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Raginee Poloogadoo

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Résumé de l'article

La médiation devient une solution plus pacifique et acceptée au niveau international pour résoudre les conflits. Il s'agit d'un processus dynamique et interactif dans lequel un tiers neutre, le médiateur, aide les parties en conflit à résoudre le conflit. Normalement, on part du principe que le médiateur restera neutre. Cette thèse explore la posture neutre du médiateur face à la médiation interculturelle. Le but de cette étude qualitative était d'examiner la compréhension et la mise en oeuvre de la neutralité du médiateur interculturel dans la pratique. Les questions de recherche portaient sur les perceptions, les interprétations, les conceptions, la mise en oeuvre et l'efficacité du médiateur lors de la médiation. Dix entretiens semi-structurés en face-à-face ont été menés avec des médiateurs interculturels originaires de diverses zones géographiques. Les données ont été codées et analysées par analyse thématique. Les résultats de l'étude ont révélé que les médiateurs interculturels ont des visions différentes de la neutralité de la médiation. De plus, ils adoptent le sens et la posture de neutralité en fonction de leur autodétermination dans la pratique. Un discours alternatif pour cette étude devrait être de donner un sens standard au terme de neutralité en lui donnant sa signification absolue dans la médiation.

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Raginee POLOOGADOO[79]

79 Raginee Poloogadoo is the CEO of PSC, a mediation and consultancy firm in Luxembourg. The Author is an accredited mediator in Civil, Commercial and Criminal and socio-family matters. Raginee.poloogadoo@gmail.com

RÉSUMÉ

La médiation devient une solution plus pacifique et acceptée au niveau international pour résoudre les conflits. Il s'agit d'un processus dynamique et interactif dans lequel un tiers neutre, le médiateur, aide les parties en conflit à résoudre le conflit. Normalement, on part du principe que le médiateur restera neutre. Cette thèse explore la posture neutre du médiateur face à la médiation interculturelle. Le but de cette étude qualitative était d'examiner la compréhension et la mise en œuvre de la neutralité du médiateur interculturel dans la pratique. Les questions de recherche portaient sur les perceptions, les interprétations, les conceptions, la mise en œuvre et l'efficacité du médiateur lors de la médiation. Dix entretiens semi-structurés en face-à-face ont été menés avec des médiateurs interculturels originaires de diverses zones géographiques. Les données ont été codées et analysées par analyse thématique. Les résultats de l'étude ont révélé que les médiateurs interculturels ont des visions différentes de la neutralité de la médiation. De plus, ils adoptent le sens et la posture de neutralité en fonction de leur autodétermination dans la pratique. Un discours alternatif pour cette étude devrait être de donner un sens standard au terme de neutralité en lui donnant sa signification absolue dans la médiation.

MOTS-CLÉS

Médiation interculturelle, Posture de neutralité, Médiateur, Significations, Pratique

1. INTRODUCTION

[511] Mediation is a dynamic, structured, interactive process wherein a neutral third individual who is a mediator assists disputing parties in solving conflict to reach a fair settlement. Mediation as practiced is in diverse fields such as civil, commercial, penal and cultural contexts. It consists in solving conflict using specialized communication and negotiation techniques in order to reach an accord between the opponent parties. Normally, there is an assumption that the mediator will remain neutral. This article explores what happens to this neutrality posture when dealing with cultural mediation or inter-cultural mediation (the two terms used in different geographical locations). When stating cultural or intercultural mediation more specifically it is a conflicting situation wherein two or multiple parties hail from diverse cultural backgrounds. My interest in this subject is because I am an accredited mediator in civil, commercial and penal matters by profession. I belong to a multicultural background and at instances when participating in situations with multicultural mediations, the question of maintaining a neutral posture arose.

1.1 WHO IS A MEDIATOR?

[511] Due to heavy court caseloads and rising costs, disputant parties often opt to resolve their disputes outside the courtroom through a known process called mediation. A mediator, unlike a lawyer, does not represent any of the litigants or parties in legal disputes. When the parties have a dispute and wish to avoid the legal complexities of a lawsuit, they take recourse to a mediator's services. Such is to assist them in finding a fair solution The online business dictionary defines a mediator as an "unbiased third party that mediates situations between two or more parties having as job to look at all facts involved in the situation and make suggestions to reach an amicable decision."

[512] In Western traditions, like judges, mediators are outsider-neutrals that is they are persons with no association to the conflict or opposing parties. They differ from insider-partials, lawyers, and facilitators with an in-depth know-how of parties to a conflict (Dyck, 2000, pp. 130-3; Gadlin & Pino, 1997, p. 18). In contrast, the non-Western cultures do not bear the same characteristics. For instance, according to Kelly (2008, pp 202-203) in a mediation process in the indigenous communities like in Australia the "best" mediator may be a person connected to the parties and dispute. In other cultures, for example in India, elders were qualified as mediators generally because of their existing knowledge of the specific dispute and their interest in assisting in the resolution so that individuals or a group (tribe, community, and village) will all benefit. Such a practice is the so-called "Panchayat" in India meaning the assembly of conflict solvers. It is to be concluded that a mediator can alter a conflict dynamic in five significant ways. For instance, changing the structure of the interaction, bringing an approach to the mediation through their personal commitment, vision, and humanity to the interaction with a set of values and ethics (Mayer, 2000 pp.273-4).

1.2 MOTIVATION FOR RESEARCH

[513] Neutrality is the central concept of the practice of mediation. During my work so far, in several instances, I faced situations while conducting an intercultural mediation, which questioned the neutral posture that I adopted. It made me wonder if the fact that I

come from a multicultural background allows me to understand cultures better to better assist in the mediation process. Is it because I could comprehend the position of the parties? Is it because Mauritians live in unity even if they do not have a shared language and customs but rather the mix of cultures and cultural understanding form the unity and identity (Carroll, 2000)? As a mediator's satisfaction is fulfilled when both disputant parties have reached a beneficial solution to their dispute, sometimes some covert strategies are engaged to clout the outcome of the mediation positively. Being a mediator, whose main purpose is to solve conflicts, I found myself in conflict with myself. The sole reason was "Can someone really be neutral?"

