

Ulla Gläßer, Lin Adrian and Nadja Alexander (Eds.)

## **mediation moves –**

concepts. systems. people.



Wolfgang Metzner Verlag



---

mediation moves – concepts. systems. people.

---

This anthology was inspired by the international conference “mediation moves”, which took place in October 2018 at the European University Viadrina Frankfurt (Oder) (see also <http://mediation-moves.eu>).

Editors:

Prof. Dr. Ulla Gläßer,  
Europa-Universität Viadrina Frankfurt (Oder)

Prof. Dr. Lin Adrian,  
University of Copenhagen

Prof. Dr. Nadja Alexander,  
Singapore Management University

---

Ulla Gläßer, Lin Adrian and Nadja Alexander (Eds.)

## mediation moves –

concepts. systems. people.

With contributions by

Juliane Ade

Lin Adrian

Nadja Alexander

Silke Amann

Katarzyna Antolak-Szymanski

Monia Ben Larbi

Olav Berger

Ellen Birkhahn

Greg Bond

Theophilus Ekpon

Jörn Gendner

Ulla Gläßer

Ulrich Hagel

Jan Nicolai Hennemann

Georgios Karamanidis

Imke Kerber

Bettina Knothe

Tetiana Kyselova

Bernadette Papawassiliou-  
Schreckenber

Jonathan Rodrigues

Kirsten Schroeter

Katarzyna Schubert-Panecka

Nancy A. Welsh

Felix Wendenburg

Mark Zimdars



Wolfgang Metzner Verlag

---

© Wolfgang Metzner Verlag, Frankfurt am Main 2022

Printed in Germany  
ISBN 978-3-96117-102-6

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission of the publisher.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie. Detailed bibliographic data is available at <http://dnb.d-nb.de>

## ■ Table of Contents

Introduction 7

### **Section 1 Mediation Moves ... into Legal Systems 13**

*Nancy A. Welsh*

Data and Regulation 15

*Jonathan Rodrigues*

Mediation Moves into the Scottish Civil Justice System – An Expert Group Report 41

*Bernadette Papawassiliou-Schreckenber, Georgios Karamanidis*

The Evolution of Mandatory Mediation in Greece as a Paradigm for the Concept of Learning Legislation 51

*Nadja Alexander*

The Singapore Convention Moves ... 63

### **Section 2 Mediation Moves ... into Society 71**

*Tetiana Kyselova*

Mediation and Revolutions: The Case Study of Ukraine 73

*Bettina Knothe*

Mediation in Conflicts of Nature Conservation and Energy Transition 95

*Olav Berger, Imke Kerber; Translated and edited by Ellen Birkhahn*

ZoffOff for Free! 103

### **Section 3 Mediation Moves ... Organisational (Conflict) Culture 113**

*Katarzyna Antolak-Szymanski*

Moving Employment Mediation into the Gig Economy 115

*Katarzyna Schubert-Panecka*

The Ecology of Mediation 139

*Monia Ben Larbi*

Mediating in Non-hierarchical Systems 163

### **Section 4 Mediation Moves ... into the Digital World 173**

*Lin Adrian*

The New Normal: Online Dispute Resolution and Online Mediation 175

*Felix Wendenburg, Jörn Gendner, Ulrich Hagel, Jan Nicolai Hennemann,  
Mark Zimdars*

There Will Be No Good Dispute Resolution in the Wrong Procedural  
Framework 195

**Section 5 Mediation Training Moves ... People (and Politics) 205**

*Lin Adrian, Ulla Gläßer, Kirsten Schroeter*

Academic Mediation Programs Move –  
an Impact Report 207

*Greg Bond with Eva Chye, Alexander von Aretin, Sophie Tkemaladze, Larissa  
Wille-Friel, Tat Lim, Elena Koltsaki and Marion Uitslag*

Mediation Moves: The Effects of Mediation Training – in Stories 225

*Juliane Ade, Theophilus Ekpon*

10 Years of Mediation and Peace Dialogue Trainings in Nigeria: A Reflec-  
tion on Impact, Meta-Goals and Conditions in View of the Town Hall  
Meeting Project 243

