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# Divide to unite

## Making disagreement explicit in dispute mediation

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In dispute mediation, mediators, perhaps counterintuitively, make the disagreement between parties explicit and formulate their interventions on the disagreement in such a way that the disagreement is made manageable. In this paper, three functions of identifying and elucidating the parties' disagreement that demonstrate the importance of making disagreement salient – (1) uncovering real issues, (2) emphasizing conflict ownership, (3) making disagreements manageable – are presented. Corpora of mediation simulation transcripts are used as empirical bases for the analyses of the means by which mediators make disagreement explicit (the how) and for what specific functions they do so (the why). The three aspects of strategic maneuvering (van Eemeren 2010) are used to analyze how mediators construct the interventions on the disagreement in terms of: (a) the topics they select from the topical potential, (b) the adjustment of interventions to suit their intended addressee(s), and (c) what presentational devices are used.

**Keywords:** disagreement, dispute mediation, issues, strategic maneuvering

## 1.    Introduction

For the last decades, dispute mediation has been used to resolve disputes in a variety of situations, from divorce conflicts to disputes between agencies and in communities, from disagreements between doctors and patients to consumers and organizations (Burrell and Vogl 1990: 237). Because of its applicability, we may expect this *Alternative Dispute Resolution*[1] option to become even more

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1.    *Alternative Dispute Resolution* (ADR) methods, under which we find techniques such as *negotiation, arbitration*, and *mediation*, are options for resolving conflicts *alternative* to the traditional juridical options (see for example Herman 2006).

widespread in reach and application in the future,[2] with institutions such as for example the European Union pushing for its application.[3]

We refer to dispute mediation, *when a (theoretically) neutral third party tries to procedurally guide two or more parties in a conflict at deadlock to a win-win resolution of their conflict*. One of the biggest motivators for parties to reach out to a mediator is relationship repair, since this ADR method offers "the possibility to restore jeopardized relationships using reason in dialogue" (Greco Morasso 2011: 2). Parties resort to mediation because without external aid they are unable to enter into a constructive discussion that may ultimately lead to a mutually beneficial solution of the problem that negatively affects their relationship. Simply put, in order for mediation to be successful, the mediator needs to transform the interaction into one in which parties are able to see each other as argumentative critical discussants instead of adversaries that need to be shut down. For this reason, dispute mediation has already been the subject of several studies in the field of argumentation (see for example Aakhus 2003; Greco Morasso 2011; Jacobs 2002; van Eemeren et al. 1993; Vasilyeva 2017).

A win-win resolution can only be found when the parties go from hostile to reasonable. The necessity of this transformation makes the creation of common ground between the parties in conflict one of mediators' most important but also most difficult tasks. Because of the stalemate in the initial situation, this is anything but easy. Still, it has been established that reorienting parties in a conflict at deadlock "toward a "new and shared perception of their relationship" is one of the most central aims of dispute mediation (Currie 2004: 10).

Although creating common ground is difficult and of great importance for a successful resolution of a conflict, dispute mediators can also be seen *emphasiz-*

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**2.** In this paper, we study mediation as a highly professionalized and institutionalized practice within the ADR methods and as it is currently understood by most certified ADR mediators. However, it should be noted that dispute mediation has existed long before the ADR methods were established, both in formal and in informal settings (see for example Greco Morasso 2011: 18–19). In addition, mediation may vary across cultures (see for example Tabucanon, Wall and Yann 2008; Wall, Beriker and Wu 2010; Wall and Dunne 2012). For example, differences in mediation practices have been noted in studies on mediation in Asia (see for example Colatrella 2000; Deng 2012; Kim, Wall Jr, Sohn and Kim 1993; Ran and Zhao 2018). The data used in this study concern ADR mediation practices that are relatively standard and may be understood by professional mediators in Europe and North America, where the mediators included in the corpora practice their profession. Although a comparison between the argumentative characteristics of different forms of dispute mediation are very interesting, the inclusion of such a discussion is beyond the scope of this paper.

**3.** See for example the DIRECTIVES 2008/52/EC of the European Parliament and of the Council, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052&from=LV (last visited May 2018), which promote mediation in civil and commercial matters.

*ing the parties' disagreement, namely the issue(s) in the conflict.* In our view, the issues correspond to the differences of opinion between the parties, which can be the subject of an argumentative discussion. Mediators could be said to be tasked with making the disagreement explicit, i.e. identifying and elucidating the disagreement, in mediation sessions, because "if it is not clear exactly what difference of opinion underlies the discourse, there will be no way of telling whether the difference has been resolved by the discourse" (van Eemeren 2010:12). Of course, making disagreement explicit does not mean that a mediator will emphasize the conflict between the parties, but rather that he or she will clarify the differences of opinion that can be treated through discussion.