[514] Over the years, there has been a rise in the number of Western academics who have been questioning and criticizing the concept of neutrality in a mediation practice (Field, 2003). The concept of neutrality becomes questionable when anthropology studies have found that mediators in Central America, Asia and Middle Eastern cultures maintain a close relationship with opposing parties based on the concept of trust, connectedness and continuity. (Golbert, 2009). In contrast, more Western-based practices, according to Cobb and Rifkin (1991) often refer to neutrality using the concepts of justice, power and ideology.

[515] As a mediator, the neutrality theory must be depicted to clearly determine whether this concept is essential or not in practice. The key concepts namely mediation and neutrality will be scrutinized in the subsequent sections followed by the data-gathering procedure; the said methodology. The findings are to be decomposed in order to attempt to have a better overview of the neutrality concept in mediation. It presumes that this study will contribute to the existing studies where the neutrality concept in mediation is ambiguous or not.

2. THEORETICAL FRAMEWORK: MEDIATION

2.1 WHAT IS MEDIATION?

[516] Mediation is a time and cost-efficient, confidential and voluntary process in which individuals alter the features of their conflict interactions from negative and destructive to positive and constructive (EU Directive Memo/08/263). In the process of mediation, a mediator, in reaching a resolution together, rather than imposing arbitration, assists disputant parties in an adjudication-based system. Such practice is rapidly becoming a popular form of complaint resolution, particularly those complaints that involve a high level of emotion. This is effective when such an alternative to solving conflicts at the preliminary phase of any disagreement is considered. This is to prevent both parties from becoming rooted in their positions before the conflict escalates. In order to have a profound understanding of the practice of mediation, it is essential to explore the concept by looking at the definitions, characteristics, history and process.

2.2 DEFINING MEDIATION

[517] Although differences of opinion still exist, there appears to be some agreement that mediation refers to a decision-making process wherein a third party known as a mediator assists the relevant parties. The mediator works by facilitating consensus

between both parties in dispute by addressing their fundamental interests and needs as opposed to their stated positions. Mediation is a practice that requires several skills such as hearing out the parties, handling emotions, assisting the negotiation process and generating options that are acceptable and agreed upon. Additionally, to break the dilemma that may frequently arise between the disputing parties to assess the options and arrive at a consensus. The mediator takes in all the information, analyzes it, and defines the perception of the parties with the purpose of helping them see each other's perspective. In consequence, supporting both parties from a confrontational to a collective mode to develop consensus. (Ab. Hamid, 2017). Importantly, mediation is non-binding, in other words, a mediator cannot enforce a resolution to a dispute. Parties entering direct negotiation may not have the benefit of such neutral intervention. It is noteworthy to highlight the mediator's acceptance by the parties involved in the mediation process.

[518] Many scholars and researchers have defined mediation. Indeed, there are multiple definitions of the concept. Professor Joseph Stullberg (1981), wrote that despite the expansion of mediation practices over two decades, a common understanding as to what constitutes mediation has faded. Thus, according to him, it is crucial to identify and clarify the principles and dynamics, which in sum constitute mediation as a dispute resolution process. Therefore, it is indeed essential to scrutinize the mechanics of this process. For instance, Spencer and Brogan (2006) stated that mediation remains a fluid concept whilst McCorkle and Reese (2005) argue that mediation is a difficult term to pin down a single definition. While some researchers have talked about the fluidity of the concept others argued about its complications. It clearly demonstrates that this process of perception lies through different lenses. Consequently, an examination of definitions is crucial in trying to have a better comprehension of what constitutes mediation.

[519] Davis and Duncan (1982) defined mediation as the settlement of a dispute involving techniques to a negotiation process in which a skilled detached neutral person assists in changing the minds over the conflicting needs by suggesting, to reach an agreement. For them, mediation is purely a settlement of dispute in which the "neutral", notably the mediator, have a fundamental role to assist, communicate, negotiate, and make disputant decisions in favor of reaching a settlement. It is essential to note that this role does not include determining a solution. For Michael Noone (1996) mediation is a process in which a neutral and impartial third individual, which is a mediator, is to simplify the process of discussion. The mediator assists the parties in the dispute to facilitate communication, promote understanding between both parties and help disputants focus on the relevance of the needs of each other in order to resolve the issues. Moreover, the skilled mediator also uses creative and proper techniques in the interest of reaching a viable resolution.

[520] Such practice appears in the essay of Francis Bacon (1914, XLVII of Negotiation). Bacon points out that "it is generally better to deal by speech than by letter; and by mediation of a third than by a man's self". In both definitions, there appeared a general description of what consist mediation and its dynamics. Emphasis is on the word "assist". The latter is a broad term meaning it could involve any number of third activities in terms of intervention like arbitration and consultation.

[521] Some researchers in defining mediation emphasized the third party's lack of control over the resolution while settling a dispute. For example, Kriesberg (2007) asserted that mediation pertains to helping the conflicting parties to negotiate and reach an agreement by themselves, but not imposing one. Similarly, for Podolefsky (1990) mediation is a process of conflict management in which a third party facilitates the negotiations between two parties but is limited to imposing an authority on a decision. According to Singer (1990), mediation is a form of third-party "outsider" assistance to the dispute, who has no power to make decisions for the parties.