*Silke Amann*

Mediators Move Outdoors – an Adventure Based Learning  
Approach 253

Profiles 275

## ■ Introduction

Over the past four decades, mediation has increasingly gained traction across the globe. It continues to move into new areas of conflict and fields of practice. As a professional service, mediation enriches the spectrum of conflict resolution approaches and decision-making processes. Mediation is culturally agile. Mediative methods are adapted according to conflict resolution practices and procedural designs. The positive conception of human beings that underlies the basic principles, communication models and aspired attitude in mediation touches and moves us to our core.

These diverse aspects of mediation were centre stage at the international conference »mediation moves« that took place at the European University Viadrina in Frankfurt (Oder)/Germany in November 2018.<sup>1</sup> The »mediation moves« event sought to explore the experience that mediation is alive and moving in many directions. Thus, mediation promises potential for life-long learning.

The event consisted of two parts: a pre-conference expert workshop and a full-day conference open to the public. The expert workshop provided room for an open, productive exchange on mediation theory and practice in addition to reflective discussions on the personal values and motivation of those experts with longstanding engagement in the field. The rich and creative discourse of the pre-conference workshop informed and enhanced the contributions on the subsequent conference day.

Both the pre-conference expert meeting and the conference itself went well beyond the content and style of »classical« mediation conferences. Both event elements were designed and conducted to facilitate an ongoing reflective focus on the key questions »What is really important to me? Why do I care? What do I want to ›move‹ further?« in the area of mediation. Participants were encouraged to authentically pursue these questions, share thoughts and experiences, and generate ideas together.

<sup>1</sup> See the documentation on the conference website [www.mediation-moves.eu](http://www.mediation-moves.eu). The conference was initiated and organized by Prof. Dr. Ulla Gläßer from the European University Viadrina Frankfurt (Oder), and conducted in collaboration with Prof. Dr. Lin Adrian from the University of Copenhagen and Prof. Dr. Nadja Alexander from the Singapore Management University.

This volume presents the kaleidoscope of contributions to the conference. Based in four continents<sup>2</sup>, the authors view mediation through different lenses – some theoretical and conceptual, others very practical and personal. We hope that this vibrant and eclectic composition will inspire the readers' own journeys through the worlds of mediation.

The volume is structured in five sections. The thematic focus moves from mediation regulation (section 1) to the role mediation can play in societal change (section 2) before reaching the intersection of mediation, organisational development, and the labour market (section 3). After that it shifts to the impact of increased digitalization of mediation (section 4) and finally arrives at the potential of mediation training and innovative mediation approaches (section 5).

### **Section 1: Mediation Moves ... into Legal Systems**

Over the last three decades, mediation has moved from the sidelines of justice systems to a widely acknowledged, and in numerous jurisdictions, mainstream dispute resolution procedure alongside litigation and arbitration. National and supra-national regulation of mediation has played a crucial role in this development by incentivising the use of mediation and introducing quality assurance and protective measures for users of the procedure.

In the first chapter of this section, *Nancy Welsh* examines the extent to which mediation should be subject to formal regulation, and the significance of data collection and reporting for effective policy and law-making. The author focusses her lens on mediation contexts that invoke the power of the state in their occurrence or the enforcement of their outcomes (such as court or agency-directed mediation). Adopting a comparative analysis, she draws upon the Singapore experience and highlights potential lessons for the United States.

Subsequently, *Jonathan Rodrigues* presents the work of a Scottish expert group, which identified several hurdles to comprehensive and systematic referral and mediation practice – in particular, lack of information on the availability and benefits of ADR, inconsistency in the provision and funding of ADR and inconsistent rules and policies. On this basis, the expert

<sup>2</sup> The contributing authors are based in Europe, North America, Africa and Asia; see the profiles of the editors and authors at the end of the book. Some of the contributions were written in intercontinental co-authorship. According to the authors' diversity in origin, some contributions are written in British English, others in American English.

group has developed numerous recommendations for viable pathways to ›normalise‹ mediation as a key part of the civil justice system.

