

Adaptive Mediation

An Experience/Evidence-Based Approach to
Navigating Conflict Dynamics and Derailers

Justice Marie L. Garibaldi Inn of Court
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A Question...

How many of you are **mediators**?

How many of you are **facilitative** mediators?

How many of you are **transformative** mediators?

How many of you are **settlement** mediators?

How many of you are **insight** mediators?

How many of you are **narrative** mediators?

How many of you are **evaluative** mediators?

How many of you are **problem-solving** mediators?

How many of you are **therapeutic** mediators?

How many of you are **manipulative** mediators?

How many of you are **analytic** mediators?

How many of you are **strategic** mediators?

How many of you are **power-broker** mediators?

How many of you are **understanding-based** mediators?

How many of you are **story-telling** mediators?

HELP!

An Identity Crisis?

Agenda

- Story of our research
- **Adaptive** Mediation
- Five Mediator Roles
- **Systemic Agency** in Mediation
- Q & A on Implications for You

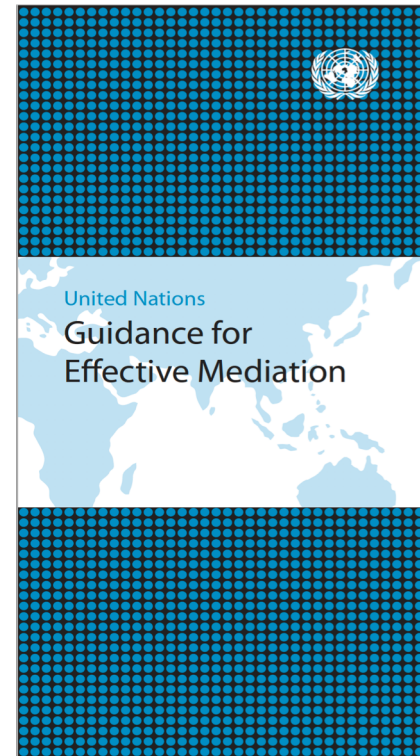
Report of the Secretary-General on enhancing UN mediation and its support activities

On September 23, 2008, the President of Burkina Faso convened a high-level meeting of the UN Security Council on “mediation and settlement of disputes”.

On July 11, 2011 the UN General Assembly passed UN Resolution 65/283 on Strengthening the Role of Mediation in the Peaceful Settlement of Disputes, Conflict Prevention and Resolution.

The MD-ICCCR was invited to contribute to the report to the UN Secretary General, and to help shape the first international criteria for effective mediation. Published on June 25, 2012.

Formed the UN Academic Advisory Council on Mediation.



State of the Art

Mediation Research: A Current Review

James A. Wall and Timothy C. Dunne

In this article, we review the mediation literature from the past decade, utilizing a cybernetic mediation paradigm to organize the material. In this paradigm, we note that the type of conflict, country, culture, and mediation institutions affect the mediation process. Within this process, the mediator and disputants interact with each other, attempting to reach their own goals. This interaction produces outcomes for the disputants, the mediators, and other parties. The literature — organized using this paradigm — indicates that mediation is frequently practiced in many venues; the literature also provides an exhaustive list of mediation goals, describes many mediation strategies, and reports manifold mediation outcomes. Unfortunately, the number of studies examining the relative effectiveness of specific strategies (e.g., pressing, relational, and analytic) seems insufficient. Few studies have used control groups or reported observations of mediator and disputants' behavior in actual mediations.

Key words: mediation, mediation research, conflict resolution, literature review.

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Mediation Challenges

Empirical research findings on mediation present a fractured, piecemeal understanding of what constitutes “effective mediation” and how to achieve it.

Among the most glaring gaps in mediation research are investigations into the main antecedences of different mediation strategies, which ultimately influence the course of the mediation.

Mediation Challenges

In their review of mediation scholarship, Wall and Dunne (2012) write:

“The literature from the past decade – as that from the preceding years – indicates that mediators have approximately **one hundred techniques** to choose from...While this bountiful array of often overlapping and sometimes very similar strategies allows for a thorough description of the available mediation approaches, it can paradoxically retard the advancement of our knowledge.”

Mediator Strategies

- analytic (e.g., Birke 2000);
- broad/focused (e.g., Currie 2004);
- bottom up (e.g., Mars 2001);
- differentiated (e.g., Regina 2000);
- evaluative (e.g., Lande 2000);
- facilitative (e.g., Gabel 2003);
- insight (e.g., Picard and Melchin 2007);
- mediation-arbitration (e.g., Ross and Conlon 2000);
- narrative (e.g., Hardy 2008);
- neutral (e.g., Kydd 2003);
- power broker (e.g., Chayes 2007);
- power-political (e.g., Jones 2000);
- pressing (e.g., Kichaven 2008);
- problem solving (e.g., Harper 2006);
- proper sequenced (e.g., Weiss 2003);
- pragmatic (e.g., Alberstein 2007);
- story telling (e.g., Pinto 2000);
- strategic (e.g., Kressel 2007);
- transformative (e.g., Alberstein 2007);
- transformative-narrative (e.g., Harper 2006), and
- understanding-based (e.g., Friedman and Himmelstein 2006).

Mediation Challenges

In their review of mediation scholarship, Wall and Dunne (2012) write:

“Faced with such a complex set of categories, scholars have not been able to grapple with the two fundamental questions for mediation: (1) What are the major causes/antecedents of mediators strategies? That is, what causes mediators to use the strategies they do? (2) And what are the major impacts of the mediators’ use of particular strategies?”

Columbia Mediation Initiative: Developing an Adaptive Model of Mediation in Social Conflict

- 1) Surveyed the empirical literature on mediation.

Factors Studied in the Research Literature

Aspects of the mediator	Aspects of the disputants	Aspects of the conflict	Aspects of the mediation	Aspects of the broader context	Mediator strategies and tactics	Mediation outcomes
mediator styles behaviors bias goals power strength adaptivity experience and substantive expertise credibility emotional intelligence and empathetic attunement	gender trust goals and aspirations flexibility behaviors self-other orientation sincerity levels of insecurity prior relationship with one another past experience with mediation conflict asymmetries	intensity of conflict degree of polarization cooperative or competitive goals task-focused or social-emotional resource or identity-based	pre-mediation communication mediation stage inadequate progress procedural and distributive justice situational constraints (rules and time constraints) number of parties access to information	culture organizational characteristics threats of strikes the audience for the mediation	analytic broad/focused bottom up differentiated evaluative facilitative insight mediation-arbitration narrative neutral power broker power-political pressing problem-solving properly-sequenced pragmatic story-telling strategic transformative transformative-narrative emotional venting therapeutic understanding-based manipulative	goal of agreement helping participants objectively evaluate the strengths and weaknesses of their arguments appraise the settlement value of the case identifying parties' underlying and/or unexpressed interests uncovering previously unexpressed flexibility and willingness to compromise generating new ideas and options for settlement overcoming obstacles and impasses in the negotiations guiding the negotiating process perceptions of fairness and satisfaction high-quality agreements enhanced wellbeing reducing tensions or animosity improving the relationship between the disputants attaining social justice social transformation reducing sexual discrimination allowing the disputants to blow-off steam preventing future conflicts efficiency/speed solving problems forestalling future problems (...)

Columbia Mediation Initiative: Developing an Adaptive Model of Mediation in Social Conflict

- 1) Surveyed the literature on mediation.
- 2) **Study 1 surveyed 149 experienced mediators on their last mediation case and identified the 1 basic distinction 4 basic derailers of mediation situations.**

Dimensions of the situation (Nature of the Conflict)

Much common ground-----	No common ground-----
High intensity conflict-----	Low intensity (calm)-----
Social-emotional conflict-----	Task conflict-----
Broad range of issues-----	Narrow range of issues-----
Highly complex-----	Very simple-----
Significant concerns from the past -----	Few concerns from the past -----
Significant concerns over the future -----	Few concerns over the future -----
Superficial concerns-----	Deep-rooted concerns-----
Significant concerns over resources -----	Few concerns over resources -----
Significant concerns about identity -----	Few concerns about identity -----
Easy to resolve-----	Difficult to resolve-----
Issues very important to parties-----	Issues very unimportant to parties-----
Temporary conflict-----	Protracted conflict-----
Highly emotional-----	Unemotional-----
Issues important to broader community-----	Unimportant to community-----
Concrete issues-----	Matters of general principle-----
Explicit issues-----	implicit issues-----
Important latent issues fueling the conflict -----	no latent issues fueling the conflict -----
Explicit agendas-----	Hidden agendas-----

Dimensions of the situation (Context of the Mediation)

Conflict appropriate for mediation-----	Conflict inappropriate for mediation-----
Conflict previously mediated-----	Conflict not previously mediated-----
Extreme time pressures-----	No time pressures-----
Very safe environment-----	Very unsafe environment-----
Voluntary mediation-----	Mandated mediation-----
Formal mediation process-----	Informal process-----
Complicated environment-----	Simple environment-----
Public process-----	Private process-----
Overt process-----	Covert process-----
Required considerable preparation-----	Required no preparation-----
Constrained by a legal framework-----	Not constrained by a legal framework-----
Required pre-mediation sessions-----	Did not require pre-mediation sessions-----
Possibilities to reflect/consult about the case with colleagues -----	no such opportunities-----
Involved local indigenous practices-----	Involved general mediation practices-----
Direct parties involved-----	Representatives of constituents-----
Constituent support for parties-----	No constituent support-----
Situation imposed extreme limitations on your actions...situation imposed few limitations on your actions	

Dimensions of the situation (Mediation Process)

Direct communication-----	Indirect communication-----
Rational conversation-----	Irrational conversation-----
Fair process-----	Unfair process-----
Hostile communication-----	Friendly communication-----
Disrespectful communication-----	Respectful communication-----
Very interesting to you-----	Very uninteresting to you-----

Use of threats by parties -----no threats by parties
Required mediator control of the process-----No need for mediator control

Dimensions of the situation (Characteristics of the parties)

Parties were exactly equal in power-----Parties extremely unequal in power
History of negative relations between parties-----History of positive relations
Similar cultures between parties-----Different cultures
Similar social backgrounds -----different social backgrounds
Temporary relationship between parties-----Ongoing relationship

The following questions address the parties involved in the mediation, answered the following scale for each party separately:

High party motivation to settle-----Low party motivation to settle
High party commitment to mediation-----Low party commitment to mediation
Difficult person-----Easy person
High power party-----Low power party
Sincere parties-----Insincere parties
Parties engaged in good faith-----Parties attempted to game the mediation
Threats of violence -----No threat of violence
High trust-----High Distrust
Very altruistic-----Very selfish
Parties perceive each other's concerns as legitimate-----As illegitimate
Skilled negotiators-----Unskilled negotiators
From a community-oriented-----From an individualist culture
High aspirations of parties-----Low aspirations
Open about genuine concerns-----hidden agendas
From a culture that prefers clear authority and hierarchy-----From a culture that prefers equality
Primarily concerned with preventing losses in the mediation--Primarily interested in achieving gains
Needed clear rules and procedures-----Comfortable with few rules and procedures

Mediators' behaviors

Mediator highly invested in outcome-----Neutral mediator
Invited mediator-----Uninvited mediator
Insider mediator-----Outsider mediator
Mediator substantive expertise required-----No mediator substantive expertise required
Accepted by parties-----Rejected by parties
Authoritative-----Passive
Senior/experienced-----Novice/inexperienced
Directive strategy-----non-directive
Incentives offered by mediator-----No incentives offered
Active-----Inactive
Evaluative-----Facilitative
Settlement-oriented-----Relationally-oriented
Problem-solving style-----Relational style

Mediator Characteristics

Please rate yourself as a mediator:

Relationship-oriented

1



2



3



4



5



6



Settlement-oriented

7



Please rate yourself as a mediator:

Relational style

1



2



3



4



5



6



Problem-solving style

7



Please rate yourself as a mediator:

Provide no suggestions

1



2



3



4



5



6



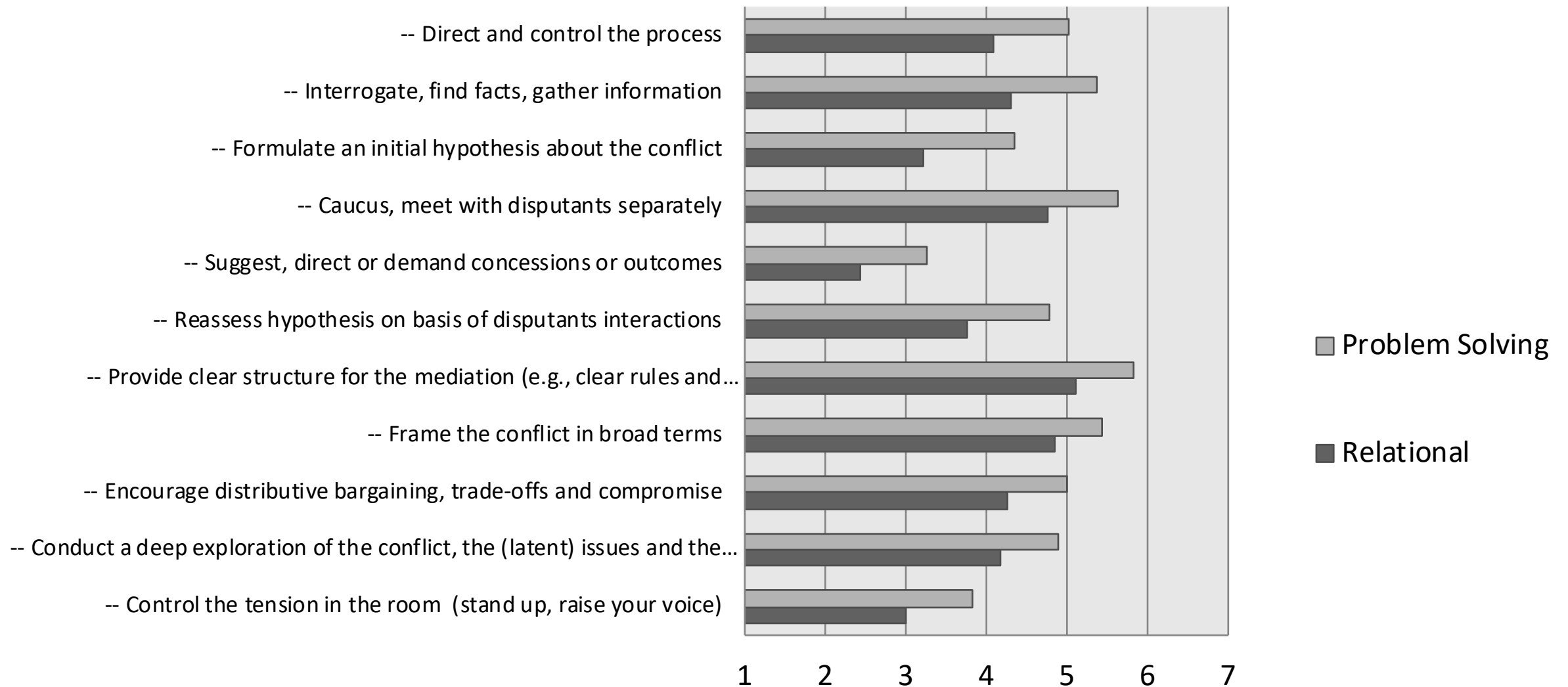
Provide suggestions
about the settlement

7



Mediator Style: Relational vs. Problem Solving

Relational vs. Problem Solving Differences



Level 1 Mediator Adaptivity

Problem-Solving

Directive
Fact finding
Caucus
Bargaining
Outcome Control
Process Control
Pressure

Relational

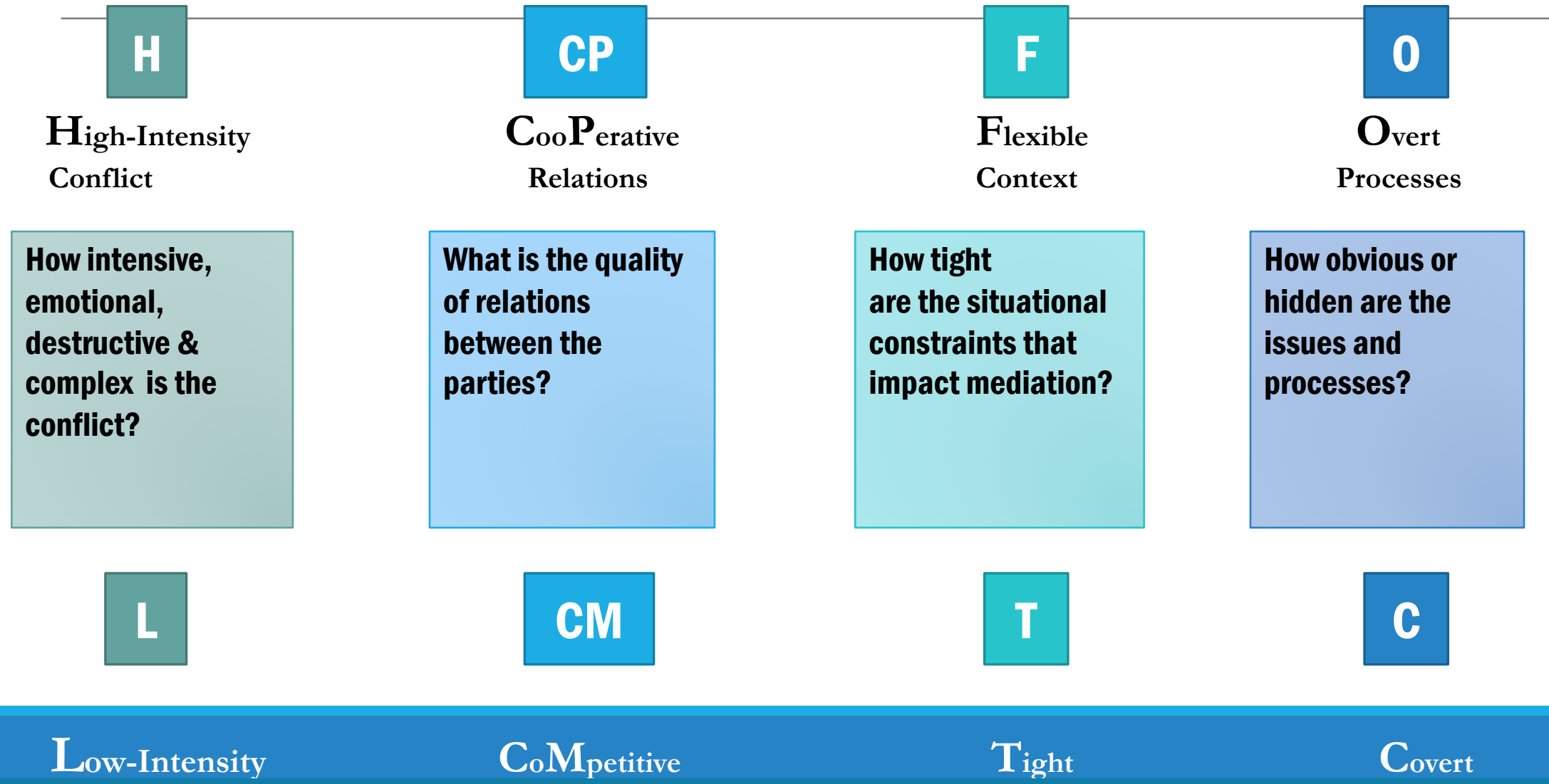
Non-Directive
Facilitative
Joint process
Integrative
Less Outcome Control
Less Process Control
Less pressure