[522] In the same line of attempts to discuss mediation, there has also been a tendency to characterize its specifics. Bingham (1986) assumed "an assistance of a 'neutral' third party to a negation". Similarly, Applegate and Beck (2013) deduced that mediation is a confidential process in which an impartial and neutral third party assists disputing parties to reach a mutually acceptable agreement on all or some of the issues disputed. In conducting their research, Mc Corkle and Resse (2005), defined mediation as the process whereby a mutually acceptable third party, who is neutral and impartial, facilitates an interest-based communicative process that enables disputing parties to explore concerns and to create their outcome.

[523] On closer look, at the examination of the existing definitions, there seems to be an indication that researchers have adopted different approaches to their interpretation of the term "mediation". Some have put forward broad definitions without investigating the specifics. They view mediation as a third-party assistance. Duly, some scholars felt the need to distinguish mediation from other forms of a third party's intervention. Some emphasized the lack of control of the third party's involvement in the outcome while some stressed the neutral nature of the third party's involvement. A trend is visible in defining some specific characteristics especially the assumption that mediation is a neutral process. The referred definitions feature the consistent and informal process inherent in mediation. Unanimously, the connotations include key provisions such as assist, third party, mediator's potential as neutral, impartial and parties' aptitude to mediate a resolution of their own. Concerning a mediator's acceptableness, it is notable to highlight the parties' perceptions about the intermediary's view, potential biases, and objectivity toward the issues in question. Frequently, the relationship of a third party's perspective refers to neutrality (Moore, 2014).

3. THEORETICAL VIEW: NEUTRALITY

3.1 WHAT IS NEUTRALITY?

[524] Given that the scope of this paper is to study the neutrality posture of a mediator in intercultural mediation, the emphasis is on the term neutrality in this section. The word neutrality is derived "from the Latin *neuter*, meaning 'neither of them,' a condition in which attitude and action reflect a refusal to take sides in a dispute, or a lack of bias or [favoritism]" (Yarn, 1999 p.322). Cecchin (1987) describes neutrality as the creation of a state of curiosity in the mind of a therapist. The author defines curiosity as exploring and inventing alternative views and moves. According to Cecchin, these diverse views and moves breed curiosity. Thus, in a repetitive pattern, neutrality and curiosity position

one another distinctly in a commitment with a symbiotic detachment to any specific position.

[525] Departing from a general perspective of neutrality in the mediation context, Douglas (2012) states that the indispensable requirements of the mediation proceedings are neutrality on the part of the mediator and its autonomy. In line with this statement, Zamir (2011) contends that the absence of neutrality in mediation practices challenges the foundation of mediation. The term neutrality is often present in the descriptions and definitions of a mediator. The mediator is often regarded as the neutral third person, Fehrenbach & al (2014). Thus, it is significant to have a brief overview of the definitions of neutrality in the context of conflict resolution to depict the meaning of neutrality for the study of this paper as well as how it is perceived.

3.2 DEFINITION OF NEUTRALITY IN MEDIATION

[526] Even though many researchers have attempted to define neutrality for a mediator, according to Exon (2008) the meaning ascribed to the term neutrality is still vague. This is because neutrality is an elusive concept; sort of ambiguous (Becker 2013). According to Cobb and Rifkin (1991), neutrality can be both transparent and opaque. Quoting Cobb and Rifkin (1991, p.37): "[T]ransparent because it operates on the basis of widely held assumptions about power and conflict, and opaque because it is exceedingly difficult to raise questions about the nature and practice of neutrality from *within* this consensus". In line with this statement, it is assumed that mediators have power (Shapira 2008). The power used by a mediator during mediation is to assist the conflicting parties in communicating with each other in order to alter their positions and perspectives and come to an agreement. Often the term power in mediation refers to the advantages over other conflict resolution processes (Bowen 2005).

[527] In practical terms, virtually all conflicts directly or indirectly involve power. Power can be conceptualized as an exchange between the characteristics of a person and the characteristics of a situation, whereby the person has access to valued resources which he uses to achieve personal, relational, or environmental goals and often also by using various strategies of influence (Coleman et al 204, p.120). Power may also be perceived as a symbolic expression of one's identity and right to self-determination. In addition, power in conflicts is generally used as an authority for achieving the aim of self-determination.   Conflict is sometimes a means of seeking or maintaining the imbalance of power in relationships. Thus, based on these features, neutrality can be identified as transparent. Consequently, neutrality is a difficult concept to depict as its meaning depends on the context (Mayer, 2011). The concept can imply conflicting connotations and, respectively, Mulcahy (2001, cited in Noone and Ojelabi. 2014, p.164) concludes that the concept is identical to "invisibility" and "passivity".   In contrast, a mediator's neutrality is the objective expertise in simplifying communication between conflicting parties (Alfini et al. 2001).

[528] Furthermore, mediator neutrality is often debated and contested which has several meanings (Astor 2007). According to Astor (2007), the complexities of defining the term are due to the lack of agreement and consistency among mediators to define the term. Thus, it is essential to have a look at different perspectives concerning the meanings of neutrality in mediation for the purpose of this research. The following

section will concentrate on the struggle of academicians and practitioners to find a definition of the concept of neutrality.

3.3 THEORETICAL PERSPECTIVES ON THE MEANING OF NEUTRALITY

[529] As indicated previously, for Astor (2007, pp221-239), neutrality has several meanings. The author outlines four meanings, also considered key elements when defining neutrality for the purpose of mediation. According to her, firstly, neutrality is a frequent term used to demonstrate that a mediator can affect neither the content nor the consensus of a mediation process. His role is only limited to the control of the process of mediation in solving the dispute. The second meaning of neutrality is to refer to impartiality. In her view, both disputant parties should be treated equally and not be subjected to favoritism. The third aspect of neutrality is that no influence by financial or personal connection can arise between a mediator and either conflicting party. A further element, the fourth, Astor writes, is independence. That is, all mediation should be free from governmental influence.