In this paper, starting from an argumentative perspective, we examine why and how mediators try to strategically make the disagreement salient. *The 'why'* refers to the aims that mediators have in relation to the design of the parties' discussion; the '*how*' refers to the discursive means by which they achieve these aims. To make the disagreement explicit, mediators must both identify and elucidate the issues at the center of the conflict. We say 'strategically' because this counterintuitive line of action could be regarded as jeopardizing the already fragile state of the common ground and the difficult process of creating sufficient common starting points for the resolution process to be successful. This practice of making disagreement explicit during the mediation process seems counterintuitive because common ground – that which the parties share and what they agree on – is the counterpart of disagreement. However, the real sources of disagreement are often invisible to the parties that are entrenched in all-encompassing hostility. Therefore, if creating a "shared perception" is a mediator's central aim, questions related to the rationale of identifying and elucidating the disagreement naturally emerge.

We will proceed as follows. In Section 2, we outline the theoretical framework of this study and introduce strategic maneuvering as a theoretical basis for our analyses of the different functions and discursive means of making the disagreement explicit in terms of resolvable differences of opinion. In Section 3, the methodology used for the collection and the analyses of empirical data is presented. In Section 4, we show the main results of our analyses, by outlining three different functions of identifying and elucidating the disagreement between the parties within mediators' strategic maneuvering. Whilst commenting on the functions, we also explain the means by which mediators try to achieve these functions; this is made possible by using the concept of strategic maneuvering, which intrinsically connects means and functions of discursive moves in argumentation. Finally, we draw some conclusions in Section 5.

## 2. Theoretical framework

In this study, we adopt a pragma-dialectical framework as the foundation for the analysis of discourse. More specifically, the extended version of pragma-dialectics named *strategic maneuvering* will be used. The analyses will be presented in Section 4. In Section 2 the role of disagreement in argumentative discussions is described (Section 2.1) and mediators' choices for making disagreement explicit in terms of strategic maneuvering are interpreted (Section 2.2). This theoretical approach will be explained as functional for the understanding of *why* and *how* mediators strategically make disagreement explicit in the mediation session.

### 2.1 The space of disagreement in argumentative discussions

The study of disagreement and argument is interesting, whether the disagreement can be found emerging as a response to a previous utterance in a text or conversation (see for example Jackson and Jacobs 1980), or as differences of opinion that are closely connected to, and often tangled up with, the general hostilities between the parties at conflict. Several dialogical models of argumentation recognize that as a starting point for an argumentative discussion there must be some form of disagreement. Plantin (1996) observes that argumentation arises when a discourse runs against a counter-discourse. Barth and Krabbe speak of *conflict of opinion* (1982:19); and van Eemeren and Grootendorst (see for example 1984, 2004) use the term *difference of opinion* to indicate the origin of an argumentative discussion in pragma-dialectics. It is the latter that we adopt as our main theoretical framework in this paper.

A difference of opinion normally emerges in the course of a discussion, when a standpoint is met with "doubt or contradiction" (van Eemeren and Grootendorst 2004:60). In such cases, "it becomes clear" that the standpoint is not accepted (ibid.). We interpret "it becomes clear" as meaning "clear *for the disputants*". In many cases, in everyday conversation as well as in several institutionalized settings, it is clear for the disputants that they have a difference of opinion; in other words, it is clear that they have one or more points of disagreement (or *issues*), which are set against a background of already accepted starting points. The general aim of an argumentative critical discussion is for the disputants to resolve their difference of opinion in an ideally reasonable manner.[4] In the resolution

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4. Pragma-dialectics introduces an ideal argumentative discussion – the *critical discussion* – in which "a protagonist and an antagonist make an attempt to resolve their difference of opinion in a reasonable way", using a "series of basic rules which together constitute a code of conduct for a reasonable discussion" (van Eemeren 2001:15).

process described in the pragma-dialectical model of the critical discussion, different stages are distinguished. Relevant in this study are the *confrontation stage* and, although to a lesser degree, the *opening stage*. Whilst some degree of common ground is necessary for conducting a fruitful discussion (van Eemeren and Grootendorst 2004:60), which happens in the *opening stage*, when "the parties to the difference of opinion try to find out how much relevant common ground they share" (ibid); the difference of opinion emerges in the *confrontation stage* of a critical discussion.[5]

When the parties have a difference of opinion and are aware of it in a context that is otherwise non-conflictual, this process normally runs smoothly. However, in (highly) conflictual situations, it is less evident that parties are able to recognize their difference of opinion, or are able to agree on common starting points, themselves. Greco Morasso (2011:167) observes that "the mere contraposition of different (or even opposed) standpoints is not sufficient to make an argumentative discussion" and that it is the mediator's task to construct an argumentative space for the parties. So, it is clear that discussants, even when they fiercely oppose each other, may not be sure about their difference of opinion at all.