		Factor alpha	Intensity .855	Limitations .744	Similar .671	explicit .569
anchor 1	anchor 2					
High intensity conflict	Low intensity conflict		,813	-,105	-,182	,056
Significant concerns from the past	Few concerns from the past		,810	-,123	,125	-,097
Highly emotional	Unemotional		,693	-,090	,076	,037
Protracted conflict	Temporary conflict		,688	,169	,014	-,066
Nature_5 Highly complex	Very simple		,658	-,379	-,067	-,093
History of negative relations between parties	History of positive relations		,645	,005	,016	,116
Important latent issues fueling the conflict	no latent issues fueling the conflict		,576	-,134	,191	,018
Social-emotional conflict	Task conflict		,541	-,120	,151	-,204
Significant concerns over the future	Few concerns over the future		,525	-,132	,270	,032
Broad range of issues	Narrow range of issues		,483	-,371	-,057	-,106
Significant concerns about identity	Few concerns about identity		,453	-,234	-,206	-,270
Situation imposed few limitations on your actions	Situation imposed extreme limitations on your actions		-,105	,702	-,115	,050
Involved general mediation practices	Involved local indigenous practices		-,009	,659	,075	-,028
Private process	Public process		,052	,598	,059	-,037
Simple environment	Complicated environment		-,313	,590	,160	,079
Unimportant to community	Issues important to broader community		-,207	,579	,197	,096
No constituent support	Constituent support for parties		-,114	,528	-,050	,022
No time pressures	Extreme time pressures		-,112	,464	-,151	-,086
Not constrained by a legal framework	Constrained by a legal framework		,063	,455	-,203	-,066
Conflict not previously mediated	Conflict previously mediated		-,249	,382	,199	,055
Similar social backgrounds	Different social backgrounds		,167	,095	,776	-,079
Similar cultures	Different cultures between parties		,051	,081	,765	-,138
Much common ground (they shared interests)	No common ground (their interests were not compatible)		-,067	-,144	,610	,042
Ongoing relationship between parties	Temporary relationship		,147	,015	,599	,025
Explicit issues	Implicit issues		-,004	-,060	-,037	,725
Overt (obvious) process	Covert (secret) process		-,171	,088	-,148	,682
Concrete issues	Matters of general principle		-,055	-,286	,200	,531
Issues very important to parties	Issues very unimportant to parties		,347	,068	,163	,497
Very safe environment	Very unsafe environment		-,229	,375	,028	,466
Formal mediation process	Informal mediation process		,013	,000	-,110	,453
Extraktionsmethode: Hauptkomponentenanalyse.						
a. Die Rotation ist in 6 Iterationen konvergiert.						

Explains 42% of the variance

Four Fundamental Derailers



Four Basic Dimensions

Conflict: low vs. high intensity	Relations: competitive vs. cooperative	Context: few (loose) vs. extreme (tight) constraints	Processes: covert (secret) vs overt (obvious)
<ul style="list-style-type: none">• Few concerns for the past-significant concerns• Unemotional-highly emotional• Temporary conflict- intractable conflict• Very simple- Highly complex• History of positive relations- history of negative relations between parties• No latent issues fueling the conflict- important latent issues• Few concerns over the future-significant concerns• Task conflict-social-emotional conflict• Narrow range of issues- broad range• Few concerns about identity-significant concerns	<ul style="list-style-type: none">• Different social backgrounds- similar ones• Different cultures between parties- similar ones• Temporary relationship between the parties- ongoing relationship• No common ground- Much common ground• Few concerns over resources- significant concerns• History of positive relations – history of negative relations• No latent issues fueling the conflict- important latent issues• Few concerns over the future-significant concerns• Task conflict-social-emotional conflict• Narrow range of issues- broad range• Few concerns about identity-significant concerns	<ul style="list-style-type: none">• Involved general mediation practices – indigenous practices• Private process- public process• Unimportant to broader community- important• Simple environment- complicated• No time pressures- extreme pressures• No constituent support- constituent support• Not constrained by a legal framework-constrained• Conflict not previously mediated- previously mediated	<ul style="list-style-type: none">• Implicit issues- explicit• Issues very unimportant to parties- issues very important• Matters of general principle- concrete issues• Informal mediation process- formal mediation process• Very unsafe environment- Very safe environment

Regression analysis

Independent Variables	Dependent Variables									
	agreement reached no - yes		constructiveness of parties' communication low - high		procedural justice low - high		preparation by mediator low - high		mediator's focus: relationship - settlement	
Mediators' sex	-.03	-.07	.15	.11	.07	.03	-.12	-.05	-.03	-.01
Mediators' experience	.15	.09	.10	.10	-.23*	-.23**	.10	.09	.09	.08
Frequency mediating	-.08	-.08	.07	.06	.01	-.00	-.00	.04	-.10	-.07
How long was the mediation ago?	.14	.09	-.11	-.08	-.00	.02	.14	.05	.10	.05
Mediators' style: facilitative	.04	.04	.14	.08	-.04	-.08	-.03	.03	-.01	-.00
Mediators' style: evaluative	-.20	-.23	.06	.08	-.06	-.09	.10	.04	.40**	.34**
Mediators' style: strategic	.06	.05	-.05	-.02	-.25*	-.21*	.06	.07	.11	.14
Mediators' style: transformational	.06	.13	-.14	-.05	-.07	-.00	.07	.01	-.18*	-.18*
Mediators' style: victim-offender	-.07	-.19	-.18	-.05	-.09	.15	.25	.06	-.15	-.23*
Mediators' style: narrative	.15	.22	-.02	-.02	.01	.01	-.07	-.10	.07	.04
Goal of mediation: agreement	.24*	.27*	-.01	.00	.04	.02	.02	.02	.24**	.24**
Goal of mediation: clarity	-.09	-.13	.08	.13	.20	.18	.06	.02	.01	-.02
Goal of mediation: understanding	-.04	-.03	-.06	-.16	-.26	-.29	.06	.14	-.16	-.14
Goal of mediation: control the outcome	-.21	-.16	.17	.08	.06	.01	-.38**	-.34*	.01	-.01
Goal of mediation: ability to resolve conflicts	-.19	-.20	-.10	.05	-.20	-.11	.13	.09	-.13	-.08
Quality of the conflict: tractable – intractable		.06		-.35**		-.12		.19*		-.01
Quality of the context: no constraints – high constraints		.07		-.15		-.18		.44**		.22*
Quality of the relationship: negative – positive interdependence		.29**		.08		.03		.02		.05
Quality of the process: hidden – expressed		.19		.01		.19*		.04		.12
R^2	.19	.28	.21	.34	.21	.29	.24	.44	.45	.50
ΔR^2		.09*		.13**		.08*		.20**		.05*
F	1.41	1.81*	2.01*	2.88**	1.97*	2.26**	2.38**	4.50**	6.19**	5.65**

Study 1 Findings

- **Self-Reported Mediator Style** (Relational-Settlement) predicted different behaviors.
- **Four Major Mediation Dimensions/Derailers** Identified.
- More **cooperative relations** lead to **more agreements**.
- Higher **conflict intensity** lead to **less constructiveness**.
- More **overt conflicts** lead to **more procedural justice**.
- Higher **situational constraints** and **conflict intensity** lead to more need for **mediator preparation** before session.
- Higher **constraints** lead to **more use of settlement styles**.

Columbia Mediation Initiative: Developing an Adaptive Model of Mediation in Social Conflict

- 1) Surveyed the literature on mediation.
- 2) Study 1 surveyed 149 experienced mediators. (**Generated case materials**)
- 3) Conducted focus groups with experienced mediators to **better understand the situation-type/strategy relationships.**

Case 1

Two brothers, Mark and Dave were driving from a football game when another car blindsided the driver and they got into a bad car accident. The driver, Mark sustained some injuries, but it was his brother, Dave, who was riding shotgun who was really seriously hurt. Both of Dave's legs were broken as well as his collarbone. Mark had been drinking some alcohol before driving. Because the insurance won't cover the expenses of the treatment, Dave is asking his brother to pay for the considerable medical bills he has incurred during months of treatment and recovery. Mark says he can't do that because it would bankrupt him and his family, and it was Dave's own fault for refusing to get health insurance. They have not spoken amicably for nearly a year and every time they are in the same room the argument gets very heated. Dave is often in pain which makes him irritable, but even when the painkillers are working, each one of their interactions results in a shouting match. As soon as the mediation begins, Dave erupts with anger because of how Mark is sitting (slouched) at the table.

Adaptive Mediation

1. What is the quality of the conflict?
How intense/intractable is the conflict?

High Intensity /
Intractable

Role: The Medic

Strategy: Manage or lessen intensity

Behavioral pattern: Mediator is active and present as well as directive and enforces guidelines. A balance between slowing down and allowing venting is necessary. Reframing, rethinking, and reflecting is important. Mediators need to be very self-aware here.

Levers:

- Directive authority
- Strong presence
- Evaluate
- Process Control
- Manage emotions
- Provide structure
- Modeling
- Reassuring
- Reframing

Standard Mediation Model

Role: The Mediator

Strategy: Open dialogue & disappear – cooperative, relational-process focus

Behavioral pattern:

Relational, non-judgmental, integrative approach. Reflect, ask questions, model. Observe to identify hidden agendas.

Levers:

- Sit back, listen & observe
- Transformational
- Reflective, integrative
- Flexible

What is the quality of the relationship - more competitive or cooperative?

Competitive Relationship/Issues

Role: The Referee

Strategy: Bargain fairly and settle efficiently - task-outcome focused.

Behavioral pattern:

Caucus, give guidance and direction but also slow down and give time. Make parties feel safe and see the other side.

Levers:

- Authoritative - Directive
- Process Control
- Evaluative testing
- Compromise, log roll, expand pie
- Common ground or covert?

2. What other aspects seem most relevant?

What is the quality of the process and the issues? Are the process and the issues overt or covert?

Covert Process & Issues

Role: The Therapist

Strategy: Probe deeply, carefully

Behavioral pattern:

Caucus, inquire and probe to unearth covert issues. Be a neutral coach. Make parties feel safe.

Levers: Caucus, coach, question, clarify, share, probe history, ensure safety, take time.

What is the quality of the context? Are there external constraints?

High Constraints & Limitations

Role: The Fixer

Strategy: Increase control and efficiency or lessen constraints.

Behavioral pattern:

Openly address the constraints and clearly outline structure and guidelines thereby increasing transparency. Mediators should be directive and be specific.

