in accordance with a reasonable hierarchy of goals: in example XI, for instance, if the demands of local autonomy are considered more important than the principle of "territorial justice", the principle could be suspended in this particular circumstance.

4.2.4 The degeneration of disagreement into a proper interpersonal conflict

Beyond helping identify two distinct uses of the term *conflict*, the semantic analysis presented in the preceding paragraphs gives some clues for interpreting the relation between propositional incompatibilities of the type C2 and interpersonal conflicts of the type C1. These latter define, by the way, the proper conflicts that are presupposed by mediation and other conflict resolution practices although, as it will be shown in Chapter 6, one of the tasks that a mediator must perform in order to help parties resolve their conflict (C1) is to identify the original incompatibilities (C2) that might have provoked it and that represent the *issues* originating the conflict.

When analysing C2, an initial characterization of the arguments x_1 and x_2 as "states of affairs" (propositions) has been given. There are, indeed, different levels of incompatibility or alternativity that can be touched in C2 situations. At a first level, propositional incompatibility only concerns the *ontology* of the situation i.e. it is a mere propositional incompatibility. In this sense, for instance, if there is a fixed amount of financial resources to be distributed between two persons A and B, it is unavoidable that, the more A gains, the more B loses. Analogously, in a democratic system, if two candidates are running as president, the more votes the one gets, the more he or she "steals" votes to the other. At a second level, the incompatibility concerns *beliefs*: one cannot believe and not believe the same thing at the same time. Finally, the incompatibility can concern *commitments*: the same person cannot be committed to two contradictory positions at the same time (once he/she has resolved possible interior conflicts and has decided to support a position in public). Of course, the incompatibility of beliefs and commitments cannot be accepted at the level of the single individual, who is expected not to be inconsistent in his or her beliefs or commitments, but there can be

incompatibilities of beliefs or positions held by different human subjects. Now, such incompatibilities turn out to be, indeed, the proper origin of the conflict C1. In fact, when a propositional incompatibility involves the level of beliefs, and, even more, when it turns out to touch the level of commitments, the degree of *personalization* increases. In other words, the human subjects assume social positions as "parties"; and, at this point, a reaction can be triggered that brings C2 to degenerate into a real interpersonal conflict C1[180]. Such degeneration is based on a reasoning that could be formulated as follows: "If you do not esteem my position (my goal, my desire, etc.) you do not esteem me as a person". This reasoning stems from an argument scheme, or *locus*, namely the *locus from the product to the producer* (Rigotti and Greco 2006). The *maxim*, i.e. the inferential principle which the argument is based on, can be formulated as a very general law: "the quality of the product mirrors the quality of the producer". Indeed, we often apply this rule in our reasonings: a good cook, i.e. someone who deserves to be esteemed as a cook, is somebody who "produces" (prepares) good dishes. If a cook's culinary creations were all of bad quality, we would not consider him/her a valuable cook. Similarly, when a person undertakes a commitment, he/she is bound to it as the producer of this "communicative product", and the acknowledgement of his/her position can be interpreted as the acknowledgement of him/herself as a person. Thus, questioning one's view turns out in somehow threatening one's identity. Certainly, such reasoning is not always legitimated; on the contrary, in many cases it is not. However, it is undoubtful that its application is common[181], and generalising it to all cases is a subtle temptation[182].

It is true that facing a difference of opinion sometimes also turns out into a positive acquisition of the involved subjects, i.e., more in particular, to innovation (Doise, Deschamps and Mugny 1991: 113), learning, and to the establishment of a much

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[180] Felstiner, Abel and Sarat (1980-81) analyse the antecedents of disputing, starting from substantial distress and injustice and moving to the accusation of some other person imagined as responsible for the injustice. In particular, they claim that, although sociological analyses have focused on official and formal institutions of conflict management (courts etc.), "the antecedents of disputing are as problematic and as interesting as the disputes that may ultimately emerge" (ibid., p. 633). Here, they introduce a well-known step-analysis of the generation of the dispute sub-divided into the stages of *naming*, *blaming* and *claiming*. The attention to the process of development of conflict is also present in Nader and Todd (1978: 14ff, q.td in Nothdurft 1997: 10).

[181] An example from doctor-patient interaction is provided in Grossen (1992). The author examines the case of parents addressing a logopedist for their child, whom the logopedist herself advices to refer to a psychologist, thinking that the latter medical practice would be more adequate to their case. By this doing, the logopedist, however, neglects their specific reasons and motivations. The practice shows that this often brings to a refusal on the parents' side and to the interruption of the therapeutic relationship: "En effet, lorsqu'elle néglige les raisons qui ont amené les parents à s'adresser à un logopédiste et le cadre dans lequel la demande est formulée, cette proposition entre en conflit avec la définition que les parents donnent des difficultés de leur enfant et constitue pour eux une menace sur le plan individuel et relationnel" (ibid., p. 169).

[182] Such a temptation is particularly poisonous in asymmetrical relations, where the "inferior" person may be continuously "tested" on his or her positions in order to be accepted as a person.

more mature identity, whereby dialogue and confrontation with others become a source of personal richness (Grossen and Perret-Clermont 1994: 256). But, at least in some cases, it generates overt hostility, disagreement, and personal opposition – in other words, a real conflict of the type C1. In Dascal's (1998) terms, the different communicative ways of dealing with a difference of opinion are positioned in a dichotomy having *discussion* and *debate* as poles. A discussion can be interpreted as an argumentative exchange in which the parties are committed together to the search for truth and, though having different positions, they do not commit to them as individuals. At the opposite pole, we find disputes, where the only aim of the participants is winning, irrespectively of the truth. In disputes, the adversaries lack esteem in each other as reasonable arguers and, thus, they are ready to use manipulative devices such as stratagems in order to win the cause. To this, it could be added that, sometimes, conflicts can escalate so much that they overcome any communicative category and become non-communicative events, in which the parties simply tend to eliminate each other. The dichotomy discussion-debate can thus be viewed as a pole of a higher-level dichotomy between communicative and non-communicative ways of dealing with conflicts.

In general, the hypothesis can be made that the more a person feels identified and also "dominated" by his or her positions, the more he or she will be inclined to accordingly interpreting any criticism on the positions as an attack at the identity level. This does not mean to suggest that individuals should be indifferent to any value and so to say not to "love" them when they touch the most important level of their identity. This would be unrealistic, because human beings do normally have non-negotiable positions on certain very relevant issues[183]. What emerges from the analysis performed here is that if somebody has a "solid" identity, he/she will not feel personally questioned by objections concerning his or her positions[184] and will more easily engage in a discussion where he/she is requested of justify them without feeling threatened.

By the way, the observations made on the implications of C2 at the subject's identity level lead us to discuss the well-known principle of the conflict resolution practice that proclaims: "separate the people from the problem" (Fisher, Ury and Patton 1991: 17). This account acknowledges that the subjective relationship between the

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[183] In a very recent work, Atran and Axelrod (2008) argue that, counterintuitively, the people's "sacred values" (like family, country, religion, honour, justice and so on) should not be left apart nor should they even be left for last in conflict resolution discussions. In particular, offering material benefits in exchange for giving up a sacred value actually makes settlement more difficult because people see the offering as a personal offence. The results of their research show that, despite people's unwillingness to negotiate inviolable values, which might suggest to conventional wisdom to neglect them, showing *respect* for the other party's values may open the door to dialogue even in so-claimed intractable conflicts.

[184] The complexity of the construction of a subject's identity has been tackled by Rijsman (2008; see in particular pp. 17-20) from the perspective of social psychology, in terms of *social comparison* between Self and Other.

conflicting parties is crucial in the conflict resolution process: "You are dealing not with abstract representatives of the "other side", but with human beings. They have emotions, deeply held values, and different backgrounds and viewpoints; and they are unpredictable. So are you" (ibid., pp. 18-19). However, separating the relationship from the substance of the problem is considered as an ideal move for conflict resolution. Now, if this is interpreted as trying to solve the problem by putting apart its relational dimension ("*I am sorry but I have to fire you from my company; but nothing personal!*"), can be an unhappy enterprise, and a very quixotic one.

The degeneration process going from C2 to C1 is witnessed by the semantics of the predicate C1 itself. In fact, the presence of an original incompatibility C2 that has given rise to conflict can be found in the third argument (x_3) of C1, which represents the main issue of the conflict. The fact that, as said, x_3 can be more or less explicitly focused on depends on how much C1 has escalated. When, in fact, C1 is not managed for a certain amount of time, the parties' reciprocal attempts to hinder the realization of the other's goals may turn into a *global conflict*, whereby they ultimately try to eliminate each other. In such a degree of conflict escalation, the original C2 may be progressively left in the background, or even completely forgotten. Thus, in dealing with exacerbate and long-lasting conflicts (be them at the interpersonal level, or at the level of more or less institutionalised groups), identifying the main issue, or even a set of relevant issues, is already an important step towards the resolution of the conflict itself; indeed, this is one of the mediator's tasks in the process of mediation (see Chapter 6). Thus, the hypothesis can be made that the focus on x_3 within C1 and the escalation of the conflict are in inverse proportion: the more the issue of the conflict is specified and delimitated, the less the conflict tends to assume a global dimension, and the easier it is manageable. On the opposite, the less the presence of x_3 is clearly emerging in the linguistic formulation, the more exacerbate the conflict[185]; in these cases, a reasonable intervention for conflict management and resolution may become very difficult.

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[185] In this relation, it is useful to make a clear distinction between the state of affairs of conflict and those communicative interactions that are clearly associated to a non-cooperative attitude, but do not overlap with the conflict situation. A prime example of such interactions, whose denomination, however, brings it to be often assimilated or confused with conflict, is *controversy*, a "quasi-dialogue type", in Dascal's (2003[1989]) definition. Again, semantic analysis reveals some important aspects which help distinguish conflict and controversy. In particular, the adjective *controversial* helps us shed light on the abstract name *controversy*. Differently from *questionable*, which refers to an object of possible discussion, the adjective *controversial* is said of a topic that has already given rise to discussion, as it emerges clearly from the following example: "*Textbooks on research methods rarely mention the problems that arise when undertaking research on **controversial** topics or conducting it in sensitive locations*". The following semantic analysis can be proposed:

Controversial (x_1): Presuppositions: x_1 is a possible issue of discussion │ Implications: there has been debate on x_1

Going back to C2, it should be noticed that a particular kind of propositional incompatibility is more inclined to turn into C1: the so-called *conflict of interest*. Since interests and goals are bound to an agent's potential intervention on reality, this fact can

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Notice that x_1 is always to be interpreted as an object of discussion, even if it is apparently a physical object: for example, in the case of "…*the eventual security of the **controversial sculpture** in its Hyde Park home"*, what is controversial is the judgment about the sculpture, not the physical monument in itself. From the example, however, it is not possible to say whether it is the very existence of the sculpture to be controversial, its collocation in the park, or its realization (style, material…).

The noun *controversy* reflects some of the features of the correspondent adjective, clearly referring to communicative interactions characterized as debates or discussions: *"Much **controversy** is caused by Luxemburg's low rates of 6 per cent and 10 per cent, because Belgians simply shop 'over the border' and fill up their cars with cheap petrol"*. The following analysis can thus be proposed:

> **Controversy** (x_1, x_2, x_3): Presuppositions: x_1 and x_2 exist and are human beings; x_3 is a possible issue of discussion │Implications: there is a communicative contraposition between x_1 and x_2, who have different standpoints about x_3, and this contraposition gives rise to protracted discussion.

In comparison to C1, *controversy* clearly indicates that the divergence on x_3 is managed through pretty *communicative* means (in particular, through a discussion). Dascal has devoted a series of studies to the nature of controversy, which confirm and develop the results emerged from the semantic analysis of this concept. At the level of content, semantic analysis has revealed that controversy always involves an issue of discussion (represented as x_3); Dascal points out that, in practice, controversies normally involve more than a single issue: "An actual controversy is never a matter of a *single* difference of opinion on *any* issue" (ibid., p. 281). Controversies turn out to be, rather, "(protracted) dialogues" (ibid., p. 280), or, as it might be said, interactions of communicative nature characterized by a high level of competition and a low degree of confidence in the possible resolution of the difference of opinion between the disputants. Their dialogical nature distinguishes controversies from conflict, which are events that can be lacking any communicative involvement. In particular, Dascal (1998; 2006: xlii) highlights the pursuit of reasonable argumentation which is present in controversies, and which is also required by the actual decision maker – the public as "judge" of the controversy – because "the public praises Reason as well" (Dascal 2003[1989]: 290).

Furthermore, Dascal emphasises the impossibility of defining controversies only by pointing at logical inconsistencies between the disputants' statements (Dascal 2003[1989]: 290); the inconsistency of the disputants' statements, in fact, turns out to be only a part of the nature of controversy; moreover, the mere propositional incompatibility does not necessarily give origin to a controversy. Controversies, in fact, involve not only a cognitive dimension, but also an existential and a public dimension (ibid., p. 288), which engages the disputants globally as persons, and also affect their relationship with the community – the "public" – which acts as decision-maker for deciding who the winner is. The global involvement of the disputants' personal identities highlights a certain similarity between controversy and conflict: both events concern the person as a whole, putting into discussion not only his or her opinions, but also his or her personal identity.

In this sense, controversies can be considered particular developments of socio-cognitive conflicts, which have not degenerated into interpersonal hostility. More specifically, these observations on the social nature of controversies, by indirectly recalling the issue of socio-cognitive conflict, suggest us a possible hypothesis for studying the relationship between controversy and conflict: it might be said that interpersonal conflict can be the outcome of a controversy if this latter is not correctly managed as an argumentative discussion, and the social questioning of the parties' identities becomes preponderant.

be better explained by introducing a *theory of action*, since interests and goals are bound to an agent's potential intervention on reality. Following Rigotti (2003), action can be defined as the intervention of a human (rational and willing) subject who, on the basis of his knowledge of the actual world and of possible worlds, activates a causal chain in order to pursue his desire to reach a new corresponding state of affairs (see Figure 15).
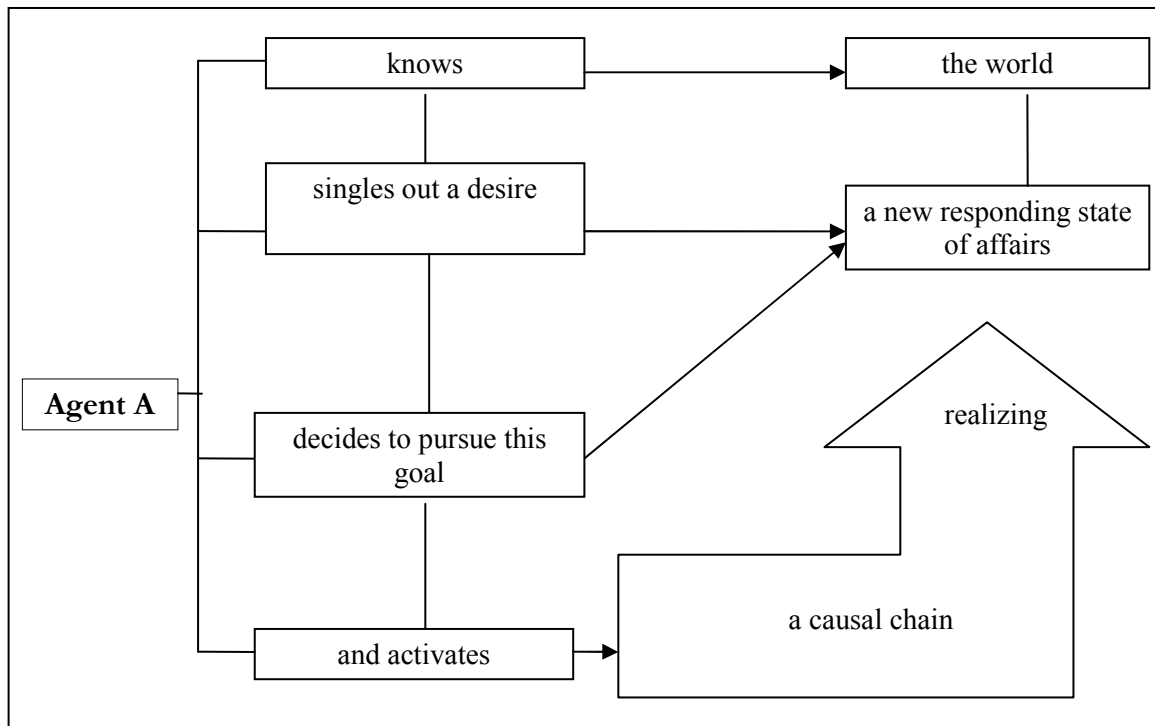
Figure 15: Structure of action (Rigotti 2003)

Now, when two agents have a conflict of interest, as far as they decide to pursue their goal, their reciprocal positions tend to become *competitive.* This can happen for two main reasons. The first one is that the new responding states of affairs they desire may be contradictory, i.e. they could not become at the same time part of the real world: if it is necessary that agent A's good is the possible world Q, and it is necessary that agent B's good is the possible world ¬Q, since Q and ¬Q are contradictory, it is impossible that these two worlds are realized together in the real world. We may think, for instance, to a political competition where only one of two candidates will become president. Since the desired good (the election as president) is exclusive, the two candidates have contradictory interests, i.e. they imagine and whish the realization of contradictory states of affairs. In such cases, if both agents deliberately pursue their respective interests, an interpersonal competition arises where the fulfilment of A's desire automatically turns into B's ruin; the Latin saying "mors tua vita mea" represents this situation crudely but quite clearly. The second cause of degeneration of conflicts of interest into proper

interpersonal conflicts takes place when the interests of the agents are per se not contradictory, but the realization of their respective desires is impossible, because it exploits an exclusive causal chain. For instance, imagine that two citizens' associations would like to propose alternative measures for promoting the cultural development of their town: the one would like to improve the library service, whereas the other one wants to open a new museum. Of course, the two interests are not *conflictual*; but the city counsel only has a limited budget, therefore only one of the projects will be accepted. Also in this case, a competitive situation is generated, which may bring to a real interpersonal conflict[186].

As a final observation, one might wonder whether the conflict of interests that parties perceive is always correspondent to a real propositional incompatibility. *Fortunately not* is the answer. In fact, when two persons appear to have incompatible interests, the search for a win-win solution seems to be vain. However, it is important to verify whether the opposition between A and B's goals reflects a real opposition between the fulfilment of their desires, or if it is only a perceived opposition. In the latter case, if the conflict is based on an apparent incompatibility, the resolution will be clearly easier. Dascal (forthcoming) discusses how sometimes the resolution of an incompatibility (or more properly, in his terms, a *dichotomy*) occurs through a de-dichotomizing strategy, i.e. through the acknowledgment that the poles of the dichotomy, if taken in a pragmatic perspective, allow for intermediate alternatives in the actual use that is made of them within an argumentative debate. It is argued that, often, the dichotomization is an *oversimplification* of the presence of a complex difference of opinion; this observation is particularly precious for conflict studies, because the underlying and maybe complementary concerns of the parties may be incorrectly "represented" by a "clear" contradiction at the superficial level of positions. Thus, we might say that interpersonal hostilities can be hidden behind a so-claimed ontological dichotomy which, at a closer look, could be reinterpreted and dissolved[187].

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[186] In both these cases we have the so-called *distributive* solution, which is opposed to the *integrative* solution, in which joint gains are possible (see Princen 1992: 35-36).

[187] Here, it is first of all important to distinguish between contrary terms and contradictory terms, of which the one consist in the other one's negation. See in this relation the discussion in Petri Hispani *Summulae logicales* 3.32 (ed. Bochenski 1947: 33). Moreover, even concerning contrary terms, as Gatti (2000: 33) remarks, already Aristotle, in his *Categoriae*, observed that contrary terms not necessarily are the opposite poles of a dichotomy, like odd and even numbers. In some cases, contraries do admit intermediate terms, as in the case of white and black, which admit an infinite set of grey tonalities in between. This has been developed in the Medieval doctrine of oppositions, which distinguished among contraria *mediata* (which admit some intermediate terms) and *immediata*. See the application in Thomae de Aquino *De Veritate*, q. 28 a. 2 ad 4; this author quotes the example of the predicates blind-visually normal, which are considered mediata in the first nine days of a dog's life, and immediata after that term.

Conflict resolution studies have rightly devoted much attention to this topic, as witnessed by the well-known Harvard principle "focus on interests, not positions" (Fisher, Ury and Patton 1991: 3, see also par. 3.2.1.2.). In this relation, it is worth reporting a famous "myth" which is transmitted to new generations of conflict resolution practitioners with the aim of warning them of this possible discrepancy between the parties' image of their advantage and their actual advantage. The story can be resumed in the following terms: two old sisters have a single orange to share, and both declare that they need the whole fruit. After a long conflict, they agree to a distributive compromise. They each take half the orange, and end up with… a very small glass of juice for one sister and a very small cake made with the orange peel for the other. Of course, if the two sisters had focused on their real desires rather than on their positions, they would have noticed that the former were compatible: the one sister could have enjoyed more orange juice, and the other one could have had the whole peel for her cake. Both sisters would have been more satisfied. The principle that conflict resolution practicitioners want to convey by this anecdote is quite clear: one should be aware of possible discrepancies between the parties' positions, which can be contradictory, and their real concerns, which often turn out to be complementary or, in any case, compatible[188].

4.2.5 Towards a new "conflict mapping guide"

When Paul Wehr, in 1979, proposed his *conflict mapping guide*, he developed a valuable tool for intervening into social and international conflicts, constructed on the basis of his experience in the field (Wehr 1979: 18). This tool aimed at achieving "a clearer understanding of the origins, nature, dynamics, and possibilities for resolution of the conflict" (ibid., pp. 18-19). The conflict mapping guide approach has, indeed, numerous merits. Above all, the map is a particularly suited instrument for identifying a series of factors that emerge as relevant in the process of conflict conceived, in this case, as overt hostility (C1) between persons, social groups, or nations. In particular, Wehr's map is founded on the identification of the conflict *history*, *context*, *parties*, *issues*, *dynamics*, of the *alternative routes to a solution(s) of the problem(s)*, and of the *conflict*

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[188] Uspenskij proposes the challenging hypothesis that even cultural differences can often express deeper complementarities. A significant example is brought in Uspenskij (2005), where it is shown that the differences about benediction with the sign of the Cross that can be found in the different Christian traditions are, in reality, expressions of different perspectives on the same relationship between the human being and God (see in particular pp. 43-49, and pp. 56-57, footnote 13). This profound complementarity, however, as it generates an actual – one could say "physical" – difference, has led to reciprocal accusations between the different Christian traditions, in particular between the Orthodox and Catholic communities (ibid., see in particular Ch. 5).

regulation potential (ibid., pp. 19-22)[189]. Moreover, the mapping guide accounts for the continuous evolution of the conflictual situation, which can be constantly developed and modified by the parties' interaction, and by the intervention of third neutral parties, as mediators.

However, the origin of the conflict does not come to the fore in the model, which is conceived of as an instrument for intervening in conflicts that are already overtly acknowledged by the parties; furthermore, although the model mentions the possibility of *issue emergence, transformation and proliferation* (ibid., p. 21), the relation between issues management and conflict development is not explained. Again, about the typology of conflict issues (*facts-based, values-based, interests-based* and *non realistic*, p. 20)[190], a more detailed account of the concept of "issue" that may generate a conflict would help prevent possible sources of conflict or effectively intervene on them.

In relation to all these aspects, the semantic analysis performed here can help define the basis for integrating Wehr's conflict mapping guide in a theoretically more justified and comprehensive framework. As shown in the results of the semantic analysis, the identification of two main meanings of the term *conflict* – conflict as interpersonal

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[189] The main factors identified by Wehr are the following (see pp. 18-22): *Conflict history,* concerning the evolution of some events into a conflict; *Conflict context*, which includes physical and institutional pieces of reality: to quote Wehr's description (ibid., p. 19), "geographical boundaries; political structures, relations, and jurisdictions; communication networks and patterns; decision making methods"; *Conflict parties,* directly or indirectly involved in the conflict, including third parties interested in a successful resolution of the dispute; *Issues*, which can be numerous, although there is often a prevailing topic (facts-based, values-based, interests-based, non realistic); *Dynamics*, which concerns the evolution of the conflict ontology, which, by its very nature, cannot be fixed at a certain stage. Wehr underlines the following points in the conflict dynamics: precipitating events, issue emergence, transformation and proliferation, polarization, spiralling, stereotyping and mirror-imaging; *Alternative routes to a solution(s) of the problem(s)*, concerning suggestions about the conflict settlement coming either from the parties, or from uninvolved observers; *Conflict resolution potential*, concerning "resources for limiting and perhaps resolving the conflict" (ibid., p. 22), among which internal limiting factors, external limiting factors (like an external authority capable of imposing a solution), interested or neutral third parties trusted by the conflicting parties, and techniques of conflict management (managed by third parties and/or by the parties themselves). From this latter element, it emerges that the conflict map can include not only actual states of affairs, but also possible worlds. In a process of conflict resolutions, the possible alternatives for the settlement are important resources to be considered in the analysis of the conflict.

[190] The typology proposed by Wehr has not, indeed, would require further justification. According to the author (Wehr 1979: 20), *facts-based* issues concern "disagreement over *what is* because of how parties perceive *what is*". *Values-based* issues are bound to disagreement about what *should* be, as determinant of some form of decision (for example, about a policy decision). *Interests-based* issues concern disagreement bound to a conflict of interest or, more properly, over "ho will get what in the distribution of scarce resources", such as power or economic benefits. In this case, we might remark, the author does not justify why any opposition of interests necessarily has to do with the distribution of scarce resources (as seen previously, other cases are possible). Finally, *non-realistic* issues is a mixed category including any other aspect not falling into the first three categories, like, for instance, the parties' style of interaction or quality of communication. Concerning this last category, it is not clear why such kind of problems is considered unrealistic.

hostility (C1) and conflict as a propositional incompatibility (C2) – and the analysis of the degeneration of C2 into C1 helps shed more light on the origin of conflict and on its dynamics. In a second moment, this can help in constructing a model of conflict resolution intervention; in particular, as already mentioned, it is important to remark that the intervention in a conflict of the type C1 cannot abstract from the consideration of its origin, namely C2.

In Figure 16, a sketched ontology of the conflictual situation is represented, whereby, following the results of the semantic analysis, the essential factors of conflict and the essential relations between them have been highlighted. This ontology can work as a matrix for elaborating a new integrated conflict mapping guide. Of course, in order to develop a tool for conflict study and conflict resolution interventions, the matrix has to be further developed; however, it already helps identify some aspects that indicate as many directions of research on crucial issues for the prevention and management of conflicts.
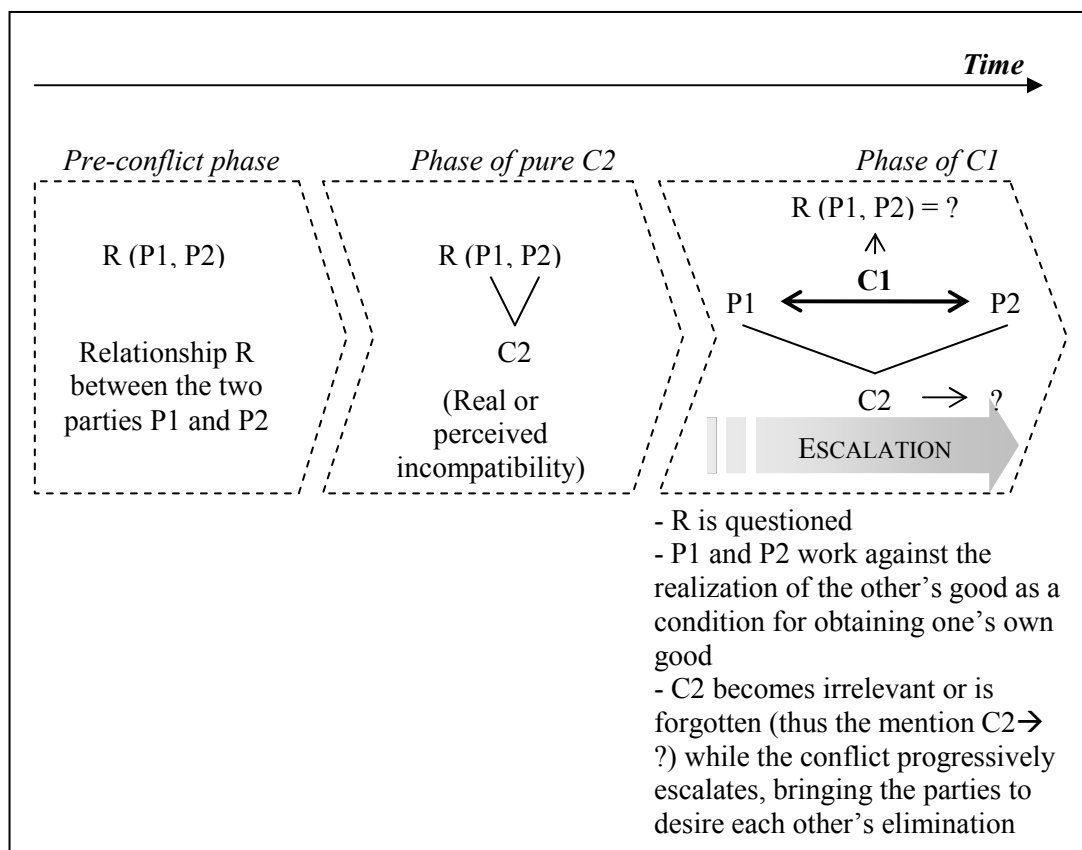
Figure 16: Matrix for developing a new conflict mapping guide

147

The temporal development of the conflict origin and escalation, which is indicated in Figure 16, should not be understood as an unstoppable degenerative mechanism. Indeed, many crucial aspects can be considered for the study of conflict and for planning effective conflict resolution interventions that block this development.

1. In relation to the pre-conflict phase, the first question to be answered is whether R is really a positive relation for P1 and P2 or not.
2. In relation to the phase of pure C2, it is important to verify whether C2 is a real incompatibility or if it is only perceived as such by the parties. As mentioned above (see paragraph 4), sometimes the degeneration into conflict C1 is avoided once parties perceive that their apparent contraposition manifests deeper complementarities.
3. When the proper interpersonal conflict has arisen (phase of C1), it is important to understand how the conflict could be managed without letting it further degenerating. Conflict resolution interventions, like mediation, constitute precious instruments in this relation, as they are conceived of as tools for intervening in proper C1 conflicts. Some authors (see Glasl 2004[191]), also relying on their professional experience, suggest how to use the various conflict resolution practices in relation to the different phases of escalation of C1.
4. A crucial point is the passage from C2 to C1 which opens the way to some reflections about conflict prevention before the need for proper conflict resolution interventions. Here, the hypothesis can be suggested that the sound management of C2 situations largely depends on how much space for sound discussion and argumentation is foreseen by the context[192]. In other words, if a certain institution, or

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[191] Glasl (2004: 197ff) analyses the different models of conflict escalation that have been proposed in literature and put forwards, also on the basis of his professional experience as a counselor and mediator, a "step-model" of escalation.

[192] Grossen and Perret-Clermont have approached this topic, in particular concerning its psychological, in their work *L'espace thérapeutique* (1992), in which they focus on the context of the therapeutic relationship. In particular, the contribution by Grossen focuses on the moment of first interview in psychological consultations and interprets it as the institutional moment in which the patient is legitimated to pose his/her problem, namely to ask his/her *question* to the psychotherapist. The definition and co-construction of *question*, in Grossen's analysis (Grossen 1992: 165-166), becomes the central kernel of the therapeutic consultation. In relation to the present analysis of conflict, we might add, it can be hypothesized that the moment in which the patient's problem can legitimately become a question and, thus, a communicative object that can be tackled by communicative means, is particularly important in relation to a reasonable management of the problem itself. In this relation, on the basis of the literature on doctor-patient or patient-psychologist interactions, Grossen concludes that "La manière dont psychothérapeute et patient définissent l'objet de la demande dépend à la fois du contexte social et institutionnel dans lequel la demande est présentée, et de la dynamique propre aux interactions" (ibid., p. 169). So the space that is left for tackling certain issues , in a certain institutional context and in the interpersonal rapports realized in it influences the development of the interaction.

a certain interpersonal relationship (like a friendship relationship) does not envisage any space for confrontation and discussion – including not only the possibility of advancing positions arguments, but also the space for expressing one's emotions and personal commitments[193] to those positions and arguments – in its written or unwritten rules, the presence of a difference of opinion or of another contraposition of the kind C2 will more likely turn into a proper conflict of the kind C1; parties, in fact, having no space for expounding their reasons, will feel more threatened in their personal identities[194] and dignity.

4.3 Proposal of a comprehensive ontology

In light of the discussion of the mediation models analysed in Chapter 3, and considering the particularly important conceptual knots of context and conflict, it is now possible to sketch a blueprint for a comprehensive ontological framework of mediation, which ideally includes all relevant factors and relations constituting this practice. Of course, the final word on such a framework needs to be spoken after more empirical verification and consequent theoretical adjustments (see Chapters 6 and 7 in this relation). The endeavor of starting to construct it, however, should not be abandoned, because arriving to a framework of mediation is necessary in order to understand the argumentative dynamics in this practice and, more in general, to analyze specific constituent aspects of this practice in the context of their relations. In the following, the framework will be expounded in its main aspects, not without mentioning the contributions offered by the different traditions of mediation studies.

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[193] Dumont, Perret-Clermont and Moss (1995) analyse the positive effects that a framework of friendly relationships can have on the cognitive progress made by children in co-constructing moral reasonings.

[194] In this relation, it is interesting to quote the analysis presented in Arcidiacono (2007) and in Pontecorvo and Arcidiacono (2007), concerning the management of conflictual situations arising from differences of opinion in families. The analysis is based on empirical data deriving from video recording of discussions during dinner of Italian families with at least two children, one of which is a teenager. By looking at the excerpts of the conversations, that not rarely teenagers engage in argumentation with their parents – often "challenging" them with provoking standpoints (see in particular Arcidiacono 2007: 97 and 103-104). It seems that, sometimes, the implicit request for the reason of certain rules that is hidden in their challenges is not taken up by the parents, who seem somehow reluctant to accept their children's argumentative challenge. Maybe, however, the excerpts presented in this works only represent the most conflictual episodes found in the corpus of conversations analysed; one could make the hypothesis that, in those families in which argumentation is more fostered, the intergenerational confrontation is also more productive.
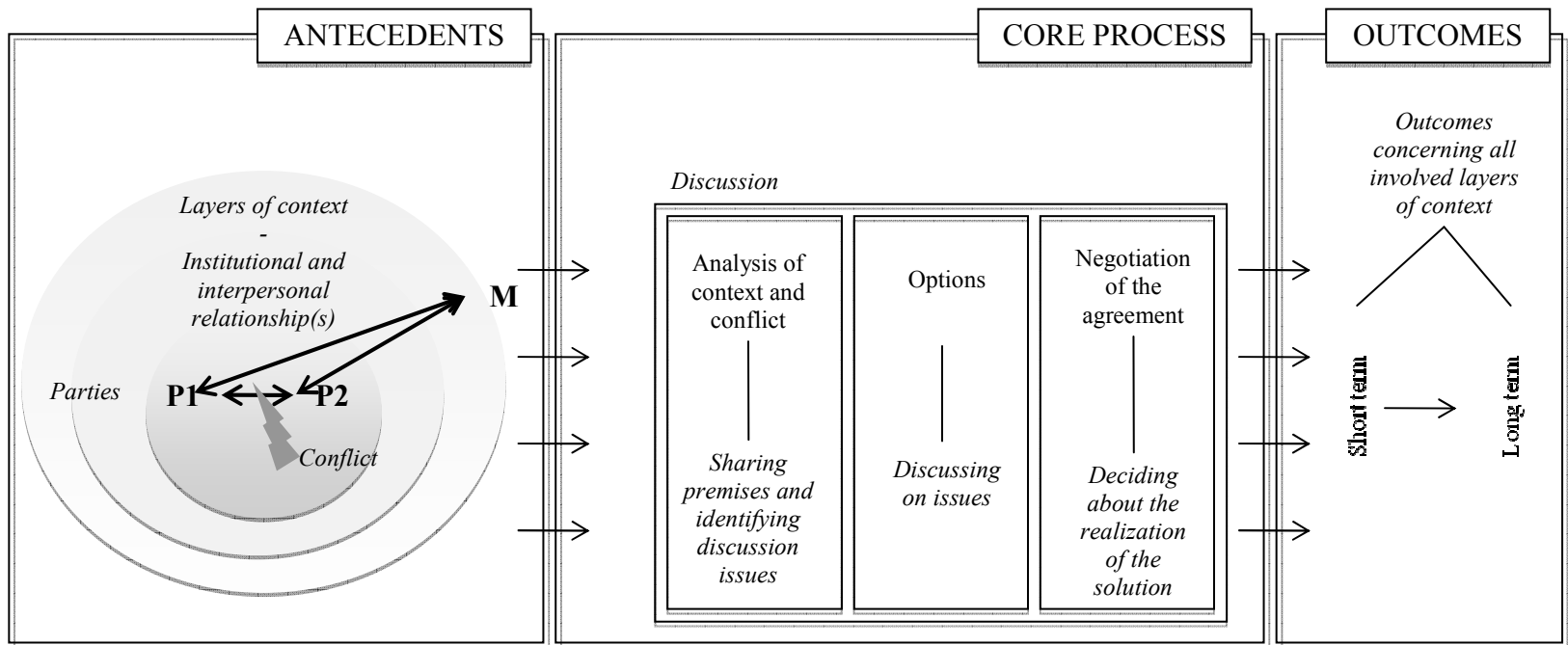
Figure 17: A mediation framework

The three categories of *antecedents*, *core process* and *outcomes* proposed by Herrman, Hollett and Gale (2006) deserve to be maintained as broader areas indicating both the essential mediation constituents and generally recalling its temporal phases. In the antecedents, the context is considered in its stricter and wider dimensions. The core circle represents the parties' institutionalized and interpersonal relationships, while surrounding circles intend to represent other significant stakeholders and relationships, among which the *constituents* (Wall 1981: 159). Within the parties' context, a conflict arises; zooming on the dynamics of conflict, we can go back to the conflict mapping guide (see Figure 16) to identify its relevant factors and understand its dynamics.

The parties' decision to enter mediation transforms them into co-arguers and brings the mediator into the context. Such choice, as said, intrinsically modifies the context itself, by adding important elements to the antecedents. The influence of antecedents on the core process is not only bound to the parties' interests and personal characteristics (Patton 2005; Herrman, Hollett and Gale 2006), but also to the mediator's personal interests (see in particular Touval and Zartman 1985a and 1985b) and profile. Thus Riskin's (1996; 2003) focus on mediators profiles turns out to highlight an important variable influencing the techniques used in the core process. After this, the core process of mediation starts, which is made of different phases (Kovach 2005). Such phases can be regrouped in three main phases whose communicative functions are distinct. The first phase represents the analysis of the antecedents (context and conflict) guided by the mediator. In relation to the mediation stage model presented by Kovach (2005: 36), the first six stages (*preliminary arrangements, mediator's introduction, opening remarks/statements by parties, venting, information gathering, issue and interests identification*) can be regrouped in this phase. In particular, in this phase, the mediator searches for the parties' common ground (Carnevale 1986), their interests and the Best Alternative To a Negotiated Agreement or BATNA (Patton 2005; Fisher, Ury and Patton 1991; Carnevale 1986). The analysis of the conflict and of the relationships it affects can be seen as a process by which the mediator and the parties walk the inverse path of the *conflict mapping guide* (see paragraph 4.2.5) in that, starting from a situation of an escalated conflict, they go back to its origin and implications[195], as shown in the following figure:

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[195] See the linguistic analysis of a conciliation session presented in Schröder (1997: 23-44) in the framework of the project on conflict resolution of the University of Mannheim (see footnote 156 above). The first phases correspond to the reconstruction of the conflict, whose salient aspects from the linguistic and communicative point of view have been identified by Nothdurft (1997) as establishment of a position/accusation (*Anschuldigung*); expounding of the counterposition and conciliator's proceeding to deal with the conflict.
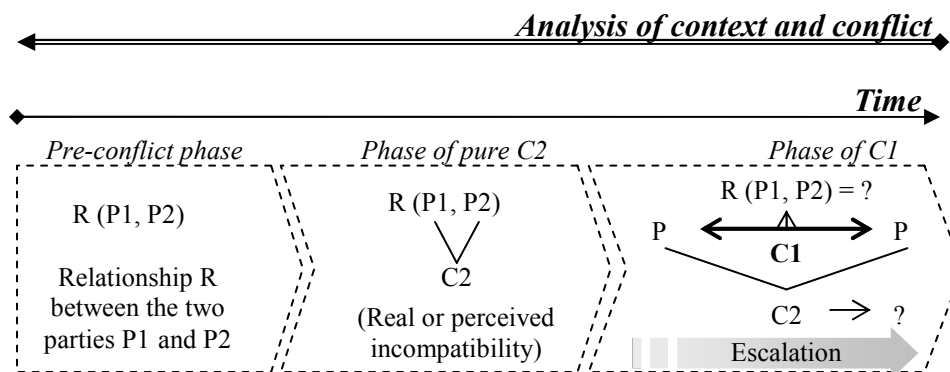
Figure 18: The mediator's analysis of context and conflict in relation to the conflict mapping guide proposed in par. 4.2.5.

The importance of this phase should not be underestimated. Indeed, proposals such that of Wehr's conflict mapping guide originated from the awareness of the importance of studying the antecedents of mediation; in mediation of interpersonal conflict, normally this phase is accomplished in the very discussion between the mediator and the parties (Kovach 2005).

Then, *agenda setting, caucus, option generation* and *reality testing* already signal the shift of the process from the establishment of a dialogical setting to the discussion of specific issues that constitute options for conflict resolution (Patton 2005). The last phase (including *bargaining and negotiation*, *agreement* and *closure*) encompasses the negotiation on the draft of a solution set out by the parties and the final agreement. The signature of the agreement closes the core process of mediation and opens the problem of implementing the assumed decision on the short and long term[196]. Such a process, which can sometimes be very delicate, represents an important starting point of the outcomes.

Throughout the core process, the techniques mentioned in literature are employed with different non-communicative and communicative functions (Wall 1981; Wall and Lynn 1993; Wall, Stark and Standifer 2001); see in particular the problem of framing and reframing in Drake and Donohue 1996; Shmueli and Ben-Gal 2003; Gray 2006).

The outcomes involve, according to Wall, Stark and Standifer (2001), effects on the disputants, the mediator and other third parties; for Herrman, Hollett and Gale (2006), such third parties are in particular represented by the institutional context. The distinction into short-term and long-term outcomes introduced by these authors also raises the issue of the durability of the agreement.

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[196] See also Thomas Flucher (interview with the author, July 30, 2008), see Chapter 2, footnote 63).

The framework illustrated in Figure 17 turns out to be extremely rich as it encompasses all the various factors and relations that have been pointed out as essential in the literature on mediation. Of course, the reciprocal positioning of these aspects needs to be further investigated and empirically tested in more than a single study. However, as pointed out previously, there is a need for starting to construct a comprehensive ontology of mediation in order to study this subject; and a certain confusion in mediation studies, already pointed out by Herrman, Hollett and Gale (2006: 19), also due to a lack of scientific dialogue among the different positions, certainly does not contribute to a clear understanding of this practice and should therefore be overcome.

As for the specific interest of the present research, the mediation framework here delineated helps shed some light on the parties' movement from opponents to co-arguers. In particular, the three phases of the core process represent as many relevant moments from the communicative point of view. In particular, the second and third phases require that the discussion setting be already disposed, as the discussion issues do not concern any more the parties' *problem* but its possible *solutions*.

In this relation, it is still to be analyzed how in the first phase such a passage from the conflict to the discussion on its possible solutions is concretely achieved through the mediator's guidance in the parties' argumentative discussion. The argumentative analysis that will be presented in Chapter 6 research is therefore focused on the crucial crossing between the antecedents and the core process.

5 Argumentative analysis: objectives, theoretical instruments and methods

5.1 *Objectives of the argumentative analysis*

Up to now, this dissertation has allowed to bring to some advances at the level of the conceptualisation of the mediation practice, bound in particular to the construction of a comprehensive ontological framework of mediation. The construction of such framework of mediation has been made possible by the analysis of different approaches to mediation presented in the opening chapters (chapters 2-4) of this dissertation. In particular, by considering the specificities of mediation in the realm of conflict resolution practices, as well as its possible applications, some essential features of mediation have emerged in Chapter 2; in Chapter 3, such features have been reviewed on the basis of the analysis of the different approaches to mediation that have been proposed in the literature. The aim of this review is to elicit the ontological traits of mediation in terms of a *scenario dimension*, consisting in the constituency of mediation in terms of roles and relations involved, and of a *script dimension*, characterizing how the pragmatic goals of mediation are achieved by means of a subsequent series of phases, by which the relations between the various roles get modified and revised. The integration of the different approaches viewed in the two preceding chapters is proposed in Chapter 4, which also aims at shedding light on the two important but underinvestigated notions of *conflict* and *context*. In particular, concerning *conflict*, a semantic analysis of this term has been proposed in order to elicit the proper meaning this notion and sketch a conflict mapping guide that shows the degeneration of different forms of disagreement into proper interpersonal conflicts. These latter represent the point of departure of any mediation intervention.

In this way, the first set of objectives of this dissertation, consisting in a conceptual analysis of mediation and how this process is configured have been met; an ontological framework of mediation has been proposed (par. 4.3.). What is still to be done is to understand how argumentation intervenes in the mediation process and whether the parties' development from disputants to co-arguers engaged in a reasonable discussion concretely contributes to the resolution of the conflict. In order to do this, a careful consideration of the mediator's interventions on the structuring of the parties' argumentative discussion turns out to be particularly important and must be carefully analysed.

Indeed, different answers – different conflict resolution practices – are possible in a situation where two parties are in conflict. As previously seen, for instance, one might foresee the intervention of an ombudsman who, after having made the necessary investigation activity, pronounces a recommendation about how to solve the conflict. Alternatively, an arbitrator may listen to the parties' stories and present a proposal of conflict resolution, for which he has to argue[197].

Differently from these cases, in mediation what happens is the creation of an *argumentative space* between the parties themselves who, having previously been in conflict, become then co-arguers and engage personally in the process of solving their conflict. The creation of such a space for argumentative discussion clearly depends on the mediator's intervention, because parties would not be able to discuss on their own as they enter the mediation process (van Eemeren et al. 1993). However, this happens without the mediator engaging in argumentation directly, i.e. without having him or her presenting positions about how the conflict should be resolved.

In order to meet the analytical objectives encompassed by this second part of the dissertation, a corpus of mediations has been compiled (see par. 5.3.3.) that will be studied from the argumentative and communicative point of view. Now, before illustrating the specific research questions guiding the analysis, it is necessary to define the theoretical and methodological instruments that will allow the argumentative analysis and to discuss the rationale for the selection of the empirical corpus.

5.2   *Theoretical instruments*

The argumentative approach on which this investigation is founded is based on the Pragma-dialectical account of argumentation, integrated by the research carried on by the Lugano group of argumentation involved in the project Argumentum[198]. From the

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[197] Van Eemeren and Grootendorst (2004: 58) imply that the settlement of a dispute does not necessarily coincide with the parties' engagement in an argumentative discussion when they say that "reaching a settlement does not mean that the difference of opinion has really been resolved. A difference of opinion is only resolved if a joint conclusion is reached on the acceptability of the standpoints at issue on the basis of a regulated and unimpaired exchange of arguments and criticism". This kind of exchange is however at the basis of a sound practice of mediation.

[198] Argumentum (www.argumentum.ch) is one of the projects funded by the Swiss Virtual Campus, a federal program involving Swiss institutions of higher education, in order to promote the use of new ICTs in higher education in Switzerland (Cantoni et al. 2007: 111). The project, which has started in October 2004 and will end its implementation phase in July 2008, has been developed thanks to the collaboration of three partner institutions: the Institute for linguistics and semiotics at the University of Lugano; the Institute of Psychology at the University of Neuchâtel, and the Department of Sociology at the University of Geneva. The didactical aim of this project has been paired by a

pragma-dialectical account, my research first of all inherits the general view of the argumentative phenomenon, its embeddedness in communication, and the crucial role of reasonableness to define the critical attitude typical of argumentation (see par. 5.2.1). Moreover, it draws on the model of a *critical discussion* (par. 5.2.2) as a fundamental grid guiding the analysis of the real argumentative practice, assuming it in its integrated version, which also accounts for the rhetorical or persuasive aims of arguers through the notion of *strategic manoeuvring* (par. 5.2.3). According to van Eemeren and Houtlosser (2002), parties develop their strategic manoeuvring along all the stages of a critical discussion. Concerning the proper *argumentation stage* in particular, in which the co-arguers bring forward arguments in support of their standpoint or against the counterparty's standpoint, the present research integrates the model of a critical discussion with the Argumentum Model of Topics (AMT; see Rigotti and Greco 2006b; Rigotti 2006), aiming in particular at establishing tools to analyze and evaluate the inferential structure of arguments (par. 5.2.4.).

Finally, on the basis of the pragma-dialectical principle of the embeddedness of argumentation in social life and communicative practices[199], this research complements the argumentative analysis, which remains however its primary focus, by a semantic-pragmatic account of the communicative interaction that allows considering the wider communicative context in which argumentation takes place (see par. 5.2.5).

5.2.1 Preliminary remarks on the nature of argumentation

My concern in the present dissertation is the argumentative specificity of mediation. Some annotations about argumentation have already emerged throughout the preceding chapters; however, the nature of argumentation must be defined thoroughly in order to understand the main concern of this dissertation.

In very general terms, argumentation is a constitutive part of human communicative exchange, namely a *mode of discourse* (Smith 2003). As such, argumentation is present in a number of communicative practices, discourse genres and social contexts. In argumentation, an arguer personally engages in proposing a standpoint – a position he/she is convinced of – to his/her interlocutor. The latter can accept or not such proposed standpoint, which can be a theoretical statement but also a proposal of practical action. What is distinctive of a sound argumentative practice is the

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common research effort aiming to found a theory of argumentation embedded in the communication sciences.

[199] Van Eemeren and Grootendorst (2004: 55) remark that argumentation is always a contribution to a *communication* process and that "argumentative discourse and texts are conceived as basically social activities".

fact that the acceptance of such proposals is based on the critical testing of their validity; in other words, the arguers commit themselves to prove their respective positions, analyse the reasons that support them, and decide for the most reasonable one.

It is already clear from this first and actually quite rough account of argumentation that this kind of critical commitment is essential in the decision-making process taking place in the parties' discussion in mediation. Argumentation, indeed, is intended here not in the polemical sense associated to the verb *to argue* or to the noun *argument* in some uses in ordinary language. By the way, the polysemy of the terms bound to argumentation may actually have made someone doubt that this practice has anything to do with an ideal mediation attitude (see the discussion on Besemer 1999 presented in Chapter 2). As a matter of fact the meaning of reasonable confrontation and critical testing of arguments in support of given positions is very much compatible with the aim of the mediation practice. Significantly, Herrman, Hollett and Gale (2006:22) assume as one of the essential presuppositions of their *comprehensive mediation model* that "Verbalising individual positions and stories provides the speaker and listener with an opportunity to develop a greater understanding of underlying needs and *to stimulate higher-level reasoning*" (emphasis added). This observation highlights the issue of the *quality* of the parties' decision, which in sound mediation practices should be supported by a healthy reasoning in order to be durable and to really meet the parties' interests.