*Georgios Karamanidis* and *Bernadette Papawassiliou-Schreckenber* explain how the evolution of mandatory mediation in Greece can be understood as a reaction to longstanding deficits in the Greek justice system. They describe the three phases of regulation towards the introduction of the Mandatory Initial Mediation Session (MIMS) and the different influences that shaped the development of mediation in Greece from a mostly unknown informal process to a strictly regulated complementary procedure with important interfaces to the Greek Code of Civil Procedure.

*Nadja Alexander* wraps up this section with a glimpse into the future with a piece entitled, »The Singapore Convention Moves ...«. Her contribution offers essential insights into the first United Nations treaty on the recognition and enforcement of international mediated settlement agreements. The Convention has the potential to springboard mediation into the main arena of international commercial dispute resolution.

## **Section 2: Mediation Moves ... into Society**

In this section, three case studies demonstrate creative strategies to establish mediation in different areas of society, and – at the same time – utilizing mediation in the service of desired societal change.

The first case study is from Ukraine. *Tetiana Kyselova* has conducted individual and focus group interviews with mediators, dialogue facilitators, lawyers, judges, local and central government officials, business people and civil society activists. Based on these interviews, she demonstrates and reflects on how mediation and dialogue strengthened social cohesion in local communities, transformed society and promoted individual responsibility, social activism and participatory democracy in the aftermath of the Euromaidan Revolution.

*Bettina Knothe* follows with a case study on mediation in conflicts involving renewable energy projects and concerns relating to nature conservation in Germany. Her chapter highlights the value of professional coaching, moderation, and mediation as support tools to resolve conflicts of this kind. The case study draws upon the work of the Competency Centre for Nature Conservation and Energy Transition (KNE) established by the German federal government. It demonstrates the benefits of involving professional and civil society stakeholders at an early stage in multi-party public planning processes with a mediative design.

Finally in this section, *Olav Berger* and *Imke Kerber* describe the church-based community mediation project »ZoffOff« which provides low thresh-

old support for conflict scenarios in the diverse neighbourhood of Berlin-Kreuzberg. The project synergetically combines a non-for-profit mediation dissemination strategy with possibilities of training on the job for newcomer mediators who co-mediate with experienced colleagues.

### **Section 3: Mediation Moves ... Organisational (Conflict) Culture**

Mediation is often considered an intervention that resolves disputes between individuals. However, as demonstrated in Section 2, mediation can inspire societal change. In a similar vein, it can also be an important tool in organizational development and an effective response to challenges in emerging markets such as the gig-economy.

*Katarzyna Antolak-Szymanski's* piece discusses how mediation can serve as an important tool in addressing conflict in the developing gig-economy. Traditional labour-market tools are by and large unavailable in this emerging industry, and mediation in new formats may be the answer to the resulting challenges.

In her chapter entitled »The Ecology of Mediation«, *Katarzyna Schubert-Panecka* casts a critical eye on the promise of mediation in a world increasingly characterised by volatility, uncertainty, complexity and ambiguity. She challenges readers to reflect deeply on their identities in mediation settings, and the multiple layers of contextual influence that continually shape and shift who we are and how we see ourselves in mediative contexts. A number of practical case studies effectively illustrate the theoretical concepts introduced.

*Monia Ben Larbi* explores the specificities of mediating in non-hierarchical systems. As more and more organizations move away from hierarchical structures and adapt a democratic and/or self-organized way of working together, the need for conflict resolution support changes as well. Monia analyzes four different modes of decision-making that are used in non-hierarchical organizations (consensus-based, consent-based, systemic consensus-based and advisory-based systems) – and discusses relevant conclusions for the mediators' work within such organizations.

### **Section 4: Mediation Moves ... into the Digital World**

Over the last decades, the field of mediation has slowly embraced emerging technologies – a development that has accelerated with the advent of COVID-19. Technology brings possibilities for moving mediation practices in new, exciting directions but also calls for critical reflection on the limitations of digitalization in conflict resolution.