Levers:

- Increase preparation
- Be directive
- Identify constraints
- Motivate
- Lower aspirations
- Lessen constraints

Columbia Mediation Initiative: Developing an Adaptive Model of Mediation in Social Conflict

- 1) Surveyed the literature on mediation.
- 2) Study 1 survey.
- 3) Conducted focus groups.
- 4) Conducted a second survey of 76 experienced mediators to **validate the situation-type/strategy relationships. (Broaden and Build Strategy)**

Standard Mediation Cannon (The Mediator)

MOST COMMON

- Be unbiased – demonstrate balanced concern for all parties
- Brainstorm options
- Check with disputants to be sure I am understanding their perceptions and needs
- Summarize and verify your understanding of the issues
- Encourage parties self reflection and responsibility-taking
- Model constructive conflict resolution for the disputants
- Focus on specific issues
- Allow emotions to surface (e.g., venting)
- Encourage parties' self reflection and responsibility-taking
- Frame the conflict in broad terms
- Evaluate, test, be critical of proposed outcomes (reality testing)
- Reward and encourage constructiveness and concession-making
- Sit back and observe
- Relax the situation, use humor
- Reassess hypothesis on basis of disputants interactions
- Reward and encourage constructiveness and concession-making
- Be unobtrusive: Disappear as much as possible

LEAST COMMON

- Tell anecdotal stories
- Encourage the parties to respond as you believe they should
- Arbitrate (ultimately you decide what are acceptable outcomes)



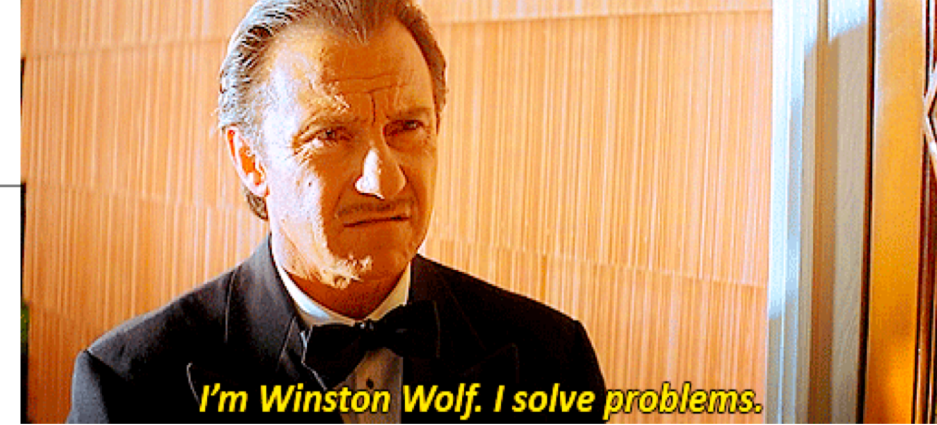
High Intensity Mediation Tactics (The Medic)

- Create a safe atmosphere (nonviolent, private, unbiased)
- Manage difficult parties
- Be very present in the mediation (lean in, observe carefully)
- Monitor non-verbals carefully
- Provide clear structure for the mediation (clear rules)
- Provide (break) time
- Offer observations on the interactions between the disputants
- Direct and control the process
- Control the emotions of the parties
- Control the tension in the room (stand up, raise your voice)
- Meet or speak with third parties involved (lawyers, etc.)
- Leverage and reinforce mediation rules and guidelines



Highly Constrained Mediation Tactics (The Fixer)

- Clearly communicate potential constraints to the situation
- Stress confidentiality
- Help parties save face and find acceptable outcomes
- Keep the parties at the table
- Provide clear structure for the mediation (clear rules and guidelines)
- Prepare for mediation beforehand (review relevant laws, documents, procedures)
- Gather information on the case prior to the mediation
- Reframe the issues as a mutual problem
- Brainstorm options
- Warn or threaten the parties (with withdrawal of resources, consequences)
- Direct and control the process
- Offer incentives to settle
- Allow third parties to intervene (educate, criticize, assist or argue for concessions)

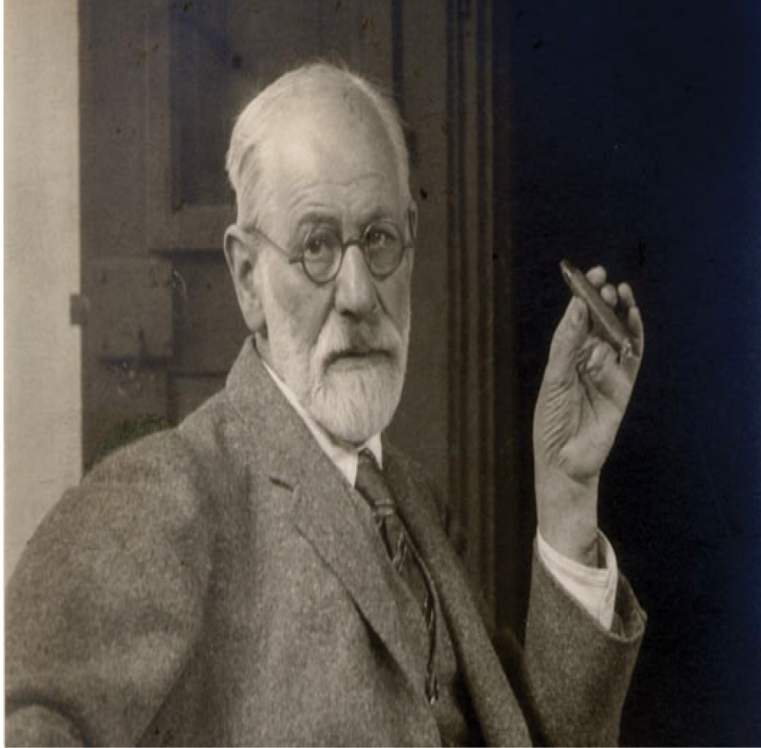


Highly Competitive Mediation Tactics (The Referee)

- Provide clear structure for the mediation (clear rules and guidelines)
- Encourage distributive bargaining, trade-offs, compromise
- Help parties save face and find acceptable outcomes
- Manage expectations and aspirations of the parties
- Clearly communicate potential constraints to the situation
- Direct and control the process
- Manage difficult parties
- Educate, supply missing information
- Suggest, direct or demand concessions or outcomes
- Cite a relevant law or rule
- Control the tension and emotions of parties
- Warn or threaten the parties (with withdrawal of resources, consequences)
- Apply pressure to settle



Highly Covert Issues Mediation Tactics (The Therapist)



- Stress confidentiality
- Caucus, meet with disputants separately
- Help parties save face and find acceptable outcomes
- Conduct a deep exploration of the conflict, the (latent) issues and the history
 - Interrogate, find facts, gather information
 - Obtain forgiveness or apologies
 - State and clarify hidden issues
 - Manage difficult parties
- Clearly communicate potential constraints to the situation
- Provide clear structure for the mediation (clear rules and guidelines)
- Prepare for mediation beforehand (review relevant laws, documents, procedures)
 - Direct and control the process
- Address power imbalances between the parties (show additional support toward one party)

Four Fundamental Derailers to Mediation

Conflict intensity/intractability:

High

Mediator's additional tactics:

- **Direct, control and guide** the process and parties; leverage the rules; monitor tension and non-verbals carefully
- **Triage the problem in depth** by focusing on relationships, hidden issues and their history; address emotions, offer observations
- **Seek new perspectives**: broaden parties views and strive for transformation or even forgiveness, Involve outside parties
- **Create space**: caucus, provide break-time

Situational constraints:

High

Mediator's additional tactics:

- **Prepare for the mediation beforehand** and gather information
- **Communicate the constraints** to disputants
- **Control, direct, manage and structure** the parties and process
- **Encourage settlement** by offering incentives or threats of consequences, by keeping parties at the table or allowing outside party involvement

Disputant relationship:

Highly competitive

Mediator's additional tactics:

- **Educate** about mediation, rules, laws, constraints and provide necessary information
- **Broker an acceptable settlement** through bargaining or offering suggestions, incentives, pressure, or threats
- **Control** process, parties, emotions and tensions, caucus
- **Increase awareness** of interests of both sides, obtain forgiveness

Issues and processes:

Highly covert

Mediator's additional tactics:

- **Conduct a deep exploration** of the conflict, gather information, identify power imbalances
- **Ensure privacy**: stress confidentiality, caucus
- **Manage** parties, constraints and process
- **Focus on an acceptable settlement** by soliciting apologies or forgiveness or warning the parties of consequences of not settling

Standard Mediation Situations

Mediator's recommended tactics:

- **Create a confidential, respectful, open, sympathetic and unbiased atmosphere**
- **Encourage dialogue and understanding** as well as self reflection among disputants
- **Focus on common ground and mutuality** as well as options to resolve the conflict
- **Consider cultural differences**

Low

Low

Highly cooperative

Highly overt

Columbia Mediation Initiative: Developing an Adaptive Model of Mediation in Social Conflict

- 1) Surveyed the literature on mediation.
- 2) Study 1 survey.
- 3) Conducted focus groups.
- 4) Conducted a second survey.
- 5) **Conducted in-depth interviews with experts in mediation on specific best-practices for addressing 4 “challenges” to mediation**
- 6) **Conducted two more survey studies to validate the effects of mediator adaptivity on mediator empowerment and efficacy.**
- 7) **Developed assessment instruments to measure mediator’s dominant strategies, meta-competencies and adaptivity.**

Mediation Meta-Competencies: Adaptivity, Optimality & Systemic Agency

Adaptivity is the capacity to employ different strategies in different conflicts, or as the same conflict situation evolves and changes, in a manner that achieves goals effectively and is fitting with the demands of the situation.

So What?

Prior Adaptivity Effects

More adaptive orientations to conflict mediation associated with higher levels of efficacy and satisfaction with mediation (Picard, 2004; Riskin, 2006; Kolb, 1994; Beardsley, Quinn, Biswas, & Wilkenfeld, 2006; Beardsley, 2010; Jacobs & Aakhus, 2002).

Effective individuals rarely employ single conflict handling styles; instead employing more blended or “conglomerated” approaches that utilize the beneficial components of a variety of tactics (Van de Vliert (1997; Van de Vliert, Euwema, & Huismans, 1997).

Effective attorneys use a pattern of behaviors in negotiations that do not neatly fit any one of the conflict-style categories (Williams, 1983, 1993).

In negotiations, higher conflict adaptivity associated with higher levels of satisfaction with conflict, with work, with co-workers, greater emotional well-being, less job stress and fewer intentions to quit (Coleman, Mitchinson, & Kugler, 2009; Coleman & Kugler, 2011).

Case-based research on interstate negotiations found parties more effective in negotiations to the extent that they were able to adjust their orientations and behavior to the relative (and relevant) power of the other side (Zartman and Rubin 2002).

So What?

Adaptive Mediation Studies 3-4

Hypotheses: Higher levels of mediator behavioral adaptivity (skills in employing both standard and specialized mediation behaviors) will be associated with more positive experiences in mediation:

- Higher levels of *satisfaction* with mediating.
- Higher levels of *empowerment* with mediating.
- Higher levels of *efficacy* with mediating.