Now, the concept of *critical testing* and that of *reasonableness* are intrinsically bound and have been identified as central to argumentation (van Eemeren and Grootendorst 1994; 2004). The dimension of criticality (defined as adherence to evidence and correct reasoning) involves in argumentation a complex interplay of relevant aspects. The reasonableness demand, in particular, should not be opposed to the notion of rationality, conceived of as logical consistency and coherence, namely as non-contradictoriness of reasoning, which guarantees the truth of conclusions derived from true premises. However, rationality is not sufficient to found all the possible cognitive and pragmatic decisions a human being is anyhow obliged to face[200]; this turns out to be even clearer in the domain of conflict resolution, where, after the failure of Leibniz's hypothesis to "calculate" a resolution of the dispute, it has been shown that pure rationality is not sufficient for taking into account the complexity of the dimensions involved in conflict[201]. In conflict resolution, as in the other domains of human social

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[200] See van Eemeren and Grootendorst (1994: 12): "We believe rationality to be a necessary but not sufficient condition for reasonableness".

[201] Indeed, Dascal and Marras (forthcoming) observe that the hypothesis of calculating the solution of all disputes was not completely embraced by Leibniz himself, who was conscious of its limits; he therefore introduced the hypothesis of a "judge of controversies" able to *weight* arguments rather than *compute* them. The judge of controversies seems to recall a more *reasonable* than only *rational* attitude. But in this relation it is worth quoting the entire passage by Dascal and Marras: "He explicitly formulated the idea of a *characteristica universalis* by means of which the contenders, instead of disputing endlessly would be able to resolve their differences by expressing them in a

life, a more complex attitude of reason is required, which must take into account the complexity of factors determining a situation. This kind of *esprit de finesse* is as difficult to define as essential for argumentative practices. Some of its essential traits have been discussed in Rigotti and Greco (2005), and then confirmed by the results of a semantic analysis of the term *reasonable* (Rigotti, Rocci and Greco 2006; see also Greco 2005a)[202].

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formal notation and then "calculating" the solution. But Leibniz, who was also, among other things, a jurist, a political advisor, and a participant in the endless negotiations for the reunification of the Christian Churches – in short, a practical man – knew very well that the *discussion* or calculative problem-solving model could not solve all conflicts. He realized that in most cases the solution could not consist in deciding demonstratively who was right and who was mistaken, for the simple reason that both parties were partially right and partially wrong, under some interpretation of their positions. He believed that quite often the opposition between the parties could be overcome if each could be brought to recognize the "right" and "wrong" parts of his own, as well as of the adversary's position, to weigh carefully their relative importance, and to be persuaded to give up what was wrong (or unacceptable to the adversary) in his position and to accept what was right (or acceptable to him) in the adversary's position. None of this could be done in a purely mechanical or formal way, nor could it be expected that it would lead to absolute certainty. Instead, it required the active intervention of a "judge of controversies", capable of reformulating the positions in conflict and to use non-deductive types of arguments (based, for example, on probabilities, presumptions, defensibility, etc.) – in short, using arguments or reasons that, in his words, were not to be *computed*, but rather *weighed*. An alternative model of polemical exchanges and their resolution, akin to what we have been calling *controversy*, was thus elaborated by Leibniz, side by side with the strict logico-mathematical model and presumably complementary to it".

[202] Firstly, maybe the most typical and comprehensive sign of reasonableness is the effort to take into account *all factors that are relevant* for the concerned issue, including the context of the decision, and its implications. Typically, for instance, in mediation the decision about whether or not negotiating with the other party depends on a comparative evaluation of the alternatives at the parties' disposal (to go through the juridical system, and so on). Moreover, arguers should consider the *hierarchy of goals* (*teleological hierarchy*) they are pursuing, by neglecting any minor incompatible goal. For instance, victim-offender mediation is not permitted in many countries except for juvenile crimes (see Chapter 2), because in juvenile justice the rehabilitation of the offender is considered a valuable goal. Furthermore, reasonableness is defined by *categorial adequacy* in the definition of pieces of reality. The respect of categorial adequacy also implies the choice of an adequate level of abstraction in describing a given situation. Both considering a too high and a too low level of abstraction is unreasonable: on the one hand, one loses the adequate consideration of the specific case he is dealing with; on the other hand, one is too dependent on the single case he is considering, which does not allow to generalise those aspects that are not proper of the specific situation but of a broader category. It must be also considered that an argumentative move that is unsound in a certain context might be adequate and legitimate in another. Here, again, the difference does not lie in the rationality of the move, but rather in the reasonable comprehension of the context. In a first sense, an argumentative move can be adequate for a certain communication practice, whereas it might be forbidden in another practice. For instance, a scientific discussion aiming at resolving a certain mathematical problem excludes the use of threats; however, the use of threats is perfectly admissible, and actually used as a rhetorical instrument, for instance, in processes of international negotiation. In a second sense, *adherence to actual circumstances* also includes a precise and comprehensive "feeling" of the context where the argumentative intervention takes place. This 'global feeling' allows the arguer and the decision maker to understand whether a certain argumentative move is sound in a given situation.

Most decisively, what defines a reasonable attitude is the commitment to finding a resolution of the difference of opinion that is worthy of the *human quality of the interlocutors*. First of all, when trying to make a reasonable decision or verify the truth of a certain opinion, '*two heads work better than one*'. In fact, the interlocutors can help each other taking into account an important aspect that one of them might have neglected, or discovering a manipulation, or keeping a reasonable level of abstraction in defining a situation, etc. Secondly, each interlocutor in an argumentative exchange is committed to assuming a reasonable attitude. The argumentative interaction, thus, aims at promoting reasonableness *by definition*. Thirdly, a direct implication of this is that the arguer does not want to obtain his/her interlocutor's assent at any cost; in fact, consent is not build through violence, but rather using language and reason for discussing and evaluating possible arguments. In conclusion, reasonableness, as it is reached through an argumentative interaction, involves the respect of the other's reason and freedom. Indeed, the very practice of mediation is founded on the belief that even in cases in which dialogue is blocked, the intervention of a third person, armed with purely communicative and argumentative means, can serve to the purpose of reasonably solving a conflict. This turns out to be consistent with the principle of optimism professed by Aristotle in the first book of his Rhetoric (see the translation by Rhys Roberts 1924): "Rhetoric is useful because things that are true and things that are just have a natural tendency to prevail over their opposites". Indeed, if human beings were not attracted by positive more than by negative, a role like that of a mediator would be not make any sense.

Within the pragma-dialectical perspective (van Eemeren and Grootendorst 1994; 2004), the concept of reasonableness is closely linked to the discussion between two arguers: where the standpoint of one is subject to the critical control of the other, it is possible to achieve a reasonable consensus, and to create a foundation for one's own actions and beliefs[203]. Within this framework, ten constitutive rules for maintaining the requested standard of reasonableness within the discussion have been pointed out [204].

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[203] Within the Pragma-dialectical approach, reasonableness is one of the philosophical bases of argumentative analysis. In this relation, see van Eemeren and Grootendorst (1994; 2004: 18-22) and the discussion in Rigotti and Greco (2005) and Rigotti, Rocci and Greco (2006).

[204] See (van Eemeren and Grootendorst 1992). 1. *The freedom rule*: Parties must not prevent each other from putting forward standpoints or casting doubt on standpoints.

2. *The burden-of-proof rule*: A party who puts forward a standpoint is obliged to defend it if asked to do so.

3. *The standpoint rule*: A party's attack on a standpoint must relate to the standpoint that has indeed been advanced by the other party.

4. *The relevance rule*: A party may defend his/her standpoint only by advancing argumentation related to that standpoint.

5. *The unexpressed premise rule*: A party may not falsely present something as a premise that has been left unexpressed by the other party or deny a premise that he/she him/herself has left implicit.

The rules owe their validity to the fact that they make the implications of a truly argumentative attitude explicit. In this sense, their nature is not normative or regulative, but it is rather *constitutive*, as it defines the essence of an argumentative commitment.

5.2.2 The model of a critical discussion as a grid for the analysis

The pragma-dialectical approach to argumentation, initiated by van Eemeren and Grootendorst in the 80s at the University of Amsterdam, proposes a model of critical discussion as an ideal definition of an argumentative discussion developing according to the standard of reasonableness. This model is assumed, in the present dissertation, as a basis for the analysis of argumentative strategies in mediation.

The model of critical discussion foresees four ideal stages, which do not mirror the actual temporal proceeding of the argumentative discussion, but the essential constituents of the reasonable – i.e. *critical* – discussion. In the *confrontation stage* of a critical discussion, the difference of opinion emerges: "it becomes clear that there is a standpoint that is not accepted because it runs up against doubt or contradiction" (ibid., p. 60). In other words, the protagonist puts forward a standpoint, and the antagonist reacts to it either by casting doubt on it (giving rise, thus, to a *non-mixed* dispute), or by presenting an alternative standpoint (which originates a *mixed* dispute). In the *opening stage*, the protagonist and the antagonist "try to find out how much relevant common ground they share (as to the discussion format, background knowledge, values, and so on) in order to be able to determine whether their procedural and substantive "zone of agreement" is sufficiently broad to conduct a fruitful discussion" (ibid.). This stage is particularly relevant, because the whole activity of argumentation is based on the confidence in the possibility of finding a reasonable solution by discussing with the

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6. *The starting point rule*: No party may falsely present a premise as an accepted starting point, or deny a premise representing an accepted starting point.

7. *The argumentation scheme rule*: A standpoint may not be regarded as conclusively defended if the defence does not take place by means of an appropriate argumentation scheme that is correctly applied.

8. *The validity rule*: The reasoning in the argumentation must be logically valid or must be capable of being made valid by making explicit one or more unexpressed premises[204].

9. *The closure rule*: A failed defence of a standpoint must result in the protagonist retracting his/her standpoint, and a successful defence of a standpoint must result in the antagonist retracting his/her doubts.

10. *The usage rule*: Parties must not use any formulations that are insufficiently clear or confusingly ambiguous, and they must interpret the formulations of the other party as carefully and accurately as possible.

This formulation of the ten rules of critical discussion is a more handy and explicit way of presenting the original fifteen rules of critical discussion, which are formulated in terms of speech acts (see van Eemeren and Grootendorst 2004: 123-157).

counterpart. This attitude of confidence also involves the disposition to find common premises on which both parties agree, and on which they can evaluate their difference of opinion. In the proper *argumentation stage* of a critical discussion[205], arguments in support to the standpoint(s) are advanced and critically tested (ibid., pp. 60-61). Finally, in the *concluding stage*, the critical discussion is concluded, "in agreement that the protagonist's standpoint is acceptable and the antagonist's doubt must be retracted, or that the standpoint of the protagonist must be retracted".

In the argumentative reality, the model of a critical discussion can be implemented according to different discussion types. The nature of the difference of opinion arisen, in fact, determines different types of confrontation between the parties. This turns out to be particularly important in the case of mediation, which, as said, is an interaction scheme intervening in response to a difference of opinion already degenerated into a proper conflict. It is thus particularly important to specify the instruments allowing to distinguish the various types of disputes (namely, the various discussions arising from different types of difference of opinion) that might be involved in such a conflictual situation[206]. In pragma-dialectical terms, when the protagonist of a critical discussion puts forward a standpoint, and the antagonist only expresses some doubts about it, a *single non-mixed* dispute has been externalised. Alternatively, if the antagonist not only casts doubt on the protagonist's standpoint, but he/she also puts forwards a personal contradictory standpoint, the dispute becomes single *mixed* (van Eemeren, Houtlosser and Snoeck-Henkemans 2007: 21-22). The alternative mixed/non-mixed, thus, refers to the type of parties' involvement in the discussion; one could say that in mixed disputes both the antagonist and the protagonist have the burden of proof of their respective standpoints. What happens more frequently, and we could add particularly in intricate situations like conflicts, is that the dispute does not only present a standpoint (or two contradictory standpoints) on the same issue (a *single* dispute), but it becomes multiple. A dispute can be *multiple in a quantitative sense* if the standpoints advanced concern more than one issue; such type of dispute (that can be mixed or non-mixed) could thus be splitted into as many single disputes for the analysis. A dispute can be *multiple in a qualitative sense* if the antagonist presents not only a contradictory standpoint, but also a *contrary* standpoint, whose successful defence would turn into a defence of the former as well (ibid., p. 23). A dispute multiple in a qualitative sense can also arise if the antagonist does not express any contradictory standpoint but only a contrary one. Van Eemeren, Houtlosser and Snoeck-Henkemans give the following example of a dispute multiple in a qualitative sense (ibid., p. 22):

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[205] The other three stages are not of course irrelevant for argumentation, not only because they represent as many essential moments of a critical discussion, but also because they frequently require argumentative moves for the fulfilment of their own tasks.
[206] Here, I refer to a recent version of the pragma-dialectical view of the dialectical confrontation profiles, presented in van Eemeren, Houtlosser and Snoeck-Henkemans (2007).

Per: This state visit to China is no more than sheer opportunism!

Åse: That's not true at all. I think it is a sincere attempt at ideological reconciliation.

In this example, if Åse succeeds in demonstrating that the state visit to China in question is indeed a sincere attempt at ideological reconciliation, given the logical relation subsisting between contrary and contradictory statements (see Rigotti and Greco 2006b; Gatti 2000), she also fulfils the task of demonstrating that it is not sheer opportunism. The dispute is thus multiple in a qualitative sense as it reflects the complexity of the standpoints' relations to the issue.

5.2.3 The notion of *strategic manoeuvring* as an instrument to understand the mediator's contribution to argumentation

More recently, van Eemeren and Houtlosser (2002) introduced the notion of *strategic manoeuvring*, moving to an integrated model of critical discussion, that allows accounting for the arguers' personal desire to win the cause (*rhetorical aim*), which, in actual argumentative practices, is always coupled with their commitment to maintain a standard of reasonableness (*dialectical aim*). This notion allows reconciling "a long-standing gap between the dialectical and the rhetorical approach to argumentation" (van Eemeren and Houtlosser 2005: 27), and takes into account the arguers' personal mobile that move them to engage in a critical discussion. Indeed, the fact that an arguer is personally involved in his/her cause is not something to be considered bad in nature, but a natural situation that allows the sound development of argumentation. Precise choices at the level of strategic manoeuvring characterize each stage of a critical discussion. Each stage, in fact, is defined by a specific dialectical aim; and, "because the parties involved want to realize this aim to their best advantage, they can be expected to make the strategic moves that serve their interest best" (van Eemeren and Houtlosser 2002: 138). The strategic moves available concern three aspects in particular. First, they foresee the expedient choice from the possibilities constituting the *topical potential* associated to a specific discussion stage; these possibilities include potential discussion issues in the confrontation stages, premises to be selected as starting point the opening stage, *loci* and arguments in the argumentation stage and possible conclusions in the concluding stage (ibid., pp. 139-140). Second, the moves made in each stage of the discourse should also be made in a way to be adapted to *audience demand*, namely with the addressee's preferences (ibid.). Finally, appropriate presentational devices at the communicative and stylistic level, "exploiting the Gricean maxims of Manner in a specific and deliberate way" (ibid., p. 140).

Now, some specific remarks about the concept of strategic manoeuvring in mediation are necessary. In fact, while in other interaction schemes, such as, for example, adjudication, it is easy to imagine that both the defence and the crown lawyers will do their best to manoeuvre strategically in order to win their cause, in mediation the situation results more complex. Parties, if they are able to argue with each other, which, as will be shown in Chapter 6, is not always the case, can be assumed not to renounce to their rhetorical aims, which mirror their interests. Mediators, however, whose argumentative strategies are at the core of the present investigation, have a status of third neutrals which may induce someone to erroneously consider them as disinterested interlocutors; in other words, they might seem to lack any form of strategic manoeuvring. Indeed, as for the concept of neutrality, this must be understood as mediators' lack of direct interest in one or another specific outcome rather than as complete lack of interest in the dispute itself, which would result in a disrespectful attitude towards the parties. On the contrary, it has been often highlighted that mediators are interested in the resolution of the conflict; as Susskind (2000: 131-132) puts it, speaking as a public dispute professional mediator:

> "I'd feel surprised if most mediators didn't feel disappointed if they failed to help the parties in a dispute reach a resolution".

Analogously, Touval and Zartman (1985a and 1985b), focusing in particular on the dimension of international mediation, analyse the possible reasons motivating a third party to enter a process of mediation. Some of these reasons, we might add, could also involve selfish interests (for instance, economic rewards). Princen (1992a) distinguishes, from the point of view of the *interest* of third parties in the disputants' conflict, between *neutral* third parties and *principal* third parties. In any case, however, he recognizes some level of interest of the mediator in the resolution of the dispute. Indeed, a disinterested mediator would show no respect for the parties. As said, in fact, the mediator is an agent involved in an agency relationship in which the parties are principals together. In this sense, mediators should be interested in the resolution of the conflict, at least from a pure contractual point of view, let alone their personal motivations and professional honour. This said, mediators' interests may derive both on their genuine passion for conflict resolution and for other reasons of convenience (career or other rewards). In any case, the mediator rhetorical goal can be considered, in general, finding a resolution for the dispute, as van Eemeren and Houtlosser (2005) also point out.

5.2.4 The Argumentum Model of Topics (AMT): analysis of the inferential structure of arguments

In the framework of the model of a critical discussion integrated by the notion of strategic manoeuvring, a specific theoretical instrument allowing to analyse in particular the topical potential of the argumentation stage is represented by the Argumentum Model of Topics (henceforth: AMT), which aims at eliciting the inferential structure of the arguments that are advanced in support of given standpoints. The model was first proposed in Rigotti and Greco (2006b) and then illustrated, refined and expanded, with the help of a certain number of different applications, in Rigotti (2006); Rigotti (2007a and 2007b); and Rigotti (2008 forthcoming). Some examples of its possible applications have been provided in Bigi (2007), Greco Morasso (2007), and Christopher-Guerra (2008).

As for the theoretical framing of the AMT model, for the present purposes it is sufficient to say that it has been elaborated by taking into account the contribution of the ancient rhetorical tradition (in particular, *Topics*, *Rhetoric* and *De Sophisticis Elenchiis* by Aristotle, and *Topics* by Cicero), and the late ancient and Medieval elaborations by Boethius (*De topicis differentiis*), Peter of Spain (*Summulae Logicales*) and Buridan (*Summulae de dialectica*). But the AMT model, far from being only a revision of ancient doctrines, is also positioned in the framework of the current research and debate on argumentation, and in particular on *argumentation schemes*. Rigotti (2007a and 2008 forthcoming) elaborates in more detail on the ancient and Medieval heritage revived and reinterpreted by this model, while Rigotti (2007b) has shown its added value as for the analysis of the inferential structure of arguments, in comparison with other modern approaches to the study of argumentation schemes[207].

The analysis of argumentation based on this model allows, on the one hand, to offer a very precise detail of the inferential structure of arguments. On the other hand, it allows to highlight the relation between the arguments and their premises, i.e. to explicitly connect arguments with the opening stage and, more in particular, with the context of the argumentative interaction (Rigotti 2006). The AMT can therefore be integrated in the analytical reconstruction of argumentation based on the model of critical discussion.

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[207] Here, such theoretical discussion is skipped in favor of an application of the AMT model that is expected to indirectly contribute to show its explicative force.

5.2.4.1 Definitions

In order to describe the fundamental aspects of the model, it is useful to present the definitions it is based on and make their origin explicit: *topics, standpoint, locus, endoxon, hooking point, maxim, argument* (the definitions are taken from Rigotti and Greco 2006b):

Concept	Definition
Topics	Topics is the component of argumentation theory by which ideally all[208] (theoretically possible) relevant arguments in favour and against any standpoint are generated by specifying their inferential structure through a system of loci.
Standpoint	A standpoint is a statement (simple or complex) for whose acceptance by the addressee the arguer intends to argue[209].

The scope of the interest of the ancient and Medieval tradition of topics, thus, turns out to coincide with the rather obscure but equally crucial domain investigated by the modern accounts of argumentation schemes (Rigotti 2008): that of examining the possible schemes that may be used (or are used) in support of a given standpoint, and of evaluating their critical dimension (logical validity and reasonableness) and their effectiveness in terms of persuasiveness.

Within the system of topics, the notions of *locus* and *maxim* have started to be investigated since the antiquity; the image of a locus both as the adequate place where arguments could be stored at and as the source from which arguments were taken was put forward. In this relation, Cicero defines the locus both as *sedes argumenti* and as their source (*unde argumenta ducuntur*). As Rigotti (2008) has pointed out, this nature of source as well as basis of an argumentative move is recalled by the proposition "from",

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[208] The claim of generating *all* relevant arguments in relation to a certain standpoint might appear unreasonable. In this relation, the AMT does not claim that it is possible to actually *produce* all relevant arguments. As a matter of fact, no model of topics could ever be considered exhaustive in this sense, given that each fragment of reality shows endless aspects that bear endless relations with endless other fragments of reality... Nonetheless, in relation to the ontology of the standpoint, the system of topics generates all relevant arguments as it is expected to assign to each possible argument a precise inferential structure that is related to the ontology of the standpoint itself (Rigotti 2007a).

[209] The definition of standpoint has already been mentioned in various stages of this work. Here, such definition is refined. Two remarks about the nature of a standpoint, proposed by Rigotti (2006: 526), are worth recalling here: "Firstly, a standpoint is a particular type of statement which (1) did not yet receive a shared justification (neither by evidence nor by a previous inference); (2) is bound to a commitment of immediate justification by an inferential procedure (it is candidate to figure as a conclusion). Secondly, a standpoint is always a statement, even though it can be subject to different modalities and thus provide logical equivalencies to other types of utterance (pieces of advice, orders, questions, and so on)".

typically occurring in the English names of loci (e.g. locus *from* definition, locus *from* authority)[210].

Locus	A locus is a "sub-generator" of argumentative procedures consisting of one or more maxims in the form of truth conditions that bind the truth value of the standpoint to the acceptance by the considered public of propositions referring to specified aspects of the ontology of the standpoint.
Maxim	*Maxims* are implications establishing a connection between the truth value of a hooking point and a standpoint of the form p→q, that generate inferential processes; each inferential process defines, within the locus, the form of a subclass of arguments that are produced in connexion with proper endoxa. All the maxims of the same locus share the same hooking point to the standpoint.
Hooking point	The aspect of the standpoint that the maxims of a certain locus refer to represents the *hooking point* of the locus to the standpoint and gives the name to the locus itself.

But the more specific nature of a locus has been gradually highlighted throughout the Medieval tradition (ibid.). The locus is understood as the one extreme of a more abstract relation (indicated with the Latin term *habitudo*) whose other extreme is represented by the standpoint to be defended itself. In the case, for instance, of the locus from the efficient cause, the efficient cause (the locus) is bound to the standpoint (its effects) by a logical relation referring to a complex state of affairs in reality (efficient cause + effect). Such logical relation can generate a series of more specific logical rules (maxims) such as, for instance, in the case of a human efficient cause (more properly, an *agent*): "if the producer is known for products of high quality, this product will be of high quality" or "if the producer has a certain specific trait, this product will inherit that trait". An example of this kind of locus at work in actual argumentation practices is represented by the advertising campaign of a car, namely Seat Leon Cupra, launched in 2007, which sounded like "German technology, Spanish passion".

But numerous other maxims of the same locus could be mentioned, both bound to human and to non-human efficient causes. These different maxims are all bound to the one locus from the efficient cause; in the AMT, the term *hooking point* is used to

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[210] Very often, the term *locus* is here substituted with *argument* in expressions like "argument from authority", "argument from analogy", and so on. In these cases *argument* often turns out to indicate the class of arguments that are constructed on the basis of the given locus.

indicate the aspect of the standpoint (the efficient cause, in this case) which is the target of all maxims and, as a consequence, regroups all maxims.

The specific maxims generated by single loci can be interpreted, according to some modern accounts, as generating specific argumentation schemes (see the pragma-dialectical account discussed in Garssen 2001; on this point see also Walton, Reed and Macagno 2008).

To these fundamental notions, the AMT adds the definition of *endoxon*, a type of premise often considered in the ancient tradition of topics but never so explicitly connected to the logical structure of a locus (Rigotti and Greco 2006b). As Rigotti (2007b) points out, the maxim-dependent structure of a locus is not sufficient to account for the persuasiveness of actual arguments. Therefore, in the AMT another component, based on the endoxon, is elicited, in order to wholly explain the argumentative reality (see more in detail par. 5.2.4.3).

Endoxon	Endoxa (Aristotle Topics, 100b. 21) are opinions that are accepted by everyone or by the majority, or by the wise men (all of them or the majority, or by the most notable and illustrious of them)". A modern translation could be: "an endoxon is an opinion that is accepted by the relevant public or by the opinion leaders of the relevant public". Now, the inferential process of the locus cannot be activated and be made persuasive if the maxim is not combined (crossed) with propositions that have already been accepted by the considered public, as they typically correspond to opinions that are considered within the community – namely, endoxa.
Argument	An argument is the actual application of a maxim to one or more proper endoxa, thus deducing the standpoint from the maxim for a certain public that shares the above-mentioned endoxa.

5.2.4.2 Taxonomy of loci

On the basis of these definitions, a taxonomy of loci has been constructed (Rigotti and Greco 2006b; Rigotti 2007) which allows distinguishing the various loci on the basis of the relation between the hooking point and the standpoint. Such taxonomy, drawing on the Medieval distinction between *intrinsic*, *extrinsic* and *middle* loci, and moving, in particular, from Themistius' account, proposes a reinterpretation of it based on the categories of modern linguistics, which more clearly account for the different

relations of the hooking points to the standpoint. The opposition intrinsic-extrinsic was chosen in the Middle Ages in order to characterize the degree of proximity of the locus to the standpoint; in other word, intrinsic loci tended to be bound to habitudines which refer to a single state of affairs in reality (cause-effect, *definitio-definitum…*), while extrinsic loci tended to be bound to habitudines which refer to alternative states of affairs in reality, their most general and representative category being that of *opposition*.
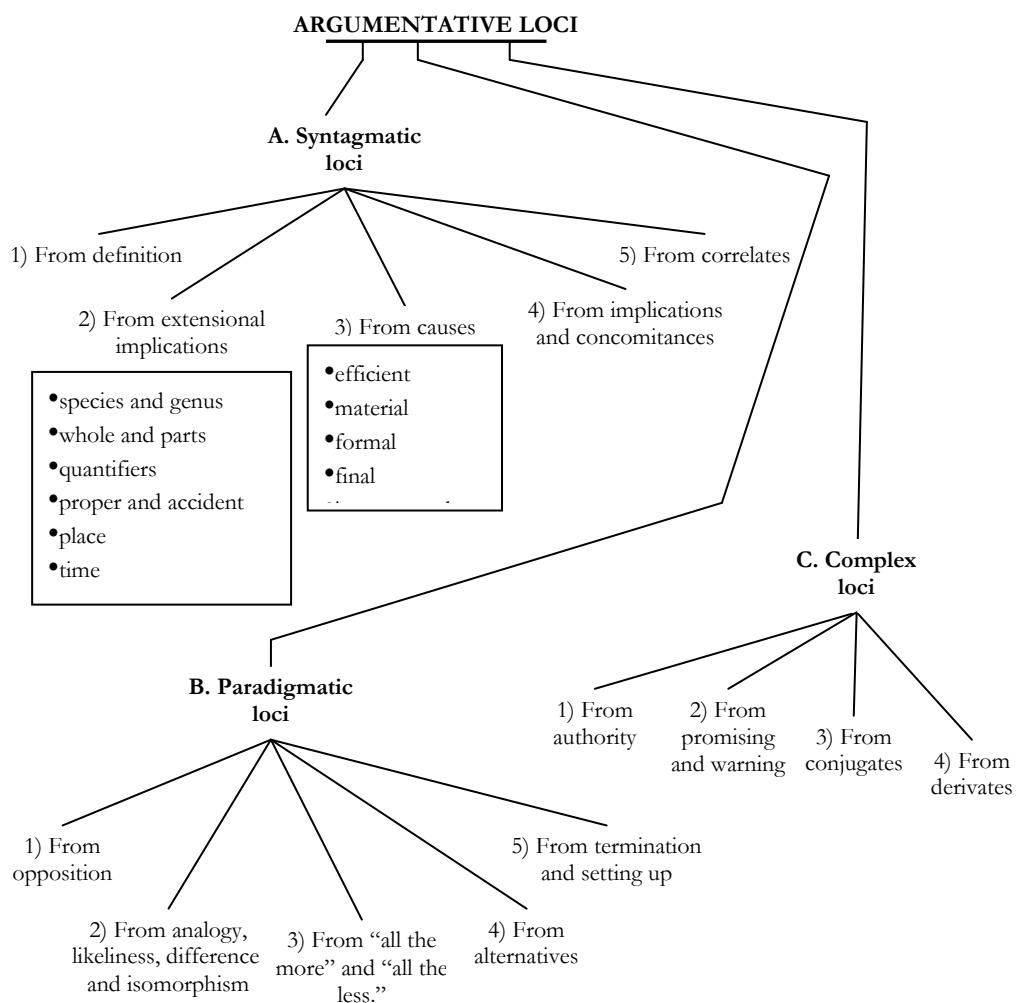
Figure 19: Taxonomy of loci in the AMT

As it is shown in Figure 19, three main categories of loci are included in this taxonomy. The first one is represented by syntagmatic loci, whose distinctive feature is

to be connected with aspects that either have been established in the standpoint or that coexist with it. The notion of syntagm, introduced in modern linguistics, accounts for these kind of *in praesentia* relations. In Medieval works, like in particular the commentary to Peter of Spain's *Summulae Logicales* written by Buridan, the logical relation on which this kind of loci is based is said to refer to a single state of affairs in reality. Such a state of affairs is normally a complex one, such as the one encompassing cause and effect, or an action and its implications. Among the syntagmatic loci, the following ones can be enumerated: *locus from definition*, *loci from extensional implications* (species and genus, whole and parts, quantifiers, proper and accident, place, time), *loci from causes* (in particular, locus from the efficient cause, from the material cause, from the formal cause, from final cause, and from instrumental cause), *locus from implications and concomitances* (of the standpoint), and *locus from correlates*.

The category of *paradigmatic loci* draws on the linguistic category of relations in absentia (or paradigmatic), and regroups all those loci that are bound to the standpoint through a relation of alternativity. Included in this category are the *loci from opposition* based on different types of opposition (systematized in the *square of oppositions*, see Rigotti and Greco 2006b) the *locus from metaphor*, the *locus from analogy* (with the subcategories, of likeliness, difference, and isomorphism), the *locus from "all the more…" and "all the less…"*, the *locus from alternatives*, and the *locus from termination and setting up*. In terms of modern semantics, these loci refer to the comparison of one or more possible worlds with the actual world.

Finally, the third category has been named of *complex loci* both in order to account for the contaminations between the two preceding categories – indeed, frequently actual arguments present aspects that can be ascribed to both syntagmatic and paradigmatic loci – and in order to consider the extra-discursive elements that can be included in these loci. For instance, the *locus from authority* is surely part of the complex loci, because, although its structure is mainly based on the efficient cause, it refers to an extra-discursive aspect, as the efficient cause of the standpoint, from which the authority is taken, is the speaker uttering it (see Rigotti 2006).

5.2.4.3   The inferential structure of arguments

A very simple example of argument, presented in Rigotti (2007), which can be considered as part of an advertising campaign, is reproduced here in order to show the analysis of the inferential structure of arguments allowed by the AMT. Such example can be imagined as taken from an advertising message, claiming in a very overt fashion: "This butter is natural. It is made from fresh Alpine milk". A first level of argumentative analysis allows identifying the standpoint (this butter is natural) and the argument used to support it (it is made from fresh Alpine milk) . The following representation mirrors

the numerous examples proposed in van Eemeren, Grootendorst and Snoeck-Henkemans (2002):

1. This butter is natural.
1.1 It is made from fresh alpine milk.

Concerning the representation of standpoint and argument, the AMT tends to highlight the problematic nature of the standpoint, signalled by a question mark, and the supporting nature of the argument, signalled by an arrow:

(?) This butter is natural.
➔ It is made from fresh Alpine milk

The two representations, in this case, can be considered equivalent from the point of view of a first identification of standpoint and arguments. The logical relation between argument and standpoint, however, remains quite obscure at this level, and needs to be further specified in terms of topical analysis (argumentation schemes) if the inferential structure of this argumentative move has to be made explicit and evaluated. In this sense, the AMT aims at furnishing some instruments for fulfilling the analytical reconstruction, by presenting a synergic representation of arguments that allows eliciting various levels of their implicit premises and highlights their connections by reconstructing the whole inferential structure of the argument (see Figure 20 below):
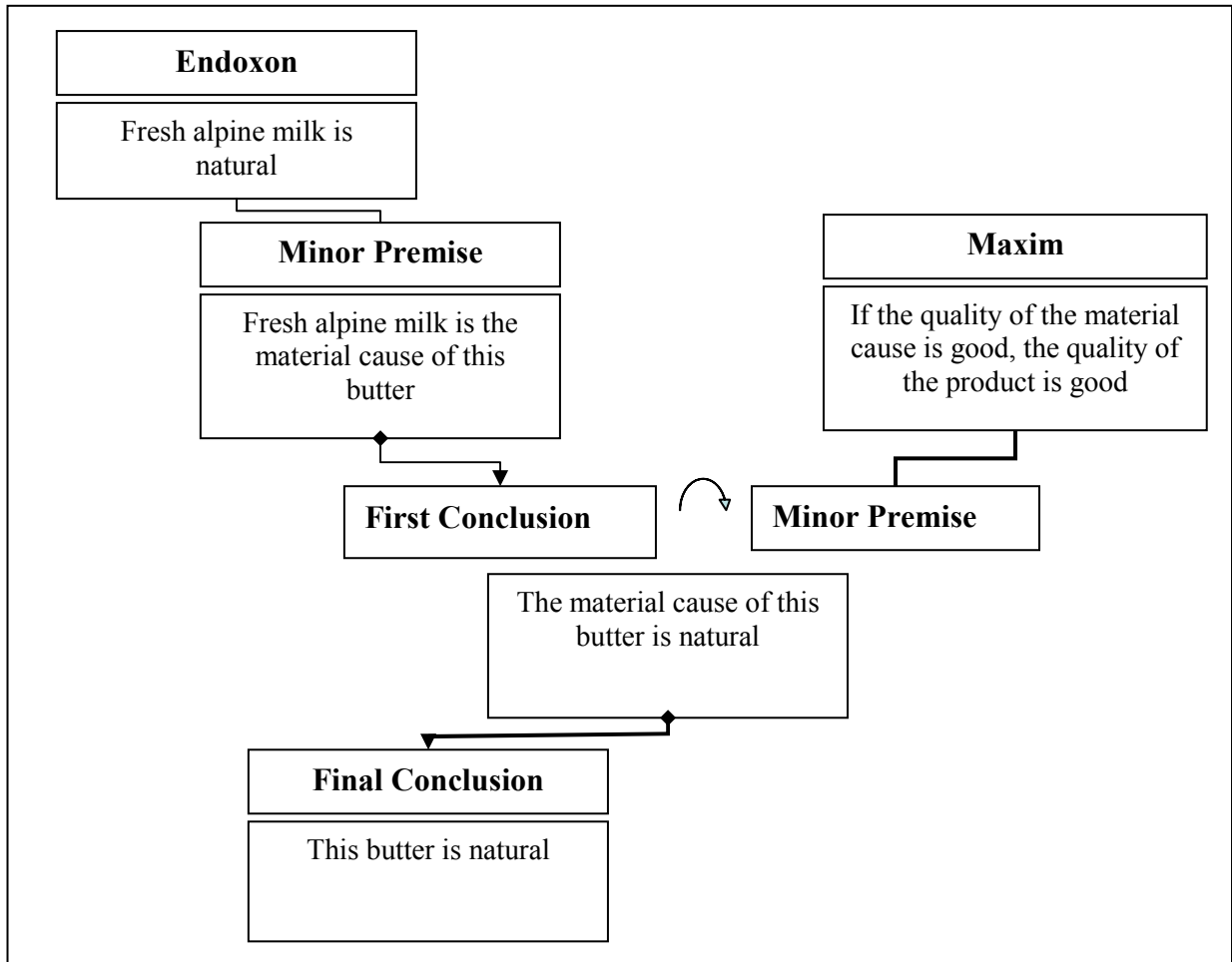
Figure 20: Synergic representation of the inferential structure of an argument (Rigotti and Greco 2006)

The general principle underlying the reconstruction of the inferential structure of this argumentation is that of finding those implicit premises that are necessary in order for the argumentation to be valid from a logical point of view. Such operation is part of an analytical reconstruction of argumentation (see par. 5.3.1.).

First, the standpoint to be supported, which has already been identified, becomes the final conclusion of the reasoning, insofar as it is the statement that the whole argumentation intends to demonstrate. Then, on the basis of the argument identified, it is possible to elicit the hooking point and thus the locus on which the argumentation is based. In our case, the "naturality" of the advertised butter is connected with the main ingredient constituting it, i.e., in more general terms, with its *material cause*. The habitudo in question is thus the relationship between a product (in this case, an edible

product) and its material cause (its ingredients). More specifically, it is now possible to identify the maxim actually working as a major premise of the syllogistic reasoning based on this argument scheme, which can be formulated as: "If the quality of the material cause is good, the quality of the product is good"[211]. Combining the maxim with the final conclusion, it clearly emerges that the minor premise, still missing in the reconstruction, should be: "The material cause of *this* butter is natural", thus applying the general principle stated by the maxim to the specific product in question.

Considering the minor premise of this reasoning, it is clear that it needs some backing in turn– in fact, the advertising message considered intends to show that the material cause of the specific butter considered *is*, indeed, natural. Such a statement, thus, becomes the final conclusion of another reasoning which, rather than being anchored to a logical principle like the maxim derived from the locus, stems from a major premise referring to the interlocutors' common ground in terms of shared knowledge, beliefs and values. We can formulate such premise as: "Fresh alpine milk is natural". In the AMT, such premises bound to the common ground are named with the term employed by Aristotle, who first elaborated on the significance of the relation with shared premises in argumentation, namely *endoxon*, which literally means "what is in the shared opinion". The minor premise connecting the endoxon to the conclusion is normally a datum that is part of evidence for the interlocutors or that is presented as such: in our case, "This butter is made from fresh Alpine milk", which is declared by the selling company. For the potential customer, fresh Alpine milk being one of the ingredients of the butter is not direct evidence (as he/she has not assisted to the production process) but it is an assertion whose truth the selling company must be strictly committed to, as it is normally requested by the legislations on commercial activities.

Indeed, the reasoning stemming from the endoxon is not strictly derived from the considered locus – this is probably the reason why many accounts of argument schemes tend not to consider it. As Rigotti (2007b) has shown, often the reconstruction of the inferential structure of arguments in modern accounts on argumentation schemes (see in particular Hastings 1963; Kienpointner 1992 and Walton, Reed and Macagno 2008), though correctly eliciting the rule underlying the logical structure of the corresponding argumentation scheme, often fail to identify one or more premises that are indeed at work in the argumentation. Such premises, which are identified as endoxa in the AMT model, complement the logical structure of the argumentation scheme by relying on the arguers' common ground, including "discussion format, background, knowledge,

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[211] Needless to say, other maxims can be generated by the same locus. Another group of important maxims related to the material cause, besides "If the quality of material cause is *bad*, the product is *bad*", is bound to the concept of *resource*. See for instance: "If the needed resources are not available, a given action cannot be performed". In general, the set of maxims bound to a locus can be generated starting from an accurate semantic analysis of the maxim (see Rigotti 2008).

values" (van Eemeren and Grootendorst 2004: 60). Thus, in order to account for the inferential structure of the real argumentation, rather than only reconstructing its logical basis, it is unavoidable to consider also this component. The reasoning stemming from the maxim would otherwise remain a mere logical procedure with no hold whatsoever on the interlocutors. The importance of the combination of these two components resides in the advantage it brings to the analysis of the inferential structure of arguments in terms of their logical consistency and persuasiveness. In fact, the consideration of the component based on the endoxon allows to insert the presentation of single arguments within the complex structure of a critical discussion, insofar as it provides the link with the premises that have been agreed upon in the opening stage. More precisely, as it has been argued in Rigotti (2006), the endoxical component is rooted in the context of the argumentative discussion that is constituted by the parties' institutionalised and interpersonal relationship. For this reason, the model accounts for not only the logical aspects of the development of argumentation, but also for its embeddedness in the parties' relationship, and, thus, in the context of argumentation (see Chapter 4).

The "quasi Y-shaped" graphical representation presented in Figure 20 has been introduced in the AMT in order to highlight the crossing of lines of reasoning stemming from premises of different nature that are present in real argumentation. It intends to provide a more complete account of all the inferential passages (based on syllogistic reasoning) that are effectively at work in argumentation. In this sense, this model is proposed, from a methodological point of view, as an integration to the methodology of the analytical reconstruction (see par. 5.3.1).

It is also important to specify that such a reconstruction of the inferential structure of actual argumentative moves is preliminary to their *evaluation* in terms of logical consistency and persuasiveness. In this realtion, many aspects could be elicited with regard to the considered example: for instance, the above mentioned endoxon clearly shows its context-dependence, as the image of the Alps as a natural place where serene cows are grown and produce natural milk is only valid in certain geographical and cultural areas, while it is unknown or meaningless in others. Moreover, the validity of the maxim itself, although it cannot be questioned as a general logical rule, can be discussed insofar as it can be limited by other concurrent factors. For instance, milk is certainly the most important material cause for butter; but if other "minor" ingredients are unhealthy, the butter cannot be claimed to be natural. Furthermore, if a very natural butter is stored with no attention to its conservation, its quality decreases in a few hours. Finally, it is important to be aware that the datum concerning the actual composition of the butter, being based on an auto-certification by the selling company, can surely be subject to fraudulent attitudes, which should be verified.

Considerations of this kind constitute an evaluation of the logical validity and of the persuasiveness (mostly in terms of shared endoxa) of argumentative moves and

discourses, and allow identifying potential mistakes, fallacies and other manipulative processes.

5.2.5 Argumentation as a communicative interaction

It is necessary now to point at some more general assumptions about the process of communication, of which argumentation is considered a relevant component. The reasons justifying such framing are twofold, and refer to two different levels of zooming in the analysis.

On the one hand, argumentation should be considered in its proper context of the communicative interaction, as it is in general widely acknowledged in argumentation studies[212]. Thus, although the argumentative analysis of texts requires a necessary abstraction process that focuses on the argumentative aspects of the discourse mode of argumentation, this analysis needs to be integrated in a perspective that considers the whole development of the communicative interaction. Indeed, even the selection of argumentatively relevant traits of the discussion can only be adequately fulfilled only if the goals of the communicative interaction are considered. Relational aspects, repetitions, phatic communication and other features may be judged relevant or irrelevant from the argumentative point of view also in relation to the contextual factors (see also par. 1.3.1).

On the other hand, a second reason for introducing some notions of communicative analysis concerns a micro-level. As argumentation also includes the exploitation of semantic nuances, ambiguities, as well as rhetorical aspects at the level of speech acts, uses of metaphors and other elocutive aspects, the analysis should not neglect specific linguistic aspects, which may have more or less direct argumentative functions.

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[212] See van Eemeren, Houtlosser and Snoeck-Henkemans (2007: 3): "Pragma-dialectics on the other hand acknowledges explicitly that argumentative discourse is part of a communicative activity. That is why the argumentation that is advanced is always analyzed in relation to the way in which the verbal interaction between the participants in the communication process proceeds. Bringing forwards standpoints and argumentation and responding to the (real or assumed) standpoints and argumentation of others are viewed as socially motivated moves in a collective process of conflict management".

5.2.5.1 Accounting for the communicative dimension: the perspective of Congruity theory

Congruity theory, already introduced in Chapter 4 for the semantic analysis of *conflict*, starts from the interpretation of texts as communicative actions (see in this relation the model of action provided in Rigotti 2003 and presented in Chapter 4), and interprets the meaning of such a communicative action as a hierarchy of semantic-pragmatic predicates. This hierarchy goes from lexicalised units, such as the ones bound to conflict, to higher level pragmatic predicates, which are analysed in the same terms of presuppositions and implications[213]. Connective predicates are to be interpreted as relational predicates (see Gobber, Gatti and Cigada 2006) assuming among their arguments text sequences, speaker, hearer and context. The structure of a connective predicate can thus be represented as follows:
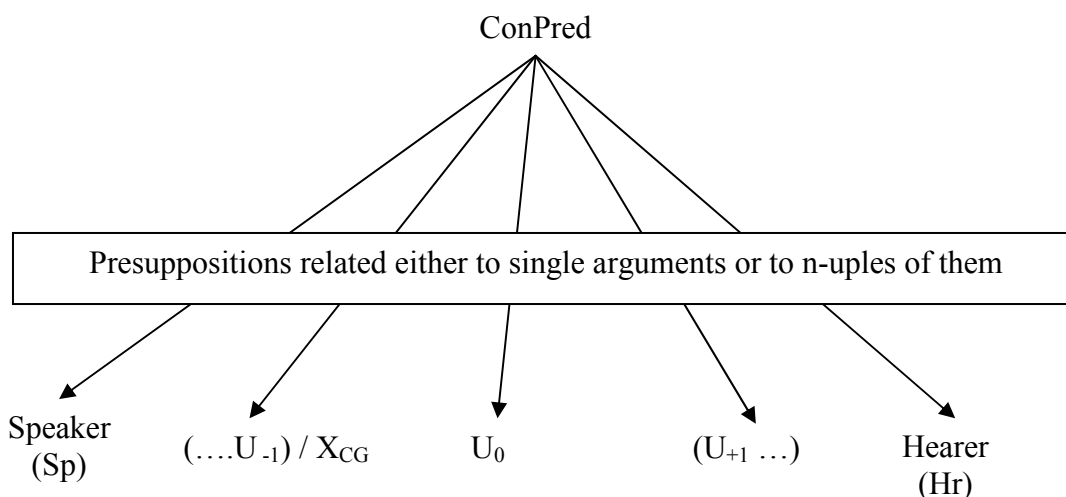
Figure 21: The structure of a connective predicate (Rigotti 2005a: 83)

The connective predicate relates all these arguments to each other, insofar as it "characterises the utterance by specifying what the speaker does to the addressee with her utterance" (Rigotti 2005a: 82). The pragmatic nature of the interpretation of texts proposed by Congruity theory clearly appears from this definition. This account is pragmatic both because, as said, it rests on the interpretation of texts as communicative actions, and because it involves the context of communication as an argument of the connective (see also Rigotti and Rocci 2006). The hierarchical network of predicates,

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[213] See Rigotti (2005a: 81): "Moreover, in Rigotti and Rocci (2001), it is argued that not only we can explain the different lexical or grammatical presupposition triggers in terms of predicates that impose presuppositions on their arguments, but it is also possible to treat in similar fashion the *coherence* and *illocutionary felicity* of entire texts".

thus, is ultimately dominated by the predicate that more directly evokes the communicative meaning of the text.

Congruity theory can be virtually applied to any communicative text, including argumentative texts (Rigotti 2005a). Now, the instruments for analysing more specifically argumentative sequences have already been introduced; as for Congruity theory, it is assumed in the present research because it allows a broader perspective on the analysed data and therefore can serve as a basis for considering relevant communicative aspects that integrate the argumentative account of mediation that this research is focused on. In fact, the mediation interaction is clearly a text where more than a single sequence is present, and though the argumentative nature of the mediation interaction has been proven, not only argumentative passages are present.

In particular, mediation corresponds to a dialogue, i.e. to "a communicative interaction where the participants can (and are expected to) alternate, more or less regularly or frequently, the roles of speaker and hearer" (Rigotti 2005a: 91). Now, as it has been shown in Rocci (2005), Congruity theory can be applied to monological as well as to dialogical texts. In the latter case, it is possible to interpret and analyse in great detail by means of the notion of connective predicates also cooperative local moves that have been called *dialogue games*, and which involve a common goal between the interlocutors beyond their individual goals. As Rocci (2005: 105) shows, connective predicates are less abstract than dialogue games, as they allow analysing the functioning of the single communicative move. However, the hypothesis can be made that dialogue games, which are "considerably more abstract" (ibid.), regroup classes of connective predicates.

Significantly, Congruity theory, interpreting texts as hierarchies of predicates, allows focusing on the fact that the ultimate action performed through the text itself – coinciding with the connective predicate of the highest level – involves the participants in the communicative interaction themselves (see the roles of speaker and hearer in Figure 21 above). Not coincidentally, Rigotti (1993: 48-49) pointed out that the most important change on social reality produced by communication operates on the subjectivity of the interlocutors. Elaborating on the implications of this at the relationship level, Cigada (2006: 140) speaks of *emotive congruity* (*congruité emotive*), namely the possibility and capability to emotionally participate in the communicative exchange, as a constitutive dimension of communication. Thus, the evaluation of the congruity of the arguments of the connective predicate dominating a given communicative text must also take into account the complexity of the human subjects involved in communication.

It is clear that such a delicate balance becomes even more complex in the case of communication in mediation, which follows a conflictual phase (see par. 4.2.) in which

the conflicting parties are certainly lacking congruity at the relational level. In fact, the escalation of a conflict is a process by which the parties' relationship is gradually deteriorated, up to the moment in which each party only wants to eliminate his/her adversary and considers him/her to be the real problem (the real origin and source of the conflict). In such a situation, we are certainly far away from the ideal of cooperative communication, and from a well-balanced dialogue from the emotive point of view[214]. Thus, the importance for the mediator to be able to cope with emotive aspects and to be empathic with both parties has often been highlighted[215]. Such capability should be understood as aimed at enabling both parties to "find their own place" as human beings within the communicative process[216].

5.3 Methodology

5.3.1 The analysis of argumentative interactions: proper features, advantages and limitations

Having defined the objectives of the present investigation and the theoretical instruments that will serve for the purpose of the analysis, the methodology of research and the data on which it will be conducted are still to be defined.

The present research is set within the domain of discourse studies and text linguistics and, specifically, within the tradition of argumentative studies, whereby argumentative (written or oral) texts are analysed and the argumentative dynamics within these texts are elicited. In particular, as a general theoretical framework, this study refers to the pragma-dialectical program for the study of argumentation, also inheriting its methodological approach.

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[214] The fact that (even less-than-conflictual) polemical exchanges can be very challenging from the point of view of the involved subjects has been pointed out by Dascal (2003[1989]). See also Greco Morasso (2008) for this aspect.

[215] Dealing with interpersonal aspects and emotions is considered very important in the training of mediators. More specifically, it has been argued that mediators' training should devote more attention to the management of emotions and the development of emotional intelligence, conceived of as "the capacity for recognizing our own feelings and those of others, for motivating ourselves, and for managing emotions well in ourselves and in our relationships" (Goleman 1998: 317, quoted by Schreirer 2002: 100). Emotions are identified as an essential component in conflict resolution (Jones and Bodtker 2001; Shapiro 2002).

[216] The relevance and significance of the emotive and relational dimension in argumentation has been highlighted in a series of studies by Christian Plantin and his research group in Lyon (see Plantin 2004).

Some remarks on the methodological rationale underlying studies in argumentation have been proposed by Jackson (1986), Jacobs (1986), van Eemeren et al. (1993) and van Eemeren and Grootendorst (2004). In particular, Jackson (1986) has examined the methodology of argumentation studies and, more in general, of discourse analytic approaches based on *analytic induction* (ibid., p. 129)[217]. More in detail, van Eemeren et al. (1993) and van Eemeren and Grootendorst (2004) specifically situate the pragma-dialectical approach to argumentation within this kind of approaches and provide some methodological principles[218].