[530] Unlike Astor, Moore (2003) proposes that neutrality refers to the posture and relation between the mediator and the conflicting parties. Nevertheless, he asserts like Astor, that a mediator bears no prior association whether social or beneficial with any of the parties. In defining neutrality, Moore further states that a mediator does not gain any favorable benefits or remuneration for special treatment in the mediation session and its outcome. Similarly, McCorkle and Reese (2005) suggest that the neutrality of a mediator lies in not being personally biased towards both parties. Furthermore, Boulle and Teh (2000) view neutrality as a concept bearing multidimensional meanings. In addition to the statements of Moore (2003) and McCorkle (2005) regarding neutrality, Boulle and Teh further expand the meaning. They ascertain that neutrality for a mediator means not being judgmental, having no prior knowledge of conflict and not making use of substantive knowledge to influence the outcome.

[531] Thus far, in attempting to define the neutrality of a mediator's influence on the outcome, some authors, such as Boulle, Teh, and Moore link being neutral to the outcome but not to the process while others maintained that mediators could remain neutral and influence the outcome (Astor 2007). Ultimately, Taylor (1997) argued that neutrality is an ongoing process wherein some mediators practice neutrality distinctly but remain ethical. She views neutrality as a continuum possessing two specific points. In terming these two distinct ends "strict neutrality" and "expanded neutrality", she views the process opposed to an absolute structure. As an example, a mediator closer to the *expanded neutrality* end of the continuum would feel more of the need to balance power and will actively respond to emotions in contrast to one who is nearer to *strict neutrality*. Thus, practitioners would bear different characteristics depending on their variation upon the continuum. Despite the discrepancies, Taylor underlines that a mediator can embrace the meaning of neutrality at any point of a continuum and yet be ethical.

[532] In sum, the term appears to be a multifaceted concept due to its diverse definitions and theoretical perspectives regarding the meaning of neutrality proliferate in literature. The term neutrality in mediation seems to be a matter of different perspectives among diverse authors when associated with the outcome of a mediation process.

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3.4 EMPIRICAL PERSPECTIVES ON THE MEANING OF NEUTRALITY

[533] Even though theoretical perspectives abound in the literature regarding the meaning of neutrality, there is insufficient empirical research done on this subject. Nonetheless, certain prominent authors did some empirical studies focusing on understanding the mediator's perspective on neutrality. Through the means of interviews with mediators, video sessions of mediation and support of literature, Cobb and Rifkin (1991) studied the mediator's perception of neutrality. Their findings led to two definitions for the meaning of neutrality, namely *impartiality* and *equidistance*. Neutrality as impartiality deals with no emotions and being unbiased, while neutrality as equidistance is finding the power balance between the parties through empathic communication. Cobb and Rifkin (1991) and Rifkin et al. (1991) concluded that the two meanings of neutrality create an inconsistency of neutrality in practice. In sum, for them, these two meanings of neutrality, impartiality and equidistance create a paradox of neutrality in practice.

[534] Practitioners at times in order to achieve an equitable outcome (equidistance) must balance power between parties, nevertheless this practice requires a mediator to favor one party over the other. This effort contradicts impartiality. The equidistance hypothesis in neutrality was analyzed and criticized by Feer (1992, pp 173-177). In his view, equidistance is a mere tool contrary to an overarching concept. He outlines that balancing power through empathetic communication does not constitute impartiality. He regards the tool as an element which deals with power balance based on empathy. According to the author, this authority of finding the power balance does not consist of being impartial.

[535] Emphasizing the hypothesis of the power balance, authority and favoritism as suggested by Cobb and Rifkin, Jacobs (2002) views the demands of power balance between parties, empathetic communication, favor one side (viewed as relational closeness) in an effort to aid parties reach an unbiased, symmetrical agreement as competing and difficult requirements to maintain neutrality. Still, at the same time, he describes them as constructive moves for the parties to an equitable settlement. Jacob further describes neutrality as a "practical impossibility", given the "gap between normative ideal and actual practice." (Jacobs 2002, p.1407).

[536] Another empirical study in line with the mediator's neutrality was done by Douglas (2008). She did qualitative research by analyzing ten in-depth interview transcripts of a mediator's actual or lived experience during a mediation process. The mediators were from the Dispute Resolution Centre, Department of Justice, Brisbane, a government-funded and administered community of mediation. The study was about how mediators make sense of neutrality in practice. In trying to understand the mediator's perception of neutrality, Douglas identified four thematic areas for constructing the meaning of neutrality: impartiality, evenhandedness, process versus content and self-determination. Douglas refers to neutrality's impartiality as a lack of bias, and evenhandedness to equal treatment. She further reports that insignificant of the outcome, mediators are neutral but are in control of the process. At last, she views self-determination as the parties' autonomy to reach an agreement. Following the view of neutrality as a multidimensional concept put forward by Boulle and Teh (2000), Douglas' research

bears similarities to the concept leading to the conclusion that neutrality is a multidimensional concept which embodies diverse aims and dimensions.

[537] In yet another study, further observation on the perception of the meaning of neutrality revealed that the fundamentals of the theory of neutrality were uniform among the mediators but in practice, they struggled to maintain their neutrality posture Mulcahy (2001).   The observation was conducted during housing mediation sessions at a mediation community center. In total, 38 mediation sessions were scrutinized, and participation in informal discussions and formal interviews were conducted with the mediators and housing agents in Britain. Mulcahy concluded that even though the mediators knew the theoretical principle of the concept of neutrality, the mediators in practice sought reflexivity. He reports that reflexivity in practice is to "recognize rather than deny the possibility of bias while attempting to minimize its impact" (Mulcahy 2001, p. 517).

[538] Such reflexivity is sought to be an attempt to acknowledge instead of denying the possibility of bias and ease its impact for a fair outcome. For instance, mediators were open to the parties about the values they brought in the mediation session. They talked about the potential influence of their biases on the process and outcomes with their peers. Eventually, through discussions with the participants, a "self-reflexive" approach emerged to mediation at the mediation community center. According to scholars Astor (2007) and Rock (2006), the practice of self-reflexivity is a method to maintain power balance and issues of bias in order to reach a consensus.