Developed new scales and surveyed 79 active mediators.

Adaptive Mediation Studies 3-4

Results:

- The more mediators felt skilled in responding to both standard and challenging situations, the higher was their level of **self-efficacy** and **empowerment** when mediating.
- The more mediators felt skilled in responding to both standard and challenging situations, the more they were **satisfied** with the mediations' **outcomes** and **their ability to deal with challenges** during mediation.

Mediator Assessments

Implicit Mediation Theory

Mediator Behavior Checklist (standard)

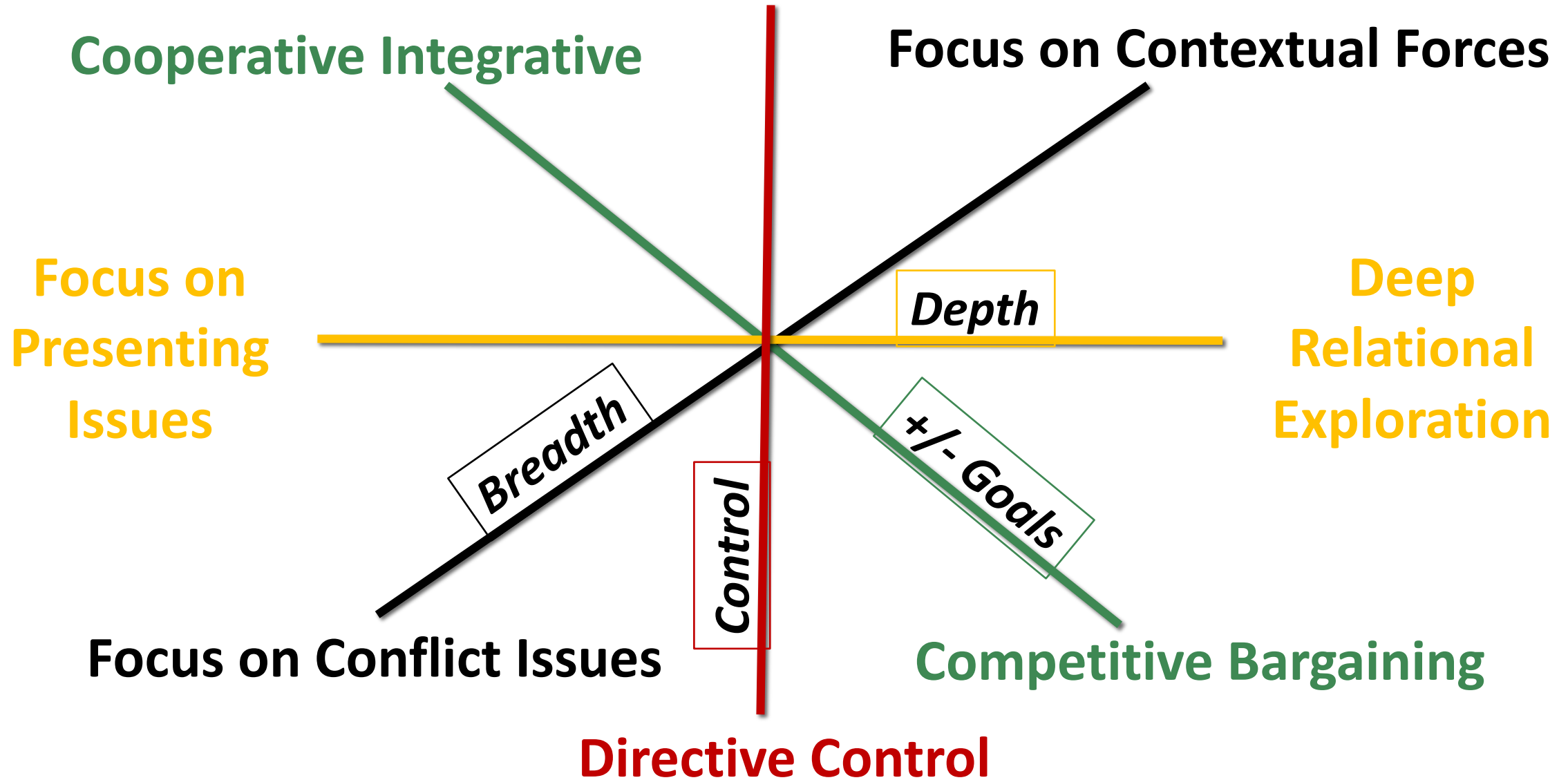
Mediator Satisfaction survey

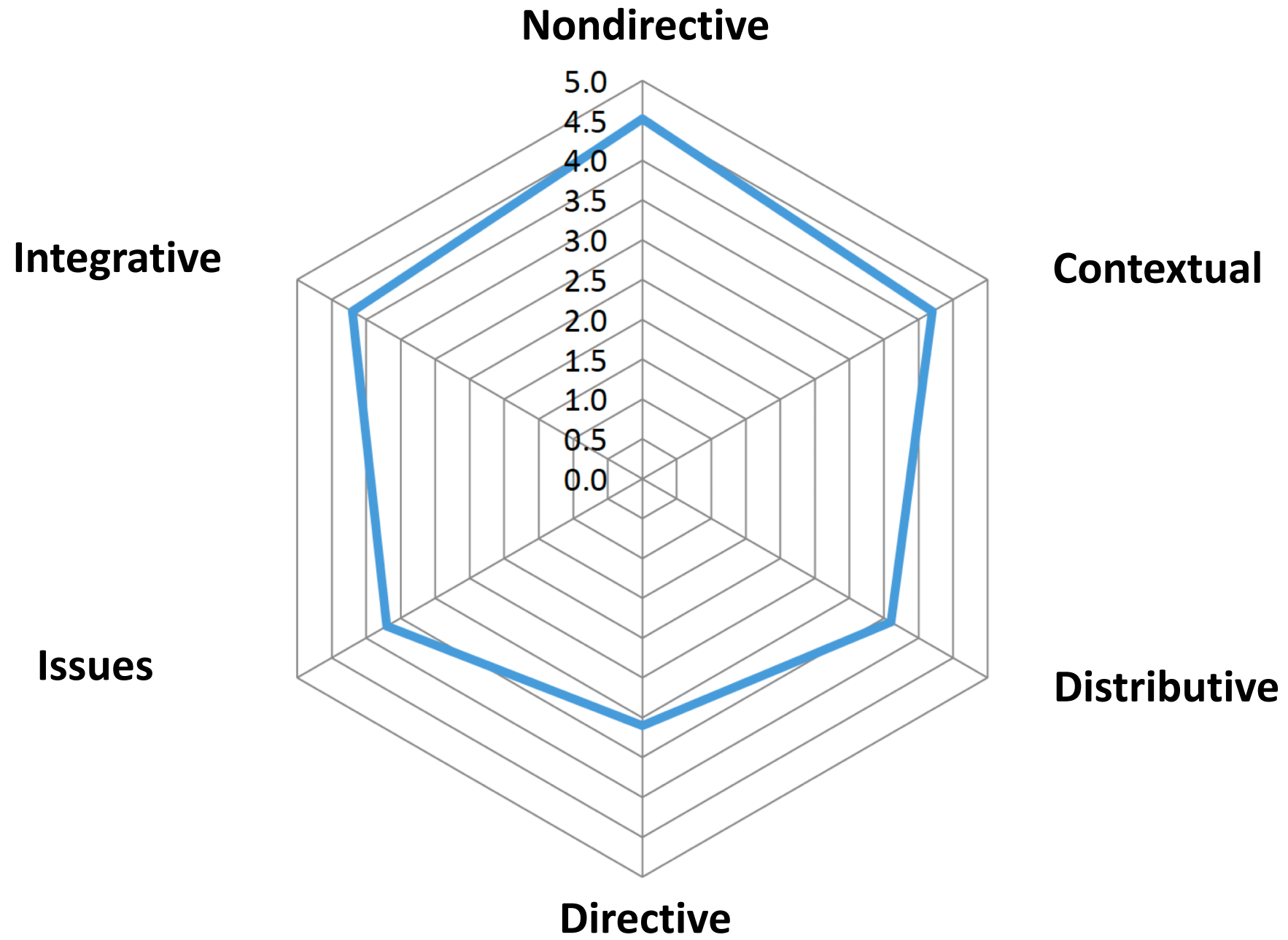
Mediator Level 1 Adaptivity Assessment (problem-relational)

Mediator level 2 Adaptivity Assessment (4 modes)

Mediator Competing Values Assessment

Nondirective Facilitation





Adaptive Mediation Next Steps

Assess the effects of mediator **adaptivity** on **disputant satisfaction, transformation, settlement, and sustainability.**

Need **partnerships** with mediation centers, clinics and practices.

Mediation Meta-Competencies: Adaptivity, Optimality & Systemic Agency

Adaptivity is the capacity to employ different strategies in different conflicts, or as the same conflict situation evolves and changes, in a manner that achieves goals effectively and is fitting with the demands of the situation.

Optimality is the capacity to combine different approaches (such as integrative and distributive) to achieve the best possible outcomes for the stakeholders.

Systemic Agency is the capacity to act or to mobilize networks of collective influence to alter the nature of the context in which the mediation is situated (intensity, structure of interests, constraints, hidden agendas) to support constructive outcomes.