The fundamental concept at the basis of the methodology also employed in the present work is that of *reconstruction*:

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[217] In relation to social sciences, in particular, Jackson (ibid.) argues against the common view that discourse analysis and other accounts founded on analytic induction would lack methodological validity. In particular, Jackson maintains that methodology should not be confused with specific and routinized procedures considered as rules to be followed in doing research. Methodology is "a way for generating arguments for empirical claims"; in this perspective, "specific design and analysis procedures are seen not as guarantors of correct conclusions, but as routinized solutions to argumentative problems" (ibid., p. 131). In this sense, the specific routinized principles of empirical inquiries used in the social sciences turns out to be standard means to reach the goal of empirically founded claims. As any means, they show to have an instrumental rather than absolute validity. Therefore, "analytic induction offers no pre-existing argumentative structure into which empirical claims can be slipped. But this does not mean that it has no method, nor does it mean that the claims are non-empirical" (ibid., p. 133).

More specifically, Jackson observes that, in regards to the relation between claims and empirical evidence, "the most salient characteristic of discourse analytic research is the use of examples drawn from conversation or other discourse as data" (ibid., p. 138). In this relation, Jacobs (1986) further examines and discusses the validity of this method, based on the argument from example: "There is a genuine sense in which examples have a demonstrative power within the framework of discourse analytic argumentation. That demonstrative power is grounded in the idea of an institutional fact and in the claim that intuitions are social facts to be accounted for. [...] In comparing and contrasting examples of language structure and language use, the discourse analyst is involved in finding out how our social knowledge makes language appear. By selecting for analysis examples of a variety of types, the analyst can (1) bring those intuitions into bold relief, showing that we in fact have them, and (2) argue for the correctness of technical descriptions based on those intuitions, justifying the description by the way in which the described features are required for having the intuitions we do" (ibid., p. 166). This is how the examples drawn from the corpus selected for the present work are used. As for the rationale for the selection of the corpus, it is explained further on in this chapter.

[218] As a whole, the methodological approach to the argumentative analysis derived from pragma-dialectics is defined tending to be an *analytic, a priori, rational* approach (van Eemeren et al. 1993). Each of these attributions corresponds to the extreme of a dichotomy in which approaches to analysis and reconstruction can be viewed. It tends to be analytic because the empirical data (oral or written texts) are analysed from an external perspective (etic-emic). It is a priori because it starts "from a theoretical stance taken toward the phenomena (ibid., p. 53). It is rational because it assumes that the organization of verbal interaction is to be found neither in sequencing (at the level of behaviour regularities) nor in conventions but in deeper rationality (ibid., p. 55).

"The aim of a pragma-dialectical analysis is to reconstruct the process of resolving a difference of opinion occurring in an argumentative discourse or text" (van Eemeren and Grootendorst 2004: 95).

Indeed, the reality of human interaction allowed by communication is far more complex than any disciplinary approach may account for. Doing an argumentative analysis of a text, thus, means reconstructing those aspects of it which are relevant to the argumentative purpose of resolving a difference of opinion, and neglecting other aspects. Of course, this does not mean that the other aspects pertaining to the complexity of human communication are not relevant, but only that there is a necessary abstraction from the real object to the *formal object* which is relevant to argumentation studies (Rigotti and Cigada 2004: 59-61). The concept of reconstruction is in no case to be conceived of as a process of text manipulation that neglects or revisits the empirical data, but only as a focus on the argumentative traits of a more complex communicative interaction.

In particular, the process of reconstruction implies four kinds of *transformations* (van Eemeren and Grootendorst 2004: 100-110) that might be said to help focus on these traits: *deletion*, *addition*, *permutation* and *substitution*. Deletion consists in leaving out parts of the data that are irrelevant to their argumentative nature; addition consists in including the implicit argumentative material that can be inferred by what is explicitly uttered; permutation concerns the disposition of the data, which can be rearranged in order to interpret it in light of the model; and, finally, substitution may bring to interpret vague or imprecise formulations of communicative moves and provide in the analysis clearer formulations that help highlight the argumentative nature of such moves.

It is thus clear that the argumentative reconstruction of a text is not a trivial task, since the data that the analyst approaches are often mixed with non-argumentative passages, and on the other hand they may leave part of the argumentation implicit; indeed, the fact that argumentation in real human interaction is not completely explicit is a distinctive feature of human communication, already pointed out by the Aristotelian notion of *enthymeme* (Tardini 1997); thus the relevance of the process of reconstruction.

Van Eemeren et al. (1993) have analysed the basis for the justification of the analyst's reconstruction of the process of argumentation. On the one hand, part of the grounding is of *empirical nature*, insofar as it is bound to ethnographic evidence or to the natural speaker's awareness of the use of language, which gives information about the use of communication in general, and also cues deriving from how the participants themselves understand what is going on in their communicative exchange. To this, van Eemeren and Grootendorst (2004: 112) add the specific knowledge of the context where the argumentative interaction takes place, which often sets up expectations and conventions which may justify a specific reconstruction. Such a remark is in line with the reconstruction of a framework of mediation performed in the previous chapter, since

knowledge of the context turns out to be in this case necessary for understanding the argumentative dynamics taking place within it. In general, as van Eemeren et al. (ibid., p. 44) put it, "This evidence can be assembled both to justify the analyst's intuitions empirically about what is being argued and to augment those intuitions so as to go beyond a naïve reading of the discourse".

A second major source of justification of the reconstruction is *normative*. In fact, the analyst of argumentation assumes the participants to be cooperative and to act in a reasonable way and holds them accountable for meeting such expectations (ibid., p. 45). In this relation, the model of a critical discussion – which is assumed, in our case, in its integrated version, including the strategic manoeuvring and integrated by the AMT in its specific component of topical potential in the argumentation stage – plays a fundamental role, insofar as it plays a heuristic and critical function. As van Eemeren and Grootendorst (2004: 58-59) put it:

> "The model of a critical discussion performs both a heuristic and a critical function in the analysis and evaluation of argumentative discourse and text. The heuristic function is that of being a guideline for the analysis: the model serves as a guide in the detection and theoretical interpretation of every element in, and aspect of, the discourse or text that is relevant to a critical evaluation. The critical function is that of serving as a standard in the evaluation: the model provides a series of norms by which it can be determined in what respects an argumentative exchange of ideas diverges from the procedure that is the most conducive to the resolution of a difference of opinion"[219].

It is clear that what is relevant to the normative account guiding the analysis depends on the research purpose. In general, however, the analysis is guided by some strategies directly deriving form the normative account. The most general strategy is called the strategy of *maximally reasonable reconstruction*, which gives maximal credit to the speakers considering them as contributing to the resolution of a difference of

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[219] About the heuristic and critical functions of the model, van Eemeren, Houtlosser and Snoeck-Henkemans (2007: 17) explain: "Assuming that argumentative discussions and texts and the argumentative moves made in such argumentative discourse have – at least potentially – the objective of resolving a difference of opinion in a critical way, we believe this model can be considered a template for the crucial tasks that parties involved in the difference of opinion have to perform. If it turns out that language users do not fulfil all these tasks in everyday argumentative discourse or do not fulfil all of them completely, it still holds true that all the tasks specified in the model are functional for scrupulously resolving a difference of opinion, and so, technically, they should be performed one way or the other. Consequently, one of the uses of the model is to identify moves which in real world cases are not explicitly or completely expressed. Even in the case of moves that are apparently (or even actually) fallacious, we are of the opinion that it is methodologically acceptable to use the ideal model for conducting a critical discussion to identify these moves as argumentative moves".

opinion[220]. Such a strategy works as a guiding principle under uncertain conditions but the justification of the analysis must always be in accordance with the empirical grounding, including knowledge of the specific context of argumentation[221].

Methodologically, the pragma-dialectical approach to argumentation also includes the presentation of the analytical reconstruction by means of an *analytic overview* of the critical discussion, which helps bring to light "which points are at dispute, which parties are involved in the difference of opinion, what their procedural and material premises are, which argumentation is put forward by each of the parties, how their discourses are organised, and how each individual argument is connected with the standpoint that it is supposed to justify or refute" (van Eemeren and Grootendorst 2004: 118). In the present research, the analytic overview is adopted. Some elements typical of the mediation interaction are included, together with the representation offered by the AMT.

5.3.2 Preliminary remarks on the confidential nature of the mediation intervention

Before illustrating the choice of the data on which the present study is based, it is important to specify some of its essential features that are bound, more in general, to the specific interaction of mediation. Human interactions, in general, can be classified in accordance with the dichotomy having as opposite poles their openness versus their confidentiality. For instance, a corpus made of newspaper articles is by its very nature founded on a type of document that is open to the public; a more restricted segment of public is foreseen for university lectures or even school teaching; but mediation interactions – together with many other kinds of activity types, such as doctor-patient consultation, financial consultation, and so on – are confidential[222] by nature, so that

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[220] Such a principle is then instantiated into two more specific strategies. On the one hand, the strategy of *maximally argumentative interpretation* requires that the argumentative force (or status) is attributed to those speech acts that may have it. On the other hand, the strategy of *maximally argumentative analysis* each single argumentation is accorded a maximum of argumentative force (p. 114ff.)

[221] In this sense, as van Eemeren and Grootendorst (2004: 117) observe, there is an open character of the argumentative analysis based on pragma-dialectics: "In principle, there is always the possibility that in the course of the reconstruction process, other, and better, options, come into view that are more plausible, and have to be taken into account". Such a status of interpretive work-in-progress may be perhaps attributed to all qualitative analyses of human interaction.

[222] Mediation, indeed, can be considered one of the contexts in which one can find instances of confidential interactions. See in this relation Kerbrat-Orecchioni and Traverso (2007: 1-2): "Les confidences sont attendues dans les conversations familières (où elles servent précisément à construire

their development is never made public and it is delicate to approach it even for reasons of scientific research[223]. In some cases, the final mediation agreements acquire a public status, but generally the process of mediation, including the discussion and the arguments put forward, is not filed in the records (Herberger 1986: 231, q.td in Nothdurft 1995b: 11). As Princen (1992a: 4) has observed, this determines, first of all, a real problem for the scientific research, because the confidential nature of mediation somehow hinders the analysis of this process. The problem, however, is not only a practical one. Indeed, it also has theoretical implications, since including some external observer into a process that is confidential by nature may somehow modify the very nature of the interaction. For this reason, the presence of researchers during the mediation interaction is limited; in some cases it is possible, in particular when parties agree to have somebody who supervises the mediator him/herself; in other cases, observers are announced to the parties but watch the interaction without being viewed[224]. At other times, the interaction is (video)-recorded without having any external observer present. In general, it can be said that this external intervention does not necessarily change the nature of the interaction, but it must be cautiously planned.

Indeed, the problem of the confidentiality of data is reflected on the methodologies for collecting data employed in mediation studies; in fact, many of the analyses only rely on *indirect* sources for investigating conflict and mediation. In this regards, considering the transcriptions of entire mediation interactions turns out to

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la 'familiarité') ; elles sont fréquentes dans certains sites comme les petits commerces ou les salons de coiffure, et plus encore dans certains contextes institutionnels comme les consultations médicales ou les entretiens thérapeutiques". Mediation is certainly a context in which parties are required to disclose part of themselves in front of the mediator and – which sometimes can be more difficult – in front of each other. It can be imagined that, in such situation, the presence of some external observer such as the researcher could be disturbing; in all cases, then, the collection of data must be conducted carefully, taking into account the problem of confidentiality.

[223] In the already mentioned project on conflict settlement conducted at the Institut für Deutsche Sprache in Mannheim, Germany (see footnote 156), the collection of data constituted a very delicate issue. As the researchers report (see in particular Nothdurft 1995b: 8-13), at the beginning, collecting data on real interactions of conflict settlement was so hard that it seemed impossible. Such difficulty was not coincidental, but rather it was due to the fact that the confidentiality of this type of interaction is an essential component of it. As Nothdurft (ibid., p. 10) puts it: "In Interviews, die wir mit Teilnehmern der Tarifschlichtung nach dem Metallarbeiter-Streik 1983 (Eisenmann, IG Metall, für die Arbeitnehmer- und Dr. Grenz, Daimler-Benz, für die Arbeitgeberseite) führen konnten, wurde von den Beteiligten deutlich gemacht, wie wichtig es für den Erfolg solcher Schlichtungen ist, daß sie unter Ausschluß der Öffentlichkeit stattfinden. Erst die ‚Hermetik' der Situation und das Vertrauen der Beteiligten darauf, daß bestimmte Dinge nicht an der Öffentlichkeit kommen, ermögliche Verhandlungsprozesse und Verhandlungszüge, die für die Herstellung einer Übereinkunft von großer Wirklichkeit seien".

[224] Isabella Buzzi, head of a mediation centre in Milan, confirms that she sometimes allows observers to be present to the interaction; in other cases, observers can watch the interaction through an internal audio-video system (I. Buzzi, interview with the author, June 10[th], 2008).

constitute a delicate as well as precious empirical basis, necessary for an argumentative view on mediation.

In general, two widely accepted methods can be identified in the literature on mediation: the *case-study approach* and the *media-based content analysis* approach.

In the case-study approach, evidence is taken from the analysis of a single mediatory event which the author has participated in. The empirical data are therefore constituted by the writer's direct observation, often corroborated by recording or notes and completed by subsequent interviews. The most famous case analysed in this way is former American President Carter's mediation between Israeli and Palestinians at Camp David (Princen 1992a; Matz 2006). But numerous other experiences of intervention are quoted; in particular, this method is very often employed for the study of ethnic conflicts (see for example Povey et al. 2005; Davidheiser 2006; Levine 2005). Particularly in the case of ethnic conflict, the kind of experience from which data are drawn in this approach is not necessarily a complete mediation process; often, these studies refer to a minor event within a complex and protracted conflict, such as a *peace workshop* where some representatives of the parties are invited to talk together and present their reasons to each other.

The case-study approach clearly presents some advantages, among which the fact that it provides direct and fresh experience on real practices of conflict resolution through the evaluation of best practices. Sometimes, a methodology used in a particular case may have proven successful and thus claim to be extendable to similar interventions; it is the case, for instance, of Levine's (2005) process phases or of Broome and Murray's (2002) account of the mediator's job in a peace workshop. However, this method clearly shows to have some weaknesses: for example, Malhotra and Liyanage (2005: 911) critique against the lack of long-term evaluation of such experiences; in their view, the evaluation of the results of such cases is normally drawn too quickly and without a solid basis of evidence. More in general, the fact that the author is directly involved in the interaction and relies on the participants' memories of the discussions rather than on more objective recordings obviously creates problems with the reliability of the materials.

A quite widespread alternative to the case-study approach is based on a content analysis of media reports. Such a methodology clearly allows overcoming the problem of confidentiality by relying on public data published in the media; of course, it is particularly suited for international conflicts and other public events that result relevant for the media system, while it could not be applied to the study of interpersonal conflicts[225]. In this relation, different corpora of data on conflictual events have been constructed, and, most interestingly, codebooks have been organised for the study of

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[225] Not coincidentally, this methodology has been mostly employed by political scientists interested in national and international conflicts.

salient features of conflict and conflict resolution initiatives. The most employed software applications for the creation of data sets on international political behaviour are the Kansas Event Data System (KEDS, see http://web.ku.edu/keds/index.html) and the more recent Textual Analysis by Augmented Replacement Instructions (TABARI, see http://web.ku.edu/keds/software.dir/tabari.html), both developed by Philip Schrodt and his collaborators (Schrodt 2006). Such applications need to rely on previously elaborated conceptual frameworks in order to code data and identify relevant categories; in this relation, some well-known frameworks are WEIS (created in 1976), COPDAB (created in 1982), PANDA, then extended into the Integrated Data for Event Analysis (IDEA) in 1997 (see http://www.vranet.com/idea/), and CAMEO, created in the early 2000s, see Schrodt et al. 2005). The presence of different coding frameworks is a consequence of the fact that identifying semantically relevant categories is a process presupposing a specific ontological framework of conflict and mediation[226], which is not necessarily shared by all researchers, and which also depends on the reality of the conflict to be analyzed[227].

Very few studies rely on a methodology which is similar to the present one; however, it is noteworthy that the (actually not very numerous) studies that concentrate on the argumentative nature of mediation have managed to present results emerging from the analysis of empirical data consisting in transcriptions of mediation interactions.

5.3.3 Rationale for the selection of an empirical corpus

The objectives of this research, oriented towards the understanding of the role of argumentation in a mediation process, required to identify a corpus of mediation cases that can be considered successful (see par. 5.1), insofar as they represent the restoration of the relationships endangered by conflict.

Now, in order to fulfil this requirement and to answer the problem of confidentiality in a theoretically and practically satisfying manner by providing a reliable set of data for the argumentative analysis, the present reserach is based on a corpus of

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[226] See the detailed illustration that the research group led by Jacob Bercovitch provides for the rationale of the codebook he proposed in 1999 as a result of the mediation Project (Houston 1999).

[227] Schrodt et al. (2005: 2-3) justify their choice of creating a new coding framework (namely, CAMEO) on the basis of the fact that the preceding ones were either aimed as studying a too large body of politically different events (such as PANDA/IDEA) or, as in the case of WEIS and COPDAB, they were based on "implicit assumptions" (ibid.) stemming from theoretical assumptions which resulted inappropriate for the study of the kind of conflicts they were dealing with. For example, they claim WEIS and COPDAB (not coincidentally, both created during the Cold War period) to be too state-centered and therefore to neglect all non-state actors who may however play an important role in conflict and mediation (ibid., p. 2).

pre-recorded mediations whose distinctive feature is that of constituting an acknowledged basis for the training of mediators. In this sense, the empirical corpus, which will be described in detail below, is constituted by *exemplary interactions, from which mediators learn to mediate*.

The cases that constitute this corpus are mediated by two renowned mediators, namely Dr. John Haynes and Dr. Larry Fong, who are considered authorities in the field of mediation. John Haynes, in particular, "was a pioneer in the field of family mediation[228], a respected author and practitioner, an international trainer, and the founding president of the Academy of Family Mediators", as presented by the Association for Conflict Resolution (www.acrnet.org). As a mediator in private practice, he mediated more than 5000 interpersonal disputes. He is the author of various volumes on divorce and family mediation, among which *The fundamentals of family mediation* (1994) and of a number of publications on conflict resolution.

An award dedicated to his memory – the John Haynes Distinguished Mediator Award – is attributed every year to a distinguished practitioner in the field of mediation since 2001. But in order to understand Haynes' contribution not only to the practical development of the practice of mediation, but also to the constitution of the "spirit" of the practice itself, it must be considered that John Haynes' example has been and is much more than that of a successful and capable practitioner. He is really considered a pioneer in the field of mediation also in the sense that he somehow interprets the "human attitude" that is considered the ideal of any mediator[229]. Some of his discourses, like the so-called "Vienna Speech", are considered as a moral will for mediators. In particular, Haynes always declared that the reason for his engagement in mediation and the basic principles guiding his practice stemmed from his personal experience as a Quaker (Haynes, Haynes and Fong 2004: xvi)[230] and, in particular, from a positive view on human beings' capability of recognizing what is good[231].

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[228] There is a particular episode of his biography that can show his role as a pioneer of the mediation movement. In 1978, Haynes got a PhD from the State University of New York at Stony Brook, where he discussed the possibility of applying mediation to the field of family relationships and divorce. It is reported that, at his defence of thesis conference, one mentor commented "It's very impressive, but will anyone else ever be able to duplicate?" (Haynes, Haynes and Fong 2004: 275). The flourishing of mediation activities in the subsequent period witnesses that Haynes was prophetic...

[229] See the description of possible candidates for the John Haynes Distinguished Mediator Award on www.acrnet.org: "In keeping with his legacy, the candidate should demonstrate innovation, creativity, and outstanding competence in published writings, training, and practice, maintain personal and professional integrity and respect for others, and embrace a sense of humour and humility about our standing as fallible beings".

[230] Quakers have a long experience in non official and official mediation and peacemaking (Princen 1992a: 186-213; Bailey 1985).

[231] In his own words: "There is 'that of God' in everyone. While it is difficult, when caught in the middle of the parties' maelstrom, to believe that either one has virtue, each person does carry an inner

Significantly, the first winner of such an award has been Larry Fong, Haynes' former colleague and friend, with whom he had reinterpreted and developed his practice in light of the so-called "Milan Mediation Model", a methodology derived from the systemic therapy method[232]. Nowadays, Larry Fong, who holds a Ph.D. in psychology (1987), works as a private mediator and arbitrator in Calgary, Alberta (see his personal homepage at http://www.fongmediate.com); moreover, as an international mediator and trainer, he has consulted in 13 different countries. He sat on the board of the Alberta Family Mediation Society (Past President), Family Mediation Canada (Past President) and the Academy of Family Mediators (Past President). He is currently on the board of the World Mediation Forum (http://www.worldmediationforum.org/).

A second more important reason, yet connected with the first one, concerns the exemplarity of the corpus; in fact, the selected cases can be said to have a paradigmatic function in the training of new mediators. Indeed, these cases have been video recorded and are part of mediator training videos distributed worldwide. This means that these mediations are used as an example from which new mediators can learn; significantly, Carl D. Schneider, head of a mediation service in Bethesda, Maryland[233], which also serves as a training agency, uses the following words for describing the training tapes: "No one else has put together anything like these tapes. […] *They have trained a generation of mediator*s" (emphasis added). Indeed, John Haynes himself has trained over 20,000 professionals in more than twenty countries[234] and implemented mediation training programs within international court systems throughout the world. The training tapes are part of Haynes' and Fong's engagement in teaching.

Moreover, given the reasons expounded above, the sample of mediation sessions that constitute the corpus may be claimed to be representative of the practice as they are widely recognized as paradigmatic examples by professionals themselves; indeed, these cases show how mediators *should behave*, and, in this sense, studying argumentation in these cases equals to studying argumentation in a canonical case[235]. In this relation, all

wisdom. The mediator seeks 'that of God' in each person, to be able to reconnect him or her to that inner wisdom" (Haynes and Haynes 1989: 3).

[232] Larry Fong has been working with John Haynes for a long time, but his professional practice as mediator also stems from his intercultural background as a second-generation-born Chinese Canadian (Haynes, Haynes and Fong 2004: xvii).

[233] Schneider leads *Mediation Matters*, see http://www.mediationmatters.com.

[234] The list of countries in which Haynes worked as a mediator trainer is impressive as it covers large areas of the world: Argentina, Austria, Australia, Canada, Germany, Great Britain, Ireland, Italy, The Netherlands, New Zealand, Northern Ireland, Norway, Poland, Russia, Scotland, Singapore, South Africa, Spain, Switzerland, United States of America and Uruguay.

[235] Of course, this does not intend to deny or neglect the importance of personal and cultural factors in interpreting the mediator work. It is clear that any cultural community where mediators are involved

cases can be considered as successful, because they somehow show the restoration and improvement of the parties' relationship[236].

The selection criteria for the compilation of this corpus have been elaborated in accordance to the purpose of having mediations as canonical and "basic" as possible in the realm of ADR practices. First of all, only *interpersonal* conflicts have been selected (see Chapter 2 for the discussion on this topic), involving two or three parties beyond the mediator. Moreover, in the selected cases, all parties have equal negotiation power, namely they are free to maintain their relationship or to break it; therefore, mediations that involved children or teenagers in conflict with their parents have been excluded.

As the success of a mediation case is defined in this investigation as the possible restoring of the parties' relationship in the pre-conflictual terms, cases of divorce mediation have been also excluded[237].

Considering the very specific and fine focus of the argumentative analysis, a selection of six cases (as a whole, about six hours of interaction) has been considered adequate, since it allows to manage a reasonable amount of materials and, at the same time, to select enough diversified cases.

In fact, first of all, within the sphere of interpersonal conflicts, the choice has intended to include quite a significant variety of application domains (interaction fields)

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and, even more, any single mediator are significantly free as to how to live the practice. However, the fact that the training tapes are used worldwide for the training of new mediators shows that these two mediators are however assumed as "models" for learning the fundamentals of the practice.

[236] Although not in every case parties arrive to a formalised agreement, in all cases a single mediation session was sufficient to reach a solid basis of understanding between the parties that allows future personal negotiations of their problem. In an interview with the author (September 7, 2005), one of the two mediators involved in these cases, Larry Fong, declared that in no case they were asked by the parties to meet again, which they consider a sign of the parties' improvement in their relationship. Certainly, further analysis about the long-term outcomes of the parties' agreement (for example, interviews after some years) lack in this case, which is a limit of the present work. However, the fact that these cases have been selected as a basis for training and as paradigmatic of how to conduct mediation guarantees that, from the point of view of the pragmatic goals of mediation, they are considered successful.

[237] In fact, divorce mediation, as highlighted in Chapter 2, presents a slight difference in relation to other applications, which however should not be underestimated. In fact, the conflict between the parties is not resolved with the restoration of the preceding relationship, but with the instauration of a new different relationship. Now, since one of the main issues in mediation has shown to be the relation between conflict, parties' relationship, and the very process of mediation, having equivalent cases from the point of view of the possibility of restoring the initial relationship seemed to me very important for the uniformity of the corpus. This does not mean that divorce mediation necessarily presents different argumentative dynamics. The selection has been made to concentrate on a corpus as uniform as possible from the point of view of the goal of the mediation in terms of restoring the parties' relationship. Other studies of mediation (see in particular van Eemeren et. al 1993) have tackled cases of divorce mediation; the analysed excerpts refer more properly to child custody mediations. Child custody consultations are similar to the cases selected here, because they respond to the same requisite of aiming at restoring a relationship which is already present.

of mediation. In accordance with the goals of the present research, in fact, the analysis is oriented towards the investigation of the argumentative dynamics in relation to the pragmatic goals of mediation as an interaction scheme that can be applied to a variety of interaction fields (see Chapter 4). In this sense, selecting different interaction fields on the one hand eliminates the risk of generalize field-bound argumentative dynamics. On the other hand, it offers the equally important possibility to verify whether there is any contextual influence, due to the interaction scheme to which mediation is applied, on the development of the argumentative discussion, the choice of arguments, and so on (see Chapter 6, in particular par. 6.2.3.).

The involved interaction fields, which turn out to be equally various and representative of major applications of mediation, are shown in Table 7:

	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6
Family m.						▓
Business m.		▓			▓	▓
Community m.	▓			▓	▓	
- School m.			▓			
- Organisational m.	▓					

Table 7: Domains of application of mediation emerging in the corpus

The most frequent interaction fields – family mediation, business mediation, and some very common forms of community mediation – are thus included in the sample. The combination of family mediation and business mediation presented in Case 6 is also very frequently occurring (see Chapter 2). The variety of application domains is also essential for understanding the relation between the process of argumentation and all the dimensions of *context* emerged in Chapter 4.

The corpus is however quite diversified, beyond the interaction fields considered, also for the geographical, temporal and cultural origin of the cases. Cases from 1 to 3 have been mediated by John Haynes, while cases from 4 to 6 have been mediated by Larry Fong. Cases 1 to 4 have been recorded at the beginning of the eighties in Canada (Alberta)[238], while cases 5 and 6 have been recorded in the years just after 2000 in the Netherlands. These characteristics have been purposefully weighed up in order to avoid as much as possible to depend too much on personal characteristics of a single mediator[239] or on cultural factors related to temporal and geographical variables.

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[238] The former set of tapes have been produced by Kent Taylor (Haynes and Haynes 1989: xv), while the latter has been produced by Sjoerd Homminga from Edumonde Mediation, The Netherlands.

[239] Ideally, it would have been useful to include a higher number of mediators mediating the selected cases in order to avoid the risk of personalization. However, as proven above, no equivalent to these

5.3.3.1 Narratives of the cases making up the corpus

For illustrative purposes, the six cases constituting the corpus will be presented by means of a short narrative of the conflict as it emerges during the mediation discussion. Such description is only meant to introduce the reader in the cases, and does not have any analytical claim. The description is focused on the emerging traits of the conflict, while the moves towards its resolution will be explored in Chapter 6 through the analysis. Names and identifying information of the disputants have been modified for privacy reasons.

Case 1: Harassment complaint
Mediator: John Haynes

This case concerns a conflict between a university Professor, Philip Ford, and one of his students, Ann. Ann is a mature student and Prof. Ford is the responsible for a special program for students with particular commitments (especially family commitments) who cannot attend the university program on a regular basis. Prof. Ford is in charge of helping these students keep on track, by suggesting them specific assignments, answering to their questions, etc. Part of this special program includes private meetings beyond the regular course timetable, where students can discuss their academic issues with Prof. Ford. Ann has filed a sexual harassment complaint against Prof. Ford concerning his behaviour during some one-to-one consultations. The mediator has been asked to intervene by the academic vice-president who is in charge of regulating this kind of issues in the concerned university. Both parties have separately met with the vice-president who has advised them to try to mediate their issue before going through the normal academic procedure for handling such problems; both of them have agreed with this suggestion. As it clearly emerges from the parties' discussion, the case can be tackled through mediation because the complaint concerns events which do not constitute per se a clear case of sexual harassment, though they may be claimed to be part of an ambiguous behaviour. More precisely, the problem concerns, on the one hand, some invitations to lunch and dinner and, on the other hand, the fact that Ann contends Philip has placed his hand on her knee once, while Philip's position on this second aspect varies throughout the discussion. The lack of clarity between Philip and Ann is, indeed, the very problem that has given rise to the conflict.

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video-recorded interactions currently exists at the level of professional acknowledgment and recognized authority in the field of professional mediation. Moreover, the fact that Haynes and Fong are indicated as *models* to be followed by other mediators has allowed to overcome the doubt that their practice is considered too individual-bound. In a way, it can be said that even their personal characteristics and style are considered a best-practice to be not necessarily assumed but certainly taken into account.

Case 2: Business conflict

Mediator: John Haynes

Two friends who have been working together for a long time as collaborators and co-owners of a business of bagels find themselves involved in a conflict that encompasses both their working relationship, thereby endangering the very survival of their very successful business, and their interpersonal relationship, which is spiralling down together with their families' friendship. In particular, the workload is subdivided between David, who bakes bagels, and Robert, who is in charge of maintaining the relationships with the customers and of the shipping. Such division of labour brings to quite different organisations of David and Robert's working time. David must wake up very early in the morning and work "in front of the oven", as he puts it; Robert, after taking of bagels' deliveries, usually contacts clients and talks to them on golf field. Both David and Robert are very happy with the other's working skills, and they are satisfied with the business, which has a very good bottom line. David, however, is resentful of Robert's lifestyle, which he finds much more comfortable than his own; he wants to mechanize the business, while Robert is afraid that the debt that would be involved in this operation would be too much a heavy burden on their families. During the discussion, it emerges that this problem is also affecting the relationship between their respective wives and families, which, although having grown up together as friends, now find themselves entrenched in a spiral of complaints. As for the "style" of the conflict, while David puts forward a number of complaints and threats of leaving the business, Robert tends to deny the existence of the problem itself and limits himself to claim that his work too is hard.

Case 3: Conflict at school

Mediator: John Haynes

The principal of a school invites the mediator to meet with a third grade teacher, Claire, and the mother (Lisa) of one of her pupils (Kevin, who is not present during the mediation). The conflict concerns the behaviour of Kevin, which Claire finds unacceptable, immature and not adequate for a third-grader; she claims to have suggested putting Kevin in second grade at the beginning of the year. But Kevin, who is the son of an American diplomat, and therefore has been travelling quite a while in his life, has already attended second grade during the previous year in the United States. Therefore, his parents do not accept to make him repeat the same class. Lisa claims that Claire is not engaging herself enough in helping Kevin, and, more, that she is against her son. For this reason, she directly addressed the principal of the school, who then suggested mediating the case. Claire, on the opposite, says that she has done everything possible to help Kevin, but that he is not mature for third grade. One of the major problems seems to be that he never completes his work in class, nor is he willing to complete it at home; she says that Kevin leaves his work at school and that at home he is often alone and not followed by his parents. Lisa answers that she is not aware of the homework that Kevin has because she does not get it… and so, the discussion tends to go on as a cumulus of reciprocal accusations of Lisa and Claire, who put each other into question.

190

Case 4: Adoption

Mediator: Larry Fong

The mediator is confronted with a problem about the adoption of a very little child (the five days old Rudolph) by a couple. The mediation session involves, beyond the mediator, the potential adopting parents (Harrison and Jenny) and the natural mother (Vivian). From the point of view of the legislation, Vivian had the right of choosing the family to whom her child should go, and still has the possibility, after some days from the moment she gave birth, either to definitively sign the papers concerning the adoption or to decide to keep the baby. During these days, however, it has emerged that the adopting couple and Vivian had a confused idea of the relationship that should be maintained between the baby and his natural mother. Vivian desires to keep some contact with the baby; but what she means by "contact" (namely, some visitation rights) is far from what the new parents had understood. The new couple is afraid of somehow confusing Rudolph and would prefer Vivian not to see him personally. The agreement that the parties had signed before Rudolph was born, however, was ambiguous on this aspect, which endangers the very fulfilment of the interaction.

The discussion is held in an emotionally surcharged environment; Vivian has given birth five days before the mediation session and is about to leave her son to another family, while Harrison and Jenny have been waiting for a baby of their own for a long time and now risk to lose Rudolph.

Case 5: Banker versus caterer

Mediator: Larry Fong

In this case, Tim, a banker, has entrusted Polly, the chef of a specialty items catering service, with the task of preparing a magnificent reception for the celebration of his bank's 100th anniversary. The conflict arises because, on the very day of the reception, a significant part of the food appears to be rotten. After this regrettable event, which has seriously damaged the bank's image, Tim refuses to refund Polly's small business, which has a huge debt with its suppliers. Polly claims that the food had been correctly delivered by her collaborators a couple of days before the reception, and that the damage is due to the incorrect storage methods used by the bank's staff. The commitments between Polly and Tim had not been explicitly written in the usual form of a contract, but remained at an informal level, which makes the solution less evident. Besides, the parties' conflict is made more complex by the presence of some kind of interpersonal ties between them: Polly and Tim had met in primary school and, since then, they have remained friends, seeing one another from time to time. The present problem risks therefore not only to exclude future possibilities of business deals (and, incidentally, to bring Polly's business to failure), but also to interrupt the parties' friendship forever.

Case 6: Father and daughter in business

Mediator: Larry Fong

Therese has been hired as a director of one of the divisions of her father's (Paul) real estate business. While she was on holiday, Paul fired one of her employees, whom she claims to be one of the best people of their business, without consulting her. Therese is very upset and does not accept the

firing and, above all, the fact that her father makes important decisions without consulting her; Paul is determined to affirm his working position as founder and "boss" of the business, and the role of Therese as one of the directors. The situation is complicated by the fact that, as it emerges after about 20 minutes of discussion, the fired employee, James, was held by Paul to be Therese's boyfriend (although she never confirms this interpretation). The problem gradually turns out to involve a more general lack of communication (and listening) between father and daughter, which risks to endanger their personal relationship and the future of Therese within her father's business.

5.3.4 Conventional procedures for the transcription of oral data

Some preparatory work has been necessary not only to select the relevant cases, but also to prepare them for the analysis. Indeed, when the texts to be analysed are written – take for instance a corpus of newspaper articles – their "boundaries" are so to speak clear, although the definition of their meaning always depends on the consideration of relevant co-textual and contextual factors. In our case, however, the texts to be analysed, being mediation sessions, are typically *oral* texts. As for this kind of data, they can be reconstructed in order to make them suitable for the analysis; in particular, they have to be transcribed in such a way that allows maintaining the oral traits as much as possible[240]. For this task, the present dissertation has relied on a quite developed methodological framework of conversation analysis (Hopper, Koch and Mandelbaum 1986; van Rees 1992; Traverso 1999)[241]. Within this framework, the studies in argumentation that have analysed mediation sessions (see par. 3.2.2.2.) can be said to have set up a standard of transcription (as concerns the relevant aspects to be indicated in the notation), which has been taken into account and mirrored in this dissertation[242].

As for the notation system, the transcription is based on Traverso (1999). The conventions are reported in the following table:

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[240] In this relation, see Traverso (1999: 23): "La transcription est une preparation indispensable du corpus, à travers laquelle on cherche à conserver à l'écrit le maximum des traits de l'oral".

[241] Concerning the value of conversational analysis as a basis for the description of argumentation in conversations see van Rees (1992), in particular pp. 155-156.

[242] The most salient aspect is that turns are numbered rather than lines. Such a notation happens to be much more efficient for the purposes of an argumentative analysis. In this sense, it is clear that "Conversational analysts use a variety of transcription systems for such purposes, the choice of system depending on the purpose which the transcription is intended to serve: there is no such thing as a single 'right' transcription system. Different systems focus on different aspects of an utterance, and which aspects are relevant depend on where the investigator's interests lie" (van Rees 1992: 157).

Sign	Explanation
[	Interruption and overlapping: (indicates the point at which overlap by another speaker starts)
=	Turns following one another with no interruption
wh-	Interruption of a word
Eh:	Lengthening of preceding vowel is indicated by colons
A::nd	Longer lengthening of preceding vowel
Hhhh	Aspiration
(.)	Pause of one second or less
(3)	Pause of more than one second (the duration in seconds is indicated)
↑	Rising intonation (questions)
/	Slightly rising intonation (suspension)
↓	Falling intonation (exclamations)
YOU SHOULD	Majuscules indicate emphasis
°I agree°	Text comprised between the signs °° is pronounced with a very low volume
(SHOUTING)… +	Particular vocal characteristics are indicated in small caps inter brackets at the beginning of the excerpt. Their end is indicated by the sign +
(*looking at T*)	Essential non-verbal elements and actions are indicated in italic inter brackets
[…]	Omitted from transcription
( )	Inaudible/incomprehensible passage

Each talking turn is numbered[243]. Numeration is relative to each case (each case starts from turn n. 1); the excerpts reported in this dissertation keep the original numeration of the whole transcriptions[244].

The parties' names have been changed for reasons of privacy. In the transcription, they have been indicated with their (changed) full names; while the indication of the speaker of each turn is indicated by a letter. M always indicates the mediator; the parties are indicated with the initial of their first name[245]. In the analysis, the mediator is always

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[243] The concept of *turn*, as controversial as it may be from the theoretical point of view (see van Rees 1992: 22), is however at the basis of the transcription systems, and there is some consensus about the identification of turns (ibid., p. 28).

[244] A CD-rom with the whole transcriptions has been created and is available upon request to the author.

[245] Here, the use of M for indicating the mediator seemed to be the most pertinent category. In fact, characterizing the mediator from the point of view of his socio-professional role is adequate in terms of the focus of the present work on the interaction scheme of mediation. On the opposite, the parties' professional roles, as they enter mediation, become less determinant than their equal status of human beings and potential co-arguers. Therefore, the initials of their (changed) proper names have been selected. For a discussion of the theoretical implications of the identification of the speakers in transcriptions practices see Mondada (2002).

indicated using the masculine markers he/his. This choice is simply due to the fact that both mediators were male.

The interaction language is English for all the cases. In principle, nonverbal aspects have not been reported in the transcription, since the focus of the present research mainly concerns the verbal development of the argumentative discourse in mediation. However, the availability of video recordings has been exploited for a careful interpretation of verbal aspects (as suggested by Traverso 1999: 22-23)[246]. Moreover, when some specific aspect of nonverbal communication (a gesture, a facial expression, and so on) is fundamental for the understanding of the verbal text, it is noted conformingly with the transcription system; when a gesture (like nodding one's head) counts as a communicative move (the answer to a question, for instance) that is essential to the development of the discussion, it is considered an autonomous turn.

5.4   Design of the argumentative analysis

The ontological framework of mediation presented in Chapter 4 (par. 4.1), which constitutes a first set of results of the present research as for the conceptualization of the mediation practice, presents a "blueprint" of a process of mediation, in which some moments appear as particularly crucial. This blueprint also shows that, during the mediation process, there effectively is a mutation of the disputing parties into real co-arguers able to discuss on specific options for the resolution of their conflict and to negotiate on the details.

Now, the research questions from which this investigation originated are oriented towards the understanding of the correspondence of the structure of the argumentative discussion in mediation with the fulfillment of the pragmatic objectives encompassed by this practice, namely to the objectives. The different phases identified in the framework are teleologically oriented to realize the goal of mediation, namely conflict resolution. For this reason, it is necessary to exploit the results of the conceptual analysis presented in Chapter 4 as a background to the argumentative analysis which will be performed in Chapter 6. Overall, the analysis of the empirical corpus presented in Chapter 6 has the function to identify the dynamics of argumentation in mediation and to verify whether and how the various argumentative moves contribute to the fulfillment of the pragmatic objectives of mediation.

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[246] The selection of only verbal aspects in the transcription has been decided in conformity with the goals of the present work. Indeed, the various possible notations of nonverbal communication on the basis of video recorded materials are a current issue in the linguistic research (see in particular De Stefani 2007: 4; Mondada 2006).

The objectives of this part of the present research (see also par. 5.1) are constituted by the investigation of the function that the communicative and argumentative instrumentation plays in a mediation process. For this reason, before analyzing the discussion between the parties and the mediator from an argumentative and communicative point of view, it is important to map the development of such discussion onto the phases identified by the mediation framework proposed in par. 4.3. This will make possible to analyze each argumentative move in relation to the objectives of each phase of the framework.

The argumentative analysis has been organized in itself according to a two-step research design. The first step aims at allowing a first analysis concerning all the mediation process from its beginning to the resolution of the conflict; by means of this analysis, the salient phases corresponding to crucial moments in which the argumentative discussion contributes to the fulfillment of the pragmatic goals of mediation will be identified. A more specifically oriented and finer analysis will be thus possible in the second step.

- *First step*. One of the cases of the corpus, which is particularly representative of a successful mediation process, because parties completely solve their problem and restore a new ground for their relationship also arriving at a formalized agreement, is selected as the source of the empirical data. The discussion presented in this case is analyzed according to the functions that each communicative move has in relation to the pragmatic goals of mediation in its different phases.

  In a second moment, the same case is analyzed from the point of view of the structuring of the argumentative discussion. Particular attention is devoted to the moves that help parties be "transformed" from conflicting individuals to co-arguers and to the role performed by the mediator and to how he contributes to argumentation without arguing, as defined by his paradoxical role (see Chapter 1).

  On this basis, it will be possible to identify:
  - Where the passage to co-arguers is realized;
  - How (by which moves at the argumentative and communicative level) the mediator contributes to it and which aspects of his strategic manoeuvring (van Eemeren and Houtlosser 2002, see par. 5.2.3.) turn out to be essential;
  - Whether this passage corresponds to a true progress of the conflict resolution process in mediation.

- *Second step*. The results of the first step will allow restricting the focus of the analysis by zooming on the crucial passages that help answer to the research questions originating the present investigation. On this basis, a more precisely oriented analysis will be performed in the second step on a larger evidence basis, constituted by all the other cases of the corpus. This analysis will allow specifying:

- Whether the specific argumentative and communicative tools identified in the mediator's activity in the first step are confirmed;
- Whether other specificities emerge in relation to the different cases analyzed;
- Moreover, the possibility of comparing different applications of mediation will offer the possibility to investigate how the institutionalized and interpersonal dimensions of *context*, conceived of in terms of *interaction scheme* and *interaction field* (see the definition discussed in par. 4.1) influence the development of the argumentative discussion and, thus, the process of conflict resolution.

The double-step research design here delineated shows to have different advantages. First of all, it allows a management of the empirical data that, on the one hand, consents a progressive zooming on those aspects that are relevant to the research questions of the present investigation. In this sense, such research design foresees a progressive refinement of the research questions, which are oriented by the results of the first step. At the same time, however, the second step also allows to account for unexpected results that can emerge from the analysis of the other cases.

6 Results of the argumentative analysis: responses to the research questions and exceeding evidence

6.1 How argumentation supports a mediation process

The construction of an ontological framework of mediation, on which the first part of this research has been centred (see Chapter 4), constitutes an important result that can now be exploited to understand the relevance that argumentation has in the fulfilment of the objectives of mediation. This framework, thus, is used in this chapter as a conceptual basis to understand the definition of mediation as the context in which the argumentative discussion occurs. As van Eemeren and Houtlosser (2005) make explicit, the institutionalized contexts of an argumentative discussion impose constraints on the development of argumentation. But, looking at the same phenomenon with an inverse perspective, it could also be said that argumentation can be used in specific interaction schemes in order to fulfil the goals associated to institutionalized domains of social reality, namely interaction fields (see Rigotti and Rocci 2006 and the discussion in Chapter 4).

In general, thus, in order to highlight which argumentative strategies are particularly suited to the goals that a certain interaction scheme is activated to fulfil, it is necessary to move from the understanding of the ontological structure of the interaction scheme itself, including its goals and the description of the phases that constitute its development.

In our particular case, this is allowed by the ontological framework of mediation proposed in Chapter 4. On this basis, it is now possible to study the structuring of argumentation in mediation, resting on the theoretical and conceptual instruments presented in the previous chapter and on the evidence basis of a corpus of mediation sessions whose selection criteria have been defined in the previous chapter as well.

The structure of the present chapter follows the design of the analysis presented in Chapter 5 (par. 5.2.). In particular, the two larger sections (section 6.1. and 6.2.) correspond to the first and second step of the analysis. The first step aims at identifying the correspondence between the moment in which the parties' communicative change of attitude occurs and the mediation phases identified in the mediation framework (Chapter 4). By means of an accurate analytical reconstruction, which elicits the argumentative traits of the parties' and mediator's discussion, it will be possible to understand in which phase of a mediation process the passage to co-arguers actually occurs. Moreover, the most important argumentative moves relative to the mediator's strategic manoeuvring

will be elicited. In particular, the moves will be highlighted that help the parties' acquisition of the statute of co-arguers in the discussion over the resolution of their conflict.

The first step of the analysis, thus, can be said to have a double function. On the one hand, the detailed analysis of the whole development of a successful mediation case (Case 1) will allow to perform a more focused and precise analysis in the other cases, by concentrating on the most relevant passages which correspond to the parties' change in attitude. Beside this function, the first step of the analysis will also bring to the identification of relevant features of the mediator's strategic manoeuvring which most importantly contribute to the fulfillment of the resolution process. On this basis, it will be possible to adjust, refine and precise the research questions on which the second step of the analysis will be focused. In other words, in the second step, the presence of the identified strategies will be verified on a larger basis of evidence, while other possible aspects will be let emerge at the same time.

6.1.1 Empirical analysis of the ontological structure of a mediation process

First of all, in order to understand the correspondences and synergies between the mediation ontological structure and the argumentative salient phases, it is necessary to have a clear representation of the phases of the mediation process, in accordance with the framework outlined in Chapter 4, as they develop in Case 1, which has been selected as an empirical basis for the analysis. It is therefore useful to represent the *plot* of the case, in the sense proposed by Caffi (2007), namely, as a type of summary presenting the actual content of the case in the same order as they appear in the real interaction. In other words, possible repetitions of moves, shifts from one to the next phase of mediation (see Chapter 4), and returns back to the preceding phase are all faithfully reported[247]. Such a representation makes it possible to grasp the actual development of the discussion between the mediator and the parties throughout the time and to systematically elicit to which phase of the mediation process each set of communicative moves corresponds.

The representation proposed here is inspired, though largely adapted in accordance with the purposes of the present research, by the *multidimensional representation* presented in Caffi (2007: 177-185) and by the representation of *salient*

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[247] Caffi (2007: 163) says to refer to a distinction proposed by Russian formalists between fabula and plot. Fabula is defined as "the set of narrative motifs as rearranged in their logical, causal and chronological order", while plot "is the set of motifs as the appear in the story, i.e. the actual content".

phases of the interaction elaborated in Giugliano (2007)[248]. The use of a synoptic table helps visualising the chronological development of the communicative interaction in relation to the essential aspects considered and allows for various dimensions to be taken into consideration simultaneously.

The first column shows the phases of the mediation process; each communicative move is associated to the mediation phase to which it pertains. As said in par. 4.3., the phases of the mediation process are not fulfilled in a strictly chronological order; also in the case considered here (see Table 8 below), the first phases are interrupted and restarted various times.

The second column reports the talking turns in a strict chronological order; turns are regrouped in significant communicative moves. As a consequence, the representation proposed here, being specifically oriented towards the understanding of the communicative process that brings to the resolution of the conflict, is relatively flexible. For example, it does not necessarily cover any single communicative move, but it focuses on those passages that show to be more relevant in relation to the goal of the interaction scheme of mediation, namely in relation to the resolution of the conflict. In this sense, the representation is quite free and synthetic, because it aims at highlighting the salient moves in terms of the resolution of the dispute.

In other words, the granularity of the analysis depends on the relevance of the moves, where relevance is defined in relation to the contribution to conflict resolution.

Columns three, four and five are respectively devoted to the first party (Ann), the mediator and the second party (Philiph): their salient communicative interventions are represented in the respective columns[249] in terms of a first approximation of the communicative actions that they are performing[250].

The table proposed here also allows considering some other aspects relevant from the argumentative analysis that will follow. The initiator of each communicative move, i.e., in rough terms, the interlocutor who takes the responsibility of raising a new

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[248] Caffi (2007) applies her multidimensional representation to the analysis of doctor-patient interactions, while Giugliano (2007) has elaborated a form of representation allowing her to indicate the salient phases of school teaching classes. In the latter work, as the author has tackled a type of communicative interaction (namely, a school class) to which more than two participants collaborate, she proposes to specifically mention in the representation of the interaction which interlocutors are directly involved in each communicative move. I have followed this proposal, since it allows identifying more or less direct levels of relevance of each communicative move to the corresponding levels of addressees.

[249] With the exception of the discussion on options-boundaries, to which all parties are equally participating.

[250] In relation to the theoretical instruments for textual analysis proposed in Congruity theory (see Chapter 5), it could be said that columns 3-5 report a first and necessarily quite approximate analysis of the connective predicates dominating the parties' communicative actions.

issue in the discussion, is indicated in bold. Interestingly enough, a prominent role of the mediator in leading the discussion in terms of the issues considered emerges in a quite clear fashion, especially at the beginning of the interaction.

Moreover, for each of the communicative actions considered, the participants to the communicative interaction are specified. In fact, it is evident that some communicative moves are purposefully directed only to one of the two potential interlocutors who participate in the mediation session; for example, the mediator may ask a question to one of the two parties; or a party may refuse to directly address the counterpart and decide to speak to the mediator only; and so on. Nonetheless, the mediation discussion at some level always involves all the interlocutors, as everyone is present and potentially listening to what is said; some implications of what is said by one party to the mediator may be surely relevant to the other party too. In this sense, different levels of speakers and addressees can be envisaged, corresponding to the degree of immediacy of the interlocutors' involvement. For example, who makes a concession when speaking to the mediator, indirectly presents a proposal (an offer) to the counterpart, and even more indirectly asks for a counter-offer. In table 8, the immediately involved interlocutors are indicated by the shaded boxes. Considering who is involved at each stage turns out to be quite significant; as it visually emerges from the representation, in fact, at the beginning the mediation discussion is realized as a sequence of one-to-one dialogues between the mediator and one of the parties. As the discussion proceeds, the parties are able both to be involved in the trilogue together and even to speak to each other without the mediator's help. This indicates the unblocking of the communicative situation occurring with the development of the case.