3.5 CRITICS OF NEUTRALITY

[539] Astor (2007, pp 221-239) acknowledged the necessity of a reflexive approach to maintain neutrality in mediation. She advocated that mediator "actively consider their own identities, experiences, politics, attitudes and beliefs..." and the impact of these personal attributes on a mediation session. She ascertained that through a reflexive process, the mediator is not only validating the perspectives of both conflicting parties but simultaneously making them aware of their self-perception. Rock (2006) asserts that in order to have an equitable outcome, the parties must find their own consensus. For this scholar, in facilitating this process, the mediator must bear a neutral posture. However, he also argues that in order to reach a fair outcome in a neutral manner, mediators should pay attention to their reflections and emotions in practice. This is to nurture the reflexive process and develop the self-awareness of perception. For both scholars, the mediators' experience is the resulting change in mediation practice that aligns with proponents of self-reflexivity.

[540] The perception of neutrality may vary significantly between cultures. Taking into consideration the greater extent of criticisms, neutrality in mediation has been characterized simply as an aim, an objective, or an ideal, incapable of pragmatic implementation (Astor, 2000, Mulcahy, 2001). Neutrality is referred to by critics as a prevalent and delusive myth, arguing that it is neither possible nor desirable (Boulle, 2005; Della Noce 1999; Field, 2000). According to Freer (1992, pp 173-77), "for certain it is that neutrality, both as theory and practice, is a slippery slope full of tensions and contradictions". Still, mediators persist in claiming that they are neutral (Field, 2000, Astor & Chinkin, 2002) and seek virtue in the claim (Astor 2007). Thus, it is of essence

to assess and consider this posture when mediators are dealing with conflicts emerging from different cultures. As pointed out the sense of this paper is to investigate the neutrality posture of a mediator in an intercultural mediation, the following section will emphasize culture and mediation.

4. MEDIATION AND CULTURE LANDSCAPE

4.1 WHAT IS CULTURE?

[541] With today's progressing globalized societies come new challenges, among these, managing increasingly diverse workforces and cultures. Fields of psych-sociology, sociolinguistics and communication have seen important developments in the study of culture, identity and their importance in the well-being of an individual over the past decades. Issues of prejudice and tolerance have become a common subject regarding the valuation and acceptance of diversity across all domains. Intercultural mediation is a reoccurring term in contemporary approaches. Nowadays society often comprises individuals of multiple nationalities and cultural backgrounds, which can lead to myriads of issues from misunderstandings to outright social conflicts. The field of intercultural conflict resolution focuses on strategies to avoid or solve such issues and accommodate everyone's identity.

[542] The first notion to appear in an intercultural conflictual context is that of culture. Such as interpreted today, culture is a social construct, which serves as a common denominator for groups of individuals. This differs from its earlier understanding as a variety of static norms and social rules requiring strict adherence for legitimate affiliation which problematically posed culture as an entity to be analyzed as an unchanging "whole". Contemporary approaches to culture postulate on the contrary that everyone is an active actor in the construction of a culture (Giordano, 2003). This not only justifies differences between individuals of the same culture, but it also establishes culture as a way to "organis[e] internal differences and […] heterogeneity (economic, social, generational, etc.) between the individuals and the groups that constitute a society" (Rivera, 1997/2000). In other words, a fundamentally dynamic construct dependent on the values of the individuals defining and identifying it (Giordano, 2003).

[543] If culture is not a static set of norms prescribing values, the causes for conflict doubtlessly lay with individuals and how they relate to their culture and identity. In short, identity. Identity which tends to be interchangeably used alongside personality, refers to one's individuality, what makes them different. It is widely accepted that an individual's identity is constituted of what makes them unique genetically, physically, intellectually and morally. The construction of one's identity is a process of years endured by all. The link from identity to the notion of culture is the idea of its construction through social contact, but not solely.

[544] The way individuals define themselves is equally dependent on their own perception as it is on others'; identity is the complex result of personal and social development taking place throughout the life of an individual. Like culture, it is not a static conceptualization of some norm or characteristic, rather it evolves dynamically and continuously through personal experience, socialization and other factors. However,

for an improved understanding of what constitutes intercultural mediation, culture and its importance bear relevance.   In the next section, we thus go into further details approaching this notion of culture as it is the core of this work.

4.2 DEFINING CULTURE

[545] Like mediation and neutrality, culture is a term with several definitions. Anthropologists have defined culture long ago. Faure and Sjöstedt (1993 p.3) defined culture as "an aggregate product… [that] typically consists of such social phenomena as beliefs, ideas, language, customs, rules and family patterns". Hofstede (1980 p.24) regards culture as "the collective programming of the human mind that distinguishes the members of one group from the other"[80]. Culture in this sense according to Hofstede is a system of collectively held values. The latter points out that he regards culture as a set of values and perceptions that may influence an individual behavior within a community. Dahl (2004) highlights, in pointing out that Hofstede is not attempting to explain the multiple identities of individuals within a society but rather emphasizing factors of societal common values and perception. Hall (1976) defines culture as another fundamental dimension that has an impact on a person similar to status, activity, setting and experience influencing an organism's perception.