*Lin Adrian* suggests a conceptual framework for understanding the different forms of online dispute resolution as well as the relationship between online dispute resolution and mediation. She outlines the different kinds of online mediation and reflects on how key issues such as communication, self-determination and ethics are affected by the move towards digital mediation activities.

Following Adrian's conceptual framework, the next chapter offers a view of ODR practice. Here, authors *Felix Wendenburg, Jörn Gendner, Ulrich Hagel, Jan Nicolai Hennemann,* and *Mark Zimdars* team up to examine a software-based tool called Dispute Resolution Comparison Tool (DiReCT). DiReCT is tailored to the German legal framework and is designed to help disputing parties choose the most adequate procedure for B2B conflicts. The authors analyse the ODR software and discuss current and potential future applications.

### **Section 5: Mediation Training Moves ... People (and Politics)**

Mediation training provides participants with conflict resolution tools, and it also touches participants in many other ways. In this section, we try to capture the various ways that mediation training moves people in often unexpected directions, on personal as well as professional levels.

In the first chapter of this section, *Lin Adrian, Ulla Gläßer* and *Kirsten Schroeter* present the results of a study that explores the impact of mediation training on the lives of executive master-level students. They demonstrate that, in addition to acquiring knowledge and skills, the students experience other positive gains such as personal growth, professional self-confidence and building new networks.

In the next piece, *Greg Bond* explores the impact of mediation training and the resulting transformation through personal narratives. He invited seven colleagues to tell a story about how mediation training changed their lives, whether personal or professional, and received deeply moving and very personal stories about how the training led them somewhere they had not been before.

*Juliane Ade* and *Theophilus Ekpon's* chapter shows how reflective dialogue and mediation training have had a collective impact on peacebuilding on a communal level in conflict-affected Nigeria. Drawing upon personal experiences and case studies, the authors convincingly demonstrate how implementation of their work in inclusive and sustainable programs embedded in broader societal and governance meta-goals is vital to success.

In her piece »Mediators move Outdoors«, *Silke Amann* examines the potential and practical approaches of incorporating nature into mediation.

Her starting point is the conviction that a profound transformation of the causes of a conflict calls for profound emotional involvement of the parties – and, thus, for a holistic approach. As encounters with nature can touch human beings deeply and bring about authentic emotional movement, she develops a concept of »nature-assisted mediation«.

A big thank you goes to all of our authors for their contributions – and for their patience as we navigated a series of delays in the publishing process due to the pandemic.

In addition, we are grateful to the following people and organisations:

For infrastructural support before and during the conference event, we thank the European University Viadrina Frankfurt (Oder) as well as the conference organizing team Mursel Acikalin, Ellen Birkhahn, Claudia Kück and Dominik Schmitz.

For editing, proof reading and organizational support, our gratitude goes to Ellen Birkhahn (Viadrina), Pauline Trappe (Viadrina), and Rozalin Mohanty (Singapore).

For sponsorship of the conference and having the vision to publish this innovative volume, we acknowledge the terrific team at Wolfgang Metzner Verlag. Thank you for your patience and belief in the »*mediation moves*« project!

Looking back at the »*mediation moves*« journey, which commenced well before any of us imagined living through a global health pandemic and witnessing a new war, we are moved by the authenticity and positive spirit of the rich professional and personal exchange amongst colleagues.

We anticipate another »*mediation moves*«-event<sup>3</sup> in the not too distant future.<sup>4</sup> Certainly, the world has changed significantly since 2018 and the opportunity to map mediation's movements in response to COVID-19 awaits.

March 2022

Ulla Gläßer  
*Frankfurt (Oder)/Berlin*

Lin Adrian  
*Copenhagen*

Nadja Alexander  
*Singapore*

<sup>3</sup> Such an event was originally been planned for 2020, but the plans had to be put on hold due to the global COVID-19 pandemic.

<sup>4</sup> We will announce the event on the mediation moves website [www.mediation-moves.eu](http://www.mediation-moves.eu).