Phase	Turn	A	M	P
Phase 1	1-3		**Summarizes A's position (harassment complaint against P) and introduces mediation**	
	4	Confirms		
	5		**Asks for P's analysis**	
	6-13			Refuses to consider A's accusation
	14		**Asks for A's story**	
	15-67	Tells her story		
	68-72		**Insists for knowing P's story**	(Initially: accusations against A)
	73-86			Tells his story
	87-89		**Asks to A about P's behaviour with other students**	
	90	Other students are treated differently; they		

		have confirmed this		
	95-123		**States the issue: to identify boundaries that allow maintaining A and P's academic relationship and persuades the parties to remain on this issue**	
Phase 2	192-253	Discussion on boundaries: - No physical contact - Type of relationship (only academic, no friendship) - Timing of A's and P's meetings - Confidentiality of the agreement		
Phase 1	254-256		**Asks P to recognize the possibility for A to draw her boundaries**	
	257			Recognizes
	258		**Asks P to recognize that A may have been disturbed by him having inadvertently crossed her boundaries**	
	259-263			Recognizes
	264-268		**(to P): Asks P to apologize for having crossed A's boundaries**	
	269			Apologizes
	270		**Asks P to directly address himself to A**	
	271			Apologizes
	272		**Asks for A's reaction after P's apologies**	
	273-277	Says that what P said has an enormous importance to her.		
Phase 2	278-280		**Goes back to discussing the agreement**	
Phase 1	281-287			**Raises doubts on A's good faith and trustworthiness and thus jeopardizes the agreement**
	288		**Asks to A to repeat what she has stated at 22-226**	
	292	Confirms her willingness to continue		

		the academic relationship with P. Expresses her disappointment because of P's lack of trust ("wild allegations")		
	293-295			Expresses the main reason of his worries: some of the things that A said are not true because he does not remember them
	296	Counter-argues ("that doesn't make me a liar that you don't remember")		
	297-300		**Helps P recognize that A has admitted he crossed her boundaries** *inadvertently*	
	301-305			**Restates his good faith**
	306		**Asks him to apologize with A**	
	307			Apologizes
Phase 2	308		**Turns back to the boundaries discussion and summarizes it**	
	309-331	Discussion on boundaries: - Timing of A's and P's meetings - Presence of some other person		
	332-337			**Raises a further sub-issue about A's complaints about how P looked at her**
	338-340	Commits herself not to re-open the conflict; affirms her willingness to close the problem		
	341			Expresses doubts on the basis of what A said at the beginning
	342		Asks P to revise his judgment now	
	343-351			Admits that his judgment is different now and expresses trust in A and esteem as a student; accepts the issue of boundaries.

Phase 3	352-366		**Leads a brief discussion on the implementation of the reached agreement.**	

Table 8: Representation of the plot of Case 1

The interaction clearly starts with what corresponds to the first phase of the mediation framework/model, namely with the *mediator's introduction* (turns 1-3) and by subsequent *opening remarks by the parties*, *venting*, *information gathering* and *issues and interests identification* (see Chapter IV); the first phase is concluded at turn 123.

It is quite clear that the passage to the second phase (*option generation*, *reality testing* and *bargaining and negotiation*) can be performed once the issue that the parties have to discuss has been identified; in this specific case, the discussion can move to the problem of the *boundaries* of Ann and Philip's future relationship (see turn 124 and ff). More specifically, the discussion on boundaries proceeds between the generation of sub-options, corresponding to the specific elements defining the boundaries, and the testing of their appropriateness.

However, this phase is interrupted, and phase 1 restarts, as it emerges that the identification of issues and interests is not completed. Indeed, from turn 254 to turn 277 and, again, from turn 280 to turn 307, the mediator has to lead parties back to discuss the origin of the conflict, until they commonly agree that it has been originated by a misunderstanding rather than by an evil intention.

Then phase 2 begins again at 308, adding new elements to the definition of boundaries. Eventually, the interaction is concluded with some space devoted to phase 3 (*agreement and closure*). As clearly emerging from Table 8, this final phase does not take too much time, probably because the implementation of the agreement is relatively simple. In fact, it only involves the two parties' interactions without directly including other persons. Moreover, nobody must be made aware of the terms of the agreement except for the Academic vice-president, whom the mediator offers to inform himself.

Now, this first overview and analysis of the plot of Case 1 constitutes a necessary and valid basis for the argumentative analysis, which will be performed in the paragraphs that follow. In fact, it offers an overview of how the pragmatic structure of mediation detailed in the framework presented in Chapter 4 is actually implemented in the case in question.

6.1.2 A macro-text of argumentative discussions

The first relevant aspects that come to light through the analytic reconstruction concern the interpretation of the mediation interaction in light of the model of a critical discussion. In fact, we are confronted with a quite complex and intriguing situation. With regard to the stages of a critical discussion, what first emerges is the fact that the development of the discussion does not imply a linear succession of the stages nor a single dispute, but it rather involves different argumentative discussions, albeit interconnected to each other. The kind of dispute involved, thus, is certainly *multiple* in a quantitative sense, but it is also multiple in a qualitative sense, as will be shown.

In this relation, the image of a *macro-text* can be of help for understanding the kind of delicate situation that the analyst is faced with when approaching the resolution of a dispute through mediation.

Indeed, different critical discussions appear to be interrelated. They can be distinguished as for (a) the individuals playing the roles of protagonist and antagonist (and, eventually, neutral) and (b) the issues and relative standpoints involved. Given the relations occurring between the different issues involved, such a macro-text can, however, also be interpreted not as a series of disputes but as a single dispute, *multiple in a qualitative sense* (see the definition proposed by van Eemeren, Houtlosser and Snoeck-Henkemans 2007, also reported in Chapter 5). In fact, the various critical discussions that, taken as a whole, give rise to the multiple dispute do not concern different and extraneous issues that are so to say "listed" the one after the other (which would be a very extreme case of dispute multiple in a *quantitative* sense). Rather, they show to be interrelated, as it will more clearly appear in the following of the analysis. Just to mention the most salient aspects of this qualitatively multiple dispute, let us consider that parties discuss about how to resolve their dispute and, by this doing, they indirectly resolve the issue about whether finding a mediated solution to their conflict is worthy. Or, again, parties may discuss on the appropriateness of a certain communication style, or on the appropriateness of a certain issue for their mediation discussion; these disputes would constitute digressions on meta-issues that favour the development of the main discussion over the resolution of the conflict. But the dynamics by which the macro-text of discussions giving rise to a qualitatively multiple dispute is constructed will more clearly appear by means of an analytical reconstruction of the interaction, which will be presented in the paragraphs that follow.

6.1.2.1 Setting up an argumentative space

As van Eemeren et al. (1993: 180) have pointed out, there is a critical standard in the mediation practice that, though often unsaid, represents a presupposed objective. As

conflicting parties are far away from this reasonable standard when they enter the process, – otherwise they could have discussed autonomously –, it is the mediator's task to set up the premises for a sound critical discussion[251]. In Case 1, the mediator starts by asking parties to formulate their disagreement. Not surprisingly, their conflict emerges not as a clear difference of opinion, but as a contraposition of reciprocally hostile positions, albeit a standpoint on Ann's side has already been made explicit, at least in part, by her filing a sexual harassment complaint against Philip. But let us see how Philip's answer to the mediator's question is transformed into a further occasion for quarrelling:

6   P   Well I really don't know what the basis of the whole thing is a:: (.) bunch of
          UNFOUNDED nonsense ah:: (.) I really (.) [don't know why we are here
7   A   [Well that's a bit strange=
8   P   =putting me in just an AWFUL situation some WILD allegations being made=
9   A   =Ya
10   P   A:nd (.) [and so ( ) past coming and:: (.) I really don't know what
11   A   [So I'm just (.) one of those CRAZY women/ (.) you're a victim of (.) some
          loony single mom
12   M   Ann (.) tell me (.) what's the basis for the allegation=
13   P   =Well paranoia ( ) a lot of [paranoia

      We are faced with a clear standpoint represented by Ann's harassment complaint. If it can be said that there is some reaction on Philip's side to this standpoint, it could equally be doubted whether such reaction can be identified as part of an argumentative discussion. Indeed, the standpoints advanced show not to refer to a single issue: while one party presents a standpoint, the other one challenges the very legitimacy of that standpoint. Indeed, Philip's strategy consists in presenting his adversary as a paranoid individual; such strategy does not merely aim at casting doubt on her standpoint but at excluding it from a reasonable discussion. This move could be considered as a fallacious attempt to violate the *freedom rule* of a critical discussion, by preventing one of the participants to express her standpoint. This strategy is substantially inadmissible. Not by chance, from the juridical point of view, even if Philip managed to demonstrate that Ann

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[251] Interestingly enough, evidence from studies in social psychology (see in particular Doise, Deschamps and Mugny 1991: 101-115) indicate that normally, when individuals are involved in free, uncontrolled discussion in groups, their positions tend to become more extreme and more polarized (namely less inclined to intermediate and moderate opinions). Mediation, at least in the case we are examining now, does not involve group discussion (but it would be possible in other cases, as shown in Chapter 2; moreover, Case 4 of the present work concerns a three-party mediation). In any case, the results of the above-mentioned psycho-social studies lead to think that, when discussion is not regulated, differences of opinion may at least in some cases polarize and become less easily manageable. In this sense, the mediator's work of setting up an argumentative discussion also shows to have a psycho-social relevance.

were paranoid, this would not automatically delete the validity of her accusation – in fact, she could be paranoid and however be the victim of some form of harassment[252].

Ann, in turn, answers by ironically designating Philip as a *victim*. This move could be read as implicating that he is, indeed, a torturer; in this way, Ann's standpoint turns out to be a repetition and accentuation of her standpoint, which however does not add any relevant element to an argumentative discussion.

The emotionally surcharged tone of the discussion is also mirrored in the frequent interruptions, in the quick concatenation of talking turns as well as in the emphasis given to various emotionally marked words (turns 6, 8 and 11 in particular).

As it clearly emerges from this passage, the mere contraposition of different (or even opposed) standpoints is not sufficient to make an argumentative discussion. A similarity may come to mind with certain political (ideological) discourse, whereby politicians can limit themselves to accuse their adversaries without assuming the burden of proving their positions and without wanting to listen to the other party's reasons. Sometimes, the exact logical relation between the standpoints – which is not necessarily of contraposition – is not even investigated. It is clear that this sort of political discourse does not make a good service to the community of electors. In a similar vein, parties in conflict who just oppose to each other deaf accusations do not make a good service to their own interests, because they lose the possibility to verify the existence of any agreement space. Now, in mediation, it is up to the mediator to take care of the critical standards of reasonableness[253]. It might be said that the mediator has to create an "argumentative space" for the parties' discussion. In Case 1, indeed, it is clear from the mediator's asking and remarks that he is trying to move from a sort of verbal war to a situation that could be interpreted as the confrontation stage of a critical discussion. Here, the mediator appears to firmly guide the construction of a sound confrontation stage, which parties are not able to create themselves. By means of this guided proceeding, he concretely puts the basis for an argumentative discussion between the parties, i.e. he opens an otherwise blocked argumentative space.

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[252] This would be accepted in most Western juridical systems. I am indebted to Carmela Fiorini and Federico Centonze for their advice on this issue.

[253] See van Eemeren et al. (1993:180): "The mediator's role, as portrayed in the literature, is to create conditions for rational discussion between the disputants, and it is the set of conditions that are desired that compose the underlying normative theory. Among those most frequently discussed in the literature are bilateral commitment to resolution of dispute through discussion, voluntary participation by both parties, unrestricted opportunity to raise concerns and make suggestions, approximate power equality between disputants, and consensus decision. *It is not assumed that these conditions hold prior to mediation; as mentioned before, it is the mediator's job to try to create these conditions*" (emphasis added). Now, this operation is performed by the mediator trough all stages of the critical discussion. The initial settings of the confrontation and opening stages, however, emerge as particularly important since they constitute the necessary premises for the exchange of arguments that occurs in the argumentation stage.

Interestingly enough, Philip's attempt at depicting Ann as a paranoid individual is not even considered by the mediator. Probably, this could be interpreted as a contextual constraint due to the fact that the academic vice-president of their university has sent the parties to mediation, thus interpreting the problem as a reasonably relevant one. Therefore, the mediator's strategic manoeuvring can exclude that standpoint from the discussion, as it has been excluded in advance by the institutional context. Now, the mediator pushes the parties' to restart their respective positions *on the issue that has given rise to conflict*. Such precision should not be underestimated in its importance: the mediator does not want to hear whatsoever reciprocal accusation between Philip and Ann, but he wants them to formulate clear positions on the problem that has led them to mediation. Indeed, it can be noticed that, here, the constitution of the confrontation stage proceeds at the same time as the narration of the story of the conflict, which could certainly be interpreted as part of the *opening stage* of a critical discussion. In fact, if, on the one hand, the narrative about the dispute is necessary in order to identify the issue to which the standpoints refer, on the other hand such problematic issue can only emerge on the backdrop of a common ground referring to the parties' previous institutional and interpersonal relationship, the events and experiences they lived together, and so on.