[546] Dahl (2004 p.1) clarifies that though there are multiple definitions of culture, the meaning is uniform: "culture is an abstract entity which involves a number of usually man made, collective and shared artifacts, behavioral patterns, values or other concepts which taken together to form the culture as whole". Culture distinguishes social groups in preserving their distinctive identities. Departing from the explanation of culture given by Faure and Sjöstedt (1993 p.3) that culture "orients or perhaps even directs, judgement and opinion", Dahl (2004 p.4) deduces that culture "acts as an interpretive frame of behavior". Consequently, culture has been an explanation of different social norms. Hall (1976) concurs that culture is an underlying element that influences an individual in the same manner that activity, status, setting and experience influence an organism's perception. As an example, Dahl (2004, p3) raises the notion of "French Culture". It implies that the society shares certain values and exhibits resultant behavior and artifacts, which distinguishes itself from other cultures for instance the "French culture" to the "German Culture" or the "Spanish Culture".

[547] In this sense, language is just one part of culture playing a role in justifying how culture has affected the behaviours of people within each society. Language is said to be the answer to anticipating an individual's perception (Faure and Sjöstedt, 1993). Therefore, under this notion, it can be implied that culture has a significant role in the area of communication within a society.

4.3 CULTURAL DIFFERENCES AND MEDIATION

[548] Since culture has an important role in communication, it can be concluded that "...culture may be both an obstacle and a facilitator" during a social interaction (Faure and Sjöstedt 1993, p.4). Communication in a conflict resolution or negotiation process may be facilitated when two parties share common values and perceptions. This is

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because the risk of misunderstandings and misinterpretations is substantially minimized. Nevertheless, interactions can be strained or severed when misunderstandings occur due to cultural differences thus offending the other party (Faure and Sjöstedt (1993, p. 5). Such an obstacle arises when two parties do not bear the same perception on a similar matter. In such instances, an insight into the counterpart's cultural values becomes essential.

[549] Thus, in attempting to understand the nature of intercultural mediation, a blend of *culture* and *mediation*, it can be assumed as a problem-solving activity that deals with communication breakdown" (Liddicoat 2016 p 3). Meyer (1991) formulated the mediation component of intercultural communication as the ability to handle cross-cultural problems arising from cultural differences. Simultaneously, according to Fitzgerald (2002) intercultural mediation is a constructed term for problems of intercultural communication. For the said author, thus, intercultural mediation has served to embody disputes as the "stuffs" of intercultural mediation and establish miscommunication as an unmediated state of interaction between cultures.

[550] An efficient way to think about intercultural mediation is to view it as an interpretative and relational activity. More specifically, intercultural mediation is "an active engagement in diversity as a meaning-making activity" (Liddicoat & Scarino, 2013 p.54). Simply put, it involves the mediator interpreting the meaning of various others for oneself and others. This, thus, implies that intercultural mediation is not only the settlement of problems linked to communication but rather the development of mutual understandings between parties in communication. According to Iriskhanova et al. (2004), intercultural mediators are actively engaged in processes such as understanding, commenting, explaining, interpreting and negotiating during the mediation process. Gohard-Radenkovic et al. (2004b) ascertain that intercultural mediators both analyze the meanings of others constructed within cultural framings and provide those who do not share the cultural framing with the means to understand others. Prof. Byram (e.g., in Alred and Byram, 2002, Buttjes and Byram, 1991a) has explained the core nature of mediation as the competence for explanation of cultural phenomena. For Prof. Byram, it involves a significant or critical comparison of cultural phenomena, a recognition of the relativity of cultural concepts and the negotiation of meaning within and across cultural frames. Thus, it can be deduced that intercultural mediation is essentially an interpretative act wherein explanations are formulated and expressed as a critical activity.

[551] A significant aspect of this critical activity that is the interpretative process is the capacity to depart from the existent as in present cultural perspective to view cultural phenomena both from the internal and external perspective (Kramsch, 1999, Byram et al., 2002, e.g., Abdallah-Pretceille, 2003, Liddicoat and Scarino, 2013). The intercultural mediator needs to decenter his or her own cultural framing to see others from different perspectives. Byram, et al. (2002 p.19) explain this as "the ability to make the strange familiar and the familiar strange". Decentering implies the ability to comprehend diverse perspectives and to seek and accept diverse potential interpretations. So far, through literature, certain authors identified significant components of mediation as an awareness of cultural concepts, the ability to make critical comparisons and the capacity to negotiate meaning. However, there seems to be more emphasis on the role of

interpretation. In a way, such mediation can be perceived as a form of sense-making in which parties grow an awareness or sense of multiple cultural realities. This paper takes its aims to examine the posture of a mediator's neutrality when confronted with interpreting meaning for oneself and others.

5. RESEARCH QUESTIONS

[552] The aim of this study was to examine the understanding of the concept of neutrality intercultural mediators have by directly asking about their perception of the concept and how it is applied in practice. This study also eventually aims to contribute and enlarge the existing empirical research done so far in a more or less similar manner for the said concept, such as, for instance, the investigation of the alternative constructions of neutrality done by Cobb and Rifkin (US), Mulcahy (UK) and Douglas (Canada). The studies are mentioned in the previous chapter on neutrality. The participants involved in this study did not hail from a specific country unlike previous research has done. The individuals involved were geographically scattered worldwide but were practitioners of the same field. The main question for the study was:

- How do mediators make sense of neutrality in their practice?

Related additional question:

- What range of meanings do mediators associate with the concept of neutrality?

6. SUMMARY OF FINDINGS

[553] Based on the findings, the following observations can be made. With regard to the perception of neutrality, resentment of the idea of being neutral seems consistent. More than half of the participants declared themselves not to be neutral. The fact that they have a history, emotions, experiences and opinions were all factors challenging their neutral position. Many also regarded neutrality as a paradox and bordering on mysticism. In order to abide nevertheless to the prescription of being neutral, certain mediators employed structured procedures and specific techniques. Unanimously, they all agreed to be neutral with regard to the outcome of the mediation but not always necessary in the process.