Dynamic Network Theory Mediation Tool

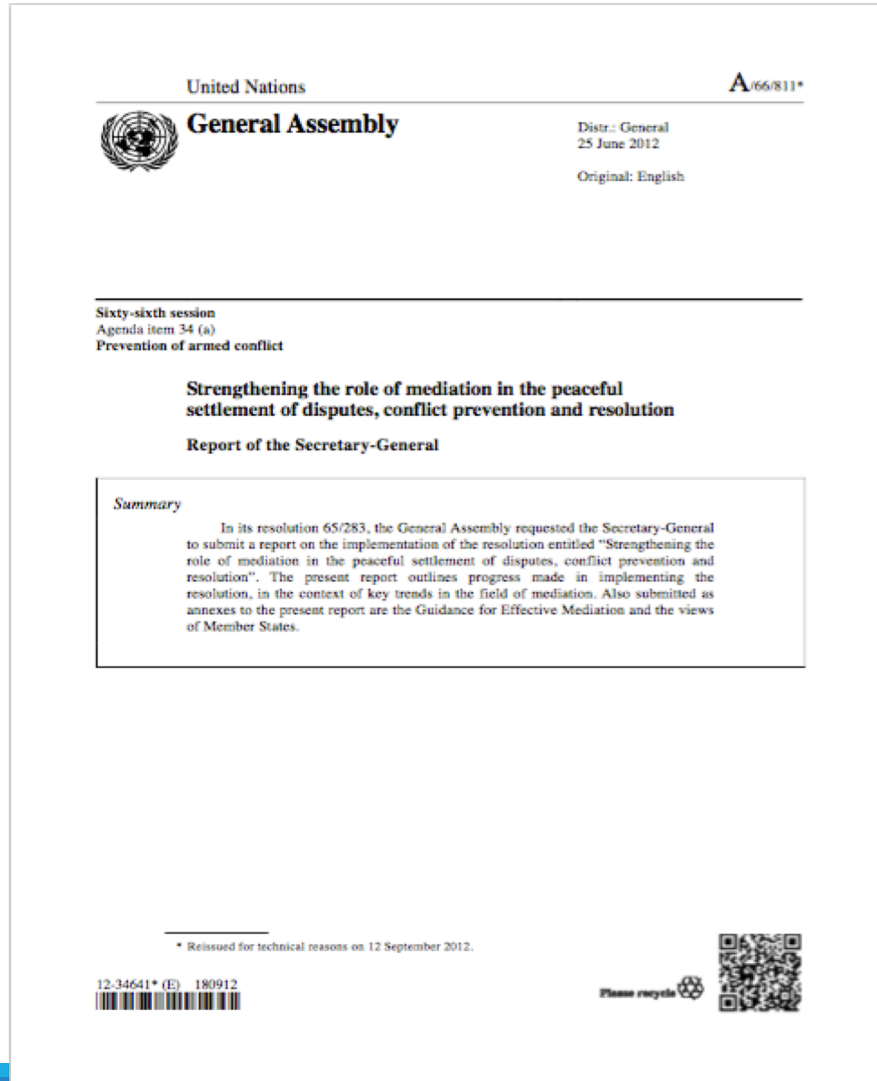
JAMES WESTABY

ADAM PARR

PETER T. COLEMAN

UN SG Report on Mediation

Resolution 65/283



Many of today's conflicts involve a complex web of objectives and actors, local and regional dimensions that pose difficult challenges for mediators.

As a result of these complexities, mediators have to grapple with a wider range of substantive issues.

The range of complex issues to be addressed means mediation requires greater and more varied expertise.

The field of mediation has become more diverse and crowded. Regional, subregional and other international organizations as well as non-governmental organizations and private individuals are increasingly involved in mediation activities.

Civil society actors, such as the youth and women groups, are rightfully demanding a greater voice in political transitions and mediation processes, as seen in the context of the Arab Spring and beyond.

Rationale

UN Mediators working in this context are tasked with comprehending and being up-to-date on past, current and future peace and conflict actors and dynamics in various complex contexts.

Mediators have no systematic methods for processing this information, other than desk research and informal professional networks.

The objective of this initiative is to develop a user-friendly tool that will assist in the collection, organization and visualization of expert and stakeholder information regarding the network of actors in which a specific mediation initiative is situated.

It will also allow for comparisons between stakeholder assessments, and for the evolution of networks over time.

DNT Mediation Tool

The tool will allow a mediator to:

- Quickly develop a visualization of the context of a conflict situation
- Incorporate additional information into the model as it becomes available
- Visualize changes in the conflict situation over time
- Visualize the conflict from the perspective of different actors and goals

Dynamic Network Theory

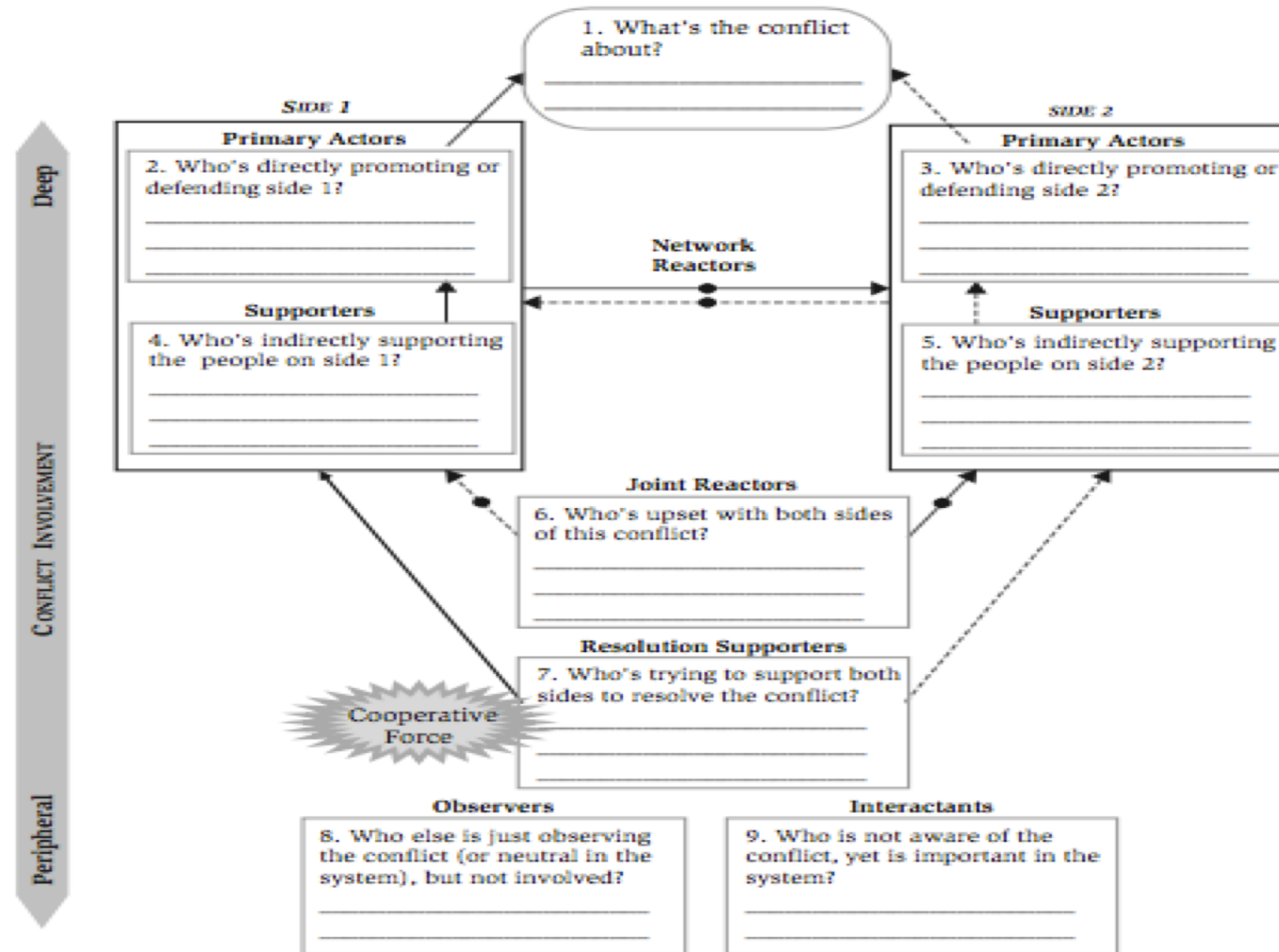
- The Mediation Tool uses Dynamic Network Theory as an organizing framework for conflict data
- DNT integrates social network theory with research on goal pursuit and resistance
- DNT identifies eight social network role behaviors that relate to goal pursuit and resistance

The 8 Linkages in Dynamic Network Diagnostics

Role Type	Label	Example
1. Goal striving	G	Mediators trying to resolve a conflict
2. System supporting	S	The UN providing mediators with needed support
3. Goal preventing	P	Some central agents in the conflict resisting mediation efforts
4. Supportive resisting	V	Other parties supporting the central agents' resistance
5. System negating	N	Parties getting irritated or upset with mediation efforts
6. System reacting	R	Other parties emotionally reacting to people not trying to resolve the conflict
7. Interacting	I	Parties not fully aware of the conflict but may be in the cross-fire (e.g., innocent bystanders)
8. Observing	O	People observing the conflict, such as state actors trying to be neutral, despite being potentially concerned

DNT Survey Method

Directions: Please start answering or discussing questions at the top of the page and work your way down. Feel free to insert yourself into relevant boxes. Boxes should be left blank, only if no one serves that role. In some rare cases, an entity may be in more than one box, because some people may have multiple motives on different sides at various times. (See figure 41.1 for a key about the meaning of path signals).



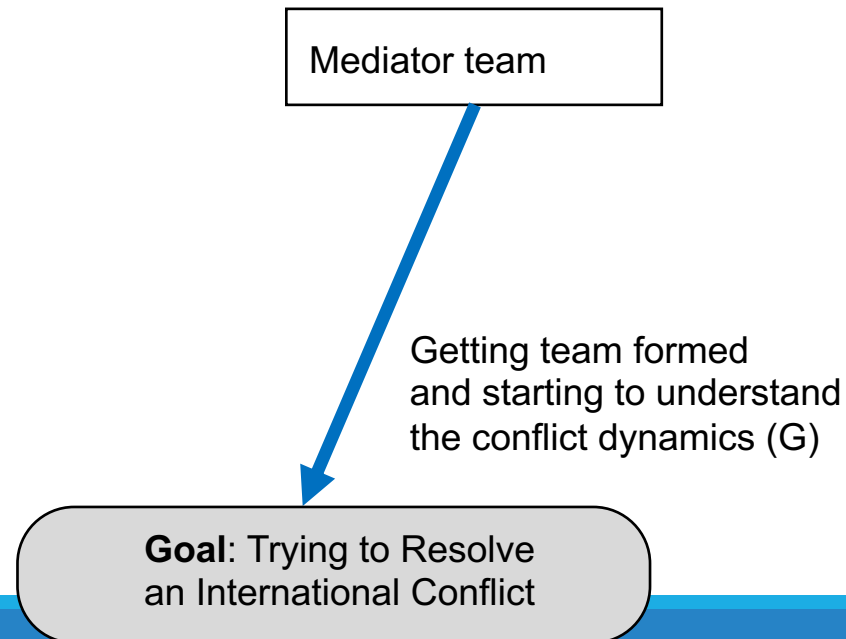
Final Questions

- 10a. Place a check (✓) by entities who are very upset about this conflict (i.e., the network reactors).
- 10b. Place a question mark (?) by entities if you are uncertain about their placement.
- 10c. In your opinion, who may be more influential in this conflict? ☐ Side 1 ☐ Side 2 ☐ Both ☐ Neither