But let us look at how the mediator actually conducts the discussion. First, he establishes the talking turns and does not allow interruptions by the other party. Between turns 12 and 14, for instance, the mediator, seeing that Philip does not answer his question about the substance of the problem (see turns 6-13 above), changes the talking order by addressing himself to Ann first:

```
12   M   Ann (.) tell me (.) what's the basis for the allegation=
13   P   =Well paranoia ( ) a lot of [paranoia
14   M                               [Well (.) Philip (.) hold it just one second (.) let's not
                 describe what each other does (.) let's try to get eh into the facts Ann tell me what's
                 what's happening↓
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At turns 30-33, the parties seem to go back to reciprocal accusations; the mediator interrupts them and invites Ann to stick to the issue:

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30   P            [I I I designed this program for [these people
31   A                                            [Oh (.) so that should give you all kinds of liberties
32   M   Okay (.) And then you (.) noticed (.) when you first joined the program (.) that (.) Philip
                 was very helpful to [you as (.) as an academic/
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Finally, only at turn 68, he decides to move back to Philip:

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68   M   O:kay (.) all right (.)  I think I have a good understanding of that (.) °then Ann° (.) thank
                 you (.) Philip/ (.) what is your sense of all this=
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Secondly, he insists on the question he has asked and does not allow parties to answer differently. The clearest example of this is the excerpt following turn (68), where the mediator insists until Philip starts answering his question at (73):

68	M	O:kay (.) all right (.) I think I have a good understanding of that (.) °then Ann° (.) thank you (.) Philip/ (.) what is your sense of all this=
69	P	=Well (.) my sense is is she is ABSOLUTELY paranoid I mean we have to understand [that this ( )
70	M	[Hold (.) excuse me but don't describe what you think she thinks (.) because that is not helpful to me (.) what WOULD be helpful to me to understand would be (.) ho:w you've seen the relationship develop over the six months=
71	P	=Well she's just misinterpreting everything that takes place (.) that's that's=
72	M	=Okay (.) that's something that [Ann did (.) but how do you see (.) this relationship
73	P	[I:: (.) I helped to establish this particular program (.) in the:: Department of the Environment for (.) for the students like Ann who (.) are somewhat disadvantaged they have got children [a:nd

6.1.2.2 "Focus on interests, not positions"

It clearly emerges that the confrontation stage prepared by the mediator is precisely and firmly guided towards a specific issue, i.e. towards the origin of the conflict. Such a procedure may well be defined by the fact that mediation is by definition aimed at resolving a conflict; therefore, identifying which conflict is to be solved turns out to be necessary. Not coincidentally, as already pointed out in Chapter 4, the analysis of the conflict is an essential tool in mediation and a constitutive part of the first phase of this process.

In this sense, the principle "Focus on interests not positions" (Fisher, Ury and Patton 1991: 3ff) is to be interpreted, from the argumentative point of view, as an invitation not to accept whatsoever contraposition or accusation; but to dig in order to find out the parties' real concerns. Now, these concerns are really bound to the problem that has originated the conflict (see Chapter 4), which is thus important to recall. In light of the analysis of the conflict proposed in Chapter 4, it emerges that what the mediator is doing is to search for the difference of opinion that has led parties to disagree and that is at the origin of the conflict (C2). He repeatedly refuses to be entrenched in the current status of the conflict escalation – in terms of a conflict analysis, he does not want to be influenced by the current dynamics of the interpersonal escalated conflict (C1). Now, reconsidering the conflict mapping guide proposed in par. 4.2.5. (Figure 16), it can be said that the mediator encourages the parties to walk the inverse path of the dynamics of conflict escalation, as it is foreseen for the mediation process in phase 1 (see par. 4.3., Figure 18).

Moreover, identifying C2, which emerges as an incompatibility on the backdrop of the parties' relationship, necessarily implies the investigation of the parties' relationship itself, i.e. of the *context* of the dispute (see Chapter 4). The mediator's guidance towards C2 has therefore the double function of confrontation and opening stage, as it has been highlighted in the previous paragraph.

Concerning Case 1, some remarks about the nature of C2 can now be useful to more specifically understand the process of mediation. The diagram for the analysis of the issue proposed in Rigotti and Greco (2006b)[254] can be of use in this sense (see Figure 22). This diagram allows highlighting the boundary between what is already ascertained in a discussion (and could therefore be relevant for the opening stage) from what properly constitutes the problematic aspect about which parties have to argue. In Philip and Ann's case, as results from Figure 22, the parties have quite different representations of what should be proven by means of argumentation:
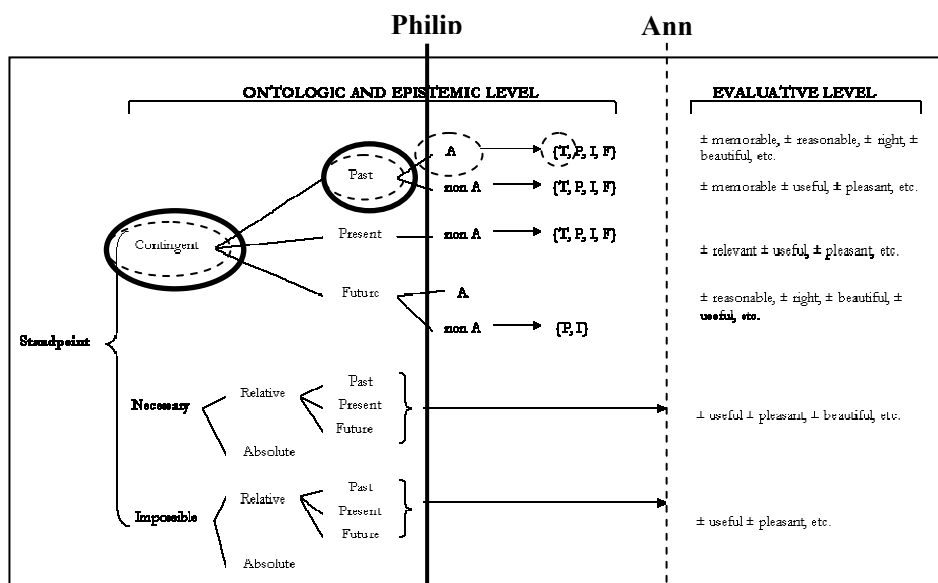
Figure 22: Analysis of the issue (adapted from Rigotti and Greco 2006)

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[254] The diagram has to be read consecutively from left to right. In fact, the order of the different levels of the semantic-pragmatic structure of the issue is not accidental: it represents the implications existing between the various levels represents the implications existing between the various levels. For example, it does not make any sense to discuss the reasonableness of a necessary or impossible state of affairs, but it is anyway possible to question its damage potential or its utility (pleasantness, risks, etc.). Or, with regard to an action in the past, it is possible to discuss whether it has actually happened (true, false, probable, improbable); on the other hand, if a future action is questioned, it does not make sense to discuss its truth or falsity. These implications, indeed, refer to different kinds of modality (see Rocci 2005). See also Greco Morasso (2006b) for an example of the use of this grid for analysing a dispute.

Now, here, C2 emerges as a fact or, better, as a series of facts (some invitations to lunch and dinner and touching Ann's knee, actually first denied but then implicitly admitted by Philip) that happened in the past. The parties, however, interpret the issue differently: for Ann, the truth of the fact in the past is not questionable; the nature of action of what happened and, therefore, Philip's intentionality, is also taken for granted. The point at issue is at the evaluative level for her, and it concerns the moral quality of Philip's actions.

For Philip, however, the issue is rather on an ontological level: he says he does not remember whether the events mentioned by Ann did take place but, if they took place, they are not to be considered as actions but rather as consequences of an unintentional behaviour. Then, Philip supports the standpoint that his behaviour is the one he usually adopts with students, and that it has nothing morally bad. Concerning the specific episode of touching Ann's knee, at first he denies having done it, but then says he does not remember, and then that, however, he comes from a more expressive cultural background where touching is allowed (thus he also moves to an evaluative level, admitting that the controversial episode could have taken place).

If we consider both parties to be sincere, which the mediator appears to do as a working hypothesis, the situation can be described as follows:

(a) Ann was offended by the set of actions φ performed by Philip
(b) This presupposes that Ann, being in good faith, interprets φ as an action and a morally bad one
(c) Philip was offended by the fact that Ann has interpreted φ as morally bad
(d) This presupposes that Philip has performed the set of actions φ in good faith without thinking that Ann would have been offended
(e) φ has different meanings for Philip and Ann[255]

6.1.2.3 "Mediation does not focus on the past but on the future"

One might expect that, once C2 has been identified, the argumentative discussion will follow this path, and focus on the evaluation of the parties' standpoints on this issue. On the opposite, here, an unexpected as well as crucial passage is operated by the mediator, which constitutes one of the aspects that more essentially characterise its paradoxical work of an arguer "behind the scenes" who nevertheless allows the argumentative discussion to take place. The discussion on C2, indeed, has already

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[255] In this situation, (e) must be assumed because, otherwise, Ann and Philip's reactions would be incomprehensible.

proven not to be very productive, since it has degenerated into a proper conflict; therefore, it is not restarted and developed but so to say "frozen"; while the mediator brings parties to discuss not on the original disagreement C2 but on other issues.

Unlike therapy and unlikely adjudication, in fact, mediation is generally acknowledged to be focused on the *future* rather than on the past (see the elaboration by Bannink 2008). Mediators repeat this saying by inviting neither to dwell on the conscious or unconscious deep grounds of the actions that have brought parties into conflict (as parties may be invited to do in different forms of therapy), nor to insist on the respective responsibilities (like a court would do). Let us take the example of a civil adjudication: a judge is expected to decide about issues like (a) whether a certain fact has taken place, (b) whether this fact is a criminal offence, (c) whether the defendant is responsible for it, and, finally, (d) which kind of punishment the defendant deserves. Mediation is a different interaction scheme that, by definition, is oriented towards a resolution of the conflict. In fact, as van Eemeren and Houtlosser (2005: 78) put it, "although theoretically the parties may be just as free to draw their own conclusions as in ordinary argumentative discourse, *in mediation they are expected to come to an arrangement*" (emphasis added). In mediation, it is expected that a solution emerges, and that this solution, being found by the parties themselves, can preserve or restore their relationship as much as possible. Therefore, the kind of issues that parties can discuss in mediation is of the following nature: what can we do in order to maintain our relationship? Are solutions p, q, z… viable ones? And so on. As said, issues like p, q, z… are commonly defined *options* for conflict resolution (Kovach 2005; see Chapter 4)[256]. They are in a relation of implication with the original issue C2, insofar as they constitute (parts of) possible solutions to it[257]. Therefore it is fully meaningful for the mediator to first investigate C2, otherwise he could not identify, together with the parties, appropriate issues to discuss about. Without reaching C2, in fact, the real interests of the parties cannot emerge.

It is however also meaningful that he orchestrates to move the discussion on these latter issues. Let us consider the very moment in which such a movement from the past to the future – or, in argumentative terms, from issue C2 to issue$_{opt}$ – happens by means of the dialogue between the mediator and Ann in particular:

45   A   [Ya (.) I mean asking me things you know how was it going and are you able to
            manage (.) and you know it must be so burdensome having (.) children to look afte:r and
            (.) it's just I thought (.) why is he (.) you know (.) that was too personal for me↓

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[256] The mediation work, thus, has a lot to do with an imaginative work about *possible worlds* for the parties' future actions and interactions (see the ontology of action presented in Figure 16 in par. 4.2.4.).
[257] The options can have different types of part-whole relations with the whole of the solution: they can be complementary parts that, taken all together, give rise to a solution, or they can represent alternative solutions.

46	M	Mmh
47	A	That's you know I (.) I don't wanna talk about those things with you↓
48	M	°Okay° (.) °All right° (.) so you need (.) more clear boundaries about the kinds of things (.) [to be talked about.
49	A	[ABSOLUTELY (.) I just=
50	M	=Okay=
51	A	=want to go to school I wanna get my degree↓

The passage from the past to the future, i.e. to the investigation of possible worlds, happens by means of a mediator's *formulation* (or *reformulation*)[258] of a statement made by Ann[259]. At 47, she formulated a standpoint about the problem originating the conflict; the anaphorical use of "those" indicates the list of things that she has just mentioned at 45 and that constituted a problem for her. The mediator does not investigate about how much it *was* legitimate to ask in an academic relationship, or about the reasons for Ann's discomfort with such questions; he rather elicits an implication for the future of Philip and Ann's relationship. Notice that the fact that some form of relationship will be in any case present is presupposed. This is certainly to be interpreted as a *presupposition accommodation* (Greco 2003), namely as the introduction of new "materials" (premises) in the parties' common ground by presupposing rather than asserting them. This move represents a non-canonical way of constructing the opening stage, which can often – though not always – be used in a manipulative way (ibid.), because it adds implicit material into the common ground that may escape the parties' control. In this case, the mediator's presupposition accommodation can be interpreted as legitimate due to the contextual constraints: the more reasonable solution would be to continue Ann and Philip's academic relationship without forcing them to move to another university. On the other hand, presupposing that the relationship will survive to the current problem probably makes Ann and Philip's deepest interests explicit, as it will be more specifically argued in the next paragraph.

The analytical reconstruction of the standpoints makes this passage clearer. In order to analytically reconstruct this discussion, the representation of the analytical

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[258] On the manifold possible uses of such a presentational device, see van Eemeren et al. (1993, in particular p. 120): "Officially, such formulations have straightforward informative and procedural functions. Clarifying positions, summarizing the status of an issue, identifying points of agreement and disagreement, closing up a stage of the discussion and moving to the next, and so on. In performing these functions, however, formulations can also give substantive shape and direction to an argument, and in that respect formulations can serve as a technique for mediators to manage the substantive character and argumentative force of a discussion without entering into the discussion as an advocate".

[259] In Aakhus' (2003: 273-275) terms, this can be interpreted as part of a strategy of *redirection*, by which the mediator manages to move the discussion from a certain issue to another one. In this case, we might add, the strategy of redirection is supportive of a very specific and typical moment of the confrontation stage in mediation: the passage from the analysis of the conflict to the attempt to resolve it by assuming its possible solutions as issues for the discussion.

reconstruction proposed by van Eemeren, Grootendorst and Snoeck-Henkemans (2002) is adopted, as it facilitates a synoptic representation of the standpoints and of their respective arguments. To the standard notation, however, some further aspects have been added in accordance to the specific purposes of the present investigation: first of all, after the numbering of the arguments, the person to which the argument is directed (the *audience* or *krités*[260]) is specified. For example, "1.1.(A)" means that the argument 1.1. is addressed to Ann and not to Philip. This turns out to be an important feature, because it takes into account the fact that, during the mediation process, parties can be more or less immediately involved as interlocutors (see par. 6.1.1.). Moreover, parties may accept a mediator's proposal on the management of the mediation process out of very different personal reasons.

Second, the mediator's standpoint is indicated as 1_{opt}. The use of number 1 indicates that he is reformulating Ann's standpoint, namely standpoint 1; but the subscripted notation 1_{opt} indicates that the new standpoint is different insofar it represents the shift from past to future, i.e. from phase 1 to phase 2 of the framework of the mediation practice proposed in Chapter 4. "Opt", indeed, is a label indicating that the standpoint moves to touch the level of options.

The reconstruction of standpoints and arguments is the following:

Turns	*Analytical reconstruction (standpoints and arguments)*	
	Ann	
45-47	1. I did not want to talk about these things with Philip 1.1.(A) That was too personal for me	
		Mediator
48		1_{opt}. Ann needs more clear boundaries about the kinds of things to be talked about in the future.
	Ann	
49-51	1opt'. Absolutely (I accept 1_{opt} as my standpoint). 1.2. $_{opt}$(A) I wanna go to school I wanna get my degree.	

Table 9: Analytical reconstruction of turns 45-51, Case 1

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[260] The pragma-dialectical approach adopts uses the term *audience* to refer to the addressee of an argumentative discourse, of which the discourse should be oriented (Van eemeren and Houtlosser 2002). The ancient Greek term *krités* (from the verb *krino*, which means "to sift", was also used in the ancient rhetorical tradition to indicate the addressee of an argumentative discussion that was in charge of making a decision about the acceptability of the proposed standpoints (see Rigotti and Greco 2005).

Different observations can be drawn from this representation.

First of all, it emerges at (48) that the mediator himself adopts a standpoint, even though, as requested by his neutral role, such standpoint does not concern a specific solution of the conflict. The standpoint rather concerns the issue to be discussed, thus emerging as a meta-issue[261]. So, it could be hypothesized that *the mediator can in general profess some standpoints if they refer to the meta-level of management of the discussion rather than to specific solutions*.

Second, concerning the development of the interaction, it can be observed that Ann first proposes a standpoint referred to the origin of the conflict, and says that she could not stand discussing with Philip personal matters. However, after the mediator reformulates her standpoint at (48), she accepts his standpoint (49) and the kind of backing she gives indicates that this is more respondent to her real interest. The passage to options, thus, seems to be natural for Ann, who proposes herself an argument, namely $1.1._{opt}(A)$, in accordance with a perspective in which the conflict will be solved in the future.

The situation is quite different for Philip who at first does not express his opinion on the mediator's standpoint 1_{opt}. His silence, however, will turn out to be a sign of lack of acceptance of the mediator's management of the process. In fact, Philip repeatedly reacts by trying to avoid to discuss about boundaries; therefore, from turn 113 to turn 190, a long meta-discussion on the appropriateness of the discussion on boundaries involves the mediator and the two parties. The mediator, here, emerges, as said, as the protagonist of a meta-argumentative discussion. Such discussion is not part of the main discussion between the parties about the resolution of their conflict. However, it turns out to constitute part of a *multiple dispute in a qualitative sense* (see par. 5.2.2.). This meta-discussion, in fact, is connected to the parties' main discussion over the resolution of their conflict; in fact, if the mediator fails to bring Philip and Ann to discuss on boundaries, probably they will be not able to discuss about the solution of their problem[262]. Let us consider the entire passage:

113   M   So one of the issues that we really need to sort out (.) i::s (.) ho::w to be able to maintain the academic relationship (.)
114   A   Mmh

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[261] The professional saying according to which the mediator is "responsible for the process" (Haynes and Haynes 1989: 3) and not for its content, which is widely accepted by mediators, can be interpreted, from the argumentative point of view, as a part of the mediator's role of agent in his/her agency relationship with the parties consists in providing for a sound confrontation stage, directed towards the resolution of the conflict. Being responsible for the process, however, also means providing for an adequate physical space for the parties' discussion *in praesentia*, considering the juridical aspects and implications of the parties' case and of the parties' agreement, and also invoking the intervention of experts of specific domains if needed (lawyers, but also other experts dealing with the parties' issue).

[262] The mediator's direct argumentation can be interpreted, in this case, as an attempt to set the parties' agenda in order to bring them to the resolution of their conflict as soon as possible.

115	M	Between you but to [have some clear boundaries
116	P	[I don't know whether we CAN ( ) (.) because I mean I I'm really=
117	M	=I'm not sure you have a choice
118	P	Well I don't know that I can continue with somebody who makes these wild allegations there would have to be an independent third party there all the time to monitor it
119	A	Fine (.) it may be a lot safer
120	M	You may well set it up in that way (.) you may well set it up and decide that's the best way to have it so that there's no misunderstanding on anybody's part (.) Ann I think you'd feel safer and more comfortable in that situation (.) and you'd feel safer and more comfortable=
121	A	=I'm not leaving this program↓
122	M	So (.) the the the question is (.) you're not leaving this program (.) you're not leaving this program and I assume therefore (.) that the (.) task today is to find a way that you can both stay in the program (.) a:nd maintain a good academic relationship↓
123	A	Mmh
124	M	And to clarify (.) what the boundaries are (.) so that you're not uncomfortable (.)
125	A	Mmh
126	M	And you're not subject to charges
127	A	I just want to be able to continue and to graduate (.) and I don't want to feel I've been compromised now (.) in the faculty (.) I don't want him to take it out on me (.) I mean that's another GENUINE concern (.) that he's not going to give me the help I need (.) or he is going to penalize me in my grades↓ (.)
128	M	Okay
129	A	And especially with these sarcastic remarks or talk about me with [other professors
130	P	[Would you like to have someone around like this with these kinds of allegations [against him/
131	A	[You couldn't you know what you couldn't have me around enough before and [you are at fault
132	P	[Are you going to try to work with somebody like this/=
133	A	=Now he doesn't want me around↓
134	P	It makes it extremely difficult to [continue↓
135	A	[No you don't want me around on MY terms (.) you want me around on YOUR terms↓ (.) as long as you're pulling the strings (.) as long as you can say [we're going to lunch
136	P	[This is the ( )
137	M	My assumption is is that you should both be around on normal terms↓
138	A	Mmh
139	P	I have nothing against that I thought that's what we were doing all along you know so
140	A	He doesn't even know he is (.) [so inappropriate
141	P	[she's (.) dreaming into this all kinds of wonderful things that she thinks that don't exist at all↓=
142	A	=Well they weren't wonderful (.) just for your information (.) that's not my idea of a wonderful thing (.) having you put your big fat hand on my knee↓
143	P	I've never put [my hand↓
144	M	[Okay now let's let's look at some of the things (.) that (.) that clearly should not happen we really should draw some clear (.) boundary lines (.) no physical contact↓
145	A	Mmh
146	M	Right↑
147	A	Absolutely
148	M	Does this seem right Philip↑

149	P	°Absolutely° that's right John that's fine by me
150	M	No physical contact (.) number one (.) no lunches↓ (.) no dinners
151	P	No friendship↓
152	A	I never asked for your friendship↓
153	M	No↓ other than academic friendship no friendship
154	A	Cooperation is different
155	M	But let's clearly distinguish between having an ACADEMIC relationship and a social relationship↓
156		(4)
157	A	I don't think you know the difference
158	M	Let Philip speak for himself↓
159	P	I've always had friendly relationships with all my students I've always expressed an interest in their general well-being (.) and made them feel comfortable and welcome to the university and (.) I've NEVER in ALL the years the twenty years that I've been (.) at the university had ANYTHING like this ever=
160	A	=Nobody ever complained/
161	P	(2) They didn't have any NEED to complain↓
162	M	In life (.) each of us ha:s (.) different boundaries about (.) what's comfortable and what's uncomfortable right↑ (2.5) a:nd (.) some people have a boundary here/ (1.5) some people have a boundary here (.) and one of the tasks that always seems necessary for the person in the power position (.) is to understand that the boundaries are set by the others (2) it's sometimes hard for us and as you know I taught for (.) many years at a university (.) sometimes it's hard for us in a power position on faculty (.) to: (.) recognize tha:t (.) the boundaries eh: should be set always by the most conservative person (3) hh and I'm sensing here that one of the things that's gone wrong (.) is that (.) hh Ann you have one set of boundaries and Philip you have another set (.) and they've been crossed (.) and in crossing those those two boundaries Ann you've become very uncomfortable (.) and that discomfort is interfering with your (.) academic goals (.)
163	A	Absolutely
164	M	and your ability to pursue the academic goals↓
165	A	Mmh
166	P	What troubles me is she's suggesting far more into it than [what warranted
167	M	[Okay (.) but Philip having that now happened (.) YOU're uncomfortable (2.5) the vice president for Academic Affairs knows about this (.) right↑ (.) at this moment now it's not a PUBLIC matter (.)
168	P	But ( )=
169	M	=Precisely it could become a public matter (.) and so that (.) if you (.) hold onto a position (.) that only you decide (.) then (.) it may well go to the next level (.) and my sense is (.) is that you would both like to come out of this (.) with a CLEAR set of boundaries (.) and an UNDERSTANDING of how to respect those boundaries (.) on the one hand (.) and maintaining (.) a good academic relationship (.) in the future (.) so you can be the best professor you want to be (.) [and you can be the best (.) graduate student you want to be
170	P	[Well the best I can be is if she just goes into another program if she went into another program [we wouldn't have any more problems↓
171	A	[So it's my fault↓=
172	M	=And it would be equally true that it could be solved if you left↓ ( )
173	A	Exactly (.) and I'm prepared to go to the limit with it because I have more RIDING on this↓
174	M	Neither of you is going to the [limit
175	P	[But there are other students who want to stay in the

		program with me so (.) I look at this [they would all suffer
176	M	[You can have (.) You can have a relationship with them (.) based on their boundaries (.) it may be DIFFERENT from the relationship you have with Ann (.) based on her boundaries↓ (.) that's perfectly okay (.) that's perfectly okay (.) to have different boundaries in different relationships with different people (1.5) but (.) to be able to respect and understand (.) that once we cross somebody else's boundaries (.) particularly in a power position
177	P	Mmh
178	M	that unfortunately it makes them (.) it discombobultates them (.) in many many ways (.) and my sense here (.) is that it is a boundary issue↓ (2) I (.) I might let me be very very clear (.) beyond (.) the touching or putting the arm
179	A	Mmh
180	M	There's there's has there been any other activity↑
181	A	Eh: no no [I just
182	P	[There you go you see there isn't=
183	A	=Well I think because I put a STOP to it↓
184	P	No because well [because if it were more to it
185	A	[Well I made a complaint
186	M	If there were more to it that would be a very different ball game we wouldn't be discussing the boundary issue↓=
187	P	=She thinks there might have been more that's what she's saying but there's never been anything °to suggest° (.) that I don't think there's any more to [this
188	M	[The question for you Philip is (.) the question for you is (.) can you reconstruct your relationship with Ann/ (.) around boundaries that are different/
189	P	That depends on what those boundaries are (.) I suppose
190	M	Okay

First of all, the mediator reformulates his standpoint "Ann needs more clear boundaries" and disambiguates it. First (turns 113ff), he proposes the standpoint "You need more clear boundaries for your relationship", by highlighting how this would also meet Philip's interests. Later on, at turn 162, he refines his standpoint, which becomes: "*Ann* should set more clear boundaries for your relationship"[263]. Then, it is the mediator who provides Philip with some arguments for accepting his standpoints, as shown in Table 10 below. Consider that, as it emerges in the following reconstruction, although the reformulation of the standpoint already occurs at turn 162, the first argument (namely 1.3.$_{opt.}$, turns 167-169) still refers to the first version of the standpoint. The second version is rather supported by argument 1.4.$_{opt.}$, presented at turns 176-178. In the whole passage, Philip is the direct addressee of the mediator's argumentation; he therefore is to be considered as the main antagonist of the critical discussion, while the mediator is the

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[263] Some remarks are necessary about the adopted notation. First of all, the standpoints are signaled with the same numeration as in Table 9. By this choice, I would like to highlight that the mediator does not formulate three different and so to say extraneous standpoints; he rather reformulates his original standpoint in three progressively more precise versions (1$_{opt.}$, 1'$_{opt.}$, and 1''$_{opt.}$ respectively). Moreover, the numeration of arguments starts with 1.3. because the arguments presented in this table support the same standpoint (as said, in its different versions) as in the preceding discussion (see Table x): In this later phase, the expected addressee of the mediator's argumentation is clearly Philip.

protagonist. In the following table, therefore, the notation "?" suggests that Philip has doubts on the mediator's standpoints (as in van Eemeren, Grootendorst and Snoeck-Henkemans 2002):

Turns	Analytical reconstruction (standpoints and arguments)	
	Philip	**Mediator**
167-169	?	1'_opt. You need more clear boundaries about your relationship. 1.3._opt.(P) Otherwise the thing could become public. 1.3.1._opt.(P). And the thing becoming public could interfere with your academic status.
162 and 176-178	?	1''_opt. Ann should set more clear boundaries about your relationship. 1.4._opt.(P).Because she has been discombobulated 1.4.1. _opt. and people in a power position on faculty need to avoid that power "discombobulates" less powerful people 1.4.1.1 _opt. And I know this because as you know I taught for many years at university.

Table 10: Analytical reconstruction of turns 167-169

It is useful to more specifically reconstruct, by means of the Argumentum Model of Topics-AMT (see Chapter 5), the inferential structure of the two main arguments that the mediator presents to Philip (respectively, 1.3 _opt._ and 1.4 _opt._).

First of all, it is necessary to say that both arguments are based on complex inferential structures that involve a concatenation of premises and conclusion, which could be named an *argumentative chain*.

Argument 1.3 _opt._ is based a two-step chain, which first of all brings to conclude that making Ann and Philip's problem public should be avoided, and, as a second step, brings to recognize that the condition for this is that Ann should be left free to set her own boundaries. These two moves are based on the *locus from termination and setting up* and on the *locus from the final cause* (based in particular on the relations between

means and ends) respectively. In what follows, these steps will be analyzed one by one and their sequential connection will be made explicit.

The locus from termination and setting up, which is at work in the first step, binds the acceptability of a state of affairs to the acceptability of one or more of its implications. For example, if a certain state of affairs is expected to bring positive consequences, one is brought to conclude, on the basis of this locus, that it has to be accepted or even welcome: so one might reason out the positive value of going on a diet from the expected outcome to get fit, healthier, and so on. Contrariwise, a state of affairs is to be avoided if its consequences are negative; for example, in Philip's case, the fact that a suspect of an affair between him and Ann is made public should be avoided, because it would engender the negative consequence of damaging Philip's professional honor[264]. This reasoning is suggested by the mediator through a communicative move which can be interpreted as a warning to Philip: "Precisely it could become a public matter" (turn 169). This warning leverages in particular on the emotion of *fear*. Fear is a future-oriented disphoric emotion (Cigada 2007: 244) which represents the desire to hinder the realization of a possible negative world: in this case, *fear* is referred to the possibility of losing one's face and maybe also one's professional and economic status. The emotion of fear is indirectly correlated to Philip's *interest*[265] in maintaining his position and reputation. In fact, the mediator points at the negative consequences on Philip's side if the "affair", even though not confirmed, is made public, i.e. if Ann goes further with the complaint (see turn 189).

From the rhetorical point of view, the mediator's formulation of this argument is quite direct[266] and does not leave much to the implicit. The mediator's wording could

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[264] Indeed, the more basic version of a locus from termination and setting up would foresee, in its "negative" formulation, that if a certain state of affairs *is* negative (in the real world) it should be avoided (for instance, if the presence of high rates of infant mortality in many countries is negative - and we do know that this states of affairs is indeed part of the real world – it should be avoided, or removed). In this case, the negative nature of the concerned state of affairs is evaluated on the basis of its possible *negative consequences* in possible worlds (in the future). In this sense, more precisely, the locus from termination and setting up is intertwined here with a *locus from the implications* which is subordinated to it. Therefore, according to the AMT (see Chapter 5), this reasoning constitutes a particular and very often occurring type of the category of *complex loci*.

[265] More in general, Cigada (2007: 241) argues that "Emotive appeal focuses on the interest of the addressee, in the sense that the author suggests him that it would make no sense to decide without considering some particular implications of his decisions". It can be said that the emotion of fear indirectly (by opposition) points to the positive interest of not losing something that one really cares for.

[266] The only aspect that could be reconstructed as a *mitigating device* (Caffi 2007) is represented by the adverb *precisely* at the beginning of turn 169, which follows (and almost interrupts) Philip's objection "But" (turn 168), in turn interrupting the mediator while saying: "At this moment now it's not a PUBLIC matter" (turn 167). The mediator, in fact, seems to interpret Philip's communicative move as "But it CAN become a public matter"; in this way, by means of the adverb *precisely*, he would only signal agreement with something said by Philip. Clearly, it is a delicate move, since Philip has been interrupted and therefore he has actually said nothing. In this sense, the adverb *precisely* is to

also be interpreted as an abuse of power, even a threat (an *ad baculum* fallacy[267]) on Philip; however, it is to be considered that the realization of the negative consequences evoked by the mediator does not depend on himself; in other words, the mediator is not the efficient cause of the realization of his warning. Rather, the realization of the negative consequences mentioned is linked to the contextual surrounding in which Philip lives and operates. In this sense, the mediator's move may be considered legitimate, as the negative consequences he evokes would be however going to be realized even if he did not mention them.

Now the proper analysis of the inferential structure of this first step of argument 1.3 (represented in Figure 23) will be presented. The endoxon, which is implicit in the mediator's discourse, has been reconstructed as the statement of the importance of *professional honor*, conceived of as the respect of Philip's professional mandate as a cultural value that Philip recognizes. The minor premise, which is also only implicitly present in the mediator's warning, states the possible negative consequences[268] that would follow if even only the suspect of an episode of disrespect in which Philip and Ann are involved is made public. In particular, Philip's professional honor would be damaged. The mediator does not specify it more than this: certainly Philip would at least gain a bad reputation; we do not know whether the university would also make provisions against him in a more formal way. But probably it is exactly the fact that the evoked future is quite uncertain and vague that renders it more menacing. The warning implied in this argument is also very well understood by Ann, who reinforces it at 173, by explicitly saying that she is "prepared to go to the limit" even if this would imply Philip leaving the university. Philip's counterarguments (at 175 he says that other students are interested in his program and would therefore want him not to leave the university) appear as quite a weak response, which is likely not to have great hold on the academic authorities who would make the decision.

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be interpreted as a presupposition violation operated by the mediator- a very delicate move, as already pointed out above.

[267] The fallacy *ad baculum* (literally, "from the stick") is a way of putting pressure on the opponent, thus violating the freedom rule of a critical discussion, according to which parties should not prevent each other from advancing standpoints or casting doubt on standpoints (see van Eemeren and Grootendorst 1992: 107-109 in particular; see also Chapter 5 of the present work). This fallacy refers to some *threat* of any kind of violence. Normally, despite the name of this fallacy, the threat remains, indeed, only a threat. In fact, as van Eemeren and Grootendorst (1992: 109) remark, "If things do not stop at threats, the name gives a literal description. But if a stick is brought into play there is, of course, really no question any more of a discussion, let alone a critical discussion". The fallacy ad baculum is always a manipulative move. Some warnings, however, may be reasonable moves and distinguish themselves from proper threats, as it happens for the mediator's intervention in this case.

[268] Not coincidentally, this minor premise is constituted by an "if…then" clause. In fact, in this case, the minor premise represents a *possible world* rather than a real one; this is requested by the very nature of this reasoning, which, as said, combines the locus from termination and setting up with a subordinate locus from the implications (see footnote 264).
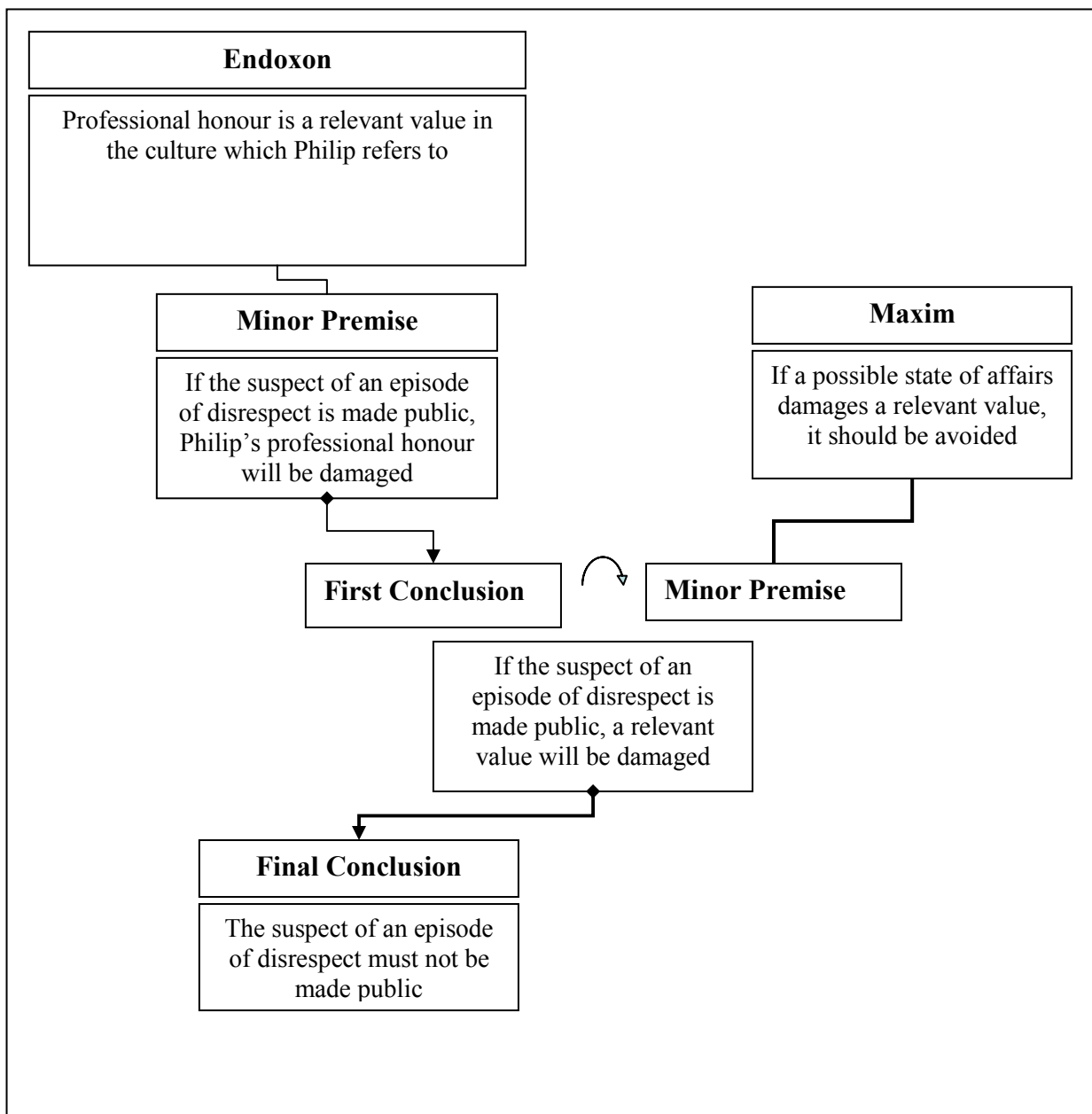
Figure 23: Synergic represntation of the first step of argument 1.3

Elaborating on the final conclusion of this step, the reasoning goes on by specifying the conditions that are necessary in order not to make the suspect about Philip's behavior with Ann public. In particular, in this second phase, the mediator's reasoning allows to conclude that the parties need to negotiate a clear set of boundaries. The specific maxim activated within the locus from the final cause, which is at work in this passage, concerns the relation between *ends* and *means* and, in particular, can be

formulated as: "The intention of realising a goal entails the intention of pursuing its necessary means". Now, once established that setting up boundaries for Philip and Ann's relationship is a necessary condition (and, actually, the only necessary condition) to avoid making their problem public (see the minor premise associated to the maxim, Figure 24), the conclusion follows that Ann and Philip have to set boundaries. The fact that their problem becoming public would be a negative situation has been already established in the first step of this reasoning (see Figure 23). The fact that the setting of boundaries actually constitutes the only necessary condition not to make their problem public is derived from another reasoning, stemming from an endoxon generally concerning the functioning of human joint actions and activities: "The cooperation[269] of a free agent must be negotiated taking into account his/her requests" and a minor premise derived from knowledge of the contextual surrounding (the academic environment) and of the previous interaction, which could be formulated as: "The fact that the suspect of an episode of disrespect is not made public presupposes Ann as a free cause; and Ann asks to set boundaries". The minor premise, in this case, clarifies the only condition that Ann is asking (see turn 49 where she first states this) in order to solve the conflict without going to the next level in the academic procedure against Philip. Such condition becomes a justifiable one because Ann is the "free cause", i.e. the agent necessarily involved in the cooperation to reach the desired end not to make the conflict public. Her power in negotiation is determined by the fact that Philip cannot decide not to make the problem public by himself. He is, thus, necessarily involved in a cooperation if he wants to reach his goal. And, since this goal is particularly relevant for Philip, he is expected to negotiate with her how to reach it on the basis of her conditions and requests. Notice that the endoxon evoked, in this relation, brings Ann and Philip on the same negotiation level, despite their power differences in the academic context, and it tends to bring them to an equal status of co-operators or co-agents, by presupposing that they can share a goal and pursue it; indeed, the equal status of the parties is requested by the interaction scheme of mediation itself.

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[269] Following Rigotti (2003), I define cooperation as a type of joint action involving two or more agents who pursue the same goal.
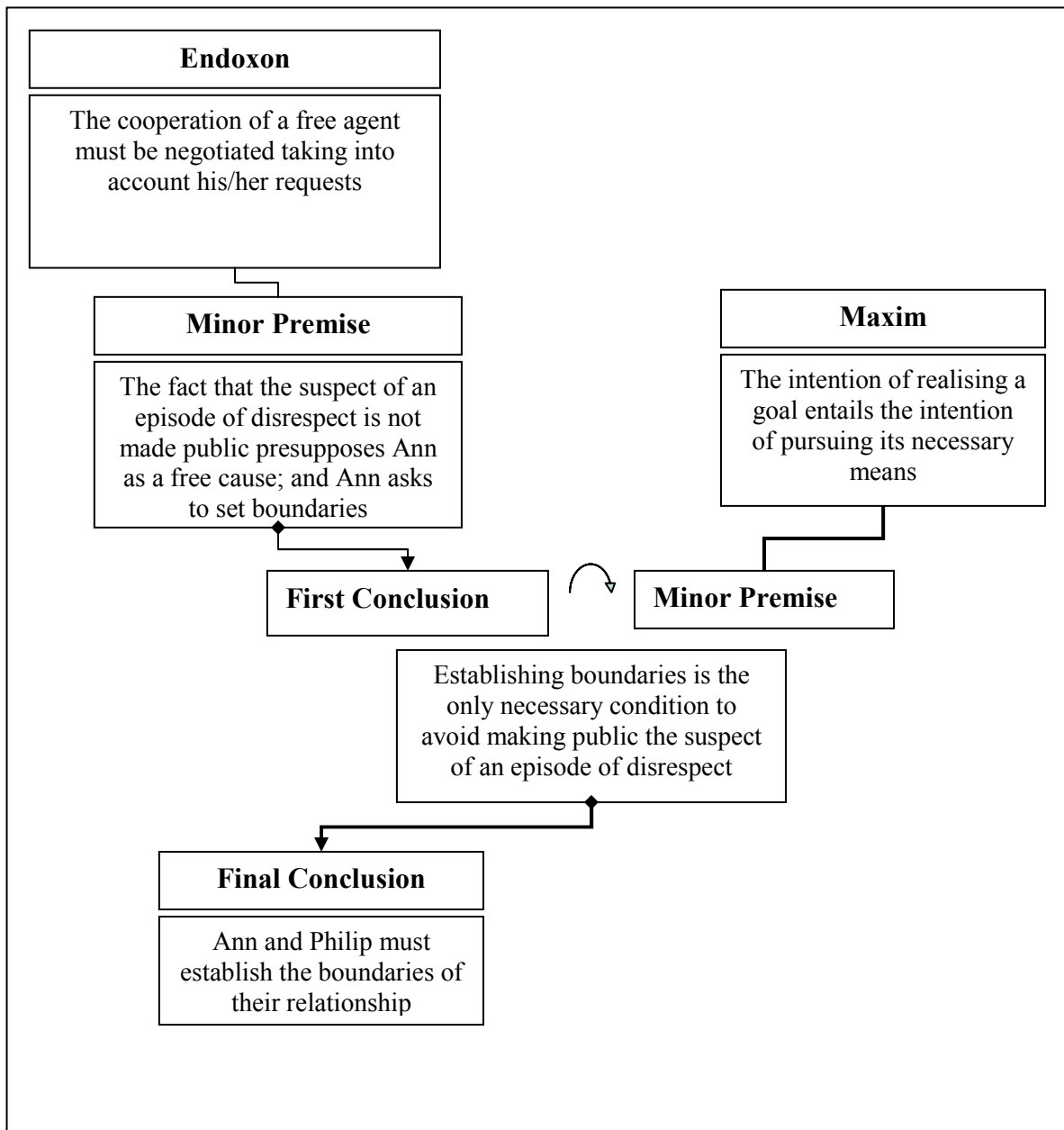
Figure 24: Synergic representation of the second step of argument 1.3

But the mediator does not limit himself to propose this argument to Philip. In fact, he also raises (turns 162 and 176-178) another line of reasoning, which seems to be aimed at supporting the standpoint 1''opt., namely "Ann should set more clear boundaries about your relationship". The interpretation of this argument, however, results difficult and uncertain, because the text is in itself quite opaque. Therefore, the interpretation suggested in what follows is to be intended as a possible hypothesis on what the mediator proposes to Philip as an argument.

Clearly, the argument is centered on the problem of power unbalance derived from Philip and Ann's different roles in the academic context. Philip has declared that he wants to maintain good relationships with his students (turns 159 and 175) and that he has "always expressed an interest in their general well being (.) and made them feel comfortable and welcome to the university" (turn 159). By this saying, Philip suggests a goal that he is always pursuing in his relationships with students, namely to care for their well-being and to make them feel comfortable and welcome to the university[270]. This seems to be part of his conception of an academic's professional ethos.

To this, the mediator's intervention at 176ff adds that, when there is a power unbalance, as it is the case of the student-professor relationship, the student, being the individual in the less powerful position, can be somehow made uncomfortable by the professor's crossing what he/she feels to be the natural boundaries of their relationship. And this can happen even if the professor, as we assume in Philip's case, has crossed the boundaries inadvertently. The mediator, in this sense, seems to point at a contradiction between Philip's normal "decorum", i.e. the normal honourable way in which he interprets his role as a university professor, and his specific behaviour with Ann; in fact, he has inadvertently crossed her boundaries, and she has been made uncomfortable by this. Therefore, if Philip does not find some corrective measure for the problem, his goal of making students feel comfortable is not fulfilled, and this has consequences on his professional ethos. For this reason, the mediator seems to suggest that Philip should let Ann decide about the boundaries of their relationship, which he apparently considers to be a corrective measure against her feeling very uncomfortable (turn 162) or "discombobulated" (178). In the interpretation proposed here, the mediator's discourse can be reconstructed as a two-steps argumentative chain; the former is founded on the locus from termination and setting up, while the latter rests on the *locus from the instrumental cause*.

In the first step, the maxim at work can be formulated as: "If an important goal is put at risk, the risk should be removed". The line of reasoning stemming from the maxim is combined with another lines of reasoning stemming from the endoxon "It is part of a university professor's ethos to maintain friendly relationships with his/her students and to make them feel comfortable". This endoxon, as noticed above, has been declared by Philip to be part of his values. The minor premise associated to this endoxon is made clear by the mediator, who highlights that Ann is not comfortable at the moment, mainly because Philip has inadvertently crossed her boundaries (see Figure 25):

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[270] The mediator seems to remind him of the importance of his goal at 169, where he presupposes that one of the most important objectives that mediation will allow Philip to reach is that he can be "the best professor he wants to be".
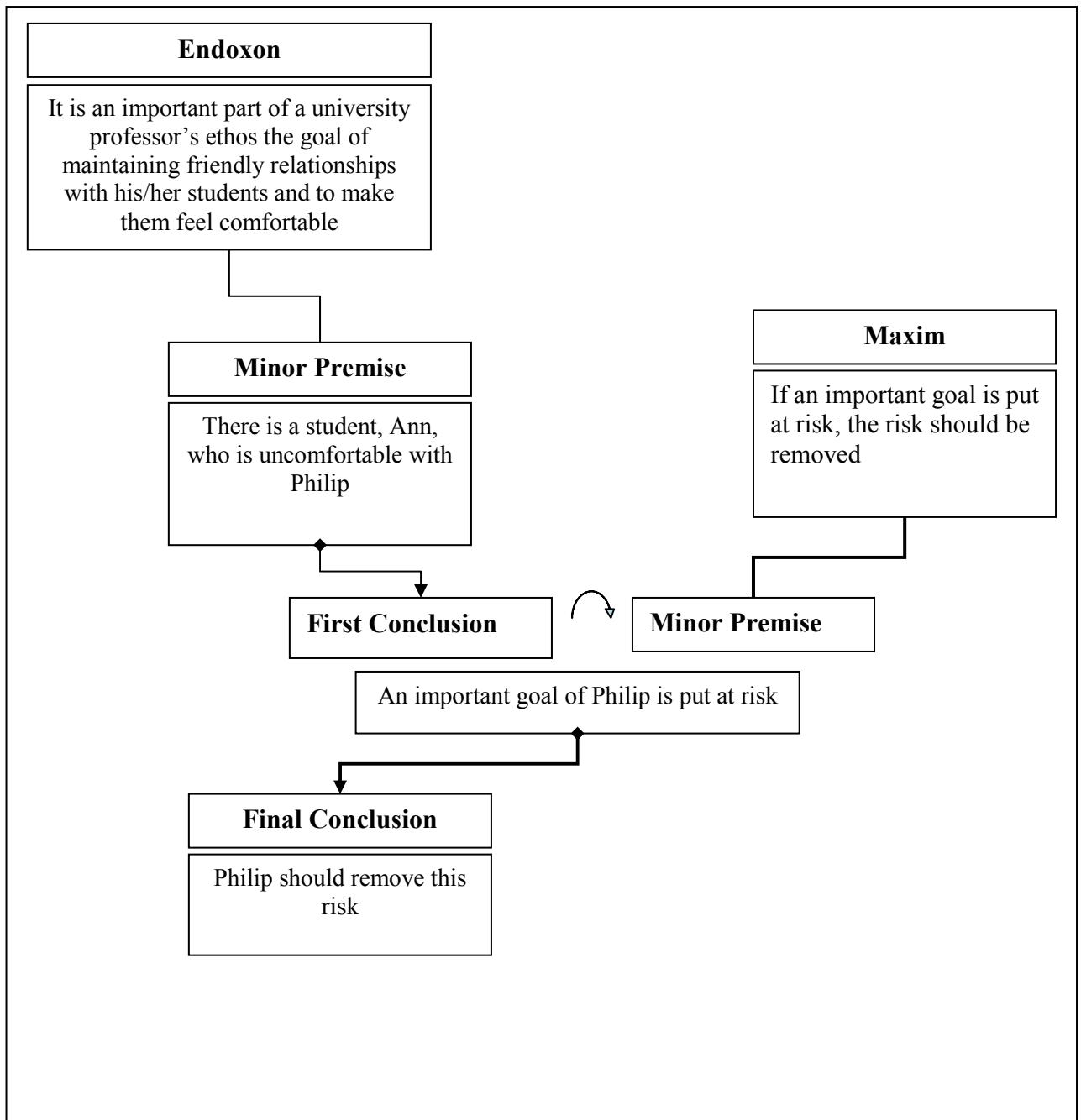
Figure 25: Synergic representation of the first step of argument 1.4.

The latter part of the argumentation draws on the results of the former. In particular, the *locus from the instrumental cause* (see Chapter 5) is applied here (see Figure 26) with the following maxim: "It is reasonable to pursue the adequate means for reaching an important goal". This reasoning shows that letting Ann decide the boundaries of her relationship with Philip is an adequate measure for avoiding her

feeling uncomfortable, which, as shown in the former step of the argumentative chain, endangers Philip's relevant goal.
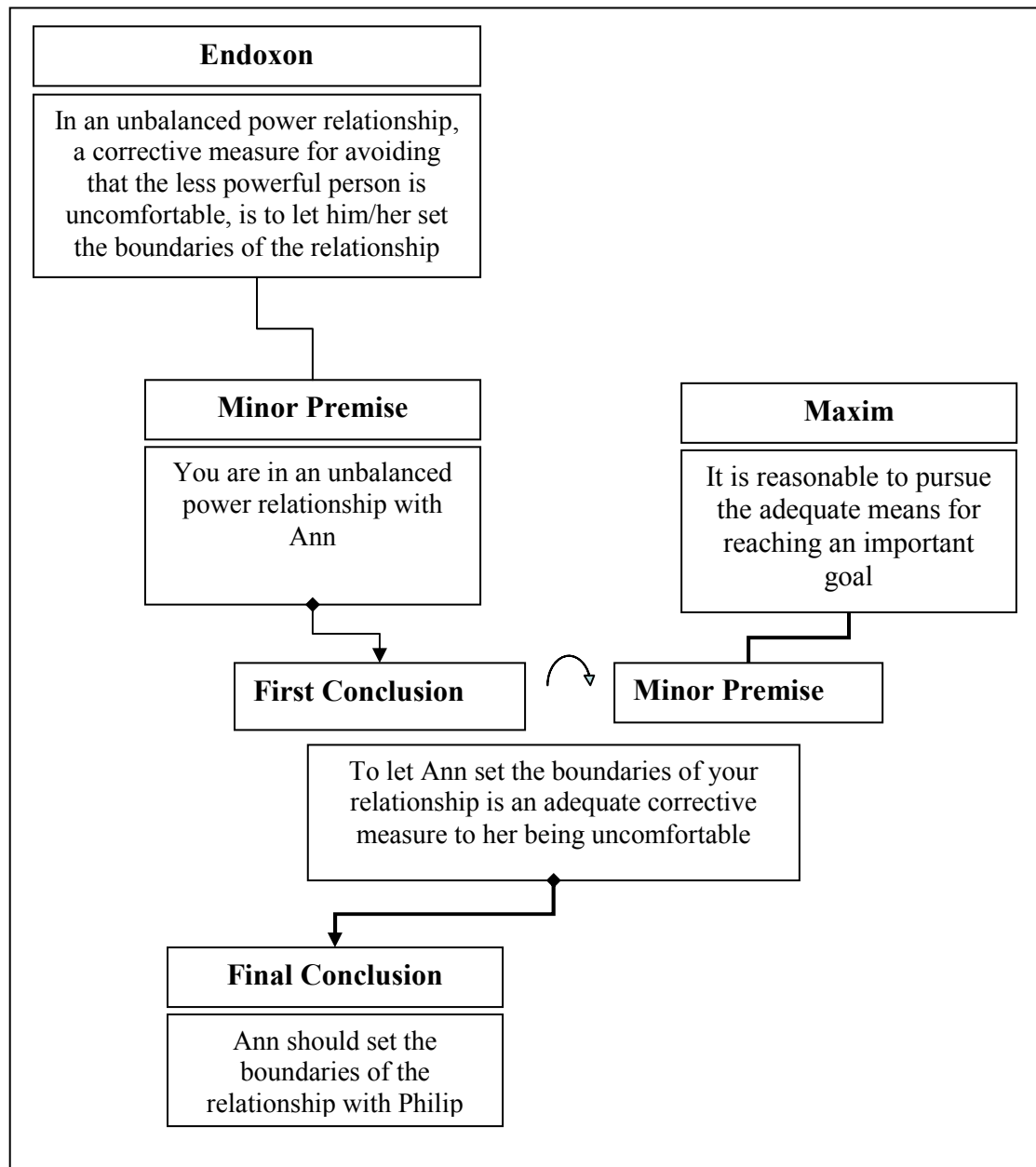
Figure 26: Synergic representation of the second step of argument 1.4

As said above, this interpretation is not to be accepted without some doubts, because the mediator's discourse leaves very much to the implicit and is not completely clear. The interpretation proposed here, however, seems to me the more reasonable in the

context of the argumentation directed to Philip that the mediator is carrying on. In fact, by means of this argument, the mediator manages to show Philip why letting Ann decide on the boundaries of their relationship is an advantage *to him*. The persuasiveness of this argumentation is bound to a very deep level of Philip's interests evoked by the endoxon represented in Figure 25. This endoxon concerns, as observed, a university professor's ethos, namely what we could call one's dignity or self-esteem. This has to do, rather than with the academic duties of a university professor, with the relationships between human beings and somehow exceeds the institutionalized dimension of Ann and Philip's relationship. Indeed, the persuasive effectiveness of this move exactly consists in presupposing that such a dimension exists, and that the concerned person (Philip) recognizes and desires it, i.e. that he wants to behave decorously and wants to be "the best professor he wants to be", as the mediator himself formulates it at turn 169. The mediator, here, is more than a third neutral; he dares to propose a "wise advice", by means of which he probably hopes to evoke a positive response of Philip, who is imagined to recognize his own deepest interest[271].

At the evaluative level, the evoking of this endoxon is appropriate, because it is drawn from Philip's own statements. A possible weak point that could be raised concerns the fact that only Ann appears to be uncomfortable with Philip; therefore, a simpler way to eliminate this risk would be, rather than reconstructing the relationship on the basis of her boundaries, to "eliminate" her by asking her to move to another program. Philip, indeed, suggests this at turn 106. This possibility, however, is excluded by the context, as the mediator promptly declares at 117: "I'm not sure you have a choice", he says to Philip, about whether to continue her relationship with Ann. Therefore, letting Ann decide about boundaries turns out to be a reasonable possibility within the paradigm of possible alternatives at Philip's disposal[272].

The fact that a university professor should try not to make his/her students uncomfortable because of the power unbalance is then supported by the mediator through an argument based on the *locus from authority* (1.4.1.1 $_{opt}$ in the reconstruction proposed in Table 10), where the mediator confirms that the professor's honour entails this aspect on the basis of his own experience.

Such audacious observation by the mediator is probably bound to the particular contextual situation of this mediation intervention; the mediator, having been an academic, can easily integrate pieces of contextual knowledge (about goals, practices, rites, and so on) that the parties have not mentioned. Notably, in this case, the endoxon is

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[271] One cannot help thinking to John Haynes' principle for which mediators have to find "that of God/that of good" in each person, presupposing that one is able to recognize what is good.
[272] The importance of the weighting of each parties' alternatives has been highlighted in the literature on conflict resolution, as shown in Chapter 3. See in particular the Harvard model of negotiation (Fisher, Ury and Patton 1991; Patton 2005).

further supported by means of an argument from authority based on the mediator's own experience: "you know I taught for (.) many years at a university (.) sometimes it's hard for us in a power position on faculty (.) to: (.) recognize tha:t (.) the boundaries eh: should be set always by the most conservative person" (turn 162). Such argument works as a subtle form of threat, meaning that if, one the one hand, Philip is in a power position in relation to Ann, he is not in relation to the mediator. The mediator himself, in fact, has been doing the same job as Philip for a while and has been in a power position on faculty. By means of this move, he thus advocates the right to a peer-to-peer dialogue, and he also shows that he cannot be deceived about the "myths" (see Chapter 4, footnote 171) present in the academic context, because he knows them as an insider.

In a way, however, a justification of Philip can be also found in the mediator's argument, as he at 176 says that Philip can have different boundaries in different relationships, and that this is perfectly legitimated. Thereby, the mediator limits the problem to one single episode, thus implying that the possible accuse to Philip of systematically embarrassing female students does not hold. The episode with Ann is indirectly interpreted as a misunderstanding in the context of generally cordial but respectful relationships with students[273].

6.1.2.4   Some remarks on the notion of *interest*

What has been shown in the previous paragraphs, in particular concerning the double line of arguments proposed by the mediator to persuade Philip about the appropriateness of starting a discussion on the boundaries of the relationship between Ann and himself (par. 6.1.2.3), has brought to light that *argumentation persuades when it touches the addressee's (or, more properly, the decision maker's) interests*. More specifically, if we consider the endoxa backing the different steps that are present in arguments 1.3 and 1.4., it is clear that some level of Philip's interests are always present: his professional honor, a positive disposition towards normal interactions with other human beings, or even his unwillingness of abusing of his power.

In this relation, it seems opportune to investigate the very notion of *interest*, which emerges as a key to the understanding of mediation, as it is also ascertained in the literature (see Chapter 3, in particular in relation to Fisher, Ury and Patton 2001 and Patton 2005). For this purpose, first of all, the notion of *interest* will be analyzed in its constituency, in order to elicit its proper meaning. In this endeavor, the thorough and informative work by Cigada (2008, see pp. 61-81 in particular) opens the way to grasp the meaning of this term. Secondly, the values of interest will be elicited as they explain

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[273] A similar interpretation, by the way, had already been given by Ann at 90, when she affirms that Philip is "much more detached" with other women who participate in the program.

the dynamics of persuasion in the passages examined in the previous paragraph. This will constitute a basis on which the remaining part of the corpus will be also investigated.

Moving from a careful etymological reconstruction of the ancient Latin word *interest*[274], Cigada (ibid., p. 63) proposes to define interest as a *function with variable intensity*, which connects an advantageous state of affairs or event to an individual or a group. From this definition, the *positive* value of any interest immediately emerges. In this relation, Cigada (2006: 135) introduces the term of *proximité positive* (positive proximity) to indicate a positive experience of reality that involves, at some level, the well-being of the involved subject.

Interest is also a polysemic word, as Cigada remarks when discussing the interpretations proposed by the *Trésor de la Langue Française Informatisé* (Cigada 2008: 66-67); and the polysemy of interest will prove to be particularly relevant for conflict resolution studies. The Trésor distinguishes between an *objective* interest[275], coinciding with a real advantage that *concerns* an individual, and a *subjective* interest, reflecting the individuals' conscious attention. The latter concept of interest implies a human subject actively claiming his interest or even "working" to realize it. But this does not necessarily coincide with the real interest of individuals nor, vice versa, is the real interest always at a conscious level. This emerges as particularly important in the resolution of a conflict, which should be guided by the principle "Focus on interests, not positions", formulated by the Harvard school on negotiation and conflict resolution, to which we have already devoted a careful analysis (Chapter 3). The hereby presupposed opposition between *positions* and *interests* opens the way to consider interests as something that parties do not expressly declare, maybe that they are unconscious of. In this sense, *parties are not automatically interested in their interests*. Therefore, the task

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[274] According to Cigada's reconstruction, the Latin form *meā interest* imitates the construction of *refert*. Indeed, the impersonal verb *rēfert* would be the result of a composition between the ablative *rē* and the verb *fert*. As Meillet (1985: 567, qt. in Cigada 2008: 62) argues, *refert* is often confused with *interest*, as the value of "to make a difference" equally suits both expressions. In this way, the syntactical construction of *meā, tuā, illius rēfert* is transferred to interest, thus giving origin to the peculiar forms a*licuius interest* and *meā, tuā interest*. On the basis of the Lexicon Totius Latinitatis, Cigada (ibid.) reconstructs four main values attributed to the Latin verb *intersum*. The first one is the proper value of *to be between* two places or two temporal moments. The second indicates the presence of a *difference* between two objects (as in the example "Inter hominem et belluam hoc maxime interest", Cic. Off. 4. 11). The third value concerns the action *to intervene, to be present.* Finally, *intersum* can mean that something *belongs to* or more or less tightly *is relevant to* or *concerns* somebody or something. For a more complete analysis see Cigada (ibid., pp. 61-63 in particular) and Cigada (2006: 133-135).

[275] As Cigada (2008: 66) remarks, the *Trésor* includes the financial meaning of *interest* in the category of objective interests. This choice could be discussed, by pointing out, in particular, that the financial meaning of interest might also be considered an autonomous one. This discussion, however, can be skipped here, since the specific financial meaning of this term is not primarily relevant in the present analysis of conflict resolution practices.

of a conflict resolution professional is, in this relation, to help parties discover their real interests.

In this relation, the mediator's argumentation to persuade Philip to speak of boundaries as an issue of his discussion is really to be interpreted as the mediator looking for Philip's real interests. Philip has clearly declared to be annoyed by Ann and her complaint, thus implying that he does want to solve the problem somehow. But his real interests, namely those that will move him to accept to discuss on boundaries, are more or less directly recalled by the mediator[276] rather than by Philip himself. In fact, it is the mediator who presupposes Philip's interest in his reputation and, more specifically, his professional honor as an academic. Again, it is the mediator who, by evoking an endoxon about the "normal terms" for cooperating with a free interagent, presupposes Philip's desire to be involved in normal interpersonal relationships and respect the human beings he is in rapport with. Eventually, when Philip declares to be interested in the students' being comfortable and welcome to the university, it is the mediator who, as seen, welcomes this value as relevant and important and elaborates on it to persuade Philip that finding a way to continue his relationship with Ann is part of his own interests.

As Philip's interests are mostly invoked as unsaid, *presupposed* endoxa, it clearly emerges that the mediator's operation is a risky one: he tries to propose arguments whose endoxical premises are intended to touch the deepest levels of the addressee's interests, but which have remained unexpressed. In this way, the mediator launches possible lines of reasoning to Philip, who however has to accept the *accommodation of these presuppositions* in order to accept the arguments themselves.

In this relation, even more risky is the mediator's management of the confrontation stage, where the mediator, as seen in the previous paragraph, moves the discussion from the issue of conflict to its possible solutions (options). Also in this case, the mediator is presupposing something that has not been explicitly accepted by the parties, namely that finding a solution is possible and that their relationship can continue and flourish. *By means of a presupposition accommodation, thus, the mediator challenges the parties to recognize what their real interest is*[277]. Moreover, by

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[276] It is true that, often, in Philip's case, the evoked interests are bound to the fear of losing something. But it can be noticed that fear is not used as a threatening means, but it is rather evoked, indeed, to remind him of his own interests and concerns. Fear, in any case, is involved in mediation, as parties have to do with a conflict that, as remarked (Chapter 2, Chapter 4) endangers the status quo of the parties' relationships.

[277] A possible relation between the evoking of interests and presupposition accommodation has been proposed by Cigada (2008: 71), who more precisely hypothesizes that the interlocutors' interests "justify" the speakers' accommodation: "La notion d'intérêt, un peu plus ouverte, permet d'expliquer le développement de la relation par le phénomène de l'accommodation, que les interlocuteurs pratiquent chaque fois qui'ils offrent verbalement à l'autre la possibilité d'assumer une position de proximité majeure par rapport au centre de leurs intérêts". The mediator may be said to bring this possibility to the extreme, almost to force it, in order to challenge parties to recognize their interests

considering the very nature of this kind of interest concerning the re-establishment of a serene relationship in the future, it turns out that, differently from what one might think, the parties' deepest interests are not necessarily opposed to each other. One is inclined to think that parties in conflict have opposite or even mutually exclusive interests. Indeed, as already seen in the analysis of the notion of conflict in Chapter 4, this is not necessarily the case; in many occasions, in fact, apparently contradictory interests turn out to be complementary. But the continuation of the parties' interests is something more. It is not just the discovery of complementary interests; rather, each party "discovers" that their interest involves the counter party, so that the interest in one's own well-being somehow turns out to include the other's well-being. In fact, it should not be neglected that parties who decide to go on mediation normally do value their relationship at some level – for this reason, they might have decided to avoid other more violent or less friendly forms of conflict resolution. Often, parties have known each other for a long time, or they have some reason for desiring to continue their relationship at some level (in Ann and Philip's case, they only want to maintain a serene academic relationship). In this relation, the concept of *relational happiness*[278] could be introduced to refer to all those actually win-win situations in which favouring the other party's also turns out to be a personal advantage[279].

6.1.2.4.1 *A deep habit change allowed by the consideration of interests*

The consideration of the most crucial interests of the parties shows to be directly bound with the degree and quality of the *habit change* in which parties are involved during the mediation process. Now, different levels of interest are associated to the

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and the common ground between them. Needless to say, launching such challenge is risky and delicate, because it is somehow an intrusion into the speakers' common ground that, if accepted, radically enlarges it.

[278] As Menkel-Meadow (1984: 754) remarks, considering personal gain as obviously entailing the other party's loss is a form of reductionism: "It is assumed that the parties must be in conflict and since they are presumed to be bargaining for the same "scarce" items, negotiators assume that any solution is predicated upon division of the goods. In the language of game theorists, economists, and psychologists, such negotiations become "zero-sum" or "constant-sum" games and the bargaining engaged in is "distributive" bargaining. Simply put, in the pure adversarial case, each party wants as much as he can get of the thing bargained for, and the more one party receives, the less the other party receives. There is a "winner" in the negotiation, determined by which party got more". According to Martini, Rigotti and Palmieri (2008), this form of reductionism is bound to a certain restricted interpretation of the Economic Theory that, during the past century, has contributed to spread an anthropological conception according to which human actions are not moved by the desires of human agents but rather by their resentment towards the others, who would have "stolen" something to them. This conception, which is at the origin of envy, is clearly also incompatible with the effort of resolving a conflict by a peaceful means like mediation.

[279] Later on (see par. 6.2.1.2) some specific cases of relational happiness will be highlighted.

different levels of change that may occur. In this sense, interest shows to have a *multilayer structure* (Cigada 2008), going from more external to more internal interests, and arriving to the ultimate habit change having to do with the subjectivity of the persons involved in communication.

A paradigmatic example of the deepest habit change that can be experienced if the parties' interests are taken into account is present in Case 1. As it will be shown in the following (see in particular par. 6.1.2.5), at a certain point in time, the mediator perceives the need of interrupting the discussion on options in order to go back and tackle "a fundamental issue" related to the disputants' interpersonal trust; indeed, without this point being clarified, the parties' negotiation was continuously undermined by a fundamental lack of trust between them. Having listened to each other's reasons, the parties are able to re-establish trust in each other, and can then move on to discuss the single options. Let us consider the passage where both disputants show to understand that the conflict has been originated by a misunderstanding rather than by an evil intention of their counterpart:

271	P	(4) I suppose so Ann if (.) if you've got boundaries that I don't know about and I've crossed them I I I guess I have a sense of regret that (.) hhhh that you feel that way but ah=
272	M	=No buts no no conditions hold it Philip right there (.) Ann (3) if (.) in the future (.) there is no physical contact no (.) lunches (.) or dinners et cetera (.) and that if there's a need for academic consultations (.) that (.) ano:ther (.) student would be participating in those consultations (.) you could benefit academically from that (.) that third mind in the room hhh (3) and given Philip's regret for having what has happened (.) how comfortable are you now about being able to move on (.) with your (.) academic career↑
273	A	Eh: that's (.) much more comfortable and (.) (*crying*) that means a lot to ME (.) to have him say (.) that (.) he WAS responsible to take some responsibility in some way (.) and so that (.) I don't feel like (.) I'm just the nut (.) and (.) know that (.) eh: (.) at some level he respects ME as a PERSON and my RIGHT (.) to move you know to move just in the world (.) my world (.) as best I can↓
274	M	Mmh=
275	A	= And that I do respect him as an academic a great deal and ah (2) and I don't want to lose what I have (.) but eh (.) it means A LOT to hear that
276	M	°Okay°
277	A	He I guess in his way is sorry I don't know (.) that's what I choose to hear↓

Something really interesting happens in this passage: the fact that Ann at 273 is in tears and says that Philip's words mean a lot *to her*, because he acknowledges her *as a person*, shows that the deepest level of interest has been touched, and that she now feels not only safe (because the mediator will help them set clearer boundaries), but also understood and *respected* as a person. Ann immediately returns the same trust to Philip: "And that I do respect him as an academic a great deal and ah (2) and I don't want to

lose what I have (.)" (turn 275). Here, probably, the real interpersonal conflict (C1, in terms of Chapter 4) is extinguished.

The consequences of such a mutual recognition on the development of the argumentative interaction should not be underestimated. Indeed, the re-establishment of trust that one can perceive here constitutes a sort of "seal" on the parties' habit change that has consequences on the proceeding of the discussion. In particular, an episode shows the occurred change. At 332, Philip raises an issue that Ann had previously mentioned but then abandoned: the fact that she felt looked in a "strange" way by him. A discussion on this issue may well be opened as part of the options for the resolution of the conflict. However, while the mediator is trying to set up such discussion 333, Ann interrupts him by expressing her intention to change her future behaviour (turns 338-340), thus interpreting the issue as irrelevant, because she is not "going around looking for things".

Such a personal initiative by Ann really shows the change of perspective she has assumed: it signals that she feels comfortable about speaking directly to Philip, whom she directly addresses at 338, and that she feels that their future interaction can proceed almost on the terms of a normal interpersonal interaction. Philip, although he still needs the mediator's help at 342, finally accepts not to discuss the issue and be confident that Ann will not malevolently interpret his behaviour in the future.

332	P	How do we get over this looking business that she was talking about that I look at her in some (.) strange way
333	M	Oh I think you have to be aware of it (.) number one (.) you have to be aware of it (.) number one (.) and you have to be aware Ann that it is not an attempt to cross the boundary number two (.)
334	A	Mmh
335	M	You both have to work at it (.)
336	A	Mmh
337	M	You've both got to have some shift in your perceptions about it (.) and if you're aware of it (.) and (.) therefore (.) play it out differently in doing the lecture (.) and if you're aware about it (.) a:nd re (.) define it (.) it (.) from (.) leering (.) to some other form (.) then it doesn't exist (.) I mean/=
338	A	=I mean I want to forget it Professor Ford I I
339	P	[( )
340	A	[I'm not going to go around looking for things↓
341	P	Okay well that's what it seemed to me that you were sort of out to get me I must say that's how I perceived it at the (.) start of
342 I	M	Does it seem that now↑
343	P	Well I (.) no I've got a bit more understanding (.) no
344	M	All right

From the excerpts presented above, it can be deduced that the deepest effect of the movement from conflict to consent allowed by the mediator's intervention consists in the habit change of the human beings involved in mediation. This aspect highlights an

important facet of the reasonableness involved in real argumentation, which does not only include the logical development of the reasoning, but also its anchoring in the parties' common ground which enables the parties' change. In mediation, thus, the relational and emotional aspect is really part of the argumentative dimension, since it has to be taken into account in order to construct a confrontation stage on issues that can really meet the parties' interests and constitute viable solutions for the conflict, which can respond to the parties' expectations. What seen in this case shows that, if the deepest level of the parties' interest is overlooked, also involving their mutual respect as individuals, any further discussion may be blocked.

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6.1.2.5   Going back to a "fundamental issue"

Not coincidentally, in Philip's and Ann case, before the explicit mutual recognition described above (see par. 6.1.2.4.1 in particular) has happened, the proceeding of the pragmatic structure of mediation and, in particular, the ongoing argumentative discussion result blocked. As said, at a certain point in time the mediator understands that there is a need to go back to phase 1 after spending some time discussing on the options constituting boundaries (phase 2). In fact, the discussion on boundaries turns out to presuppose premises that are not so much in the parties' common ground: as a consequence of their conflict, parties do not trust each other, and therefore do not concede to each other the credit of being in good faith. The mediator understands that the parties' mutual recognition and trust have been endangered in conflict; being recognized and trusted constitute interests deeply rooted in both parties. These interests need to be acknowledged before moving to the options phase; probably, this touches the deepest level of the conflict, namely the one really affecting the parties' identities, an issue still not touched in the discussion. In other words, the mediator probably realizes that the original difference of opinion C2 has not been thoroughly identified; in fact, the issue of mutual respect and trust turns out to be part of what is at stake in conflict.

As a consequence, since both parties do not recognize their interlocutor as trustworthy, the question of boundaries cannot really be discussed, because, since they are not trusting each other in the present, they also do not believe that their relationship can work in the future and think that, even if they define boundaries, the same problem will emerge again. The presence of the unsolved part of C2 within the discussion emerges from the fact that, although the discussion on specific sub-options has already started, and the parties have agreed on some points (no physical contact, no invitations…), they go on quarrelling on what has happened and accusing each other of fallacious reconstruction of the events.

Therefore, at 254, the mediator moves to this aspect of the parties' interests and does not go back to the discussion on the options-issues until the parties have reached an agreement on this "fundamental issue":

254 M Let me come back to a fundamental issue here↓ (.) it's a FUNDAMENTAL issue↓ (4) I think we all recognize that (.) part of the problem that existed here (.) is tha::t (.) you don't like (.) to (.) have (.) a relationship that you perceive to be a professional one (.) to: (.) include (.) touching (.) or to inclu::de (.) out-of (.) normal hou:rs (.) relationship interaction (.) dinners lunches et cetera (3) you Philip (.) feel (.) that's okay (.) and that with some other students you have lunch with them/

255 P I'm friendly with all my students↓=

256 M =Okay (.) now (.) the fundamental issue is this (.) can you accept (.) Ann's right (3) to draw those boundaries for herself (.) about what's comfortable for her (.) does she have that right↑

257 P Oh she certainly does if she wants to↓

258 M Do you accept then (.) that if you inadvertently cross those boundaries (3) that that would (.) upset her/

259 P (2) Well I suppose it would upset her but then she should have established those boundaries which she hasn't done up to now and (.) she's just gone straight off on a tangent without establishing them [that's that's my experience

260 A   [I never had a chance to establish them

261 P My concern is that if we continue this relationship

262 A There's no relationship to continue↓=

263 P =She's going to go (.) off again on another tangent somewhere (.) and so that that really concerns me [I want this thing at rest once and for all

264 M   [Okay let's then go to my next point (.) okay let's then go to my next point (.) okay let's then go to my next point (.) which is (.) if (.) you inadvertently (.) crossed those boundaries (.) partly because you didn't know that they existed (.) and that's always a problem where there is a relationship of a more powerful person and [a less powerful person

265 P   [This is a [fabrication↓ (   )

266 M   [Let me (.) let me just generate this other part (.) can you see that it would be appropriate (.) to: (.) express your concern of having done that (3) inadvertently/

267 P In in what way how do you mean↑

268 M (3) Do you think given those facts if that if those arguments are correct about the boundaries et cetera (.) tha:t (.) it would be appropriate to apologize for inadvertently crossing those boundaries/

269 P (4) Well (.) apologies I should eh (.) hh I could ( ) I guess if she's got boundaries that (.) are valid (.) and she feels they've been crossed I: (.) can accept that that I not only regret it but (.) I've offended her unintentionally (.) I (.) probably can deal with something of that nature

270 M Hh would it be possible for you to say that directly to Ann rather than to me↑

271 P (4) I suppose so Ann if (.) if you've got boundaries that I don't know about and I've corssed them I I I guess I have a sense of regret that (.) hhhh that you feel that way but ah=

272 M =No buts no no conditions hold it Philip right there (.) Ann (3) if (.) in the future (.) there is no physical contact no (.) lunches (.) or dinners et cetera (.) and that if there's a need for academic consultations (.) that (.) ano:ther (.) student would be participating in those consultations (.) you could benefit academically from that (.) that third mind in the room hhh (3) and given Philip's regret for having what has happened (.) how comfortable are

you now about being able to move on (.) with your (.) academic career↑

273   A   Eh: that's (.) much more comfortable and (.) (*crying*) that means a lot to ME (.) to have him say (.) that (.) he WAS responsible to take some responsibility in some way (.) and so that (.) I don't feel like (.) I'm just the nut (.) and (.) know that (.) eh: (.) at some level he respects ME as a PERSON and my RIGHT (.) to move you know to move just in the world (.) my world (.) as best I can↓

Then the discussion goes back to boundaries, thus enabling parties to come to an agreement that will be directly reported to the concerned academic authorities by the mediator; thereby, they successfully accomplish the mediation process.

From the logical point of view, thus, the sequence of issues is the following:

$$C2 \rightarrow issue_{opt} \rightarrow sub\text{-}issues_{opt}$$

From the chronological point of view, what happens in the session is the following:

$$C2 \rightarrow issue_{opt} \rightarrow sub\text{-}issues_{opt} \rightarrow C2 \rightarrow issue_{opt} \rightarrow sub\text{-}issues$$

These dynamics make us reflect on the fact that the movement from conflict to consent is not completed if the parties do not raise all fundamental issues that are bound to their conflict, because the options on which they will discuss must truly respond to their real interests; in particular, at least in this case, mutual recognition as human beings is touched. Now, if the conflict has not been thoroughly analysed, those interests that are endangered by it cannot wholly emerge. The options, in this case, would necessarily turn out to be partial solutions that only cover a part of the disputants' concerns.

In this sense, also in the other cases, one should be aware that, even though an agreement is found on certain options to be discussed, the discussion can always go to previous points. However, the mediator has no way to verify that all the components of C2 have come to light other than the parties' confirmation. And, thus, when he thinks he has reached agreement, he tends to proceed with the options, being however aware of the fact that other issues may still emerge.

6.1.2.6   Negotiating on specific options

The sub-issues that, taken together, constitute the definition of the new boundaries of Ann and Philip's relationship, are the following[280]:

(a) Physical contact
(b) Invitations
(c) Having discussions on "normal times"
(d) Presence of a third person during the parties' discussion
(e) Use of "normal" hours for the parties' discussion
(f) Philip's way of looking at Ann
(g) Management of possible future misunderstandings

In this case, the "macro-text" of argumentation in mediation turns out to be completed by a series of sub-discussions on specific options. Each sub-issue$_{opt,}$ in fact, gives rise to an argumentative discussion whereby all the dialectical stages can be identified. The fact that parties have eventually accepted the mediator's standpoint "Ann must set clear boundaries" puts Ann in the position of protagonist and Philip in that of antagonist in a critical discussion.

The management of the discussions on specific sub-options is quite similar in all seven cases; as an example, here, the treatment of issue (d) is presented. It is noteworthy that in general, as these sub-discussions are activated, some change from the initial situation of conflict already emerges relative to the parties' ability to assume an argumentative attitude. Let us analyze how the argumentative discussion on (d) can be reconstructed, in order to see how the nature of the discussion is changing at this point. At 233, Ann proposes a standpoint: as an alternative option to the idea of meeting during regular working hours, which Philip has declared impossible, she agrees to meet with him out of regular working hours but only in the presence of a third person. Philip immediately agrees, though for a reason that is criticized by the mediator, who perceives that the disagreement between the parties is still deep. Notice, by the way, that this sub-discussion starts before the mediator has brought the attention back to C2 (see the previous paragraph). It will be completed later on, after parties have agreed on their mutual respect.

233	A	(2) Or I'll meet with another mature student we can meet together (.) if (.) if it's absolutely impossible (.) to meet during the day (.)
234	M	Okay
235	A	I'll meet with one of the other mature students and he can entertain our questions
236	M	Is that good with you ( )
237	P	Oh that's fine I I don't want to ever see her one on one again (.) because it's just impossible for me to keep up with these kind of WILD allegations that come out of her↓

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[280] In this list, all the sub-issues are considered, including both those that are discussed before the shift back to phase 1, and those discussed later.

| 238 | M | It IS possible Philip if (.) we (.) recognize that (.) different people need different (.) relationships |
| 239 | P | (.) Ah if somebody else is there then that's fine↓= |

In this case, it is Ann who, unsolicited by the mediator, puts forward a standpoint (turn 233) and assumes a clear role of protagonist. In this passage, the argumentative discussion on option (d) seems to be almost useless, because the parties seem to maintain the same standpoint, i.e. that there should be a third person present during their meetings. However, after the interruption due to the discussion on C2, the mediator restates this seemingly achieved agreement at 278, and some further disagreement emerges. In particular, Philip casts some doubts on Ann's standpoint, reformulated by the mediator at 280:

279	P	=That there is going to be a third person present is that what you mean/ (.) by agreement↑
280	M	Well (.) the agreement would be (.) no no physical contact (.) no luncheon invitations or dinner invitations (.) and that when (.) an academic consultation is required (.) outside of the (.) normal (.) hours that (.) another student would participate and we would arrange that NOT specifically there has to be a monitor (.) but in fact it would be (.) a three-person consultation (.) and the idea is (.) to bounce ideas around
281	P	Well that that might be (.) problematical because sometimes we have to address a particular (.) assignment that one student is doing here
282	M	Ya
283	P	But I I need an independent objective (.) an independent witness present to make sure that there is no (.) suggestions such as has been made here of improper things taking place↓
284	M	My sense is [that
285	P	[I want to protect myself↓
286	M	My sense is that you don't need an independent person (.) to know how to behave appropriately
287	P	No I don't need that (.) but I do need to to make sure that if there are any (.) more wild allegations made that that it can readily be seen that they are unfounded

Philip's reasoning is reconstructed in the following table:

Turns	Analytical reconstruction (standpoints and arguments)	
		Mediator (on behalf of Ann)
280		(d).1. [281] When there is a need for academic consultation, another student participates
	Philip	
	(d).1 ?	

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[281] *(d).1.* is the notation selected for indicating the mediator's standpoint (which is, indeed, a reformulation of Ann's one at 233) on issue (d).

| | (d). 1.1. Each student has his/her own assignment

(d).1.1.1. And that conflicts with my need to have someone to protect me | |

Table 11: Reconstruction of the argumentation

This critical discussion is retrieved by the mediator at 308 and eventually concluded. Notice that the mediator reformulates Ann's standpoint twice, at 280 and 308 respectively. Differently from what we have previously seen in par. 6.1.2.3., however, the mediator here does not makes use of a reformulation to personally assume Ann's standpoint. In this case, in fact, Ann's standpoint directly concerns a possible solution to the conflict (or, better, part of a solution) and, therefore, the mediator remains neutral with regard to this. In this case, the reformulation can be interpreted as a mere repetition, useful for reminding parties of the status of their confrontation stage. Not coincidentally, in both occasions the mediator also briefly summarizes the results of the discussions on the other sub-options.

The discussion can thus be really developed from 308 on:

308 M Okay (.) but then what it what it means for you I think is two things Philip (.) is one is (.) that you delineated some very clear things and those are rather simple (.) no physical contact no invitations tho- those I think are relatively simple we suggested (.) a: (.) a third (.) ah:: course of action (.) that I think would make both of you more comfortable and enable both of you (.) to move forward academically and put all of this stuff behind both of you (.) it would be that if you have a consultation outside of the normal hours hh (.) that (.) you do it on a group basis↓=

309 P =Which is outside of just the normal hours↑=

310 M =Outside ten to five

311 P In the absence of anybody else this is going to be ( )

312 M Or you may feel that you would not for a while until you can get greater clarity (.) about these things (.) you may not want to meet with Ann one-on-one behind a closed door (.) that's OKAY (.) there are [lots of other

313 P   [Is that okay with you↑

314 A Absolutely

315 M There are lots of places you can meet publicly in an academic setting (.) in a sense and still discuss academic things (.) or alternatively (.) you can begin TO to arrange the situation where more than one student (.) student (*cough*) excuse me (.) is present during an academic discussion↓ (.) eh I did that all the time because I always felt (.) that one could generate more ideas with (.) with (.) with more exploration=

316 P =Can it be a male student or a female student↑

317 M Does it matter↑

318 P I don't know does it matter

319 M Does it matter to you Ann↑

320 A Well I don't know I don't think it matters

321 P Obviously somebody fairly independent

322	M	Why (.) that person doesn't know they're not there (.) eh eh for any other reason than to participate in the academic (.) discussion↓
323	A	I don't want them to know about this (.)
324	M	They are not monitors
325	A	They're not there to be a watchdog↓
326	M	They're not watching you and they're not watching Ann they're PARTICIPATING in an ACADEMIC discussion↓
327	P	But if she (.) later on I cross these boundaries and then she makes an allegation later on I cross her boundaries and she makes another allegation later on I want somebody to be able to say (.) whether these things happened or didn't happen
328	M	You don't need to alert people to say (.) I want you to join in this academic discussion (.) so that if I am accused of some sort of harassment you can then (.) prove that I didn't [I don't think that
329	P	[No we don't need to say that
330	M	No we don't need to say (.) that do we what we need to say (.) is that we need to have for your comfort and (.) for your comfort we need to have a third person (.) there you may review it jointly three or six months from now you may want to come back and talk to me about three or six months down the pike (.) in the sense of knowing that you DON'T NEED that (.) in which case you can (.) can move to the (.) one on one (.) but in the next period it would seem to me to be very useful just to ENLA::RGE the numbers in the academic discussion (.) from two (.) to three (.) or even four (.) for no other purpose than to give you both a sense of comfort so that you're not WORRYING about (.) the discussions we've had today (.) when you discussing some major environmental issue (.) tomorrow

A remarkable feature of this sub-discussion (d), which can be analogously found in the other ones, is the fact that Philip and Ann have acquired a much more mature attitude from the dialectical point of view. It can be certainly said that the passage to co-arguers has now been established, although parties move in their new role of participants in a critical discussion in a somehow fragile fashion, so that some mediator's interventions are still necessary. In other words, once the mediator has achieved the objective of identifying C2 and, then, of bringing parties to discuss on the options, he seems to have accomplished a large part of his work.

As it appears from the excerpts above, parties tend to stay on the issue rather than accusing each other; and they tend not to mention the origin of their conflict any more. From the point of view of the management of their interaction, there are less interruptions and overlapping turns, so the discussion appears much more serene. And, most significantly, at 313 Philip directly asks Ann's opinion on a mediator's proposal, which never happened before[282].

The interaction scheme of mediation almost seems to turn into a *negotiation* (with some traits of a *problem-solving* discussion), where parties aim at finding a solution that can satisfy their respective interests. The mediator encourages the parties'

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[282] Already from a glance to Table 8, it emerges that, about the end of the session, parties do communicate much more directly to each other.

new attitude, by engaging himself in the discussion as a neutral advisor who only helps them defining a good common agreement, like at 312, 315[283] and 330, and using the personal pronoun "we" when speaking of the parties' interests at 330.

Once the passage to co-arguers has happened, the conflict is somehow on the way of being resolved. Here, parties seem to become able to negotiate their problem, since the harshest aspects of conflict have dissolved. In this sense, one can really interpret negotiation not only as a specific ADR practice, but also as the genus of which mediation is a species, which in this sense becomes a negotiation *facilitated* by an initial intervention of a mediator. This observation is in line with many interpretations of the relations between mediation and other ADR practices (as the Harvard model of negotiation), which have been discussed in Chapter 3, as they constitute an important contribution to the theoretical elaboration on mediation.

6.1.3 Some responses and some refinements of the research questions

As it has been argued in paragraph 1.2., the double-step structure on which the argumentative analysis is based has the advantage of allowing to progressively refine and specify the research questions and arrive to an accurate and punctual analysis of a relatively large corpus of empirical data.

As it emerges from the analysis, it can be confirmed that the phases of the mediation process ideally tend to host different stages of a critical discussion. More specifically, as said in par. 1.1.2, mediation normally involves a dispute multiple in a qualitative sense, whereby different standpoints are put forward, giving rise to a macro-text of argumentative discussions corresponding to the pragmatic structure of this practice, i.e. to its process dimension, finalized to its goal. In part, these outcomes emerged

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[283] Very interestingly, at 315 the mediator, resting on his personal experience as a former academic, gives the parties a further reason why, according to him, a discussion on a group basis would be useful: "Alternatively you can begin to arrange the situation where more than one student is present during an academic discussion I did that all the time *because I always felt that one could generate more ideas with more exploration*". Such a reason is, indeed, something that exceeds the mediator's role, and puts him at the level of a friendly collaborator to Ann and Philip's negotiation. It is, moreover, a suggestion that the mediator feels he can give to Philip on an interpersonal basis about how to improve his professional practice (beyond the resolution of this problem). This unexpected and apparently contextually incongruous move can be interpreted as a sign of the progressively ongoing change of interaction scheme. Here, the change is also probably helped by this intervention of the mediator, as the mediator moves from speaking in his role to speaking as a human being in a peer-to-peer dialogue with other human beings. This can be interpreted as a "gratuitous" move, exceeding the boundaries of the interaction scheme.

unexpectedly; in fact, while attempting at analytically reconstructing argumentation in mediation, the reality of this practice emerged as more complex than expected. In this relation, the model of a critical discussion served as an analytical grid which allowed discovering the delicate interplay of discussions constituting a real mediation interaction.

In particular, phase 1 tends to host the confrontation and opening stages of the parties' main discussion, i.e. respectively the moment in which a difference of opinion emerges and is clarified between the parties who act as a protagonist and an antagonist, and the moment in which their common starting points are identified. In this process, the mediator performs the non-canonical role of a third neutral, which corresponds neither to protagonist nor to antagonist. The confrontation and opening stages do not emerge spontaneously, but need to be helped by the mediator's intervention. In particular, the construction of a confrontation stage shows to require a very complex process guided by the mediator. By this process, parties are helped to identify the issue on which their confrontation originally gave rise to a conflict (C2). From that moment on, however, the discussion is shifted by the mediator from C2 to one or more issues in relation to which standpoints can be put forward that may represent viable solutions to C2, the so-called issue(s)$_{opt}$.

Concerning the opening stage, through the mediator's guidance, parties are brought to find their *material* starting points (premises concerning the interpretation of their conflict and their previous relationship), while *procedural* starting points (the external conditions such as agenda of the meetings, communication rules, turn taking conventions, and so on) tend to be imposed by the practice of mediation (see van Eemeren and Grootendorst 2004 for the distinction between material and procedural starting points).

Later on, the discussions on specific options (see par. 6.1.2.6.), proper argumentation stages can be envisaged, in which parties bring forward arguments, negotiate about the solutions and exchange the roles of protagonist and antagonist. Thus, it could be said that the parties' general discussion on the resolution of their conflict has a very particular argumentation stage, which is constituted by the different argumentation stages of the discussions on options. This constitutes a first reason why the dispute in mediation is to be considered multiple in a qualitative sense: if parties solve these discussions on options, they hereby find a solution to their general conflict, thus also concluding their general discussion.

The concluding stage is ideally hosted by phase 3.

It can thus be said that the crucial dynamics of mediation, namely the disputants' "transformation" into co-arguers, mainly pertains to phase 1. As the passage from disputants to co-arguers happens during the first phase and, in the second phase, parties prove to be able to discuss between each other, the analysis of the remaining part of the empirical corpus considered in the present dissertation can be mainly concerned with the first phase. A particularly critical point emerged is the passage from C2 to the various

options, based on the options' correspondence with the parties' real interests which have emerged through the analysis of the conflict. This aspect will therefore be taken into account with particular precision.

It is interesting to remark how this transformation happens through the mediator's *direct argumentation*, which is far from being absent from the discussion. Indeed, the mediator cannot argue about one or the other solution, as it is excluded by his role of agent in the agency relationship generated by mediation (see Chapter 1). However, he is responsible for the quality of the parties' argumentative discussion: this apparent contradiction expresses the mediator's paradox (ibid.). Mediators seem to cope with this paradox by arguing in a very specific way, which is aligned with their professional role. In fact, in analyzing Case 1, besides the mediator's intervention in the construction of the confrontation stage of the discussion about the resolution of the conflict, the mediator has also emerged as a protagonist of some discussions which correspond to *meta-discussions* on crucial passages. In particular, it has been analyzed how the mediator personally assumes the standpoint of the parties' need to discuss on the boundaries of their relationship. The mediator's direct argumentation emerges as functional to the constitution of the parties' confrontation stage – in fact, he argues for the issue that they should adopt. This is a further reason to consider the mediation discussion a particular type of a multiple dispute in a *qualitative* sense. In fact, did the mediator fail to win his case, the discussion between the parties would also be blocked[284].

In relation to the mediation phases emerged from the model presented in Chapter 4, such multiple dispute can be represented as follows:

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[284] And it is to consider that, given the institutional embeddedness of the interaction scheme of mediation in a precise interaction field, namely the university in which the problem has arisen, an unsuccessful outcome of mediation would also have very negative consequences on the parties. Here, the mediator's proposal of a specific issue for the discussion is to be interpreted as he trying to fulfil his institutional mandate; in fact, he chooses an issue that is relevant to the resolution of the conflict. If he failed to win his cause, negative consequences would follow also for the parties; Philip, in particular, could be prevented from maintaining his academic position on that faculty.
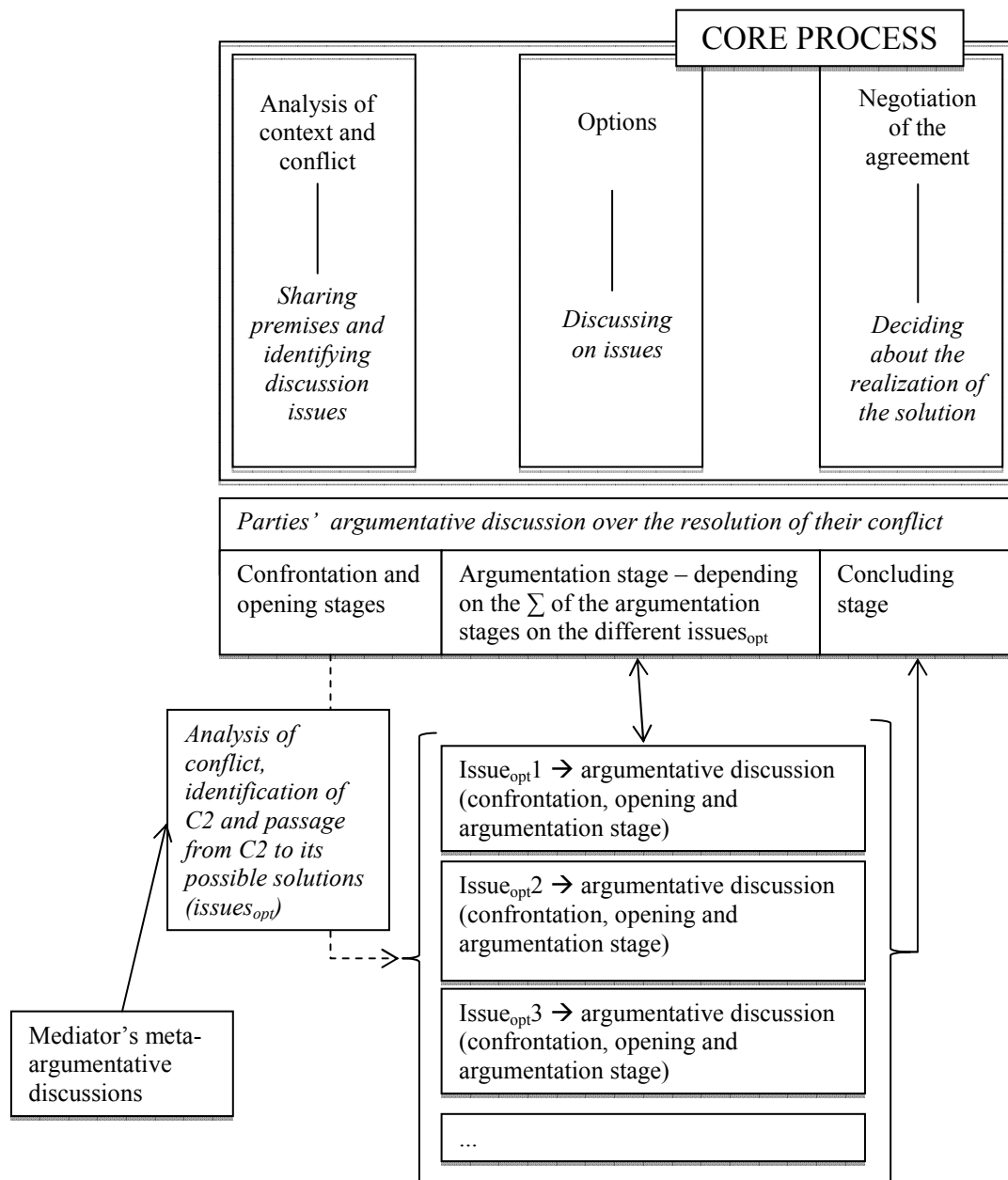
Figure 27: Representation of the macro-text of argumentative discussions in mediation

It is evident that such a multiple dispute, which can also be considered a macro-text of argumentative discussions, is peculiar of mediation as an interaction scheme imposing a specific institutional mandate. As said, such a macro-text of discussions does not generally arise spontaneously, as it is the case in ordinary discussion; indeed, it is tightly connected to the nature of the interaction scheme of mediation and it is wisely and intentionally managed by the mediator. In this sense, the *context* of mediation, in terms of the characteristics of its interaction scheme, seems to influence the nature and

development of the various discussions involved, in particular as for the selection of viable issues. This observation partially anticipates the answer to a question that can only be thoroughly given by comparing the influence of context in the various cases of the corpus, which, as shown in Chapter 5, represent as many applications of mediation to different interaction fields.

The mediator's special role of third neutral does not keep him from being a participant in the critical discussion and having a personal strategic manoeuvring. As seen in Chapter 3 (par. 3.2.2.2.), studies in the argumentatve strategies of mediation have rightfully brought to light the relevance of some presentational devices of the mediator's argumentation and have expounded their dynamics and weight at the level of strategic manoeuvring. From the analysis done in this first step, however, it emerges that an equally crucial role needs to be attributed to the mediator's strategic manoeuvring with the *topical potential*, in particular in relation to the delicate raising of the parties' interests in different stages of the critical discussion (see par. 6.1.2.4.). Indeed, although the parties maintain the privilege and burden of making their decision on the case, the interaction scheme of mediation imposes a constraint to the parties insofar as it somehow delegates to the mediator the choice of their topical potential in the confrontation and opening stages. This allows the complex structuring of the mediation discussion that has been sketched in the paragraphs above, and which is clearly directed towards the goal of solving the conflict and restoring the parties' relationship.

From this latter observation, some considerations can be drawn that will be taken into account in the following step of the analysis.

First, concerning the mediator's management of the topical potential in the confrontation and opening stages of the parties' main discussion, two moments have emerged as essential: the identification of C2 through the analysis of the parties' conflict and the movement from C2 to the options for conflict resolution that respond to the parties' interests. The analysis of the broader corpus (Cases 2-6) will thus be based on the identification of these two passages.

Second, a keystone of the movement towards the resolution of the conflict seems to be the consideration of *interests*. Interest has emerged in several passages as the resolutive factor, both in the confrontation stage, for the identification of the relevant issues, and in the argumentation stage, as a real "engine" of the resolution of the conflict. Particular attention will be thus devoted to the elicitation of interests.

6.2 Proper features of the mediator's argumentative contribution in mediation

On the basis of these considerations, it is now possible to design a more precise analysis of the remaining part of the corpus.

The analysis will focus on the first phase of the mediation process in particular, by verifying how the passage from disputants to co-arguers actually occurs and how it helps disentangle the parties' conflict and bring them to discuss on possible solutions to their problem. The cases from 2 to 6 have therefore been analysed in their pragmatic structure and the relevant communicative moves pertaining to the first phase of the mediation process have been selected. The analysis that will be presented in the following paragraphs is relative to this phase only.

The particular significance of the mediator's strategic manoeuvring with the topical potential in relation to the construction of the parties' confrontation and opening stages, which has been described in the previous paragraph, will be considered in this case (par. 6.2.1). The presence of mediator's meta-argumentative moves will be also verified (par. 6.2.2.). Furthermore, the possible function of the elicitation of parties' interests as crucial knots allowing the resolution of the conflict will be considered as well.

Certainly, the results of the first step of the analysis constitute guiding principles to orientate the research on the other cases. However, they equally constitute hypotheses to be verified on a larger evidence basis, from which unexpected results are expected, which somehow surprise and exceed the research questions. For this reason, the analysis will be also open to possible refinements or corrections of the conclusions drawn after the first step on the basis of other possible specificities of the mediator's argumentation will be looked for from the different cases analyzed.

A further component of the analysis concerns how the *context* contributes to the shaping of the argumentative process that is present in mediation (see par. 6.2.3.). Context, emerged in par. 4.1. and 4.3. as the weave of the parties' relationships, can be expected to influence the development of their argumentative discussion (van Eemeren and Houtlosser 2005; Rigotti 2006). Beside the investigation of the contribution of the interaction scheme of mediation to the structure of the argumentative discussion, which has already emerged in part in the first step of the analysis, the comparison of different domains of applications will equally allow discussing the role of the specific interaction field in which mediation is applied.

6.2.1 Manoeuvring strategically with the topical potential in the confrontation and opening stages

From the point of view of argumentation theory, the two most significant tenets emerging in the present investigation are clearly the presence of an interaction scheme-bound multiple dispute generated in the mediation process and the mediator's crucial role in constructing the topical potential in the various stages of the involved discussions.

By analyzing Case 1, the first phase of the mediation script (Figure 17, Chapter 4) was identified with the crucial moment of argumentation in mediation, in which the parties, thanks to the mediator's guidance, are expected to abandon their conflictual attitude and to learn to become co-arguers. Now, the analysis will base on the other cases (Cases 2-6) in order to verify the presence and constituency of the most significant strategies emerged in Case 1. The mediator's strategic manoeuvring with the topical potential in the confrontation stage of the discussion on the resolution of the conflict is represented in particular by two moments (see par. 1.1.2): first, the mediator's analysis of the conflict through his search for the identification of C2, which is the issue originating it; second, the shift from C2 to the options constituting possible solutions to this issue, which is typical of the confrontation stage in the mediation practice. In the following of this chapter, the presence, relevance and contextual conditions of both these moments will be discussed on the basis of how they emerge from the other cases of the empirical corpus.

6.2.1.1 The analysis of the conflict: towards the identification of C2

The mediator's guidance of the parties towards the exploration of the origin of their conflict through the identification of the major issue C2, which emerged in Case 1, shows to be relevant in all cases of the corpus. In no case, parties are able to analyze their conflict by themselves.

Now, although the two mediators considered in the present dissertation always start with the same question, i.e. they begin by asking parties what their problem is, the parties' answers are quite diverse and give rise to different kinds of deviation from the dialectical profile of a confrontation stage (van Eemeren, Houtlosser and Snoeck-Henkemans 2007: 26-27[285]).

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[285] As a matter of fact, the parties' presentation of their problem frequently turns out to be a fundamental deviation from the dialectical profile of a confrontation stage. Very often, in fact, there is no real *confrontation* of the parties' standpoints which tend to be referred to different issues, whose relations are not investigated by the parties themselves. The mediator's intervention is thus necessary from the very initial phase of the parties' discussion in order to set up a sound confrontation stage.

In some cases, the parties' accusations and reciprocal reproaches are really far away from constituting a proper confrontation stage. In such cases, the mediator starts by insisting on the narrative of their conflict (their reciprocal roles, the chronological development of their conflict), thus helping them to find C2 and to specify their positions on this issue. A prototypical example representing this kind of situation is the business and interpersonal conflict involving two friends and co-owners of a business (David and Robert) emerging in Case 2. In particular, David's complaints about Robert tend to address his person and his role within the business; in this case, the conflict has clearly escalated to a situation of interpersonal hostility (C1). Robert, in turn, insists on denying the very existence of any conflict[286]. All in all, the constituency of C2 is, in this case, completely unclear. The mediator fights on two fronts: he has to repeatedly ask David to identify a clear issue that makes him resentful – see in particular turns 22 and 66 – and, at the same time, he has to overcome Robert's attempts at arguing that, since his work is necessary, the problem raised by David is meaningless[287]:

22	M	The (.) the bottom line is okay (.) you feel tha::t the labor costs are too high and (.) could be brought down in some way (.) you feel that (.) the: selling costs are too high and could be brought down/
23	D	Well not even (.) I don't even feel that the selling costs (.) are that high everything is in line (.) I just want=
24	R	=Well (.) you're here to complain about my expense account↓

[…]

66	M	So what is it (.) David (.) that (.) golfing makes you resentful↑
67	D	Well (.) basically that he's out there in the open (.) in the sun (.) having fun (.) and I'm in front of the oven and can't (2) well hell (.) you know (.) I guess if being in front of the oven is what I did for leisure (.) maybe I'd enjoy it
68	M	Mmh

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[286] The strategy of denying the conflict, often called *avoidance*, has been identified as one of the possible attitudes that parties entrenched in a conflict of the type C1 can assume more or less consciously (see Glasl 2004).

[287] Part of Robert's argumentation is developed in these passages. See however turn 24, where he tries to present David as advancing useless complaints; see also turns 72, 74, 76 and 78, where he quite clearly supports the standpoint that he cannot do otherwise but continuing in his way of handling the relationships with the customers, since this way has proven successful. This kind of argumentation shows to have a certain weight – as David seems to acknowledge at 75; nonetheless, the fact that Robert uses it to exclude any possible problem that David may have, and refuses to engage in the construction of a confrontation stage, makes it a fallacious move in this stage of the discussion. In fact, Robert exploits this reasoning to hinder David to open an argumentative discussion, thus violating the *freedom rule* of a critical discussion, which states that every arguer has the right to advance a standpoint (or to cast doubt on a standpoint). By means of Robert's remarks, in fact, David's issue becomes an illegitimate topic for a discussion. Notice that the mediator does not follow Robert's line of reasoning for the moment, perhaps as he understands that this would block the discussion.

69	D	But I really feel that (.) yes (.) either I've got in have a whole lot more time off (.) and be up (.) in the mountains with my family doing whatever I want to do (.) just to even up the situation and have that time to spend with my family
70	M	Would would would you be more comfortable if Robert didn't (.) play golf↑
71	D	[Well (.) depending what he was doing↓
72	R	[I'm maintaining our [customers
73	D	[Well depending what he's doing with his time (.) I guess/
74	R	We've got to maintain our customer relationships↓=
75	D	=No fair enough (.) you know Robert is good at (.) is good at (.) good at what he does↓=
76	R	=Well (.) we have increased sales every year
77	D	Yes=
78	R	=I mean (.) it hasn't been as if we've gone backwards/
79	D	That's true but (1.5) I just feel that for the compensation and for the fifty-fifty split (.) I do more than fifty percent (.) and I want to change that (.) either I want to change that [or I'm going to have to get out of the situation
80	R	[( )
81	M	So your feeling is that you're doing more than (.) your half/
82	D	Oh (.) I know it↓
83	M	Okay (.) Robert (.) what's your perception↑

At the beginning, as David's answer is quite evasive, the mediator's question at 70 seems to be purposefully provoking, because it is clear that the problem cannot be actually centred on the fact that Robert plays golf. At 75, David accomplishes the retraction of the standpoint that the mediator has provokingly suggested to him, and he confirms that at 77. This exchange helps David specifying his concern that however exists – as it emerges at 79, "that's true, *but* I just feel that for the compensation and for the fifty-fifty split I do more than fifty percent and I want to change that". Finally, David's standpoint is reformulated by the mediator at 81. David proves to accept it (by reformulating it, in turn) at 82.

Analogously, a circuitous route to the construction of a confrontation stage on C2 is to be found in case 5 (*Banker versus caterer*), in which the description of the conflict development precedes the clear formulation of the parties' standpoints on C2. Also in that case, the mediator gives the parties' some time to express their discomfort and resentment by narrating how the conflict arose. First, he repeatedly asks what the problem is, i.e. he pushes parties to identify a clear issue C2 bound to the conflictual events they have experienced. Only in a second phase, once C2 has been identified, he asks the parties to formulate precise standpoints on this issue. It must be noticed that, in this case, C2 emerges as a very specific problem, which can easily be transposed at the level of options for conflict resolution. The point mainly concerns how much of Polly's expenses is to be paid by each of the parties. In this case, helping parties to precisely formulate their standpoints already helps the resolution of the problem: Tim, for instance, admits he does not want to pay *everything* but he is prepared to pay *something*. Polly, in turn, confesses she does not expect the whole amount of money but only *some* money.

Even in those cases in which the parties' standpoints emerge in an apparently clearer fashion, it should be noticed that their reciprocal positions normally do not originate a sound argumentative discussion. This happens, for example, in Case 6 (*Father and daughter in business*) in which, already at turn 10, just after the mediator has asked about the parties' problem, the daughter and director of the business (Therese) shortly presents the nature of the dispute with her father, also clarifying her position on the issue at turn 12:

10	T	[Eh:: (.) Dad has a real estate agency eh:: eh:: (.) I WORK (.) there (.) I'm I'm one of the directors and ah:: I was on vacation and (.) eh:: while I was on vacation with a good friend (.) my father fired (.) one of our (.) the BEST people we have and:: (.) well th- the guy's name is James he called me while I was (.) skiing in Austria (.) and I came home and (.) my father just doesn't want to talk about it ( )
11	M	Mmh=
12	T	=And he just says well you've to accept it and that's it that's why not and:: wh- I know I don't agree with that

Immediately after this, the mediator asks her father to complete this presentation of the problem; to this question, the father (Paul) replies by describing his view on how the problem developed, i.e. with a move that is more pertaining to the opening stage. Quite soon, however, he goes back to the presentation of the respective standpoints in a fashion that, not surprisingly given the conflictual background, is very much centered on himself even when describing Therese's point of view[288]:

20	P	And Therese is very angry about that because she says she thinks he is (.) her employee which is not the case
21	M	Mmh
22	P	Because I'm the boss
23	M	Mmh
24	P	And Therese is director (.) and I've (.) of course (.) there are some plans for the future (.) but she has to learn a lot
25	M	Yes=
26	P	=I'm responsible I'm taking the decisions (.) and now I think she's angry that I didn't (.) [contact her
27	M	[Mmh

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[288] When two persons have difficulties in talking to each other, they also have problems in *listening* to each other. Listening, indeed, is by nature an essential component of dialogue. As Cantoni et al. (2008: 214) remark, the Latin language indicated the action of being silent by means of two verbs: *sileo* and *taceo*. The former was referred to the silence of entities that could in any case not intervene – in this sense, a wood could "silere" – while the latter was a communicative concept, referred to the intentional silence of a human being who is listening and, thus, intentionally leaving room to the interlocutor. The importance of listening in communication is acknowledged by conflict resolution professionals, who include in mediation training courses *active listening* (see for instance Philips 1999), which can be realized by numerous techniques, such as *looping* (repetition and summary of the parties' statements).

28	P	[and ask her opinion about that
29	M	Mmh
30	P	I didn't think it was necessary she had to go on holidays

In fact at turn 20, although correctly recalling Therese's standpoint, Paul provides an argument that rests on his personal interpretation: "because she thinks he is (.) her employee", while Therese has never (and will never) claim unique responsibility on the firing of employees. Paul's move in this case, thus, could be considered a *strawman fallacy* (see van Eemeren and Grootendorst 1992). Paul, then, slightly corrects himself at turns 26 and 28: "And now I think she's angry that I didn't (.) contact her […] and ask her opinion about that". Paul's reaction to his daughter's remarks creates a mixed dispute. His standpoint can be inferred from what he says at turn 26: "I'm responsible I'm making the decision", so Therese does not have the right of being angry because, indeed, the decision did not concern her directly. At this moment, Paul seems to have raised a multiple dispute in a qualitative sense: while the issue is, for Therese, whether or not her father had the right to fire the employee in question, for Paul the problem is whether or not Therese has the right to comment on this kind of decisions[289]. Of course, did Paul succeed in demonstrating that Therese has no right to comment on his decision, her standpoint would be automatically defeated.

In sum, despite the apparently definite setting up of an argumentative discussion proposed at 10-12, the parties' confrontation stage appears not to be clear; Therese does not accept Paul's characterization of her point of view, nor does she provides an alternative formulation.

Now, it is interesting to observe the moves by which the mediator brings the parties to a proper confrontation stage. In a first moment, the mediator decides to summarize the difference of opinion in a quite generic way, by referring to a disagreement on what happened:

41	M	You both disagree
42	T	°Ya°
43	P	Well Therese is very upset about that
44	M	Is it fair to say that both disagree about what- what happened /
45	P	Yes

Then he quickly turns back to further investigate the very nature of the difference of opinion itself. He seems not to be persuaded that the episode first announced by the parties, i.e. the firing of an employee (James), can really be understood as the issue originating their conflict. The following of the case shows that the mediator's intuition is

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[289] The fact that Paul somehow modifies his position at 29, saying that he did not ask Therese's opinion because she was absent and, thus, implicitly recognizing that the decision could also concern her directly, even magnifies the confused presentation of the problem.

right, since more general issues concerning the relationship between father and daughter emerge as problematic, while the firing of James appears to have worked as a *casus belli*. In this case, thus, although a first form of confrontation stage is sketched quite at the beginning (turn 44), the real constellation of problematic issues will emerge only later and through the mediator's guidance.

An apparent counterexample can be found in Case 4, which presents one of the clearest instances of confrontation stage: it is one of the parties who, asked by the mediator about the problem, reconstructs the respective standpoints synthetically and precisely. Such a reconstruction will never be questioned in the following of the case:

7   V   =Sure (.) well (3) as you know I gave birth five days ago (.) and: I would like to have some (.) visiting rights with my (.) child they're waiting to adopt the (.) child and (.) they don't want me to have any visiting rights (.)=

8   M   =Mmh

9   V   °that's (.) why we're here°

Even in this case, however, such a description fails to really identify the origin of the problem, which arouse from a misunderstanding of the terms *adoption* and *visiting (rights)* due to the fuzzy semantics of natural language (see par. 6.2.3.3). At this point of the discussion, however, neither Vivian nor the adopting parents seem to be aware of the fact that their diverging positions derive from a previous misunderstanding of the implications of their decision respectively to give the child in adoption and to adopt him.

6.2.1.2   From C2 to options

Let us now consider another salient moment emerged from the analysis of Case 1, by comparing how the mediator moves to the options concerning the future of the parties' relationship in the other cases of the corpus. The relevant passages concerning the movement from the origin of the parties' conflict, namely C2, to the options for its resolution are reported in what follows:

Case 2: Business conflict.

81   M   So your feeling is that you're doing more than (.) your half/

82   D   Oh (.) I know it↓

83   M   Okay (.) Robert (.) what's your perception↑

84   R   I don't see it as that↓(.) I mean (.) I'm putting in as many hours as he's putting in and I'm there early in the morning and (.) and I'm doing the sales work I'm making sure that the (.) deliveries are ready for the drivers when they come in in the morning to take the product out (.) eh you know I go on from there I make sure everything is done before I go and meet with the customer (.) it's not always on the golf course obviously

you've got to have meetings with them in their offices and so on
85 M Mmh=
86 R =But certainly the other side of it is something that has to be done (.) I mean you've got
         to keep that up/
87 M So (.) how do we understand that in terms of what we're talking about↑ (.) your your
         sense is you'd like to increase the mechanization↑

In this case, the shift to options is very subtle; it concerns the abandonment of the previous, actually quite long and difficult, discussion on the origin of David's and Robert's conflict, in favor of a focus put on the ways to solve the problem. The shift emerges at turn 87; the use of the linguistic expression "you'd like to" signals the orientation to the future, thus being in contrast with the previous questions asked by the mediator (see for instance 81: "So your feeling is that you're doing more than (.) your half").

Case 3: Conflict at school.

46 M Mmh (.) so here's another thing (.) we are getting some clarity and I have a SENSE that
         what we're going to do this afternoon (.) is get more and MORE CLARITY (.) ah:: so that
         (.) you can each do what's (.) best for (.) Kevin 'cause I think it's clear (.) that you both want
         what' s the best for him (.) in the context of what's: needed for all of the other kids in the
         class as: [as well

In case 3, after a high-pitched discussion between the parties (a school teacher and a pupil's mother), the mediator can only hypothesize a very vague issue-option, which he expresses by the notion of *clarity*: "what we are going to do this afternoon is get more and MORE CLARITY" (here, the issue-option is also emphasized in the pronunciation). The shift from the conflict to its resolution is explicitly motivated as being oriented to the parties' shared *goal*: doing what is best for Kevin, the boy in question, in the context of his involvement in a class. From the preceding discussion the conflict appears to have really degenerated into an interpersonal struggle of the type "mors tua vita mea". Probably for this reason the mediator finds it opportune to remind parties of what their goal *should be*, in conformity with their interest in Kevin's well-being.

Case 4: Adoption

75 M Okay (.) okay (.) so one of the issues that (.) may arise is not (.) IF you tell him (.)
         you're his birth Mom but for most couples (.) it is not only an if it's WHEN (.) so we
         have a number of things to (.) agree to here before you walk out today (.) so one is you
         want to make sure that Rudolph doesn't forget (.) that (.) you're (.) his Mom (.) you want
         to ensure that (.) Rudolph (.) always feels as though (.) you never abandoned him (.) and
         you want to ensure that you have a: (.) GOOD relationship with Rudolph (.) and we still
         have to discuss the parameters of what this is going to look like (.) just in principle on

those (.) three issues alone (.) without looking at what it's going to look like↑ (.) or HOW often or whatever (.) what are your impressions about what (.) Vivian is saying (.) today (.) about WHAT (.) is going to be good for (.) Rudolph↑

Analogously to Case 3, here the shift to the proper discussion on options, i.e. to phase 2, happens through the mediator's selection of the issues on which they are going to talk, also signaled by the introduction "we have a number of things to agree to here before you walk out today", and by the fact that the mediator makes the parties' goal explicit. Also in this case, the general issue is identified as what is better for the concerned young boy, Rudolph.

Case 5: Banker versus caterer.

187	M	Mmh I'm sure we'd talk about the money (cough) (.) the exact amount in a minute (.) (cough) (5) You must have something in your mind about (.) what you'd be willing to pay (1.5) But I'm thinking more (.) of what was like when the two of you were young (.)
188	T	Mmh
189	M	And you're growing up (1.5) and what would happen if (.) Polly became the banker ↑ (2) a::nd you became (.) the eh:: (.) eh:: (.) person who (.) was very good at (.) eh:: (.) buying (.) exotic fruits and (.) give the items across the world (.) if this problem occurred (.) and (.) you (.) were eh:: (.) the (.) person who (.) helped (.) the catering↑
190	T	Mh
191	M	And (.) she was the banker↑ (1) You know just by:: (1.5) fate (1) The cross passed and you were upset ways [right↑
192	T	[Mmh
193	M	(2) And you did this favor for your good friend (2) what would you want from (.) Polly↑
194	T	What do you mean by (.) You did this favor for your good friend↑

Case 5 is distinguishable for the rhetorical strategy the mediator chooses to move on to the options. Probably levering on the parties' good relationship, the mediator dares to invert roles and asks Tim what he would ask if he were in Polly's position. This role change can be interpreted as the assumption of the other's point of view, namely, in this specific case, Tim's understanding of Polly's *perspective*.

The notion of *perspective*, indeed, can provide interesting insights to the understanding of the dynamic of change in communication. As Graumann and Kallmeyer (2002: 1) remark, the objects of reality are always necessarily viewed by some point of view, bound to the individual's position in space. Such point of view necessarily changes when the individual changes his/her position or viewpoint in space. But, the authors argue, moving is not the only way in which human beings can be faced with different perspectives on the same objects: through *communication*, in fact, human beings "learn what other see from their vantage-points and they learn to take the others' perspectives". This acquisition, however, may not be as easy as it could seem from this statement. In fact, the authors consider, different perspectives can be associated to opposing roles in antagonistic dyads; this kind of situation has been studied mainly by

social psychologists (ibid., p. 2). In this sense, in a situation in which opposing parties do have different perspectives on their problem, assuming (or trying to assume, even as a working hypothesis) *the other's perspective* can become a way to reasonably handle a difference of opinion without letting it degenerate into a proper conflict (see Chapter 4 for the description of this process). This kind of observation seems to be supported by the results of a recent analysis proposed by Schwarz, Perret-Clermont, Trognon and Marro (2008), concerning learning processes intended to foster conceptual change about proportional reasoning. During an experiment that the authors analyze, one of the two young students involved in the learning process, called Itay, after some discussion in which he and his companion, Shay, bring forward different perspectives, admits that his own conclusion "does not prevent him from considering Shay's different conclusion as not being completely at odds with its conclusion" (ibid., p. 69). Following this move, the authors notice, the interaction results "unblocked": Shay feels free to appropriate of Itay's objection and to elaborate on Itay's argument; he even explains to the adult experimenter, who is present during the interaction, why Itay's doubt on his previous standpoint is justified. The authors argue that "Itay seems to open the way for Shay to appropriate his doubt through a concession" (ibid., p. 70) which also gives the opportunity to Shay to save face (ibid., p. 69). This move can be read as Itay's acknowledgement of Shay's *perspective* as legitimate[290].

Now, this example of friendly management of disagreement is taken from a cooperative unconflictual interaction; a similar situation would be unlikely if we substituted Itay and Shay with two disputants at the beginning of a mediation session. In this case, in fact, the disputants are normally entrenched and somehow blocked in their respective positions. Given these reflections, what the mediator does with Tim and Polly in the case analyzed here emerges as particularly relevant in relation to the resolution of their conflict. In fact, it can be observed that the mediator asks Tim to change his perspective in a situation in which, without the mediator's intervention, it would be really difficult for the parties to arrive to this mutual understanding by themselves. By the following of Case 5, it can be noticed that this mediator's move is decisive: in what follows, Tim stops complaining about what happens and starts proposing to negotiate some form of solution to their problem. By this doing, he presupposes that it will be possible to continue his relationship with Polly in some way and that the modalities are "a matter of negotiation" (see turn 225). The inversion of perspective, thus, also in this case, appears to have an influence of the proceeding of the discussion.

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[290] The authors do not use the term *perspective*. But I believe that Itay's move can be interpreted as the legitimation of his interlocutor's point of view, which in turn, as the authors observe, engenders this latter's assumption of Itay's doubts (see ibid., p. 70).

Case 6: Father and daugther in business

In case 6, the passage to options is more diluted in time and complicated by continuous returns to the conflict. The salient moves are all centered on Therese's *whish*es about her father's behavior in the future; the mediator, in fact, tries to move the discussion to consider this issue, which allows taking the parties' future cooperation by granted and elaborate on the possible facets of such cooperation. The subsequent moments in which this passage occurs are reported here:

134   T   Well:: (.) We didn't really have a discussion about that he said (.) do you wanna be the director of one of the:: (.) the offices and I (.) worked with other firms so he knows that I can do that and:: (1) well (.) I'm not just another employee and being ( ) of the family well (.) we didn't have much discussion about that no

135   M   Mmh (.) In a way do you wish there were more discussion / (.) or less discussion /

136   T   I:: (.) I wish that (.) dad would listen to people a bit more

137   M   That dad would (.) listen to (.) people a bit more

138   T   Ya