[554] With regard to terminology, lots of confusion could be noted when evoking the concept of neutrality. This stems from the fact that the term neutrality is ambiguous. Since the concept of neutrality is vague and there is a lack of definitions of the literal term, many mediators interpreted neutrality in their own way and came up with their own definitions. Most of the mediators would often refer to and prefer to discuss multi-partiality or partiality when the concept of neutrality was addressed. Some claimed to reject the concept of neutrality and replace it by multi partiality to be fair in mediation.

[555] When questioned about the neutral position employed during the mediation process, reflectivity and reflexivity terms were used. Mediators stated that they needed

to do constant work on themselves to be conscious of their beliefs and moral relation to the conflicting parties. In some instances, they needed to take a step back to decenter themselves from the parties, refrain from giving opinions and be cautious when reformulating and reframing. Nonetheless, mediators who perceived themselves as not being neutral but multi-partial stipulate that neutrality for them is limited to the solution but not to the process. Thus, it was important for them to build a relationship of trust and be empathic to reach a fair outcome. During the analysis, it came up that mediators cannot uphold their neutrality when confronted with gender issues where they are aligning with one party. Gender was considered an issue in some situations for neutrality. For instance, a mediator encountered a mediated party subject to domestic violence during a mediation process. The mediator at a certain point during the process lost her neutrality, overpowered by sympathy and emotions. Thus, she opted to switch to multi-partiality in the course of the mediation.

[556] Other mediators, who regarded neutrality as a problem considered nonetheless that they could convert this issue to an advantage by balancing power relations and acknowledging the fact that it is sometimes difficult to maintain being neutral. This is when the act of reflectivity came into play. Neutrality in the codes of ethics was questioned and debated. While in certain jurisdictions, neutrality is absent in the code of ethics, for certain mediators its presence is paradoxically both questionable and unquestionable. Mediators would not necessarily get rid of the term, considering it sometimes one of the key principles of mediation, but would appreciate clarity and a proper standard definition of neutrality to better understand the concept and its essence in the codes of ethics. In the meantime, some mediators vouched for multi-partiality to neutrality.

6.1 DISCUSSION OF FINDINGS

[557] This study set out with the aim of assessing the neutrality posture of the intercultural mediator during practice and the meanings that are associated with neutrality in the mediation profession. The most obvious findings to emerge from the analysis are related to the theoretical and empirical perspectives on the meaning of neutrality that were discussed in the literature review section. With respect to the first research question of how intercultural mediators make sense of neutrality in their practice, we can observe that there seemed to be significant similarities to the past empirical studies conducted. For instance, the exercise of reflexivity seemed consistent with the findings of the empirical research of Mulcahy (2001). It could be noted that mediators do reflective work on themselves when confronted with situations of possible bias. This activity of reflexivity is to acknowledge and distinguish the mediator's position with regard to their values and beliefs from those of the parties in order to maintain their neutral position during the process. This act also aims to decenter the mediator's position of his reference to those of the conflicting parties and be neutral only to the outcome. Consistent with the observation on the perception of the meaning of neutrality in Mulcahy's research (2001), which was uniform, my findings demonstrated the same orientation. Most of the participants contended that the fundamentals of the concept of neutrality are to be neutral to the outcome.

[558] The results also corroborate the empirical research of Cobb and Rifkin (1991), whose findings led to the development of the idea that two terms were important for

mediation, namely impartiality and equidistance. Nevertheless, the data showed that instead of the equidistance term, the term multi-partiality seemed to be the most favoured term for the participants in this analysis. In describing multi-partiality participants in several instances maintained that they are equally distant to each conflicting party. The mediators try to balance the power to reach a fair solution. However, was also noted that in practice, there could be an act of favoritism to bring an equilibrium to reach a consensus in a situation of large power imbalance. Many of the participants preferred to use the term multi-partiality when the concept of neutrality was evoked. Neutrality, as impartiality, deals with not being biased to parties and decentering oneself from emotions and opinions to reach an equitable outcome. Quite similarly to Jacobs' (2002) views on the difficulties of maintaining neutrality when empathic dialogues and, relational closeness are needed to reach a symmetrical agreement and meet the demands of a situation of power imbalance, mediators claimed that they have an existence, past, emotions empathy and opinions and that, rather to be avoided, facilitated openness in the mediation process. Nonetheless, these moves are only to balance the process and the goal is to be neutral to the consensus and outcome.

[559] Regarding meanings associated with neutrality, the outcomes agreed with those obtained by Astor (2007). Astor outlined four meanings of neutrality in her research that were also similar to mine. Frequently the data showed that neutrality is related to the outcome of the mediation process. Impartiality was associated with the meaning of not indulging in favoritism. Neutrality was to be independent from institutions. The neutrality to the outcome, neutrality as impartiality and independence from institutions bore similarities to the meanings of neutrality deduced by Astor. My participants did not refer to the fourth meaning of Astor, which is influence by personal or financial connection.

[560] As mentioned in the literature review in section 4.2, the meanings given to neutrality in mediation are still vague (Exon, 2008). Becker (2013) even describes it as an elusive concept. Mediators have attempted to define meanings associated with the neutrality concept but since there is no standard definition of the meaning of neutrality, most of the participants came up with their own notion of how they perceive neutrality. This finding broadly supports the claim of Astor (2007) that the lack of agreement and consistency among mediators renders the task of defining the term neutrality difficult.

[561] So far, the results corroborate the findings of a great deal of previous work done regarding neutrality in the mediation process. Notwithstanding, through this research, it could be noted that the perception of neutrality may vary significantly between cultures. As the participants of this research hail from different geographical and cultural backgrounds, they had different views on neutrality in practice. Neutrality was also referred to as a paradox because one can never evaluate the degree of neutrality. Neutrality was compared to a white blank page which is difficult to attain at its purest white. Neutrality was referred to be not a useful concept in mediation because it does not allow influence. The influence here is according to the process. This means that if neutrality is applied in a literal sense that is only neutral to the outcome of the mediation, mediators cannot be empathic, cannot do power balance nor create relational closeness. It can be hypothesized that due to all these restrictions in abiding with the neutrality posture, mediators were driven to adopt multi-partiality neutrality. As a possible explanation, it can be that during the process adopting multi-partiality allows

them to have flexibility to facilitate the process yet maintain the neutrality only to the outcome.