SIMPLE EXAMPLE OF A MEDIATOR TEAM STARTING A MISSION

Time 1: Getting mediator team formed and engaged

Goal Striving Links (G)

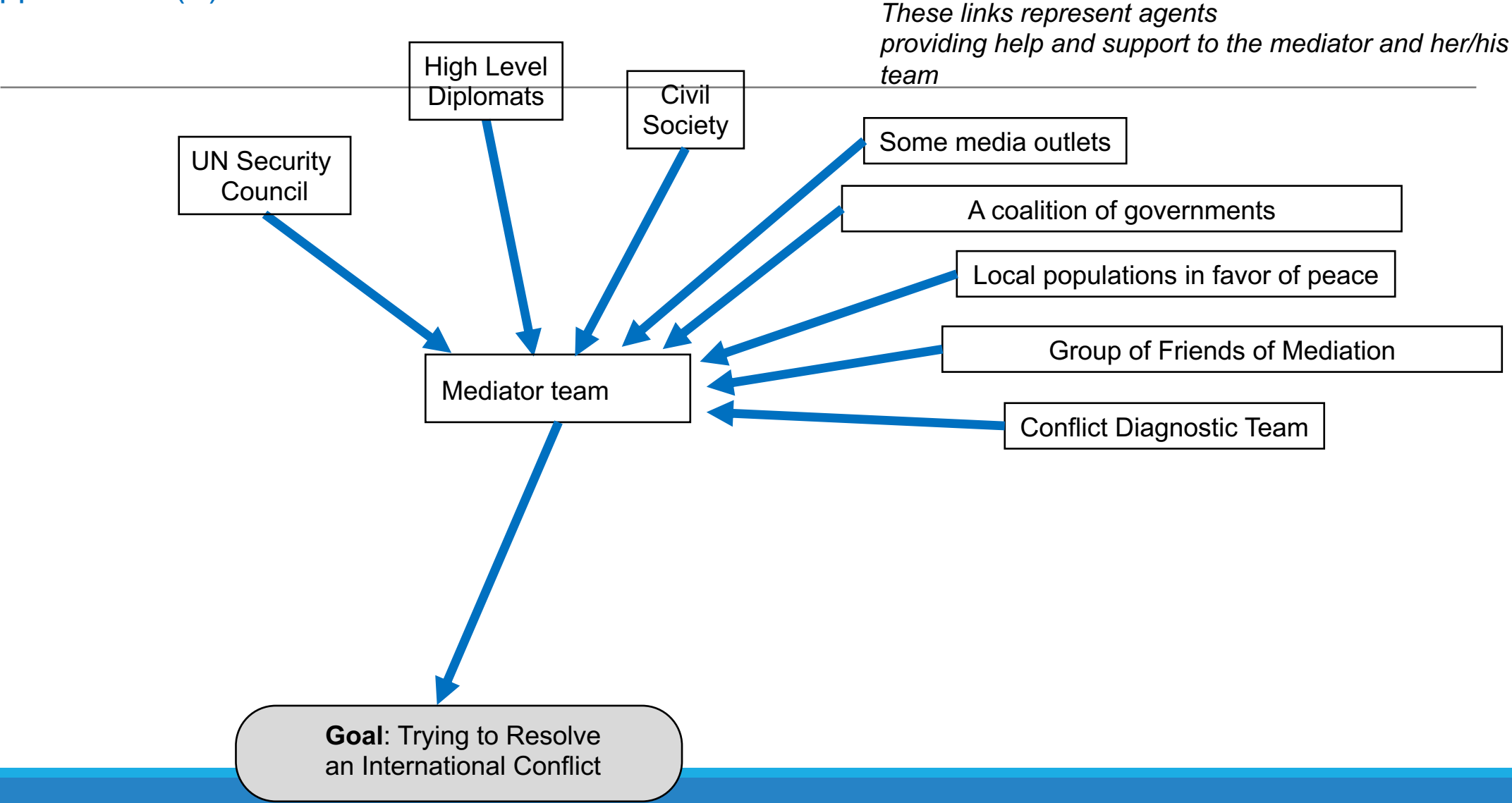


Assessment Note:

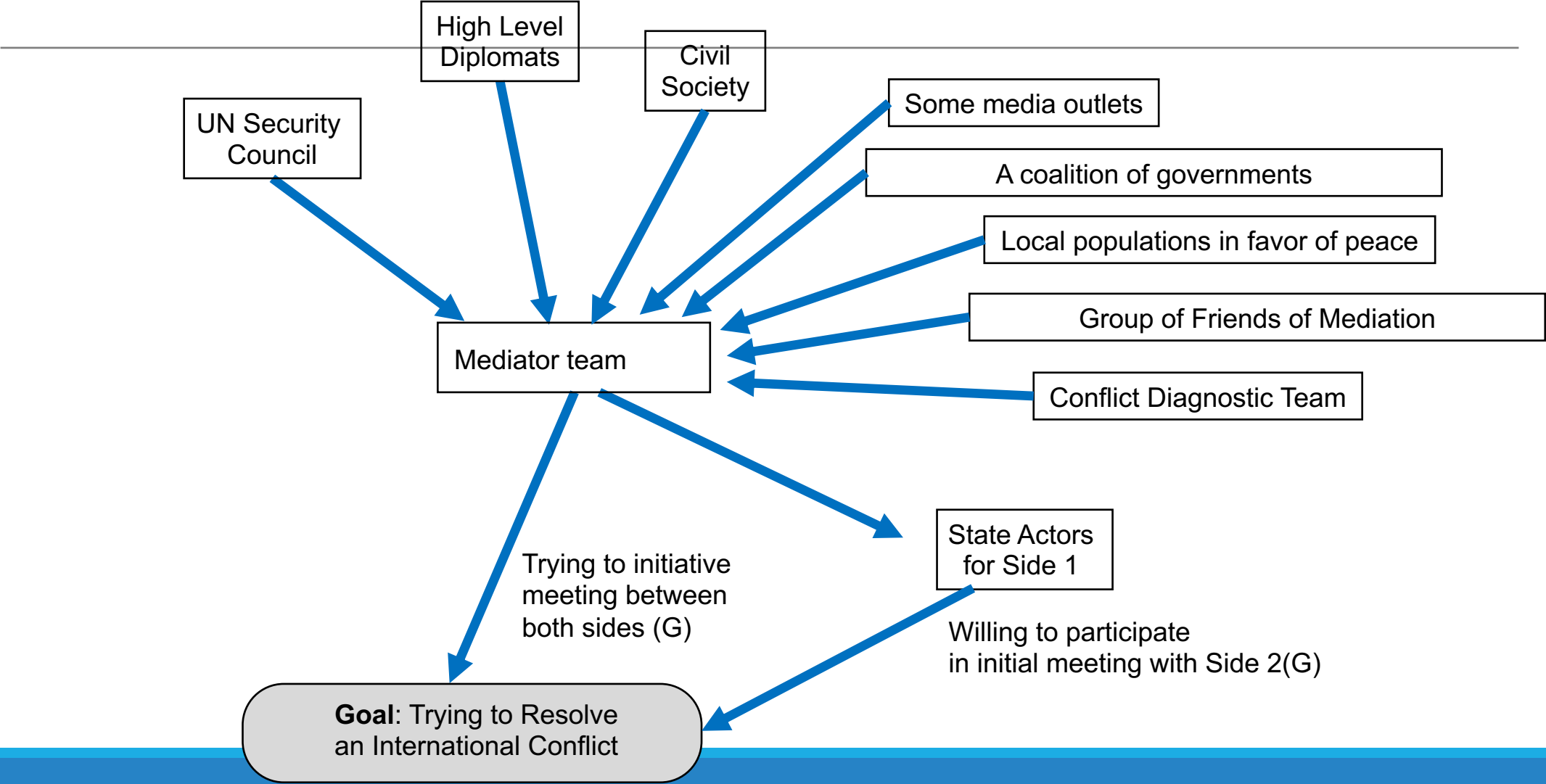
*A wide variety of behaviors can be documented as part of each path
→Different mediators can learn how others have approached system in the past or in successful ways
→Can be visualized and seen in programs (via mouse-over)*