139   P   Oh well if they say (.) things that make sense (.) that make sense it's all right

[…]

154   M   Mmh (.) when Therese said eh (.) she:: (.) wished (.) that you would listen (.) to people more

155   P   Mmh

156   M   What people (.) were you talking (.) about↑

[…]

174   M   Mmh (.) When you were saying (.) Therese that you wish that your father would listen to people more (.) were you one of those people also↑

175   T   (2) I wasn't talking about myself

176   M   Mmh (1.5) [you were

177   T   [but it would be nice

178   M   What would be nice ↑

179   T   If I could have (.) ad- ad- adult conversations with my father without him (.) saying every three seconds well (.) I'm the boss

180   P   But dear we already have adult conversations about the business (.) and about your life (.) so what's wrong

181   M   So what would these conversations (.) look like Therese did you have to (.) describe to your father (.) what (.) a conversation (.) would look like that would make (.) YOU feel (.) listened to (.) what would it look like (.) could you explain that to dad ↑

182   P   Tell me (.) what's wrong ↑

183   T   (2) Ah:: (2) Well if- you don't really listen do you ↑ I mean (.) [( )

184   P   [I listen

185   M   So:: (.) Therese (.) you have to tell your dad (.) what you would like (.) so:: (.) why don't you tell him what you do want (.) what you (.) would like him to do for you

The mediator's strategy seems to be progressively consolidated because, albeit the frequent interruptions, he insists on asking Therese to describe a possible world that would correspond to her interest.

6.2.1.3   Topical potential: manoeuvring with interests

As already emerged from the analysis of Case 1 (see par. 6.1.2.4 in particular), the category of *interest* seems to be a keystone for understanding the passage from identifying the origin of the conflict (C2) to imagining new possible solutions. Now, some remarks are necessary, in light of the results of the analysis of the whole corpus, in particular in relation to the mediator's strategic manoeuvring with the topical potential in the confrontation stage.

First of all, in all cases, focusing on the *future* of the parties' relationship, and thus presupposing that such relationship will last, meets the parties' deepest interest, i.e. that of saving their relationship or – better – to restore it on a more solid and mature basis. This interest, though normally not made explicit by the parties, is however motivating their choice of an alternative dispute resolution practice like mediation.

Moreover, in all cases, evoking interests is performed by means of a *presupposition accommodation* (Greco 2003; see also par. 6.1.2.3. and 6.1.2.4). Indeed, by asking how the parties' relationship will work in the future, the mediator presupposes that it will work; and this is probably the parties' deepest concern. As seen in the previous paragraph, such a strategy is even clearer in Case 5, where the mediator "forces" one of the parties not only to imagine their relationship in the future, but to imagine it through the other parties' eyes and by assuming her perspective.

In some cases, the retrieval of interest is solicited by the mediator's reminding of a *goal* shared by the parties, like in Case 3 and Case 4. Interestingly enough, in both these cases, what is at issue is not only the parties' rapport, but some other person (and, not coincidentally, a child or a boy whom parties love and feel responsible for), who risks to be damaged by their conflict. A deepest interest is involved here: both parties want to preserve this third person. An interesting example of what has been called *relational happiness* (par. 6.1.2.4) emerges here. The parties' true interests would be compatible as, at some level, they involve some common good, namely the happiness of a child, who would benefit from the fact that parties have a serene relationship in the future. In the case of the conflict at school (Case 3), this should be even clearer to the parties. For the child's mother, in fact, it is better that her son has a good relationship with his teacher; at the same time, it is in the teacher's interest that her pupil lives a serene experience at home. Unfortunately, in this case, the mediation process seems not to be sufficient to unblock the conflict situation; and parties seem to be disposed to renounce to their interests in order to damage each other. At a certain moment, the

mediator specifically acknowledges that their statuses respectively as a mother and as a teacher are under question, because they have really started an interpersonal struggle. Not coincidentally, as seen in the previous paragraph, the mediator finds it opportune to remind the parties of their interest in Kevin's well-being.

6.2.2   Mediators' meta-argumentation

It has already been observed in Case 1 that mediators do explicitly argue on meta-issues. In fact, beyond assuming the task of controlling the parties' topical potential in the confrontation stage, the mediator also argues directly in specific discussions on meta-issues. Here, again, the extremely crucial role of the topical potential has emerged.

6.2.2.1   Uncharted waters

A first example of the mediators' argumentation on a meta-issue is taken from Case 6, in particular from the passage between phase 1 and phase 2, when the mediator is trying to make parties shift to options. At 188, following repeated interruptions by Therese's father while she is trying to explain what she would imagine as a good relationship in the future, the mediator brings Paul to reflect on the fact that, if he does not know what Therese is going to say, he has to wait and listen in order to understand before making any judgment. The relevant excerpt of the dialogue is the following:

188   M   Okay but let (.) let me just make sure I (.) I know that Therese has finished (.) because (.) and I want you to speak just about yourself Therese not about other employees not about other people (.) but I want you to describe your father (1.5) what (.) you (.) need (.) of (.) him
189   T   (3) ah::
190   M   Is it something new for you to (.) listen to this something different / (.) or you've heard this before
191   P   Mmh well no there were no problems and then no now I think (.) you are occurring also those [problems
192   M   [No (.) Is it [something new
193   P   [the the firing of this James (.) [is
194   M   [is her describing to you your daughter describing to dad (2) something that she needs between father and daughter (.) is it something new to you/ (.) to hear this/ or have you heard this (.) before/
195   P   Eh well eh:: we had the normal quarrels between father and daughter and and there's nothing wrong with that and (.) of course I listen to her (.) I love her so I do I listen to [her
196   M   [Yes (.) as a father
197   P   Yes
198   M   As she describes what she needs from you as your daughter (.) would you have heard this

		before (.) or is it something new to you↑
199	P	(2) Well ye- yes so far it's new that eh:: (.) I don't know that anything was wrong to that point
200	M	Yes
201	P	(*to Therese*) is it something wrong↑
202	M	Ya (.) So let me make sure I understand this (.) it's something new for the both of you/ (.) would that be fair enough to say this↑ (.) or would it not↑
203	T	(3) eh:: (.) well (.) this is the first time I told you (.) I think
204	M	Mmh
205	P	Ya=
206	M	=So this is a new experience for the both of you (3) would that be:: / (4)
207	P	But that's becoming ( ) problem
208	M	Hold on I need to know (.) how you've done this before (.) it sounds to me (.) like this is a new (.) experience (.) for both of you (.) am I on the right track↑
209	T	Ya
210	M	Dad↑
211	P	I guess so yes
212	M	Ya (.) and if it is a new experience for the both of you (.) then (.) we're in UNCHARTED waters (.) we don't really know where we go
213	P	I don't understand this because (.) we are talking about the firing (.) of James
214	M	And if we are in uncharted waters (.) then (.) maybe we should (.) try to make sure we understand (.) where we're going
215	P	Mmh
216	M	Yes↑
217	P	Yes↓ I wonder
218	M	So why don't we find out where your daughter is going with this ↑ (.) and just listen to what she has to say
219	P	(1.5) Okay speak up
220	M	Because it is something new
221	P	We are here now (.) it's paid for so (.) speak up

The reasoning of the mediator is based on a metaphor suggesting the image of navigating in uncharted waters, were one cannot know the direction in advance. If one finds him/herself navigating in uncharted waters, he/she has to first understand where he/she is going. Now, such image suggests the idea of a process which escapes Paul's control, and in which he has to stop his customary way of judging and wait until he understands his new situation. Clearly enough, in order to understand where he is being brought, Paul has to listen to what Therese is saying, as the mediator suggests at 218.

This reasoning is founded on a locus from the instrumental cause, already expounded in par. 6.1.2.3. As in that case, the reasoning exploits in particular a maxim based on the relation between means and ends, assuming that, if something is needed, it is reasonable to do what ensure it. In other words, if a certain goal is to be pursued, it is reasonable to pursue its means (*locus from the instrumental cause*, see also par. 6.1.2.3.). Now, the complex inferential structure emerging from the analysis of this argument, presented in the synergic representation in Figure 28 below, encompasses two lines of reasoning stemming from as many endoxa. The former (endoxon A) states that people need to know what is unknown and relevant to them. The mediator asks Paul to confirm

that what Therese is about to say is new (a new experience for him); while its relevance is unquestioned, as we know that Paul loves Therese. The latter endoxon (endoxon B) is an equally general principle stating that, if someone asks to be listened to, he/she is willing to say something. Therese, indeed, *is* willing to say something but she could not say it due to the repeated interruptions by Paul. As she wants to talk, listening to her becomes, for Paul, the means for knowing what she wants to say. The two endoxical reasonings, taken together, give rise to the minor premise: "Paul needs to know what Therese feels, and it is possible to him to know it by listening to her". This premise, in turn, associated to the maxim, brings to conclude that, for Paul, listening to Therese is reasonable.
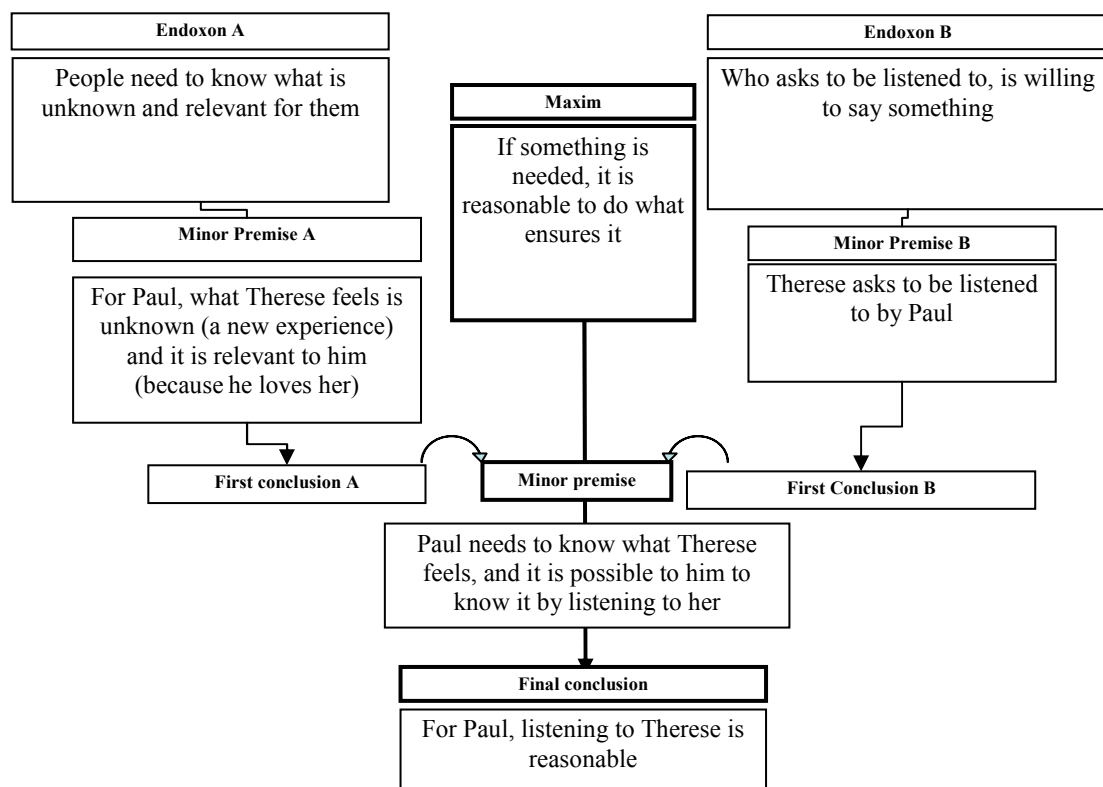
Figure 28: Synergic representation of the "uncharted waters" argument

Some considerations can be made on this reasoning. First, it has to be noticed that, from turn 188 to 211, the mediator verifies the hold of the premises of his reasoning – in particular, of the Minor Premise A, i.e. the *datum* (see Figure 28 above) together with the parties. By this procedure, he is preparing the way for its argumentation to be accepted by the parties. From the rhetorical point of view, this way of constructing

arguments is very didactical – maieutic, one could say – insofar as it brings parties to recognize the premises from which, in a second moment, a conclusion will be inescapably drawn.

Furthermore, the mediator makes use of a very effective metaphor, through which he not only forces Paul to recognize that he needs to stop and listen to his daughter, but he also gives a suggestive image of his work as a mediator. In fact, by using the pronoun "we" at turns 212 and ff., he presents himself as *navigating together with the parties*[291]. It is literally true that the mediator does not know what Therese is going to say; in this way, however, he also conveys the idea that he is participating with the parties (father and daughter) in the process of exploration of their conflict, thus empathically assuming the burden of their difficulties and the hope to find a solution.

6.2.2.2 The golden goose

Another very significant example of the mediator's argumentation, founded, also in this case, on an effective metaphor drawn from a popular fairy tale, can be found in Case 2. At the end of the session, the mediator is summarizing the status of the discussion (namely, the consolidated *commitment stores* of the parties, to use Hamblin's terms[292]) and preparing parties for their future work. At this point, the parties have

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[291] Indeed, the quality of the parties' relationships that are built up in mediation also depend on the mediator's attitude and involvement in the process. Many studies, in particular, focus on the personal qualities and skills that a mediator must show to have in order to effectively intervene in a conflict. Part of the mediators' characteristics are defined by their very role within the practice: mediators must be able to help parties discuss on their problem without directing them towards a specific solution (thus the mention of mediators as *facilitators* or, chemically speaking, as *catalysts* of the resolution process). However, mediators are responsible for the process (Haynes and Haynes 1989: 3), i.e. they must guarantee that the parties are truly involved in a mediation intervention, by avoiding the parties' shifting to other kinds of practices and dialogues. In order to fulfil their task, they must be *neutral* and *reliable*. Some insights to the issue of mediators' reliability, interestingly, derive from the literature drawing on intercultural conflicts, where the problem of mutual trust is felt as particularly urgent (see Greco 2005b). For example, moving from their experiences in mediating intercultural conflicts (in particular in Australia and Malaysia), Honeyman, Goh and Kelly (2004) identify two essential qualities that any mediator must possess in order to be trusted by the parties: *connectedness* and *authority*. In their own definition, "By *connectedness*, we mean a sense on the parties' part that the mediator is, in some way, 'one of us'. By *authority*, we mean a sense on the parties' part that, even while being 'one of us', the mediator is a person of more than average seriousness of purpose, experience, and gravitas" (ibid., p. 501). These two factors concern not only extreme ethnic conflict, but are indeed necessary for mutual understanding and trust between the mediator and the parties. Interestingly, these characteristics emerge as relevant not only in highly intercultural settings, but also in any other fields.

[292] Hamblin introduced the expression *commitment store* in order to indicate the speaker's "repository" of previous statements that imply as many commitments on his/her side: "A speaker who is obliged to maintain consistency needs to keep a store of statements representing his previous commitments, and require of each new statement he makes that it may be added without inconsistency

already learned to trust the mediator for the work he has been performing during the session; it could be hypothesized that, for this reason, he dares to directly present a meta-standpoint which is crucial as it is directly connected with the very goal of the mediation practice. At turn 406 he declares "There's got to be a solution", which can be more explicitly reconstructed as "it is possible to find a solution to your conflict through mediation[293]". Mediation, in fact, would guarantee a solution compatible with a common future as business partners and friends, while an adjudicative solution would certainly risk deteriorating their relationship. In this sense, such standpoint clearly recalls the aim and value of mediation. Even more interestingly, the argumentation supporting this standpoint is based on a metaphor which points at the value constituted by the very successful business which the parties own and in which they work together:

401	M	[…] eh: and all the time I think (.) keeping in mind (.) that (.) one of the things you really want to do is (.) you've got a golden goose here right↑ (.) and it would be crazy to kill the golden goose↓
402	R	That's what I've tried to tell him
403	M	It's laying the golden eggs you've got a [golden goose
404	D	[I'm the GOOSE↓=
405	R	=Ah: (.) [you're not
406	M	[You've got a good bottom line (.) you'd be CRAZY to kill it↓ (.) there's got to be a solution↓ (.) there's got to be a solution↓ (.) […]

The mediator not only highlights the value of their business through the image of the golden goose, but he also explicitly says that it would be a pity (literally: it would be *crazy*) to lose such a value due to the parties' conflict (see turns 401 and 406). Such a reasoning is clearly resting on a *locus from termination and setting up*, whose inferential dynamics have been already discussed in par. 6.1.2.3. The following representation (Figure 29) shows that, in this case, the mediator evokes an endoxon which reminds the parties of the importance of profit in a business context. More, as pointed out explicitly by means of the metaphor, their business is not just reaching its goal but it is even *exceeding* the expectations; this confirms and increases the persuasive force of the whole argumentation.

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to this store. The store represents a kind of *persona* of beliefs: it need not correspond with his real beliefs, but it will operate, in general, approximately as if it did. We shall find that we need to make frequent reference to the existence, or possibility, of stores of this kind. We shall call them commitment-stores: they keep a running tally of a person's commitments" (Hamblin 1970: 257).

[293] Mediation, in fact, would guarantee a solution compatible with a common future as business partners and friends, while an adjudicative solution would tend to compromise their relationship.
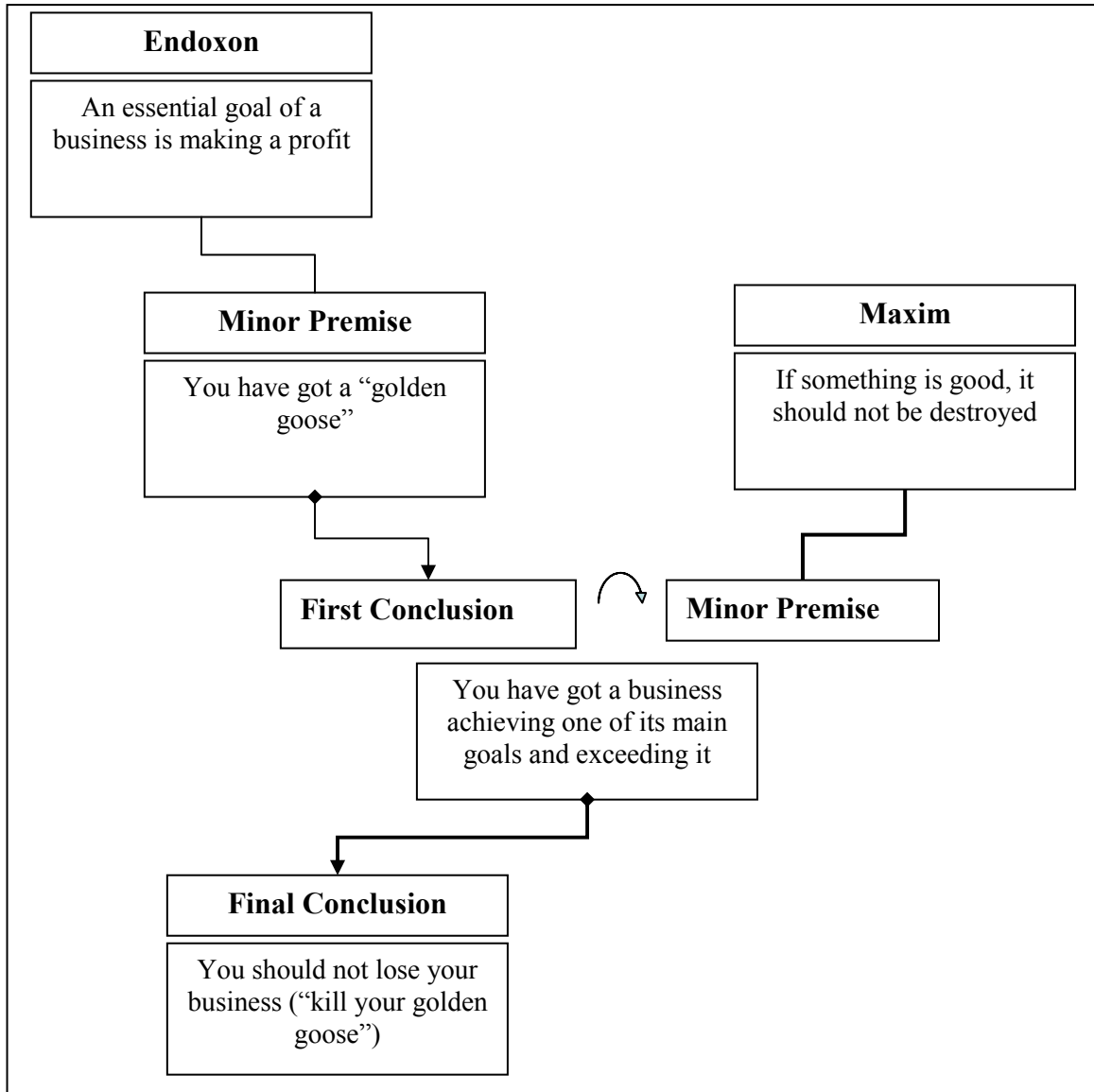
Figure 29: Synergic representation of the "golden goose" argument

6.2.2.3 A particular function of questions: the mediator as a heuristic advisor

In the cases analyzed up to now, the mediator always assumes a standpoint in the assertive form, either by reformulating the parties' positions, or by means of a personal initiative (as in the "golden goose" example). There is, however, another and more discrete way through which the mediator suggests possible arguments to the parties, i.e.

by means of questions. The role of questions as a specific aspect of the presentational devices of the mediator's strategic manoeuvring has been pointed out in several studies (see in particular van Eemeren et al. 1993 and Jacobs 2002; see also Chapter 3). Here, it can be added that, in some specific cases, the use of questions is connected to the mediator's topical potential in the argumentation stage, insofar as the mediator uses questions in order to suggest to the parties possible lines of arguments to be verified and accepted by them (Greco Morasso 2007). The mediator, in other words, can be said to work as a *heuristic advisor*, providing parties with suggestions of arguments that ultimately support what has already been identified as the most crucial meta-standpoint of the whole mediation practice, namely "It is possible to find a mediated solution to your conflict". These suggestions are based on hypotheses that the mediator makes on the solution of the conflict. As Haynes and Haynes (1989) observe, a good mediator makes hypotheses on the possible solutions of the conflict but has to verify them with the parties, who have to make the decision on their conflict[294]. Asking questions is thus a discreet but effective way to verify the hypotheses[295] and make the parties reflect on possible arguments that bring to the resolution of their conflict.

Several instances of argumentation through questions have been found in the corpus. Here, in a very interesting example taken from Case 5, the mediator appeals to the parties' interpersonal relationship, which is troubled by the conflict, in order to consolidate their commitment towards a positive settlement of the conflict itself:

302   M   [But let me (.) ask a question here (3) you know I don't know what the value of your friendship is (.) between each other (.) but (.) ah:: (.) if (.) things didn't work out (.) today (.) will that friendship be lost↑

The argumentation behind the mediator's intervention, in this case, is quite indirect and complex. It originates from the two questions he explicitly asks, both based on the problem of *friendship*:
(1) "I don't know what the value of your friendship is": the first, indirect question concerns the importance (value) that parties attribute to their friendship;

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[294] See Haynes and Haynes (1989: 28): "Good mediation also requires that we test our hypotheses through questioning and revise, modify or discard them according to the information we receive from clients".

[295] Haynes and Haynes (ibid., p. 26) theorize the use of questions in order to verify the hypotheses: "The mediator begins by collecting basic data. While collecting these data, she develops a hypothesis and then tests that hypothesis. When it appears to be correct, she confirms the hypothesis by asking the couple about it directly. When they indicate that the hypothesis is correct, it guides the mediator's behavior and line of questioning".

(2) "If things didn't work out today, will that friendship be lost?": the second question concerns the relevance of the present conflict for their friendship, i.e. how deeply their friendship would be affected if the conflict were not resolved.

Two main hypotheses of arguments for strengthening the parties' commitment to conflict resolution underlie the mediator's questions, giving rise to an argument chain. Through asking questions, he subjects these hypotheses to the parties' verification, and asks for their acceptance. Both hypotheses are founded on the *locus from termination and setting up* (see par. 6.1.2.3 and 6.2.2.2), although the latter presents a more complex structure, also encompassing a reasoning on the implications of the present states of affairs, as in the case examined in par. 6.1.2.3.

The former part is considered first. In this case, the maxim can be formulated as follows: "If a certain state of affairs is important (very positive), it should not be interrupted". This maxim is activated, in this case, as it is applied to an endoxon about the positive value of friendship:
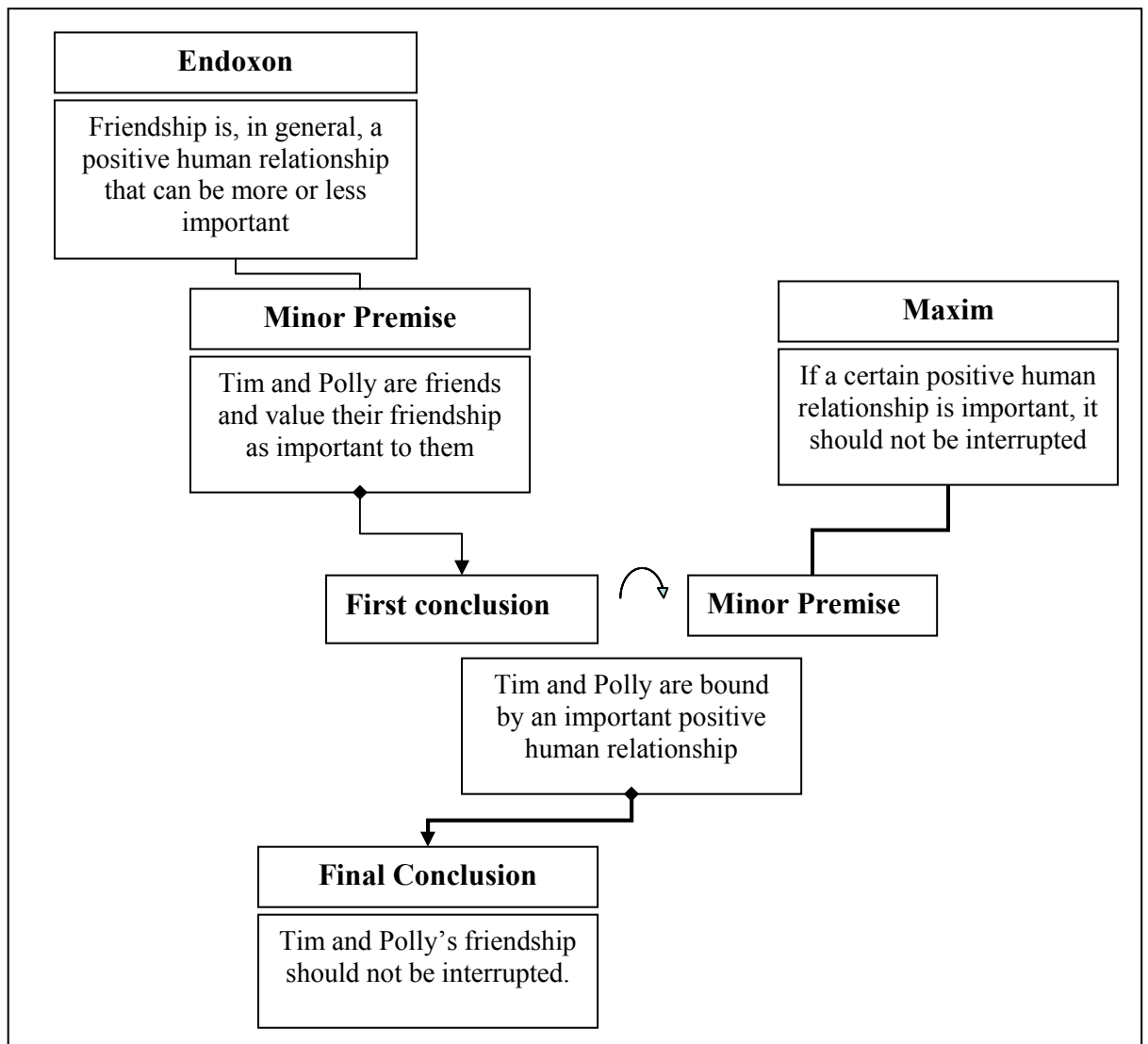
Figure 30: Synergic representation of the first step of the "friendship" argument

Although the mediator had previous evidence that the parties consider themselves friends, the minor premise pertaining to the syllogistic chain which assumes the endoxon as major premise is still the most problematic point, because it sets this issue in the foreground, and requires that parties now expressly confirm the importance of their relationship.

Before considering how parties respond to this suggestion, let us turn now to the analysis of the mediator's intervention in its second part. The hypothesis concerning the relevance of the conflict for the parties' relationship is built on a second maxim of the same locus, which can be expressed as: "If a *possible* state of affairs endangers some

value that should be kept, this state of affairs must be removed". In this case, thus, the concerned state of affairs is not evaluated for its present negative traits, but for the negative implications that it may bring. Here, as in the argument presented by the mediator to Philip, in Case 1, about the problems that would follow if the problem with Ann should become public (see par. 6.1.2.3.), the emotion of *fear* of losing something that one values as important plays a crucial role.

In the present case, the endoxon on which the mediator builds his argument concerns the very nature of conflicts, which are assumed as states of affairs that normally endanger the conflicting parties' friendship, and make them hostile to each other (Chapter 4). This argument shows to have an analogous structure to the first part analysed above. The minor premise associated to the endoxon can be formulated as "Polly and Tim are friends and have a conflict between each other *of such a nature that can endanger a relationship of friendship*"[296]; from this syllogistic chain it follows the first conclusion that "Polly and Tim's friendship is endangered by the conflict"[297]. The first premise is thus exploited as minor premise by the above-mentioned maxim, and generates, through a syllogistic process, the final conclusion: "The conflict should be removed". The following synergic representation shows the inferential structure of the argument:

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[296] The mediator's question ("if (..) things didn't work out (..) today↓ (.) will that friendship be lost↑") exactly aims at ascertaining and establishing "in public" this minor premise, which constitutes the "datum" driven from the parties' experience. In particular, such minor premise is constituted by two pieces of data: first, the acknowledgement of the fact that Polly and Tim are friends, which is assumed from previous declarations made by the parties themselves. Second, the ascertainment of the nature of their conflict, which turns out to be a real interpersonal conflict that, as such, can endanger a relationship of friendship. This second part of the premise should be "filled in" by the parties who are solicited by the mediator's question.

[297] The fact that Polly and Tim's relationship of friendship is important to them is not discussed in this part of the reasoning, as it has been established in the preceding part.
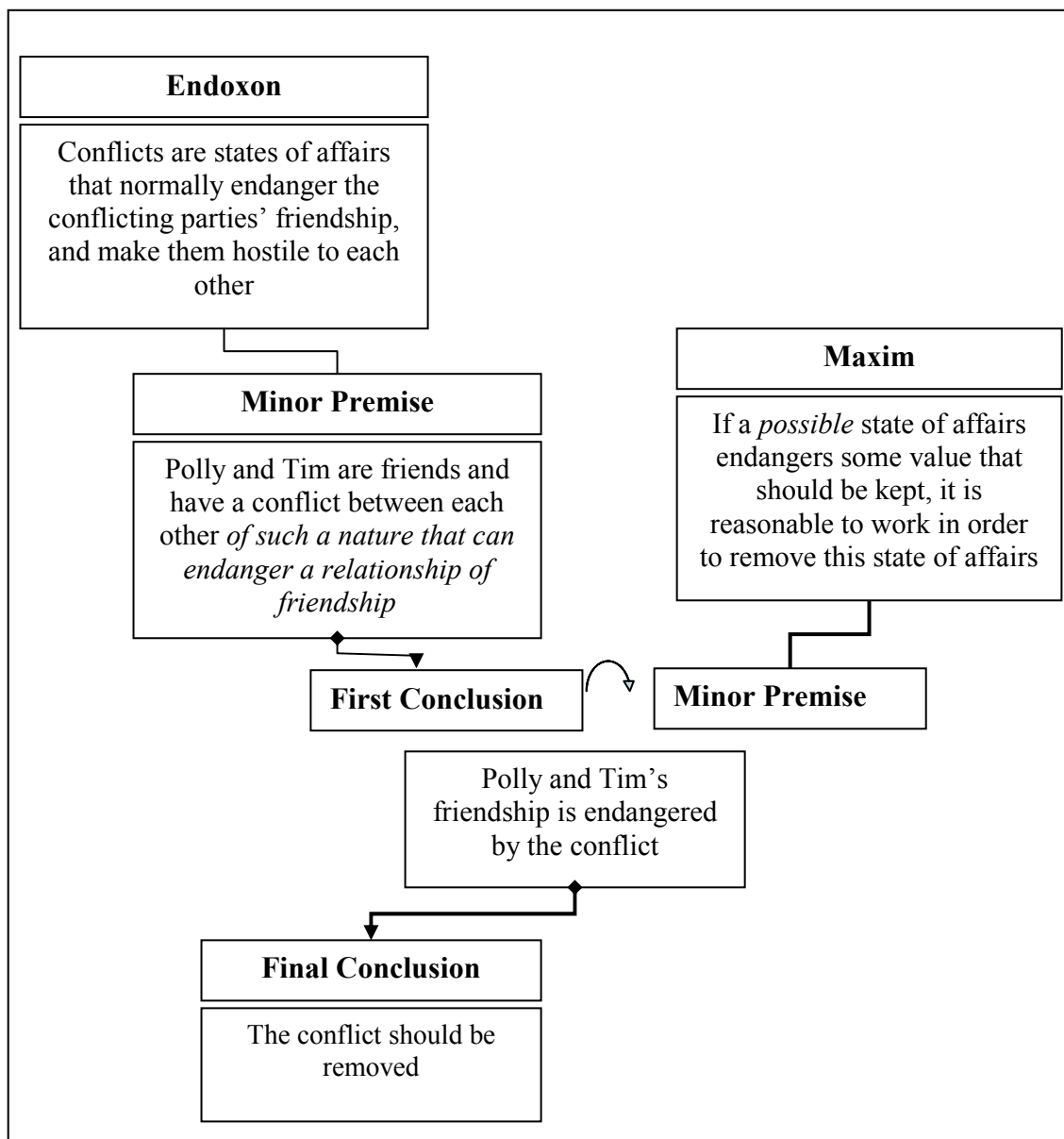
Figure 31: Synergic representation of the second step of the "friendship" argument

In this second example, it is even clearer that the mediator offers the parties, so to speak, the materials for constructing an argument that is developed by the parties themselves. In particular, it is Tim who develops the steps of this argument in answering the mediator's questions:

303   T   (4) Well eh:: (.) there is only one reason why I'm sitting here (.) eh yes I think that if we
                don't solve this eh:: (.) we we probably eh:: (.) at least we won't have business together=

304	P	=No=
305	T	=and (.) probably that we won't won't see one another (.) again eh
306	M	Mmh
307	T	And (.) well (1) that's not a disaster (.) but it's a pity
308	M	Mmh (.) Mmh (.) (*Polly nods*) (2) So I don't kno:w (1) what the value of your friendship would be (.) but (.) there would be a loss
309	T	Yes↓
310	M	Yes↑

It is interesting to see how Tim confirms the mediator's hypotheses step by step. Firstly, he "confesses" that keeping his friendship with Polly is the only reason why he has decided to solve the conflict through mediation ("There is only one reason why I'm sitting here"), and that this relationship is of importance for him, at least to a certain extent ("Well. That's not a disaster, but it's a pity"). Secondly, he confirms that, if the conflict is not resolved, this friendship will be probably lost ("At least we won't have business together, and probably we won't see one another again"). Polly confirms Tim's development of the mediator's suggestion, by saying "No" at 304, and nodding almost all the time while he is speaking. The parties, having confirmed the mediator's hypotheses, which he also restates at turn 308, commit themselves to the final conclusion: "The conflict should be removed", thus implicitly recognizing the reasonableness of the conflict resolution efforts and of the sacrifices for keeping their friendship.

Consider that an analogous argument is present also in Case 2, where, besides the conflict on the management of the workload in the parties' business, also an interpersonal dimension emerges:

47	R	You know (.) my wife his wife our kids his kids we all get along but that's starting to affect things too=
48	M	=Uh: hum
49	R	I mean (.) I'm getting static from my wife and I'm sure you are from Jane too (.) you know what I mean↓=
50	D	=Absolutely↓ (.) I mean (.) she feels very much the way I feel except that she (.) expresses it a lot louder
51	R	Well=
52	D	=She doesn't [she she's
53	R	[I hear that every time I come home=
54	M	=So you've got a double issue here/
55	R	Oh: yeah↓
56	M	You want to keep the good social relationship as well as keep a good business [relationship/
57	D	[Yes↓
58	R	[Well certainly (.) yes (.) we recognize that (.) that's why (.) we've come to see somebody like yourself=
59	D	=We were friends before we were partners↓
60	M	Mmh (.) all right

The mediator reformulates the parties' concerns at turn 56, by pointing at the value of the relationship that their conflict is making impossible to preserve, which not only involves the two of them, but also their families[298]. Such reformulation can be interpreted as an argument in supporting the reasonableness of the efforts for finding a mediated solution. Otherwise, the relationship can be irremediably broken. This argumentation, thus, can be reconstructed as a variant of the previous example, equally resting on the locus from termination and setting up, and evoking the value of friendship as an endoxon.

The mediator's reformulation brings to light a deep interest of both parties, which they immediately confirm at turns 54-56. It is, again, the desire of not damaging their friendship and that of their families. Interestingly enough, in this case, the parties' interest is far from corresponding to the other party's ruin. In fact, being friends, the parties include in their deepest level of interest the satisfaction of both of them and of their families, which also belong to the definition of themselves as individuals. This is a case in which the desire of *relational happiness* (see par. 6.1.2.4.) emerges, being "discovered" thanks to the mediator's intervention.

6.2.2.4 The *locus from termination and setting up* as a distinguishing feature of mediation

The fact that in several cases the locus from termination and setting up has emerged as determinant in the mediator's argumentation is not coincidental. At a closer look, it appears that such reasoning scheme is determinant in a process like that of mediation, because it is strictly bound to the pragmatic statute of mediation. In fact, as seen in Chapter 4, the conflict that parties are experiencing, by its very nature, endangers their relationship – be it interpersonal as a friendship, or more institutionalized, as the collaboration in a business – and makes them fear that something they care for can be compromised or lost forever. In this sense, accepting to go on mediation is explained by the hope to win one's cause in the profound sense of maintaining a positive relationship which often, as pointed out (par. 6.1.2.4. and *passim*), implies some form of relational happiness. It is thus very important that the mediator, when arguing for the possibility of finding a mediated solution, shows the possibility for the parties to keep their relationship and to maintain it in the future.

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[298] The pressure parties feel from their wives, and the fact that they are actively contributing to the conflict from behind the scenes also emerges later (see turns 243-263 in particular). Interestingly David says that decreasing his own workload "would also decrease the pressure I'm getting *from the home front*" (turn 252). The war metaphor *home front* is indicative of the kind of global conflict in which the parties feel entangled.

Therefore, the frequent use of the locus from termination and setting up, whose *habitudo* exactly touches the relations between a present state of affairs and the possible worlds that can originate from its modification, is evoked to sustain the reasoning about the value of the parties' rapport and the opportunity to mediate the conflict in order to preserve it. Normally, the maxim evoked is, in fact, "If something is a value, it should not be interrupted/lost".

As remarked in the analysis of Case 1 (par. 6.1.2.3), the application of the locus from termination and setting up to appropriate endoxa may evoke specific *emotional dynamics*, which should not be overlooked in the context of the resolution of a conflict. In particular, the locus from termination and setting up may move parties from the dysphoric emotions bound to conflict to the euphoric emotions (Cigada 2007) related to its possible positive solution, such as, in particular, *hope*. This passage is bound to the parties' consideration of the value that risks to be lost in their struggle. The reasoning relying on the locus from termination and setting up also invites the parties' involvement in the resolution of the dispute: in fact, saving the endangered value becomes a common enterprise in which parties find themselves cooperating.

The specific values at stake are, of course, bound to the endoxa evoked by the concrete arguments put forward or suggested by the mediator, which put to the fore the importance of the parties' relationship – their "golden-goose" business, or their interpersonal rapport. This is not surprising, as endoxa constitute shared premises pertaining to the parties' common ground, i.e. to what they share and accept.

What is rather surprising is that the very emotional dynamics activated seem to be strictly correlated with the very choice of the locus from termination and setting up. Thus, the abstract logical structure of a locus, which is seemingly inert from the point of view of the hold on the arguers' emotional involvement, turns out to predispose precise emotional dynamics. In the case of the locus from termination and setting up, in particular, parties are solicited to think of the valuable relationship that they risk to lose, to *fear* that they may actually lose it, and to *hope* that they can save it through mediation. Now, the emotional dynamics moving from fear to hope seems to be strictly connected to the logical dimension of the locus, in particular with the formulation of the maxim. If adequate endoxa are provided, i.e. if parties acknowledge that they actually have some relationship to preserve, the emotional dynamics is properly and persuasively activated.

More in general, it could be imagined that specific dynamics from the emotional point of view could be associated to the topical choice in the argumentation stage, not only in relation to the locus from termination and setting up, which is considered here as distinguishing feature of mediation, but also in relation to other *loci*. The hypothesis advanced here, however, would certainly require further investigation on a larger corpus of interactions taken from different activity types.

6.2.2.5 Arguing discretely is still... arguing

Although the mediator cannot assume the role of a protagonist in the critical discussion on the resolution of the conflict, his role is nonetheless extremely important and more leading than it might seem at a first glance. By means of strategic manoeuvring within the topical potential, the mediator takes the helm of the discussion, and the parties have to trust him enough to feel serene while navigating with him. Asking questions and raising particular issues, in fact, really means to assume an active role, as questions always pre-define the "horizon" of the expected answers (Rigotti 1991).

The emergence of the parties' trust in the mediator's guidance is however not easy; parties may feel uncomfortable about being asked questions they are not prepared to, or having to discuss about themes they prefer to avoid. A particularly significant example of this can be found in Case 6, where the mediator's way of leading the case is repeatedly questioned by one of the parties. This indirectly shows that parties clearly perceive the mediator's decisive leading role in selecting issues, controlling their commitment store[299], and so on, as well as the "educational work" he makes for bringing them to argumentation.

Let us see the various episodes in which Paul, the father and boss of the real estate agency considered, stops the mediator and questions his ways of proceeding.

88   P   [Do you- excuse me (.) do you think that it is all relevant↑ (.) of course you are leading but (.) is this a relevant question↑

89   M   Well (.) maybe I'll ask your daughter first and (.) if it's not relevant she will tell me

90   T   I have no idea which direction you're going but if you think it's a relevant question okay well (.) Evelyn ↑ (.) I don't think she would care (.) anyway of the other

By means of this first interruption, Paul contests the mediator asking about the attitude of his younger daughter, not involved in the conflict. From Therese's answer at (89), it clearly emerges that, though more confident in the mediator, she also perceives that the discussion is completely guided by him.

In what follows, several other interventions by Paul signal either surprise for having to deal with certain issues (turn 106) or disappointment (213, 226, 228 and 382):

106   P   Eh ↓ I didn't expect that question (*P and T laugh*) eh:: (.) well we have good relationship (.) I mean I have good relationship and Evelyn and I have good relationship and Therese and Evelyn have good relationship so I've doing (.) it's all right

[…]
213   P   I don't understand this because (.) we are talking about the firing (.) of James
[…]
225   M   So (.) If I might help you let's talk about James in a minute (.) I need to know what YOU want (.) from your father (.) when you talk to your father because (.) he's here trying to

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[299] See Hamblin (1970: 257), qtd. in footnote 292.

		understand what you need (.) yes↑
226	P	Yes but there's not relation here I (.) [°suppose°
227	M	[ABSOLUTELY (.) but I need to know what's in her mind because (.) I don't know (.) and I think you're waiting to hear this
228	P	(2.5) Well if (.) if you think it's necessary let do so but (.) I can't:: (.) get it at the moment

[…]

382	P	(3.5) But (.) where are you getting to↑ (.) because we are here for the problem (.) with James (.) and the way (.) she reacted on that
383	M	Absolutely↓ (*cough*) (.) and I am prepared to talk about that just a second and one more question (2) Therese if things don't get better here/ (.) because I don't know enough about the two of you if things cannot be resolved today/ (4.5) what would (.) what does Therese do (.) next/ (.) you've talked about that:: you've discussed about it with your father/

Finally, when the mediator has helped making C2 emerge, Paul accuses the mediator of having made "a major problem out of nothing" (391-399) and challenges him to argue about his choice.

391	P	[Excuse me but I think you make make a major problem out of nothing
392	M	Mmh (.) [So
393	P	[And you're ( ) (.) away (.) and you're creating (.) actually (.) a problem between (.) Therese and me (.) which is was not there (.) till this time
394	M	Ya
395	P	And now she's angry (.) and she thinks of resigning (.) and she's disappointed
396	M	Mmh=
397	P	=That she did not know my plans (.) for the cases of emergency (.) so what are you doing actually (.) we (.) [we are here to discuss
398	M	[You're worried (.) you're worried about the questions I asked (.) or the answers you got↑
399	P	Aha↓ Well I think your questions (.) brought up an answer (.) and ( ) a totally new problem which was not there till this moment (.) so what is all about here↑=
400	M	=Well I- you might well be right (.) may I ask Therese than↑ (.) just to make sure (.) Therese (.) have you been thinking about leading the company (.) before you came in today↑
401	T	(2) Not really (.)
402	M	Mmh
403	P	[You see↑
404	T	[Ah:: (.) because I never really knew (.) what your ideas were for the company I HOPED (.) that somehow you trusted me more [and:: and::

At 398, the mediator provokingly asks whether Paul is worried for the questions he asked or for the answers Therese gave to those questions. Indirectly, this is a way of asking whether Paul wanted to avoid the truth about the origin of his daughter's resentment towards him. In this sense, of course, Paul's difficulty to accept the mediator's management of the confrontation stage is also explained by the fact that Paul does not want to know the very origin of this conflict. He does not hide the fact that he

would prefer not to solve it by argumentative means but to have Therese obey to him. Even if he has accepted to enter a mediation process, he remains fearful of losing his hierarchically predominant role almost until the end of the session.

6.2.3 The role of *context* in the argumentative discussion

As pointed out by van Eemeren and Houtlosser (2005), the reality of the argumentative practice influences the parties' strategic manoeuvring by imposing specific constraints onto it. On the basis of the model of context presented in Chapter 4, it is possible to identify that a very important influence of the context is present at the level of the dynamics of the topical potential just expounded. In this case, in particular, the constraints posed by the context on the mediator's strategic manoeuvring also turn out to be opportunities for the mediator to accomplish his task. The context shows to influence two aspects in particular, both concerning the topical potential: the selection of issues led by the mediator in the parties' confrontation stage and, secondly, the topical choice in the mediator's construction of arguments, involving thus both the argumentation stage and the opening stage (as concerns the choice of relevant premises).

First, within context, both the interaction scheme (in our case, the practice of mediation) and the interaction field impose constraints on the topical potential in the confrontation stage. It can be argued that each interaction scheme more or less strictly predefines the paradigm of possible issues to be tackled in the communicative interaction, as we have already remarked (par. 6.1.2.3.). In mediation, once established the facts that have originated the conflict, the whole attention is moved to considering the future of the parties' relationship (see par. 1.1.2.3 and 1.2.1.2. in particular).

However, the parties' *conflict* provides in itself more specific but equally important constraints on the selection of the issues (options) to be discussed. Indeed, the options that may possibly bring to the resolution of the process are to be defined in relation to the conflict emerged within the interaction field, insofar as they must be configured as possible solutions to that specific conflict and take into account the interests it endangers (see par. 6.1.2.3.). Otherwise, the options risk to be considered by the parties issues which do not correspond to their real interests and, thus, which cannot be considered proper solutions[300].

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[300] Some of the studies concerning the argumentative nature of mediation, such as Jacobs and Aakhus (2002a), have tackled the problem of quality in the mediator's management of the critical discussion between the parties, also pointing out that, sometimes, mediators seem to push the parties to a type of rationality that is defined like "bargaining", and want them avoid to engage in real critical discussions during the mediation process. Now, it is undoubtful that, in some very extreme cases, bargaining on

274

Yet the weight of context can also be felt in the very constituency of the arguments used by mediators for orientating the disputants towards the resolution of their conflict, as it emerges from the analysis of their inferential structure (see par. 1.2.2.). As Rigotti (2006) has brought to light, there is a clear connection in particular between the endoxon evoked and the constituency of the context in which a given argument is presented. Not coincidentally, in all the cases analysed here, the mediator makes sure he is relying on premises that are accepted by the parties. When arguing about uncharted waters (par. 1.2.2.1), and about the parties' friendship (par. 1.2.2.3), as it has been pointed out above, the mediator explicitly asks parties to confirm their commitment to such premises. In the case of the golden goose (par. 1.2.2.4), such confirmation is not necessary because the financial solidity and the good perspectives of the parties' business has already repeatedly emerged during the discussion.

It is also noteworthy that the different dimensions constituting context may be more or less put to the fore by the topical choice performed by the mediator. The metaphor of the golden goose, for example, insists on the value of the parties' business, i.e. on the need of preserving their institutional relationship. On the opposite, a different focus is present in the arguments that recall the extreme importance of the parties' friendship as leverage for settling their conflict. In these cases (see par. 1.2.2.3), it is more the interpersonal relationship binding the parties that is called in question.

6.2.3.1 Context and the crucial role of the opening stage

The analysis shows that a well-constructed opening stage brings to light the essential aspects of the context that will then serve to found the resolution of the conflict: in particular, the parties' relationship, how much they care for it, and how much and under which respects the conflict endangers it; moreover, what they still agree upon, what they want to preserve, and so on. Therefore, the opening stage turns out to be essential in mediation[301], as also witnessed by a series of tools developed by mediators

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concessions without analysing the real issues of the conflict is the only reasonable solution (think, for instance, about the negotiations with terrorists holding hostages…), but in normal cases of mediation of interpersonal conflicts this may be identified as a sign of low quality of the mediators' intervention. In fact, if mediators do not help the parties develop a well-founded opening stage, their discussion on the options will necessarily lack its foundation. Clearly, on the side of the mediator, a conflict of interest or, more specifically, an *agency problem* (see par. 4.2.2.3.) may also arise: once the mediator is paid for his work in the process, he may not be interested in whether the parties reach a well-founded agreement. Many mediators, however, speak of a deep level of personal satisfaction bound to having helped parties truly understand each other.

[301] The opening stage, as such, is a concept defined in relation to a single critical discussion. It is as well clear, however, that in a complex situation like the one identified in mediation, once some elements have been put to the fore and have so to speak become part of the parties' common ground,

for reconstructing it. For instance, when a family is involved, a visualization system has been developed, which is known as *family genogram* (Parkinson 1997; Marzotto and Tamanza 2003), whereby a visual representation of the institutional and interpersonal roles within the family is designed together with the parties, and serves as an acknowledgement of the contextual (institutionalised and interpersonal) relationships (see Figure 32). In light of the interpretation of context proposed in Chapter 4, which takes into account the weave of institutional and interpersonal relationships giving rise to it, the family genogram could be read as a possible realization of a "map of context":
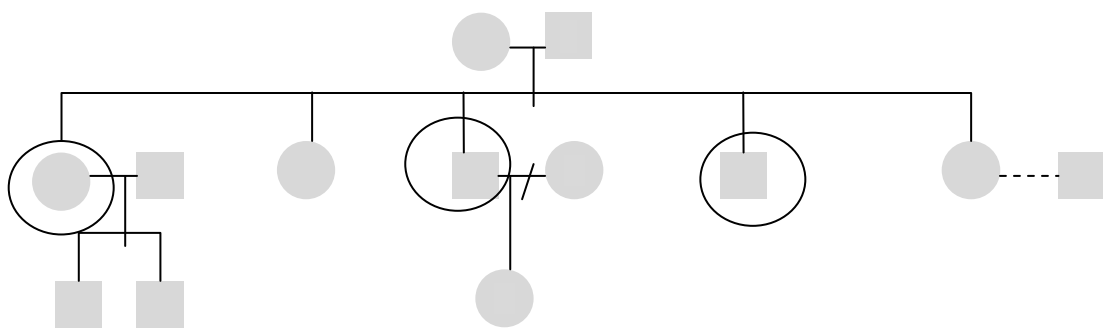

Figure 32: An interpretation of a family genogram in a family owning a business. Here, the usual form of the family tree is complemented with further information representing the institutional and interpersonal relationships between the members. Circles represent women, squares represent men; horizontal lines linking two members indicate that they are married, (dashed lines represent engagement relationships); circled members are actively working in the business.

Often mediators also employ a flipchart or analogous visualization tools in order to represent the progressive reconstruction of the parties' interaction field (Haynes and Haynes 1989: 23).

Many aspects are included within the opening stage in mediation: the description of the *context* (Rigotti and Rocci 2006, see par. 4.1) where the interaction takes place, the nature of the conflict (see par. 4.2.) and the issue around which it has originally developed, including the parties' reasons, and so on[302]. The search for this agreement is normally reconstructed by the interlocutors themselves during any everyday

they may be exploited in different discussions by activating different opening stages. This is, in general, quite a natural situation: the same pieces of common ground may constitute different opening stages in as many discussions.

[302] Not surprisingly, within the initial phase of a canonical mediation process, a long time is devoted to the investigation of these aspects by means of the mediator's questions (Kovach 2005; see Chapter 1).

conversation. In mediation, however, the interlocutors' initial status of conflicting parties tends to hinder a cooperative management of the argumentative discussion.

Such a process of exploration pertains to the opening stage of critical discussion, insofar as it constitutes a sort of commitment store[303] of the parties' assumptions, values, etc. in relation to which their difference of opinion, then degenerated into a conflict, first emerged. Indeed, while for the mediator the information he gets on the context is new[304], for the parties it is, in general, more like "visualising" and re-establishing their mutual commitments.

Mediators construct the opening stage by asking questions about the parties' institutionalised and interpersonal relationship. This allows to define what relationships have been affected by the conflict; sometimes, a clearer definition of the conflict itself also needs to be restated. Let us start from case 5, which is paradigmatic under this respect, since it involves both a relationship of friendship and a business relationship. In such cases, it is very important to reconstruct all the dimensions involved; the mediator, indeed, asks about both of them. First, already at 19, he asks information about the personal story of the parties' friendship:

19   M   [Ya 'kay (.) and (.) (*cough*) you said you've know each other since primary school (.) do you mean you actually have been friends for that long/ (.) or you just met in primary school

Then, the mediator asks about the institutionalized aspect of the parties' relationship, by asking information about how their agency relationship had been formalized. In a first moment, at 88, he asks whether parties do have a contract between each other, assuming the most common way of formalizing this kind of agency relationship. After having heard that no contract was set up in this case, however, at 96, he asks information about the informal way of handling the problem that he (rightly) supposes they have engaged in. At 99-108, the reciprocal trust characterizing the parties' professional relationship is affirmed.

88   M   [Okay (.) There's a lot of information I need to know so I hope you don't mind we're jumping around but- (.) did the two of you (.) ehm:: (3.5) have a contract with each other/ something written on paper:: that (1) set out your expectations of each other and (.) how much to spend or:: (.) what hap- (.) what happened
89   P   °No°

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[303] See Hamblin (1970: 257ff). The definition of this term is indicated in footnote 292.
[304] Indeed, in all the cases analysed within this work the mediator knows almost nothing about the parties before the beginning of the mediation process. This is a quite normal situation in many mediation experiences (some exceptions, like mediation of international conflicts, are mentioned in Chapter 2).

90	T	In fact I gave her (.) black cheque (.) Ehm (.) maybe that was not (.) exactly the ideal of which you SHOULD do business but eh (.) well since we that we have known one another known one another for such a long time (.) I KNOW that (.) she has an excellent job er: shop er:: (.) and I just thought that to be a GREAT party so she had to do (.) that much of what she could do (.) I was not really VERY much interested in the cost
91	M	Mmh (.) Mmh (.) 'Cause it supposed to be a special event
92	T	Exactly
93	M	Once in the lifetime. (.) ya↑
94	T	Ya
95	P	Mmh
96	M	(*cough*) But ↑ (.) when the two of you met (.) and you talked (.) did you give her an idea (*cough*) excuse me (.) an idea (1) of what she was 'posed to do↑ (3) How did she now what to order how did she know (.) how much↑ (2)
97	T	Ehm:: (.) I I I think it (1) my- my secretary was to give you the- the list of the attendants [wasn't she↑
98	P	[Ya she gave me
99	T	And if then Polly knows (.) VERY WELL (.) how much he have to order eh:: per person etcetera so (.) we didn't (.) actually discuss the details of the:: ( )
100	M	Mmh
101	P	And during the period afterwards I sometimes called and he said Okay if it's good for you (.) you know your business
102	T	Ya
103	P	He trusted me and (.)
104	T	Ya
105	P	[I trusted him
106	T	[If it helped (.) or to define quality (.) it would have been exactly as I wanted it to so that is not the point
107	M	Mmh (.) Mmh
108	P	°Exactly°

Analogously, in Case 6, the mediator, having been informed, about the fact that Therese is Paul's daughter asks about their business and interpersonal relationship in different moments during the interaction. In particular, he asks (a) if Paul has other children and, knowing that Therese has a younger sister, Eveline, he asks what the plans for her career are, and how the relationships between the father and the two sisters are; (b) how long Paul's business has been in existence; (c) how Therese became a member of Paul's business; whether she was invited, whether her role has been discussed, and so on; (d) how Paul founded the business (his career) and (e) what are Paul's intentions for the future. Defining the institutionalised and interpersonal context of the parties' relationship, helps establishing the value that the relationship endangered by the conflict has for the parties.

6.2.3.2 *See, I wasn't around when you had your conversations*: how mediators justify their requests for information

The use of questions to suggest to parties possible arguments for resolving their conflict has already been pointed out in par. 1.2.2.3. Clearly, however, there are other functions that the mediators' questions may perform in the process of resolving the conflict. One of these functions, as seen above, is to let the common premises constituting the parties' opening stage emerge.

In this relation, it is remarkable that often mediators' requests for information about the parties' relationship and about their conflict are explicitly justified. When, in fact, it is clear that both parties already know about the facts or events they are asked about, mediators seem to feel that a justification for their inquiring is due[305]. The kind of backing they provide about these requests refers to their own lack of information, due to the fact that they are external to the parties' relationship and conflict. In the following table, various rhetorical choices for formulating such justification moves are reported:

Case N.	Turn N.	Speaker	Formulation of the communicative move: justification of the request for information
Case 2	290	M	=What I want to know is: is if you mechanize (.) in this (.) you see (.) I know nothing about your business I can only ask questions
Case 2	312	M	=Okay↓ (.) help me because I'm just an eater of bagels and I don't know anything about producing them at all (.) ah: I just assumed that everything was mechanized these days but (.) what are your competitors doing↑ (.) what's what's what's what's going on [in the field↑
Case 4	1	M	Good afternoon: (.) you know I (.) I have the sketchiest of information as to (.) who you are (.) and: perhaps you could just take the time for me right now to kind of let me know (.) ah: (.) what your names are and who you are with I don't know if (.) you two are together or you two are together (.) can we start with you↑ (.) you know if you
Case 5	88	M	[Okay (.) There's a lot of information I need to know so I hope you don't mind we're jumping around but- (.) did the two of you (.) ehm:: (3.5) have a contract with each other/ something written on paper:: that (1) set out your expectations of each other and (.) how much to spend or:: (.) what hap- (.) what happened
Case 5	172	M	So (.) the problem is (.) she paid seventy-five thousand (.) and:

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[305] In fact, since deciding on the outcome of the conflict is only the parties' responsibility, it would be sufficient that they knew all the relevant information without the mediator being aware of it. Thus, if it is evident that both parties are already knowledgeable about what the mediator is asking, they could be brought to think that such asking is meaningless – if not invasive. In case 6, indeed, the mediator has to manage the fact that one of the parties (Paul, the father) explicitly questions the relevance of his request for information (see par. 1.2.2.5).

			you don't want to pay anything↑ (1) or:: she paid seventy-five thousand (.) and you're willing to pay something↑ (.) I I don't quite understand (.) see I wasn't around when you had your conversations so: (.)
Case 6	125	M	Ya (.) You know (.) knowing that (.) she came into the business remember that there's MUCH information I don't know (.) but when she came into the business (.) did you have dreams of what she would be doing inside this successful business of yours↑ Did you have pla::ns dreams/
Case 6	227	M	[ABSOLUTELY (.) but I need to know what's in her mind because (.) I don't know (.) and I think you're waiting to hear this

Table 12: Mediators' requests for information justified

The mediators' asking is thus justified as a sincere request for information, which can be considered a question's canonical pragmatic function (Gobber 1999: 72). However, further superior pragmatic functions are implicitly associated to this asking, and somehow hidden behind it. Gobber (1999: 73), resting on Wegener (1991[1885]: 67-68), notices that there is a hierarchy of pragmatic functions in the communicative act of asking information, and that possessing that piece of information only very rarely constitutes the final goal. Indeed, it is often subordinated to other goals: the final goal of a question may be a person's – the one asking the question, or the one being asked – good. Now, the presence of a hierarchy of goals is clearly presupposed by the mediator's activity.

First of all, the mediator's asking highlights precise portions of the parties' common ground, by bringing them to the foreground and thus evidencing a portion of common ground that is relevant to conflict resolution. In particular, the fact that parties are "forced" by the mediator's asking to re-state some of their existing commitments, although they are somehow already known, brings the attention to these commitments. Moreover, those commitments that are re-stated by the parties receive a sort of "refreshing" and are undertaken again by the parties themselves. In this sense, the updating of the commitment store allowed by the mediator's asking is essential for the parties to understand the terms of their existing relationship that is questioned by the conflict. Consider, for instance, that, through mediation lines of questioning, in Case 2, both parties re-state in front of their adversary that their business' bottom line is more than satisfying; or that, in Case 5, parties somehow admit that their friendship is important to them… The mediator's asking thus more or less directly helps constructing a portion of relevant common ground about the importance of the parties' institutionalised or interpersonal relationship that can then be exploited for resolving the conflict, insofar as it clearly emerges that losing such a relationship equals to wasting a value of some sort (see par. 6.2.2.4.).

Secondly, as said, making explicit the terms of the relationship endangered by the conflict also brings to light the meaning of the conflict itself, by specifying its relevant context.

Furthermore, a "side effect" of the mediator's asking about something that parties are convinced to know may be that unknown aspects of the parties' relationship emerge that parties themselves were not aware of. In case 6, for instance, the explicit commitment of Therese's father to the daughter's future in the business is, indeed, an important step towards the parties' orientation for a positive solution, even though, at the beginning, Therese seems far from being positively affected by it:

408	P	Therese I told you when you started working for the firm (.) eh:: (.) I expect you:: to (.) eh (.) get (.) experience (.) in (.) five years time (.) you have experience (.) to (.) manage the whole business and I it was not specific (.) in my plans (.) eh:: that you (.) are (.) definitely becoming (.) the CEO (.) after five years when I'm leaving (.) the company (.) but of course that is my plan and you FELT (.) I MUST (.) assume that you felt (.) eh:: that that was my plan (.) and what you did not know was that (.) OF COURSE in case of emergency (.) I have a plan for this [kind of ( )
409	T	[At least you could have talked to me about it instead of surprising me here with this
410	P	But it was not of your business it was not (.) [it was not relevant
411	T	[it was not of my business↓
412	M	So let me::
413	T	[Right what what what
414	P	[When you ask me what would you do how would you deal with it when you died [( )
415	M	[Let me make sure (.) eh (.) I can keep things on track because we're running out of time
416	P	Mmh
417	M	And unfortunately we did not book enough time for the session (.) I did not know (.) that these problems between the two of you:: were much bigger than I think the two of you (.) know (.) but (.) I need to know (.) ehm (.) Therese is there anything that your father can say or do for you today/ (.) that would make you feel comfortable about growing (.) inside this successful company/
418	T	(4) It would help if you ah:: (.) include me in your plans

In particular, at 408, Paul admits for the first time that he had planned to be substituted by Therese in leading his business in the future. Moreover, he says he imagined Therese had understood that this future was foreseen for her in the business, and that all alternative provisions he has made (like finding an *ad interim* director if he had some problems while Therese was growing up in the business) will be only activated in case of emergency. It is true that Therese seems not to uptake her father's admission (see turn 409 and turn 411); however, when the mediator goes back to leading the discussion (turns 415 and 417), he moves from the issue that has preceded this exchange, i.e. Therese's threats of resigning, to an option-issue bound to the resolution of the conflict, that he formulates as "Therese is there anything that your father can say or do for you today *that would make you feel comfortable about growing inside this successful*

company?". Here, clearly, the mediator's insistence on Paul's "confession" about Therese's professional future – which has really taken a long discussion before being clearly stated – is highlighted by the mediator, who asks Therese the *conditions* that would make her comfortable with such a professional perspective. The alternative of resigning seems not to be relevant any more. An analogous question is then addressed to Paul; eventually, the parties decide to go out and have dinner together in order to discuss the future of "their" business. After the first session of mediation, thus, the parties'communicative interaction is transformed into sort of problem-solving discussion to be continued without the help of the mediator.

6.2.3.3   Clarification dialogue: a subservient tool for the opening stage

Amongst the various components of a sound opening stage in mediation, a particularly important function has been identified in the clarification of misunderstandings based on semantic ambiguities. Such misunderstandings, in fact, could bring to an unclear presentation of the parties' relationships that are at stake in the mediation process.

On the one hand, as van Eemeren and Grootendorst (2004: 60) notice, "there is no point in venturing to resolve a difference of opinion through an argumentative exchange of views if there is no mutual commitment to a common starting point"[306]. On the other hand, major problems may arise if parties think that such a common starting point exists when it actually does not, because they have based their agreement on ambiguous terms or expressions; in other words, if they have been misled by words. In this relation, Aristotle wrote in the first book of his *Topics*[307] how the development of the argumentative discussion might be blocked by ambiguity of words:

> "It is useful to have examined the number of meanings of a term both for clearness'
> sake (for a man is more likely to know what it is he asserts, if it has been made clear to
> him how many meanings it may have), and also with a view to ensuring that our
> reasonings shall be in accordance with the actual facts and not addressed merely to the
> term used. For as long as it is not clear in how many senses a term is used, it is possible
> that the answerer and the questioner are not directing their minds upon the same thing".

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[306] Though it might be said that ultimately human beings always share some material common starting point – at least those traits defined by their common nature – it might be the case that, in some discussions, parties do not recognize any common starting point.
[307] The proposed translation is taken from Pickard-Cambridge 2004. For the original text, see Aristotelis *Topica et Sophistici Elenchi* in Ross (1958 ed.).

The negative effects that ambiguity may have on the management of conflict have also been noticed in the literature on conflict resolution. In their groundbreaking work on conflict resolution *Getting to Yes*, Fisher, Ury and Patton (1991: 5) examine a case of diplomatic breakdown between the U.S. and the Soviet Union at the time of President Kennedy that shows how the ambiguities of a single term can bring to the failure of a conflict resolution initiative. Concerning this episode, the authors observe:

> "A critical question arose: How many on-site inspections per year should the Soviet Union and the United States be permitted to make within the other's territory to investigate suspicious seismic events? The Soviet Union finally agreed to three inspections. The United States insisted on no less than ten. And there the talks broke down – over positions – despite the fact that no one understood whether an 'inspection' would involve one person looking around for one day, or a hundred people prying indiscriminately for a month".