7. CONCLUSION

[562] This section outlines and summarizes the results of the study, makes some recommendations and highlights limitations encountered during the research process. The results of this work aimed to unravel and shed light on the understanding of neutrality and the posture intercultural mediators adopt during a mediation process. The purpose of this paper was to understand the neutrality posture of the intercultural mediator, how they maintain the neutrality posture during mediation practice and what they understand regarding neutrality. In this study, there were glimpses of the challenges that professionals encounter, of their understanding of the concept of neutrality, of how they perceive it, what it really means to them and how it is applied in their profession. Through this research, we identified that there were lots of differences in how people define neutrality, how they perceive the term neutrality, and what the conception of neutrality means to them. One of the significant findings to emerge is that each mediator had a different opinion about neutrality. Moreover, when it comes down to the practice level mediators have different ways and techniques to use neutrality. The issue of maintaining neutrality during mediation was also discussed.

[563] It is worth mentioning that the aim of the research was also based on my own motivation. I wanted to find out whether the fact that I hail from a different cultural background had an impact, bore a difference in my practice as a meditator or not. I noticed that the fact that my participants hailed from different cultural backgrounds and different geographical locations, meant they had different ways of carrying out mediation processes. So, it could be argued that culture may have an impact on the process of mediation. For instance, mediators from the Eastern continent have a willingness to be empathic, create dialogue, and share their opinions, beliefs, stories, values and experiences. There is an openness and flexibility to the mediation process. They do not want to be neutral in the process but would prefer to be partial or multi-partial. In contrast, mediators from the European continent would rather follow a structured mediation process wherein even if there are challenges to maintaining the neutral posture, they will abide by it. They would rather do reflexive or self-reflexive work on themselves and be impartial to avoid favoritism to parties.

[564] In the following two paragraphs, I will outline the number of mediators who found it useful to use the concept of neutrality in their practice or not. In total ten intercultural mediators participated in this research.

[565] The findings of this research provide insights into the major problems five intercultural mediators faced during practice with this notion. It consisted of difficulties to create relational closeness, empathic dialogue and balance power if neutrality was strictly enforced. Therefore, these mediators tended to adopt multi-partiality. For them, multi-partiality allowed them to be partial to both parties. One among the five participants thus rejected the concept of neutrality stating that it was a useless concept in mediation because we differ in sex, gender, and culture. Thus, it is impossible to be

neutral. Similarly, another mediator claimed that she is not a passive participant. She has a past, a story, emotions, and opinions and is empathic thus she cannot be neutral. The third mediator stated that she believed that if mediators absorb subjectivity and emotions, the reality of the people with all their dreams and miseries in consideration, one could not talk of neutrality in mediation. The fourth mediator said that she is not neutral because maintaining neutrality during practice does not allow influencing the course of the process. She would prefer to reject this concept and adopt multi-partiality for flexibility. The fifth mediator stated that a neutral mediator is not a good mediator because neutrality prohibits the creation of empathic dialogue and power balance. Nonetheless, all five agreed mediators that they are neutral only to the outcome but not to the process.

[566] Four participants spoke about mediation being a structured process and about impartiality. Two mediators spoke about reflexivity and self-consciousness of the difficulty of maintaining a neutral posture. They acknowledged that it is a difficult task to be neutral and that to be so requires reflexivity to work on oneself to distinguish someone's beliefs, values, morals, and opinions from those of the involved parties. It is an ongoing task which is to be performed by the mediator to maintain a neutral posture. Another mediator viewed neutrality as the non-evaluative attitude of the mediator towards the parties. He highlighted that it did not matter how the parties agreed and he did not pursue their views and solutions. He stated that if the mediator feels that he is not being neutral anymore during the mediation then he must stop. According to the fourth mediator, a mediator must know how to accompany a process, which is going to be a structured process to help people think and position themselves in relational quality. His neutrality is limited to facilitate dialogue so that the conflicting parties can find a solution.

[567] Overall, this study strengthens the idea that neutrality is central to the building of consensus. In addition, the findings of this investigation complement those of earlier studies. The results of this research support the idea that neutrality is an elusive concept. The present study adds to the growing body of empirical research that the concept of neutrality is convoluted. It can be argued that it is an undesirable posture for certain intercultural mediators. This study has confirmed the findings of previous empirical research concerning the neutrality concept. It also demonstrated that to reach a fair outcome mediators deem it important to do a self-reflexive process. Before this study, it was difficult to make predictions about whether cultural background had an important role play in the neutrality posture of the mediator. This research has gone some way towards enhancing our understanding that the cultural factor does play a role in maintaining the neutrality posture. A limitation of this study is that it was conducted on a small scale. Only ten interviewees participated. Each intercultural mediator was from a different country thus the representation of the findings is considerably minimized. However, the in-depth interviews proved valuable to display a variety of perspectives that can now be probed further. An issue that was not addressed in this study was whether the researcher herself could be biased as she is also a mediator by profession and sometimes struggles to maintain her neutral posture. Using careful methodology was the way to find unexpected results and ensure some distance from experience.

[568] Further research should be carried out to establish whether the section on neutrality in the ethical code of conduct is important in the mediation practice. Further studies could help understand whether it is an effective posture to impose on the mediator or whether more nuanced perspectives need to be developed. There is, it seems however already a definite need for defining neutrality in mediation. A reasonable approach to tackle this ambiguity of the neutrality term and its essence in mediation is to give a proper and standard definition of neutrality in mediation. Its importance, application and implications in the mediation practice should be established.

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Raginee POLOOGADOO
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