Time 2: Mediator starts using his or her network to provide help and support

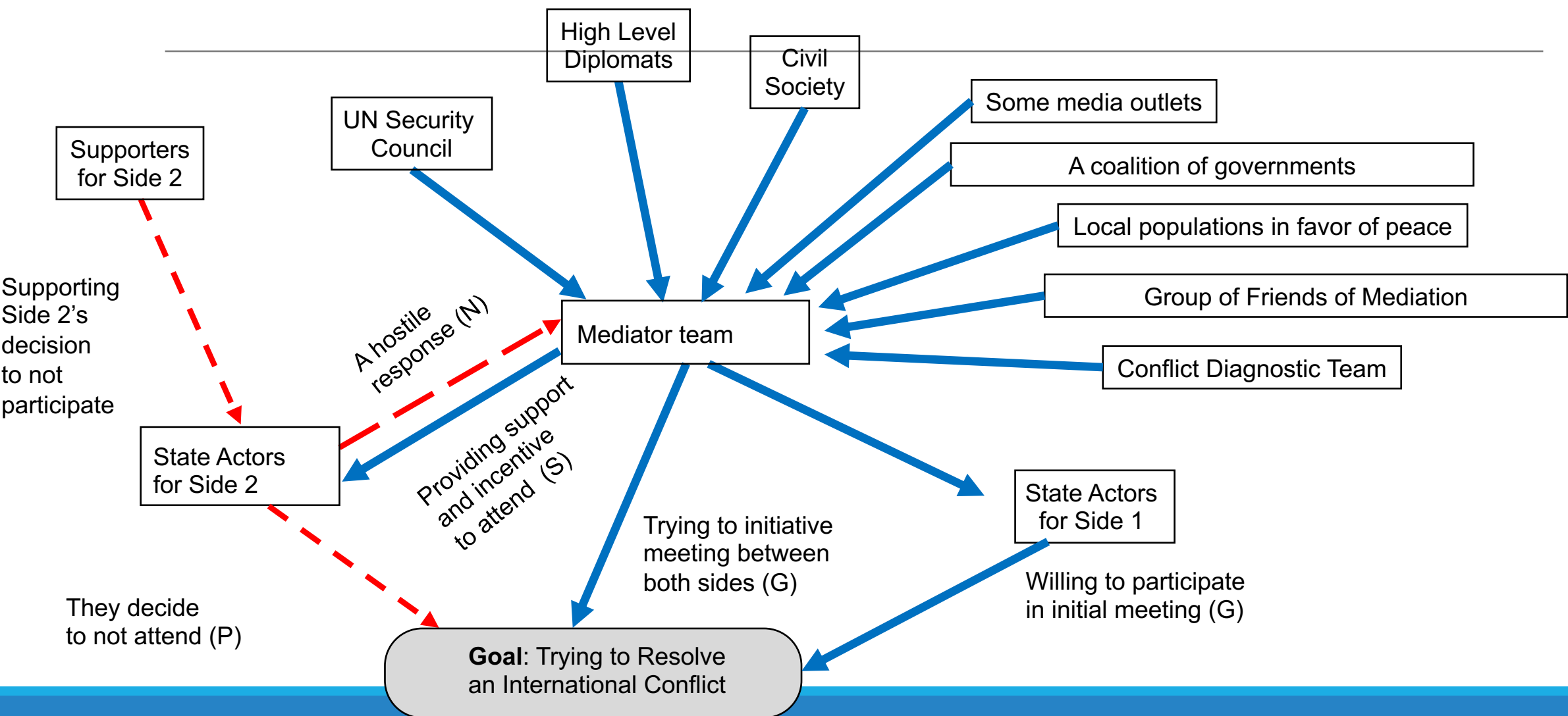
System Support Links (S)



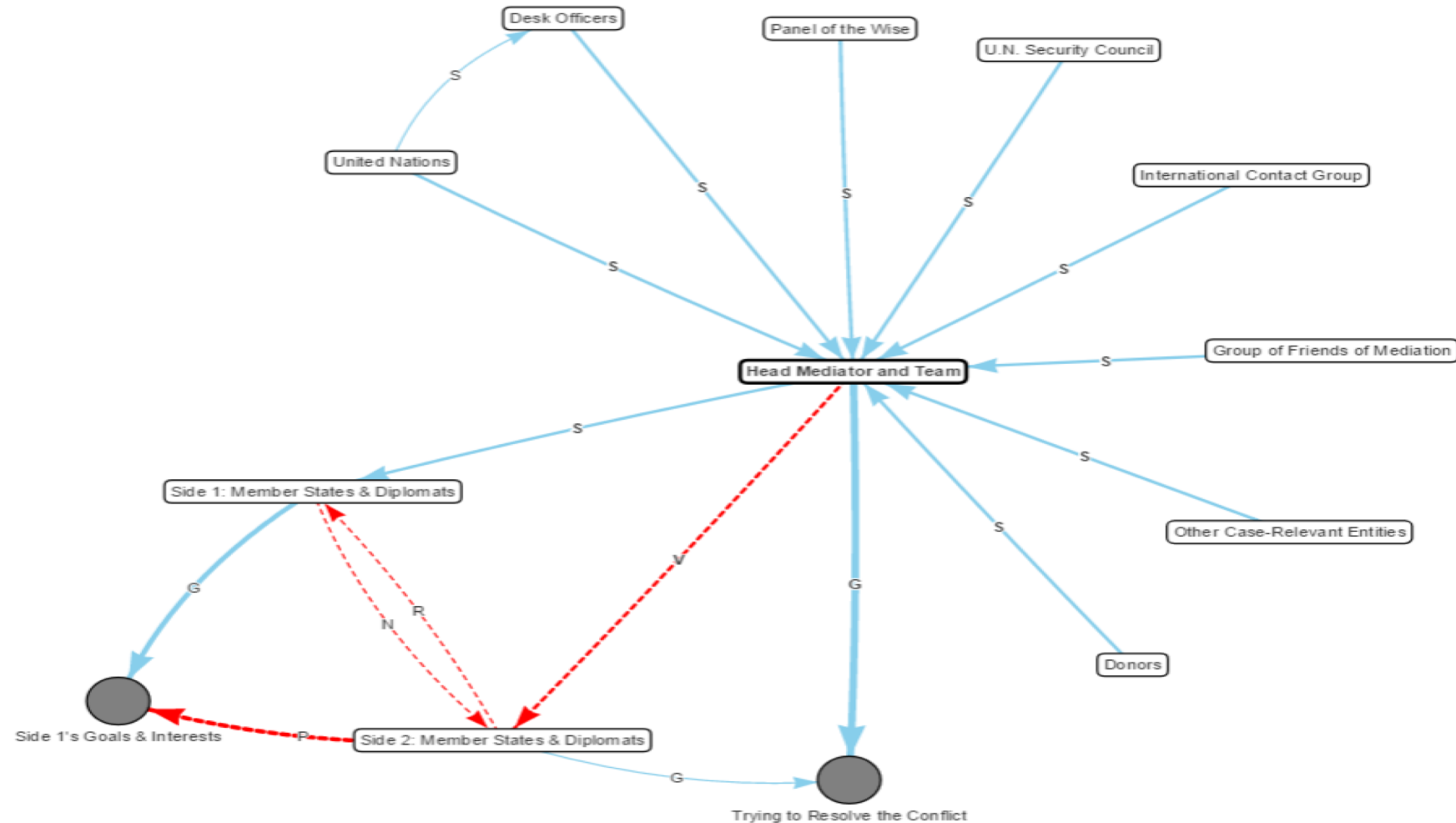
Time 3: Mediator starts engaging Side 1 State Actors, in the first step toward resolution strategy (i.e., getting two sides to meet)



Time 4: Mediator attempting to engage other side of conflict and meets resistance

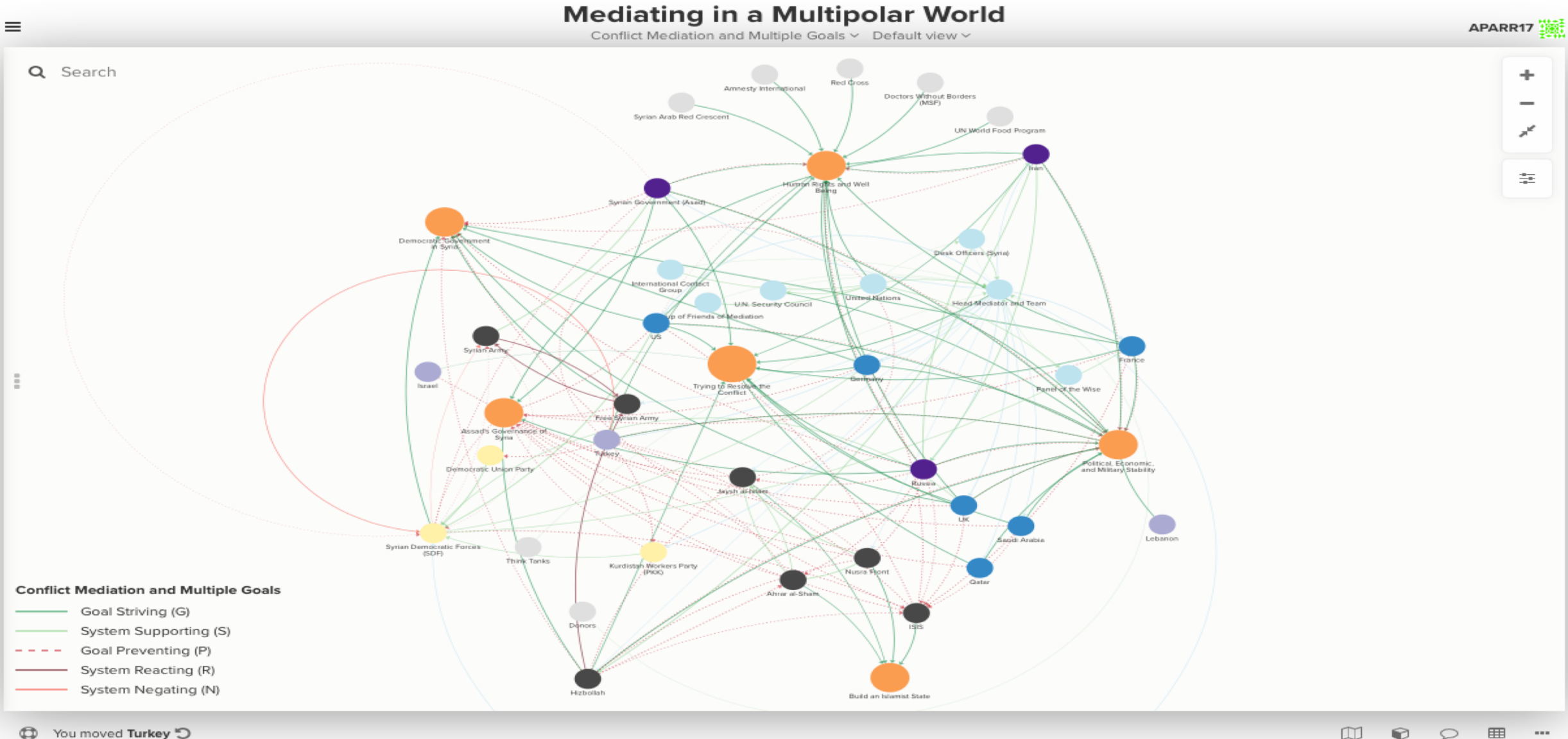


Track 1 Mediator in the Context of a Conflict and the Network's Involvement in Resolution Goals



Another initial full model of a conflict and mediation setting

-Toggling can zoom in on each motivational factor
(rough mock-up data – for simple illustration only)



Metrics

- Probability or trajectory for attainment/success or failure
- System complexity
- Level of resistance
- Goal pursuit strength (aka network motivation for goals),
- Interpersonal negativity,
- Overall positive system focus
- Network affirmation ratio
- Network motivation ratio)...

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