The ambiguity of the word *inspection*, in this case, made the parties' negotiation for managing their conflict – a broad conflict, in this case, if we consider the whole context of the Cold War – useless. In this case, parties did not even find a solution, and the clarification of the term *inspection* might have helped specifying the terms of their reciprocal positions. But it might also be said that, if they had found a solution on a number under those conditions – let us say: six inspections – the agreement would not have been solid, since, as the authors point out, nobody understood what it was meant by this.

Therefore, the clarification of ambiguities that may arise in the parties' discussion is one of the tasks that should be performed in a dialectically sound opening stage. Now, in those cases where a specific activity type foresees the presence of some "leading figure", as is the case of the mediator who accompanies and leads the conflicting parties' discussion, it is then the task of such leading figure to make sure that this kind of ambiguity does not arise[308]. In this sense, various instances of what may be called a *clarification dialogue* (Walton 2007) initiated by the mediator may be found in the process of mediation. In the terms of Congruity theory (see Chapter 5), this kind of communicative move corresponds to a class of connective predicates that regulate the interruption of an ongoing discussion to make the interlocutors discuss about their presuppositions. From the theoretical point of view, dialogues should not be confused with activity types or interaction schemes: the term dialogue is used here in relation to the more "local" notion of *dialogue games* (Mann 2002), which indicate the sets of joint

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[308] Compare the analysis of doctor-patient consultation in Bigi, Cigada, Gobber and Greco Morasso (2007), where the opening stage is led by the doctor, who makes sure that the patient understands the premises necessary for making a decision on his diagnosis and therapy.

goals that define the cooperative dimension of a dialogue, and allows distinguishing the different dialogues, such as deliberation, negotiation, information seeking, and so on. Some of these dialogue games, like information seeking dialogue, or clarification dialogue itself, are not to be seen as argumentative in nature. However, they can be understood as local dialogic connective predicates that serve specific functions in the context of an argumentative exchange; and it is reasonable to interpret their goal as subordinate to the goal of the stage of critical discussion that is concerned.

Clarification dialogue, in particular, opens so to speak a space for meta-reflection that is semantic in nature, because it aims at the clarification of terms or expressions – and at the same time performs the pragmatic function of adjusting the parties' common ground. This is not a directly argumentative function but it clearly shows to have argumentative implications, as it allows defining a clear opening stage[309]. Although more specific connective predicates can be identified from case to case, the notion of *clarification dialogue* seems quite adequate for regrouping them into a single class. In Walton's (2007: 174) terms, a clarification dialogue's aim is "to help one party in a dialogue to understand an obscure or otherwise problematic utterance of the other party". In this sense, clarification dialogues are to be distinguished from explanation, because they concern a sort of "semantic negotiation" at the level of terms or expressions (i.e. at the linguistic level) rather than the expounding of the causal relations between facts or events in the real world.

Clarification dialogue is of particular relevance in mediation, where parties need to find an agreement starting from a situation of conflict where finding common premises for the discussion can be particularly difficult, and misunderstandings can occur with a certain frequency. The analysis of the corpus has brought to light some instances of clarification dialogue initiated by the mediator for the sake of the parties' mutual understanding. In this relation, Case 4 is exemplary[310], because the parties' misunderstanding is directly bound to the core of their conflict (C2). In fact, when the child's natural mother presents the problem to the mediator at 7, she says that the

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[309] See the interesting observation proposed in Berthoud (2004: 3): "Parler des mots est notamment lié à la non-transparence de la signification, et particulièrement dans ces moments du discours où des objets ou des événements ne se laissent pas aisément mettre en mots, où les mots cessent d'aller de soi […]. La difficulté de s'entendre sur les mots, les précautions à prendre pour nommer une réalité résistant à une catégorisation trop stricte, la recherche des mots mieux ajustés, le jeu sur les extensions lexicales, font émerger dans le discours des séquences où sont négociés et thématisés des choix de dire, la responsabilité de la formulation, la justification du choix de telle ou telle formulation". Such an observation about the moments in which words *stop going automatically*, i.e. stop being a goal-directed instrument and become a problem in themselves, highlights that, from the argumentative point of view, the negotiation and clarification of meaning is a move typically pertaining to the opening stage, as it allows precisely defining the premises on which parties agree as point of departure for their discussion.

[310] A revised and simplified version of this communicative exchange has been discussed in Walton (2007) as an example of clarification dialogue.

adopting parents do not want to give her visiting rights; just after this presentation, she affirms – and then repeats afterwards – that her having contact with the baby was part of the agreement signed with the adopting parents and prepared by the legal advisors (turn 15):

6	M	Okay (.) eh can (.) can you give me an idea in a nutshell ah (.) my secretary said that I was gonna have (.) three people coming today (.) can you give me an idea in a nutshell (.) why you are here today eh: (3) Vivian would you like to give me an idea please↑=
7	V	=Sure (.) well (3) as you know I gave birth five days ago (.) and: I would like to have some (.) visiting rights with my (.) child they're waiting to adopt the (.) child and (.) they don't want me to have any visiting rights (.)=
8	M	=Mmh
9	V	°that's (.) why we're here°.
10	M	Okay I understand so we have a: (.) a: (.) is it a boy or a girl↑
11	V	Little boy (.) Rudolph
12	M	Rudolph↓ (.) okay (.) and: five days ago Rudolph was (.) born and (.) we have (.) did you have other arrangements with (.) Mom and Dad (.) previously to this/ I'm not sure
13	V	Well (.) I've signed the papers (.) ehm (.) but I'm still in my (.) my waiting period (.) I still have (.) you know (.) time to (.) decide what I really want to do
14	M	Mmh
15	V	And the arrangements were that (.) I would be able to have some °contact with him°
16	M	Mmh mmh (.) okay (.) so (.) all three of you have worked together before (.) we have Rudolph who is born now (.) we have a situation where (.) e::hm it might be unclear as to what kind of arrangements there were about (.) visitation or something like that is that↑ (.)
17	V	[Yeah
18	M	[Does that put it in a nutshell for you↑
19	V	Yeah Rudolph is at their house now ↓
20	M	Okay °okay° (3) what has she left out↑ what would you like to include↑ can you give me a little bit more framework of what you think the: (.) problem is today that brings you here↑
21	J	(*looking at H*) Well (.) when we (.) when we adopted Rudolph I mean we ADOPTED him we expected that he was going to come into our FAMILY (.) and be our CHILD (.) and (.) you know we've met with Vivian and we talked TALKED before the baby was born and (.) my our OUR understanding was that (.) the BABY now we know the baby is Rudolph was going to come and live with us and be OUR CHILD=
22	H	=For 100 percent (.) that was our understanding↓

The mediator already identifies that the origin of the conflict may include a lack of clarity on the problem of visitation rights at 16. Janice's presentation of the case, at 21, followed by her husband's intervention at 22, confirms that there has been a problem in understanding the terms of the agreement. The problem is progressively emerging, in particular helped by the mediator's questioning; in particular, at 30, Janice, asked by the

mediator[311], points at the ambiguity of the word *contact*, which has been at the origin of the misunderstanding:

27	M	So (.) then you felt (.) happy and satisfied that that was going to be a good home (.) are you saying that's the way it is now or not saying↑
28	V	Yeah↓ but (.) I had agreed that (.) I had talked to them about it about having agreements of (.) me being able to (.) to see him (.) have contact with my child
29	M	With Rudolph↑ mmh I see you nodding your head (.) does that mean (.) yes or (.) or no↑
30	J	Yes (.) (*nodding*) my understanding (.) was that (.) by CONTACT (.) you know Vivian was free to write letters and:
31	M	Mmh
32	J	Send pictures on holidays
33	M	Mmh
34	J	Christmas (.) birthdays (.) that kind of thing (.) and (3) but I had never I don't think we ever (.) CONSIDERED (.) Vivian (.) seeing (.) Rudolph and spending TIME with him (.) I just think it's it's a very very confusing situation for everyone including Rudolph (.) when he gets older
35	M	Harrison check this out (.) Is this the same kind of/
36	H	Yes my understanding was (.) that (.) the contact (.) would be: (.) up until the point where she (.) surrendered the baby to us after signing the papers

Then it is the mediator who offers the parties the opportunity to start a clarification dialogue at 41:

41	M	Mmh (1) okay (.) help me out with something (.) Vivian I need need to understand a little bit more (.) is it your impression that (.) ehm (.) during the negotiation phase with (.) Mom and Dad here (.) that (.) it wasn't clear to you (.) about what (.) visitation meant/ was it not discussed/ and then if I might then I'll ask both of you what your general impressions are
42	V	No↓ I pretty well got the impression I said I wanted to have contact with my (.) my boy and: (.) that's why I signed the papers they had agreed that I would have contact
43	M	Mmh (.) mmh (.) did they say anything about what (.) kind of (.) contact↑
44	V	No (.) no we didn't really talk about it
45	H	That was the problem the AMBIGUITY (.) of the way things were presented to us (.) by our legal counsel and: it's becoming quite a quite a (.) big issue for us right now because we have ad inability to (.) conceive children on our own (.) and: (.) and (.) the adoption process is an almost impossible (.) mass of paperwork and (.) red tape so (.) when the opportunity came to adopt Rudolph (.) we jumped (.) we just jumped at it we very much (.) truly want the baby↓
46	M	That's generally my experience what happens is that (2) couples who want to adopt (.) are excited (.) and (.) moms who (.) are: (.) going to (.) consider (.) eh (.) giving up (.) their child (.) to a family have a lot going on in their MIND at once (.) so (.) it might

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appear that it would be easy for eh something like this to slip by (.) I need to know (.) from you Vivian what is it that you do want↓ because I still don't know yet I know you want (.) access (.) I hear (.) eh Harrison and Jenny saying what (.) they think (.) you want (.) but I personally don't know what you want yet (1) for you and Rudolph/

Here, a constellation of related ambiguities emerge that have given rise to the conflict. Two particular concepts are related and entrenched in the misunderstanding: *contact* (*to have contact with someone*) and *adoption* (*to adopt*). A very concise semantic analysis[312] of these two terms can help understand where the problem lies:

> To have contact with (x1, x2). X1 and x2 are human beings | x1 and x2 have some not too tight but regular form of relationship

Indeed, *contact* is used for covering different (more or less regular) frequencies of encounters: regular contact (once per week) as well as very occasional meetings. For Vivian, in this case, contact meant to see her baby regularly; while for Jenny and Harrison it meant being allowed to send some postcards in special occasions.

Clearly, such interpretations are bound to equally diverging interpretation of Harrison and Jenny's role of adopting parents:

> To adopt (x1, x2, x3). X1 and x2 are a couple of potential parents, x3 is a child who for some reason cannot be grown by his natural family. | x1 and x2 commit themselves to raise x3 *as if* he/she were their natural son/daughter.

Here, again, the problem has not been defined in clear terms. In fact, one might argue, even though adopting parents want to raise their child as if they were natural parents (with the same love, care, and so on), this does not necessarily (logically) exclude that the child can however have some form of contact with the natural parents[313].

Now, while the need for clarification emerges from the parties' statements, the possibility of clarifying them is clearly offered by the mediator's interventions. By analysing them at the level of *connective predicates* (see Chapter 5), in fact, it is clear that he is bringing the parties to clarify their ambiguities:

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[312] See Chapter 4 for a detailed expounding and application of the method of semantic analysis adopted in the present work.

[313] The issue is, of course, very complicate and delicate. Here, I just would like to point out that using a term like "adoption" without defining it can be a dangerous operation.

Turn	Text	Connective predicate
20	M Okay °okay° (3) what has she left out↑ what would you like to include↑ can you give me a little bit more framework of what you think the: (.) problem is today that brings you here↑	C (S, U_{-1}, U, A)[314]: With U[315] the mediator asks J's opinion about V's preceding statement
35	M Harrison check this out (.) Is this the same kind of/	C (S, U_{-1}, U, A): With U the mediator asks H to assume a personal commitment on the other interlocutors' difference of opinion
41	M Mmh (1) okay (.) help me out with something (.) Vivian I need need to understand a little bit more (.) is it your impression that (.) ehm (.) during the negotiation phase with (.) Mom and Dad here (.) that (.) it wasn't clear to you (.) about what (.) visitation meant/ was it not discussed/ and then if I might then I'll ask both of you what your general impressions are	With U the mediator asks V to recognize the misunderstanding in the preceding discussion
46	M That's generally my experience what happens is that (2) couples who want to adopt (.) are excited (.) and (.) moms who (.) are: (.) going to (.) consider (.) eh (.) giving up (.) their child (.) to a family have a lot going on in their MIND at once (.) so (.) it might appear that it would be easy for eh something like this to slip by (.) I need to know (.) from you Vivian what is it that you do want↓ because I still don't know yet I know you want (.) access (.) I hear (.) eh Harrison and Jenny saying what (.) they think (.) you want (.) but I personally don't know what you want yet (1) for you and Rudolph/	C (S, U_{-1}, U, U_{+1}, A): With U H confirms the presence of a misunderstanding in the preceding discussion and interprets it as a normally occurring phenomenon in similar situations

[314] Here, the elements enclosed in brackets are the arguments of the connective predicate in question. S refers to the speaker, A to the addressees. U indicates the utterance, while U_{-1} and U_{+1} refer to the co-text, namely to the preceding and to the following co-textual material respectively. Notice that many of the mediator's interventions are at a meta-communicative level, as he asks parties to take a position on the preceding discussion (thus, the argument U_{-1} is always present). This is required by the clarification dialogue, as the mediator must bring the parties to acknowledge their misunderstanding.

[315] Here, "U" is used for "utterance", while the participants to the interaction are indicated with the initials of their proper names except for the mediator.

The clarification of what was meant in the past by "contact" is clearly part of the opening stage, because it aims at clarifying the premises from which the further discussion on conflict resolution can be developed. Such dialogue provides the opportunity to the parties of acknowledging each other's reasons behind their standpoint, and of understanding that a misunderstanding arose about their interpretation of the visiting rights. Since this clarification takes place, they can avoid accusing each other of having changed their mind after the first agreement, and move to discuss the real issue of what is the best solution for the baby. In this case, the mediator function as support to the parties' critical discussion is quite evident, because he tries to help them avoid unclear formulations, as requested in rule 10 of a critical discussion[316]. This requirement was clearly not fulfilled in the preceding discussion, and now the mediator has to put it forward in the present situation.

Case 4 probably presents the clearest instance of a clarification dialogue fostered and directed by the mediator that can be found in the corpus. However, other evidence comes from the other cases, in which the mediator either resolves a misunderstanding, or starts a clarification dialogue in order to avoid possible misunderstanding deriving from words or expressions used in an unclear fashion.

In Case 1, some instances of clarification are needed in order to set the new boundaries of Ann and Philip's relationship as unambiguously as possible. See the mediator's attempt at distinguishing[317] a friendly institutionalised relationship and a friendly interpersonal relationship at 153 and 155:

150	M	No physical contact (.) number one (.) no lunches↓ (.) no dinners
151	P	No friendship↓
152	A	I never asked for your friendship↓
153	M	No↓ other than academic friendship no friendship
154	A	Cooperation is different
155	M	But let's clearly distinguish between having an ACADEMIC relationship and a social relationship↓

The situation is slightly different in Case 5, in which the mediator accidentally finds out a difference of opinion by using a word to define Polly's work for Tim – the word *favor* – that he does not accept:

193	M	(2) And you did this favor for your good friend (2) what would you want from (.) Polly↑
194	T	What do you mean by (.) You did this favor for your good friend↑

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[316] See Chapter 5, footnote 204.

[317] In this case, a dissociation (see van Rees 2005) is operated on the notion of *friendship*, which for the purposes of the interaction is subdivided between "academic friendship" (that can be interpreted as a friendly working collaboration in the institutionalized roles of professor and student) and "friendship", meaning a more intimate interpersonal relationship.

195	P	[It was a FAVOR
196	M	[You helped there your good friend (.) You are the:: ah (.) ah (.) caterer (2) if you were caterer instead of (.) Polly (.) and she was the banker↑ ()
197	P	You don't think that was A FAVOR (.) from me↑
198	T	(3) I think ah:: (1) I GAVE you the POSSIBILITY (.) to eh:: (.) to do a good job (.) that you you would get eh:: (.) a good payment for it that's not exactly what I call a favor [no
199	M	[Ya (.) so (.) then (.) I may have misused (.) the word↑

In this case, it is Tim that, at turn 194, advances the bid for the clarification dialogue, at the same time implicitly conveying a doubt on the presupposed standpoint "what Polly did for you is a favor". Thus in this case, the clarification dialogue is associated to a subordinate critical discussion that is bound to the interpretation of the events of the conflict. Indeed, the word *favor* semantically indicates some (single and limited in time) action gratuitously performed by a subject x for the good of another subject y. It is implied that x was not expected to perform the action in question, but that this is made out of his good heart.

Therefore, accepting this characterization of Polly's work for him would mean for Tim putting their business relationship in the background, which he does not want to accept, and above all putting himself in the position of someone who is expected to do something in exchange for Polly's favor. Polly's interpretation of her work, however, is probably very well fitting with the mediator's characterization. Therefore, she immediately contrasts Tim's doubt both at 195 and at 197. The mediator, at 199, seems to ignore the implications of Tim's question; he seems more concerned with resolving his "gaffe" than with understanding why Tim has so immediately reacted. Polly, however, has grasped the deeper meaning of this reaction, as he declaredly shows at 195. It must be said that, in this case, the mediator quite surprisingly tries to close this clarification dialogue and its underlying subordinate discussion without concluding it, which seems to put the quality of his intervention in question. Interestingly enough, however, after some discussion, Polly goes back to the point:

268	P	[Ya (2) But (.) I- I want to make one thing clear. It was a favor from me (.) that I::
269	M	Mmh
270	P	NOT (.) that I had the opportunity but (.) I I called (.) to (.) places all over the world I have: (.) worked late to get everything right eh: (.) there were some problems abroad I (.) I managed to control them (.) so there were some favors for you
271	T	[Eh
272	M	[Eh
273	P	It's good to realize that
274	T	Did you realize as well that your (.) name was on the ( ) that (.) all the guests (.) have had this:: (.) oh (.) ( ) party with your name?
275	P	Yes of course=
276	M	=Mmh=
277	T	=It's a::=
278	P	=Of course and that's a shame what's you said it's a shame but it's not (.) basically it's

		not my problem
279	M	So it sounds like (.) the two of you (.) for the two of you (.) this was an embarrassment for both of your (.) businesses.
280	T	°Certainly°=
281	M	=Your name on the card:: (.) your party:: (.)
282	T	Mmh
283	M	Yes↑
284	P	(2) Mmh
285	M	Ya
286	P	Ya you're right

Polly does not want to leave the discussion unsolved without providing her reasons for interpreting what she did as a favor; such reasons are expounded at 270. After Tim's reply, the mediator eventually manages to make the discussion move to the consequences of what happened, which has provoked an embarrassment for both businesses (turn 279). In the passages reported here, the clarification dialogue occurs almost without the help of the mediator, as the parties provide themselves to each other a sort of explanation of their interpretation of the facts. In this case, it could be said that the mediator is only the unwilling "trigger" that activates such confrontation. Here, it is the interaction scheme that in itself provides the parties with some room for presenting each other the reasons of their concerns. On the opposite, the mediator's reaction, especially at the beginning, risks not to fulfill the task of the opening stage, because he seems to escape clarification in this case. The fact that, however, parties do not leave the issue unsolved shows the importance of such a work in the opening stage of mediation.

7 Conclusive remarks and openings

7.1 Answering the research questions

A twofold motivation brought me to focus my research on this topic. First of all, nowadays mediation certainly shows a particular *social relevance* as a conflict resolution practice both for its use as an informal way of managing disagreement and for its professional applications, whose outcomes are recognized as an institutionally valid and legally enforceable alternative to those deriving from court-based justice systems. In particular, amongst other approaches to conflict resolution, mediation distinguishes itself for the possibility it offers to the parties to settle the conflict by themselves; they can thus potentially co-construct a tailor-made solution that mirrors their real interests.

A further motivation coincides with the fact that *argumentative discourse* is at work in mediation under many respects and that the role played by argumentation is tightly bound to the *quality* of the resolution process. In relation to the latter aspect, the practice of mediation constitutes a particularly interesting terrain for argumentation theorists, as it offers the possibility of considering argumentation in a specific context of application and, thus, of analyzing how argumentative interactions concretely develop in the framework of a particular sphere of social interaction. As argumentation is aimed at solving differences of opinion and reaching reasonable consensus, it is of particular interest to understand how it can be soundly applied in the delicate domain of conflict management.

Of course, mediation cannot be properly assumed as simply a type of argumentative discourse (almost as if it were a species of the genus "argumentation"). We may however comprehensively read the mediator's effort as a process aimed at supporting, often very indirectly, the standpoint that the conflict dividing parties can be solved. Indeed, the mediator's contribution is not conceived of as a unitary discourse but more as a series of punctual, locally relevant interventions aimed at supporting the parties' engagement in a sound argumentative discussion. The nature and content of these interventions largely depend on the emergences deriving from the context of the discussion, namely on the parties' contingent reactions and answers to the mediator's questions as well as on their personal communicative initiatives that help or jeopardize the resolution of the conflict. Parties are by definition the protagonists of the mediation interaction and the initiative of settling the conflict should originate from them. Nonetheless, it is possible to teleologically interpret the mediator's contribution as a unitary one if the aim of the mediation process is taken into account in the analytical

reconstruction (van Eemeren and Grootendorst 2004: 95 and ff.). In other words, the mediator's discourse, as fragmentary and situated in the contingent interaction as it is, as a whole is aimed at helping parties engage in a sound argumentative discussion over the resolution of their conflict. The ideal model of a critical discussion (van Eemeren and Grootendorst 1992; 2004) could thus be used as an analytical grid to guide the analysis. By this means, it has been possible to identify a series of particular moves and strategies related to the management of the argumentative discussion in mediation. It has also been possible to reconstruct these moves and strategies as argumentative interventions, of which an analytical overview has been provided, also taking into account the larger context of the mediator's discussion with the parties.

Some of the mediator's interventions that can be reconstructed as more or less overtly argumentative concern, for example, the setting up of a reasonable framework for the parties' confrontation, namely of an *argumentative space* in which they can serenely discuss about their problem by means of a sound and respectful dialogue. These interventions appear delicate, insofar as parties are normally involved in a long story of miscommunication, if not of reciprocal accusations, fruitless venting and conflictual reproaches. The mediator acts in order to move the focus of the parties' discussion from conflict to conflict resolution. The mediator's first important intervention is to help them transform their hostile and competitive verbal exchange into a sound *confrontation stage* (van Eemeren and Grootendorst 1992; 2004) that can be the basis for a reasonable discussion. In order to do this, the mediator also needs to understand the status of the parties' relationship, the value they attach to it, and the problematic aspects expressed by the conflict. All this information is functional to the construction of a set of shared premises, namely to the exploration of the parties' *opening stage* on whose basis it is then possible to build a reasonable discussion.

Even more clearly argumentative are some direct mediator's interventions that explicitly contribute to set up the parties' argumentative discussion (see par. 6.1.2. and 6.2.2.); this happens, first and foremost, when mediators argue for the relevance of a certain issue to be discussed; or evoke shared premises by means of very punctual and reasoned questions; or, again, when they suggest arguments that take such premises for granted and, thus, "test" the parties' agreement on them. By these means, mediators can accomplish the activation of the parties' interests and the values they can found their solution on.

In what follows, the main results of this dissertation are resumed and commented. They concern two major aspects. On the one hand, they mirror the effort of defining the practice of mediation in its essential constituency and dynamics. On the other hand, they are based on an empirical analysis of mediation processes, aiming at verifying the role of argumentation in the fulfilment of successful mediations.

Both kinds of results, first and foremost, answer certain research questions that have opened the present research, such as how the change in the parties' attitude (from disputants to co-arguers) occurs; or how is the parties' discussion structured and how it is helped by the mediator's intervention; or whether and how the parties' and mediator's argumentative engagement is helpful in solving the conflict. Some of the outcomes also exceed what expected, present new challenges and suggest possible lines of research.

In particular, paragraph 7.2. will report the major findings concerning the construction of a comprehensive model of mediation which is centered on its constitutive factors and accounts for the dynamic relations between them. Particular emphasis is given to the results concerning the elicitation of the nature of conflict (par. 7.2.1), as its analysis has emerged as fundamental to establish a sound consent between the parties. Paragraph 7.3. focuses on the results deriving from the argumentative analysis of the corpus of mediation interactions, by highlighting, in particular, the structure and correlations between different argumentative discussions in mediation, the crucial role of the mediator in the setting up of a sound confrontation between the parties' positions, the arguments recurrently emerging, and so on. The following paragraph (7.4.) shows how relevant the consideration of the parties' interests for a successful mediation process is; it also shows how argumentative analysis offers a tool to understand how interests can concretely be considered in the mediator's intervention. The two final paragraphs (7.5. and 7.6.) discuss, more in general, the significance that the present research may have respectively at the scientific and professional levels.

7.2   *Structure and dynamics of mediation*

During the last years, the need for a comprehensive framework of mediation has been increasingly felt as urgent in professional elaborations and in scientific studies (par. 3.1. and 3.2.). These latter have recently been developing into a proper disciplinary perspective, also supported by academic education programs (par. 2.6.2.).

The theoretical studies on mediation focus, in particular, on two aspects. The former concerns the conceptualization of the analogies and differences between the various ADR practices (see the quite recent *Handbook of dispute resolution* proposed by Moffitt and Bordone 2005). The present research contributes to this conceptualisation by offering a comparison between some major proposals, each focusing on some analogies and differences of mediation in relation to other ADR practices, based on the conceptual tool of the *arbor porphyriana* (see par. 3.2.1.1.). The latter concern regards the elicitation of the essential factors constituting mediation. Some very recent attempts clearly signal the need for such a model, as it is manifestly suggested in Herrman, Hollett and Gale (2006). In general, although there is a variety of approaches that

propose interesting insights on one or the other aspect of a mediation *scenario* (the network of essential factors and relations constituting a mediation interaction) and *script* (the expected process of a successfully managed mediation interaction), no comprehensive ontology had been elaborated, able to combine the scenario and the script perspectives and founded on a conceptual analysis based on an interdisciplinary overview of the literature. The framework I have presented in Chapter 4 (par. 4.3) intends to fill this gap. This framework has been constructed on the basis of the different approaches to the analysis of mediation offered in the literature as well as on the basis of specific in-depth analyses of particular notions such as *conflict* and *context* of the mediation discussion.

Indeed, the integration of the scenario and script dimensions constitutes one of the main advances of the framework proposed in this dissertation and makes it particularly suited for the study of the communication and argumentation dynamics that are concretely at work in a mediation process. The integration of the script dimension gives rise to a comprehensive reconstruction of mediation that highlights its pragmatic structure, namely its general goal and the specific subservient goals, tendentially distributed in specific phases of a mediation script. Understanding the script dimension has been also helped, in the present research, by my involvement in a professional mediation training course, which facilitated me in eliciting what is expected by mediators in each phase of a successful conflict resolution process[318].

Once identified the ontological framework of mediation, it is possible to analyze the role of the various argumentative discussions emerged (see Chapter 6) in relation to the fulfilment of the pragmatic structure of this practice and, in particular, to the specific goals of each phase of the mediation process.

Concerning the analysis of the parties' relationships in terms of *context* of the dispute and the analysis of the *conflict* originating the mediation intervention, the framework proposed in Chapter 4 presents two substantial integrations of mediation studies. In fact, although primary importance is attributed to these notions in the literature, their proper meaning remains quite unclear. Concerning context, a model drawn from communicative research (Rigotti and Rocci 2006) has been adopted as particularly suited to understand the role of the context in which the mediation discussion is embedded. In fact, the integration of this model of context allows understanding what is meant by *relationship* between the parties, which aspects of their institutionalised and interpersonal commitments it can concern, and so on. Moreover, this model, originally conceived of as a tool for analyzing the context of communicative interactions, facilitates the assumption of a communicative perspective on mediation.

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[318] I followed the course organized by the Scuola Universitaria Professionale della Svizzera italiana (SUPSI) from March 2007 to January 2008 and obtained the Certificate of advanced studies in mediation and the use of mediation techniques on the workplace.

In order to understand the ontological constituency of conflict that intervenes in the parties' relationships and jeopardizes them, it has been necessary to rely on a semantic analysis of this notion, based on the uses of the term *conflict* itself and of a series of related words and expressions, elicited on the basis of an empirical corpus of language data (see also Greco Morasso 2008).

The main results of the analysis of conflict, given the relevance of this notion for the practice of mediation, will be mentioned separately in the next paragraph.

7.2.1   Conflict resolution and conflict prevention

Being a necessary presupposition of any mediation intervention, conflict turns out to be a crucial notion. Despite its importance, however, there are relatively few studies devoted to the understanding of its proper constituency. Conflict shows to be a polysemic, if not an ambiguous word; and conflict resolution studies suffer from such situation of uncertain semantics.

The semantic analysis proposed in par. 4.2.3., relying on a large evidence basis of the uses of *conflict* and its related terms, has brought to clarify the dynamics of escalation from some form of disagreement (a difference of opinion on an issue or some incompatibility of interests[319]) to situations of interpersonal hostility; these dynamics are represented in a *conflict mapping guide* (proposed in Figure 16 par 4.2.5)[320]. Such analysis of the concept of *conflict* suggested some cues that have successively allowed enriching the analytical instrumentation applied to the empirical data. As showed by the outcomes of Chapter 6, understanding how conflict develops is something that any mediator needs; normally, in fact, when parties ask for an external help to solve their problem, the conflict has already arisen and, very often, the original difference(s) of opinion that have provoked it are not clearly identified by the parties, who seem to be more interested in damaging each other rather than in delimitating their disagreement. In this connection, the outcomes of the argumentative analysis in Chapter 6 have also

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[319] Some proper interpersonal conflicts originate from differences in the parties' perspectives or "ideological" contrapositions; others originate from competitive situations deriving from conflicts of interests. Both cases can be viewed as generating differences of opinion that, if not managed, degenerate into proper interpersonal hostility. What normally happens in a conflict of interests, when it is awarely perceived by the parties, is that they not only know that the realization of their interest is incompatible with the realization of the counterparty's interest; but they also claim that their position (their willingness to achieve their own interest) is *right* and that the counterparty is wrong in opposing it. Not rarely, proper interpersonal struggles arise from this situation (see also par. 4.2.4.).

[320] The task pursued by the conflict mapping guide represented in Chapter 4 is offering an instrument to understand conflict. In this relation, this instrument, apart from its value as a theoretical investigation of the constituency of conflict, can also serve the more practical purpose of being a possible matrix for designing tools for conflict resolution interventions.

showed that the mediator has to walk the inverse path of the escalation of the conflict and arrive to the identification of the original controversial issue, which has been named C2, in order to help parties solve their interpersonal conflict C1.

The dynamics of de-escalation and resolution of the parties' conflict would clearly require to be further investigated, beyond their communicative and argumentative aspects, also in their psycho-social dimensions, concerning in particular the individuals' mutual recognition and respect and the re-construction of their identity in conflictual situations. In this relation, the assumption of the other's perspective (see par 6.2.1.2.) seems to open important views on the process of the parties' mutual understanding. The conflict, as said, originates from some difference of opinion that is not reasonably resolved by the parties. Now, in these cases, as the proper interpersonal conflict emerges, it is often difficult for a party to pay attention to or understand what the real concerns of his/her "adversary" are beyond the advanced positions, his/her view on conflict and the reasons why he/she did not find a more accommodating way to handle the problem. This has also been confirmed empirically in almost all cases of the corpus analyzed in the present research. To quote a significant example, in Case 6 (see par. 6.2.1.), Therese's father, Paul, in explaining the problem that has occurred between him and his daughter, reports the reasons why *he* thinks she is angry, which by no means corresponds to what *she* really feels. In a subsequent moment, she will be helped by the mediator to express her view, while Paul will be reluctant to consider it until the mediator explicitly argues about Paul's need to listen to his daughter (par. 6.2.2.1.).

Now, from what emerged in other studies (Schwarz, Perret-Clermont, Trognon and Marro 2008, par. 6.2.1.2), understanding each other's perspective, even without embracing it, shows to be a powerful instrument to unblock the situation. And, as shown in the same paragraph, in cases of escalated conflicts, this change of perspective can only be helped by the mediator. This issue, however, would surely require further investigation, not only at the level of its implications for mediation and other conflict resolution practices, but also because favouring the individuals' capacity to understand the other party's perspective might turn out in a useful reflection about conflict *prevention* in a number of contexts. This kind of consideration opens, beside the already well-established research on conflict resolution practices, a parallel vein of research about how conflict can be prevented by the creation of adequate spaces of mutual understanding, supported by argumentative discussions.

7.3 *Argumentative strategies in mediation*

The empirically-founded analysis of mediation (Chapter 6) also brought to light significant outcomes. Primarily, it emerges that argumentation strongly contributes to the

fulfilment of the pragmatic goals of the interaction scheme of mediation. In particular, in this relation, the structuring of a macro-text of argumentative discussions shows to be a characterizing feature of mediation; in other words, the concatenation of argumentative discussions that has been elicited as typical of mediation responds to the goals of the various phases of the resolution process and allows their achievement (see Figure 26 in par. 6.1.3.). Thus, the analysis has not only led to identify the argumentative strategies and the actual moves by which the mediator helps the parties manage their argumentative discussion. It also proved that *the successful change of attitude of the parties who learn to be co-arguers becomes the condition of a happy outcome of the mediation process*, which can be defined as the re-establishment of a "revised version" of the parties' previous relationship.

In this sense, this investigation has allowed to show how argumentation really constitutes the core of the mediation process, not only because the conflict is solved by means of the parties' discussion, but also because the structuring of argumentation is functional and essential to the effective achievement of the pragmatic objectives of mediation.

The relation between the pragmatic structure of mediation and the dynamics of the argumentative discussion intervening in it has turned out to be extremely articulated. When analysing the development of argumentation in mediation on the basis of the model of a critical discussion (van Eemeren and Grootendorst 1992; 2004), one notices the presence of more than a single critical discussion. In fact, the argumentative exchange can be interpreted as a *multiple dispute in a qualitative sense* (van Eemeren, Houtlosser and Snoeck-Henkemans 2007, see par. 6.1.2.), namely a discussion in which more than one issue is tackled; in this kind of dispute, the issues are not separately listed, but they show to have important logical connections. Thus, for example, the resolution of a specific difference of opinion on an issue may reveal that other issues are automatically solved. In order to stress the unity between these different discussions, which are not simply juxtaposed, but are connected by their responding to the same ultimate pragmatic goal – that of settling the conflict – the term *macro-text* has also been introduced.

The main discussion is conducted between the parties, who, from being conflictual disputants, progressively acquire the roles of *protagonist* and *antagonist* of a critical discussion. In relation to the interests of the present research, such discussion turns out to be particularly important. In fact, at the beginning of a case, parties often are unable to manage their role of co-arguers by themselves; whereas, along the proceeding of the discussion, while they are trying to solve their conflict in a reasonable fashion, at the same time they progressively acquire an argumentative attitude.

And, in this relation, it is the mediator's work that can explain their change of attitude. In particular, with regard to the parties' discussion, the mediator's intervention

has emerged as crucial in relation to his wise management of the topical potential in the *confrontation* and *opening* stages. It has been shown that the confrontation stage of the disputants' discussion, when they would be expected to advance standpoints about the resolution of their conflict, to cast doubts or advance objections, is far from being spontaneously generated; on the opposite, it is created by the mediator's wise management of issues and control over the reasonableness of the discussion. This kind of intervention does not contradict the mediator's neutral stance. On the opposite, it explains how mediators can handle their paradoxical role by exploiting the topical potential of their strategic manoeuvring, which brings them to shape the structure of the parties' discussion at the same time manifestingly avoiding the role of direct protagonist or antagonist of a critical discussion[321].

By managing the selection of the parties' discussion issues, the mediator makes them move from an initial status of conflict as interpersonal hostility (C1, in terms of the analysis proposed in Chapter 4) to the identification of the *real issue* constituted by the difference of opinion that has originated their conflict (C2) and that, as any issue, could have been resolved by non-conflictual argumentative means. As emerged in Chapter 6, such issue is tightly connected to the parties' deep interests, namely to the concerns that worry them. But these concerns also represent the reasons why the conflict can be settled: they constitute the values that the parties do not want to lose, or the goals they want to achieve by their engagement in mediation (par. 6.2.2.4.).

Here, however, mediators surprise us; they do not meet our expectations about how a "normal", canonical, argumentative discussion should proceed. In fact, once identified the issue that brought parties to conflict, one could expect that parties would be invited to open a sound argumentative discussion on that issue itself. But this does not happen. Actually, re-starting to discuss C2 would be out of the scope of the mediation practice. Mediation, in fact, aims at possibly finding *a solution* to the conflict, and not, for example, at investigating its origins or at evaluating responsibilities and establishing relative sanctions. The latter kind of concern is associated, for example, to the intervention of therapists or judges (see par. 6.1.2.3.). Therefore, in order to fulfil the institutional mandate determined by their role in the agency relationship with the parties, mediators *do have to shift the discussion* from the issue identified with C2 to one or more issues (*options*) characterized by their nature of possible solutions to C2. And, in this relation, eliciting appropriate option-issues is only possible thanks to the fact that the mediators' accurate analysis of the conflict has also brought to light the real interests of the parties bound to C2 in particular. The various discussions on options tend to include the proper argumentation stage of a critical discussion and bring to the parties' agreement, ideally coinciding with the concluding stage of a critical discussion. Often, in

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[321] In Case 6, one of the parties explicitly asks the mediator to formulate his opinion about which solution would be reasonable, and Fong answers: "S- so (.) Let me just ask you more questions because (.) I think what's more important is (.) what you two find reasonable" (turn 334).

these later phases of the mediation process (phases 2-3), the parties, having learnt to be co-arguers, manage to conduct their argumentative discussion with relatively few mediation interventions.

In this sense, the mediator's work, which, as said, contributes to the construction of a dialectically sound confrontation stage, at the same time, constitutes a step-by-step construction of the parties' common ground. It is, thus, a wise work of establishment of a commitment store (Hamblin 1970: 257, see par. 6.2.2.2.); in argumentative terms, it turns out to be part of a mediator-guided construction of an *opening stage* of a critical discussion. In particular, a part of this work is constituted by the analysis of the *conflict* and, together with it, the story of the relationships shaping the *context* of the dispute (see Chapter 4). Within the net of the parties' relationships, which can be of institutionalised or interpersonal nature, those aspects that are endangered by the conflict emerge as problematic. At the same time, they become reasons to resolve the conflict: since they are valuable, they should not be lost because of the difficulties. As a prime example of this (see par 6.2.2.4.), values emerged from the analysis of conflict and context provide the endoxa on which later, in the argumentation stage, arguments based on the *locus of termination and setting up* can be built. An appropriate use of this locus, as shown (ibid.), can be hypothesized to activate specific emotional dynamics in the parties who, from the emotions they are locked in because of the conflict, move to *hope* about its resolution. For this reason, understanding the conflict in its relation with the context, which is solicited in particular thanks to the mediator's questions, turns out to be particularly important in mediation.

The decisive role of the mediator, who is very often leading the discussion at least in the first phases of the mediation process (corresponding to phases 1 and 2 of the mediation framework) brings to hypothesize, as already put forward in Chapter 1, that the specific strategies of management of the topical potential elicited in Chapter 6 represent a precise component of the mediator's role of *agent* in his/her agency relationship with the parties (Eisenhardt 1989, see Chapter 1). But this hypothesis would certainly deserve to be confirmed by means of further research.

Now, the management of the confrontation and opening stages of the parties' discussion is made possible, sometimes, by the mediator *explicit argumentation on some meta-issues*, like the adequateness of discussing about a particular option, the opportunity to find a mediated solution, and the like (see par. 6.2.2.). This kind of direct argumentation does not contradict the mediator's neutral role of facilitator of the discussion who, as has been pointed out in previous studies on argumentation in mediation (see par. 3.2.2.2.)[322], does not directly put forward arguments on the resolution of the conflict (see also Chapter 1).

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[322] In conformity to what already established in the literature on argumentation in mediation, direct mediator interventions concerning the specific solutions to the conflict have not been found.

From the methodological point of view, in order to define the role that argumentation plays in a happily concluded mediation process, a corpus of transcriptions of successful mediation cases has been compiled. This corpus, whose selection criteria have been discussed in detail in Chapter 5, is constituted by exemplary mediation cases ("best practices"), also used as an example-basis to train mediators in a number of countries worldwide.

The selection of these cases has necessarily implied some limits, which signal the need for further research. The two mediators considered, John Haynes and Larry Fong, are assumed as professional models by other mediators and currently there exist no equivalent collection of cases which can be considered equally acknowledged by practitioners as a training tool. However, the fact that this set of mediations is limited to two mediators only could raise a problem about to which extent the strategies and techniques identified are based on the two mediators' individual characteristics rather than to a standard interpretation of what mediators should do. If there had been any comparable cases as for the exemplary status in the mediation professional world, taking them into consideration would have been opportune to get a more generalizable basis of evidence about how argumentation in mediation is structured. As a matter of fact, however, the use of these cases in training shows that Haynes and Fong's way to handle a mediation process is considered canonical and exemplary and that their individual characteristics are assumed as a term of comparison for other mediators as well.

A further limit that the selection of the present corpus certainly bears is the fact that all mediations are restricted to a somehow homogeneous cultural area, related to the Western world. Other cultural domains would certainly involve arguments based on different culturally-based premises (*endoxa*) and, supposedly, also different rhetorical strategies.

Given these considerations, it would be interesting to move from the results obtained in this dissertation to analyze and evaluate the actualisations and interpretations of mediation in different geographical and cultural environments and on a higher number of cases. In this relation, on the one hand, the analysis of the best practices performed here can be used as an evaluative model to define the canonical way of handling argumentation in mediation[323]. On the other hand, different actualisations and different cultural approaches can be expected to bring fresh insights and new directions to the study of mediation.

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[323] In this relation, including also some *a-contrario* cases in which mediation fails, it would be interesting to understand what argumentative problems can be identified. This methodology has been used, for example, in Jacobs and Aakhus (2002a).

7.4 Meeting on the ground of interests

In the brief description of the complex structuring of the mediation macro-text of argumentative discussions outlined above, the notion of *interest* has repeatedly emerged at crucial points. The important role of interests in mediation is, indeed, an established acquisition for conflict resolution studies (see Fisher, Ury and Patton 1991). It is well-known, in fact, that probably the most important value of mediation resides in the parties' possibility of considering their deep interests in the design of a solution to their conflict.

What still lacked, however, was the understanding of *how* interests are activated in practice by means of specific communicative moves. In this relation, the present research has helped elicit how interests that are at the very origin of the parties' engagement in the resolution of their conflict can be solicited by the mediator's argumentative interventions.

The consideration of the parties' interests has emerged as even more crucial than expected. Interests, in fact, become the keystones of the parties' opening stage; in non-metaphorical terms, they represent the ultimate premises that enable parties to reasonably solve their conflict by means of an argumentative discussion.

Furthermore, the results emerged in Chapter 6 show that the mediator's role in eliciting the parties' interests is even more crucial than expected, too: the mediator, in fact, assumes the risk to evoke the parties' interests, often even anticipating their explicit concessions by means of *presupposition accommodation* (see Greco 2003, Cigada 2008: 71, and the discussion in par. 6.1.2.4), i.e. by taking for granted that some compatible interests (in particular in the continuation of the parties' relationship) exist although they have not been declared by the parties themselves. Mediators do so by constructing arguments based on supposedly shared premises (*endoxa*); by evoking such premises, mediators "test" the parties' agreement on them and the correspondence of these premises to their interests. Moreover, mediators equally test and challenge the parties' interests by means of presupposition accommodation when they shift the focus of the discussion from the conflict to its possible solutions, thus just taking for granted that it is possible and convenient to find some solution to the conflict, and that what has to be ascertained is only *how* (which solution).

By means of these strategies, all bound to the mediator's management of the topical potential, the conflict resolution principle is realized that recommends focusing on the parties' *objective interests* rather than on their explicit positions (Fisher, Ury and Patton 1991). And, at least in succesful cases, when the mediator dares to make the strings of objective interests vibrate, the parties resound in sympathy, and the encounter between them becomes possible. In this relation (see in particular par. 6.2.1.3.), the parties' deepest interests, at least sometimes, turn out to be associated to some form of

relational happiness, by which they "discover" that they gain from the other party's feeling comfortable and from the continuation of their relationship.

Presupposition accommodation emerges thus as a linguistic strategy allowing the mediator's selection of the parties' interests within the topical potential. This device, which is often exploited in manipulative uses, in this case shows to have a virtuous application: in fact, the mediator does not *impose* unaccepted premises to the parties, but he leaves them the possibility to accept or refuse all levels of the presupposed common ground. Letting interests emerge or provoking interests by presupposition accommodation signals a specific way to achieve a successful mediation. In fact, parties can overcome their interpersonal difficulty and become co-arguers if they get closer by the mutual recognition of interests, including personal respect and mutual recognition as human beings (see par. 6.1.2.4.1. in particular). The mediator's work, thus, is not that of making parties walk together towards some form of unhappy compromise, which could leave them resentful. It is to make them meet on the ground of finding what is truly and objectively important to them.

7.5 *A methodological path to study argumentation in interaction schemes*

The methodological structure of the present investigation has been defined in accordance to the research questions that have originated it. Such structure can be defined as moulded on two components: a first component was aimed at reconstructing the constituency of the interaction scheme of mediation, focused on its teleological structure; a second component, guided by the results of the first one, has investigated the role of argumentation within mediation. From the combination of the two components, it has emerged that the teleological structure of mediation defines the argumentative strategies employed by mediators in the fulfilment of their professional role. There is no mere parallelism between the phases of a mediation script and the phases of an argumentative discussion; rather, the goals of mediation and the argumentative moves and strategies employed are connected by the functional relation that connects ends and means. In other words, argumentation is attested as crucial part of the communicative *instrumentation* which necessarily has to be activated in order to reach the pragmatic goals of mediation.

If, on the one hand, the specific modalities through which this research path has been realized in this dissertation are strictly depending on its specific object of investigation, it seems nonetheless that an analogous approach should prove to be expedient also in the analysis of other interaction schemes. In other words, beyond the boundaries of a better understanding of the roles and dynamics of argumentation in

mediation, this research might contribute, more in general, to design a methodological basis for investigations aimed at identifying the argumentative specificities of other interaction schemes.

Thus, the methodology tested in the present dissertation could contribute to existing and well-founded knowledge of interaction schemes and activity types such as, for example, legal argumentation (Feteris 1999, 2005). But it could also help plough up new ground, for example in relation the argumentative instrumentation employed in financial negotiations (see Palmieri 2008 for some first results in this direction), and others.

7.6   *Professional fall-outs of the research*

Before concluding the discussion of the outcomes emerges from this dissertation, it is important to mention that the present research could contribute, at the professional level, to improve the design of mediation training courses and to integrate their educational instrumentation in relation to a specific matter the importance of which is often more or less implicitly acknowledged by conflict resolution studies. Indeed, as it has been remarked in different moments of the analysis of the literature, communication is acknowledged as constitutive of the mediation process (see Folger and Jones 1994: ix in particular); for example, the results emerging from investigations on frame convergence (see par. 3.1.2) have shown the extreme relevance of a fine analysis of the parties' interaction at the level of language use. And argumentation has been showed to be an essential component of the communicative instrumentation that successful mediators use in their professional practice, although at the moment no training on argumentation skills are foreseen, in general, in mediation courses (see par. 2.6.3.). An interesting novelty appears to emerge, in this relation, from the field of Online Dispute Resolution, where some of the software applications start to be designed by taking into account the argumentative dimension (see par. 2.4.1).

Hovewer, a possible objection to the introduction of argumentation in the professional mediators' curriculum concerns the suspect that an argumentative engagement could affect the neutral and facilitative role that mediators must keep. This suspect, which is maybe also favoured, at least in part, by the polysemy of *argumentation*, *to argue* and of related terms, often associated to a polemical meaning (see the interpretation in Besemer 1993), stems from the interpretation of the argumentative attitude as "directive" and "impositive"; argumentation, in this sense, would clearly results irremediably incompatible with the attitude of an ideal mediator.

Indeed, as already signalled in argumentation studies on mediation (see par. 3.2.2.2.), and confirmed in the results of this dissertation (Chapter 6), the mediator's way

of arguing is specific and in line with their commitment to favour the parties' discussion without taking position on the possible solutions of the conflict. Even when mediators argue directly (see par. 6.2.2.), or when they risk to suggest cues to the parties to construct their own arguments on the basis of supposedly shared interests (see par. 6.1.2.4. in particular), their argumentative moves are always allineated with their function of neutral facilitators.

In this context, the careful analysis of the salient moments of the indirect argumentation of the mediator, which have emerged in Chapter 6, can be of use to dissipate doubts about the role of the mediator's argumentation in the process of conflict resolution. In particular, the fact that mediators contribute to shape the argumentative process without proposing specific standpoints, together with the fact that they tend to argue on meta-issues, and that their eventual suggestions of arguments are always submitted to the parties' verification, especially at the level of the congruity of premises with their actual common ground may help ensure the correspondence of an argumentative mediator with the ideal of a neutral professional mediator.

The integration of argumentation in the curriculum of professional mediators should in any case be monitored by ad hoc applied investigations aimed at sigling out the most expedient professional education practices for obtaining actual improvements in mediators' training.

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Annex: List of interviewed professionals

	Name	Organization-professional role	Prevailing mediation field	Date
1.	Marianne Galli-Widmer	Former President of the Associazione Ticinese per la Mediazione (ATME), Lugano, CH	Family and community mediation	10/05/2004 and 27/05/2008
2.	Maddalena Ermotti-Lepori	Former president of ATME, Lugano, CH	Family and community mediation	10/05/2004
3.	Marina Bernardo	Mediator, Centro delle Mediazioni di Lugano, Lugano, CH	Family and community mediation	18/05/2004
4.	Tamara Erez	Mediation Aargau, CH	Business and family mediation	24/0672004
5.	Rosa Anaba	AIDS-Hilfe, Basel, CH	Support to migrants concerning health care and other issues. Community mediation.	26/07/2004
6.	Dante Lorenzetti	Director of the school program "Pre-tirocinio di orientamento", Lugano, CH	Informal activity of mediation in the school context	10/12/2005
7.	Filippo Jörg	Responsible of the pre-apprenticeship for integration and orientation of the Professional Education Department of DECS, Lugano, CH	Informal activity of mediation with foreign students in Lugano	20/01/2005
8.	Patricia Hasler-Arana	Project Dime, Bern, CH	Intercultural mediation with Swiss and foreign citizens	07/09/2005
9.	Larry Fong	Larry Fong Mediation, Alberta, Canada	Family, community and business mediation	07/09/2005
10.	Tim Hardy	CMS Cameron McKenna and CEDR, the Centre for Effective Dispute Resolution, London, UK	Commercial mediation	07/09/2005
11.	Diana De la Rua Eugenio	Respuesta para la paz, Mediación en la comunidad, Buenos Aires, Argentina	Community mediation in the marginal neighbourhoods in Buenos Aires	08/09/2005

12.	Isabella Buzzi	Studio TdL "Tracce di Luce", Milan, Italy	Family mediation	10/06/2008
13.	Radouan Jelassi	Imam, Lugano, CH	Intercultural mediation	03/07/2008
14.	Thomas Flucher	KoMeT Kommunikation-Mediation-Teamentwicklung, Sempach Station, CH	Organizational mediation, business mediation, construction mediation	31/07/2008
15.	Gianfranco Domenighetti	Director of the Sezione Sanitaria del Dipartimento della Sanità e della Socialità del Cantone Ticino, CH	Medical organizations	26/08/2008
16.	Mauro Martinoni	Former head of the Office for University studies of Ticino Canton, Bellinzona, CH	Mediation in institutional contexts	27/08/08
17.	Barbara dell'Acqua	Progetto Conoscere, Lugano-Viganello, CH	Medical mediation	06/09/08

The majority of the interviews were held in face-to-face modality. A few of them were supported by other means (telephone or e-mail).