Pushing this observation to the forefront, in this paper we claim that it is part of a dispute mediator's tasks to identify and elucidate what the parties disagree on and present the disagreement to the parties themselves. A mediator who procedurally guides a session tries to find explicit answers to the questions: *what are the issues that the standpoints of the parties accept and reject?* And, more broadly speaking; *what is the conflict about?*

Compared to a non-conflictual discussion in a natural setting, third parties' argumentation in conflict resolution requires some extra effort at the level of the *design* of the discussion (Aakhus 2003, 2007; Greco 2018). The parties tend to be unable to design the discussion by themselves; this being a good reason for their acceptance of external support in the form of a neutral third party. The design is mainly done in the initial phase of the mediation process, although, mediators will (need to) further fine-tune and adjust the explication of the issues throughout the mediation interaction. Mediators will establish and refine the characterization of issues to ensure that the discussion that follows is actually on the issues that are central in the conflict. It follows that mediators design interventions on the issue and the interests of the parties at conflict. If not all the important issues

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**5.** In the *argumentation stage*, parties will advance arguments for their standpoint(s) and discuss them; in the *concluding stage*, ideally, the difference of opinion is resolved. This paper mainly deals with *confrontation stage* and *opening stage*, because we are interested in how disagreement is made explicit. For more discussion on the four stages of the *critical discussion,* see for example van Eemeren (2001:15–16) or van Eemeren et al. (2014:529–531).

are brought out and resolved during the discussion and the underlying interests are not included in the solution, we cannot assume the solution(s) to be durable and to have a rehabilitating effect on the damaged relationship between parties.

In some specific settings, the art of making disagreement explicit has an interesting historical precedent in the concept of *divisio* as a part of the orator's speech in classical rhetoric[6] (Montefusco 1987:71). In an educational handbook such as the *Rhetorica ad Herennium* (I century BC), the divisio (or *partitio*) is described as a part of the speech in which the orator establishes what is controversial (i.e., as one might say, the difference of opinion) and what is shared by the interlocutors;[7] in pragma-dialectical terms, this includes working with the confrontation and opening stages at once, although the main emphasis is on the confrontation stage, because *divisio* means making the main points of disagreement explicit. Interestingly, however, the *divisio* as one part of the orator's speech was not always recommended in all argumentative discourse (Montefusco 1987:71–72); it was however recommended to students who needed to learn what argumentation is (see the discussion on Seneca The Elder in Berti 2007:81ff). This is to say, that the *divisio* – i.e. agreeing on what parties disagree and agree on – is important at a conceptual level, as a crucial (though often implicit) part of argumentative confrontation.

When 'agreement on disagreement' does not come naturally to parties in a difference of opinion, someone else – in our case, a neutral third party – needs to aid the parties by helping them navigate through the definition of the disagreement, i.e. helping them in the confrontation stage to define the difference of opinion.

## 2.2   Making disagreement explicit as part of a mediator's strategic maneuvering

The mediator's task of making disagreement explicit for the parties is oriented towards the reasonableness of the parties' discussion and, thus, is dialectical in nature. Nevertheless, this effort must also be understood as part of a mediator's own professional interests – to have the conflict resolved, which as a result enhances his or her reputation. Thus, 'making the disagreement explicit' may be

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**6.**  The Latin word *divisio* covered different meanings in classical rhetoric (Porter 1990:192). *Divisio*, in fact, was also used as a subtype of a locus (grossly speaking, an 'argument scheme'). However, in this paper, only the meaning of *divisio* as part of an orator's speech is relevant and a discussion on the polysemy of this term is beyond the scope of our work.

**7.**  Original Latin in the *Rhetorica ad Herennium*: "Causarum divisio in duas partes distributa est. 2. Primum per narrationem debemus aperire, quid nobis conveniat cum adversariis si ea, quae utilia sunt nobis, convenient, quid in controversiis <relictum sit>…". A strikingly similar definition for divisio is given in Cicero's *De Inventione*, although Cicero uses the term *partitio* instead of *divisio* (see Montefusco 1987:73).

better understood within the extended version of the pragma-dialectical approach to argumentation, which introduces the concept of *strategic maneuvering*. Aiming to bridge the gap between dialectics and rhetoric (van Eemeren and Houtlosser 2009: 4), *strategic maneuvering* "refers to the efforts that are made in the discourse [to move about] between effectiveness and reasonableness that the balance – the equilibrium – between the two is maintained" (van Eemeren 2010: 41).

Strategic maneuvering can be used to understand how argumentation is presented in an attempt to resolve conflicts reasonably *and* effectively. It provides us with tools that can help us understand, not only what a mediator says to construct a reasonable discussion, but also how they do so effectively, or at least with effectiveness in mind. The concept of strategic maneuvering has been applied to dispute mediators before (Greco Morasso 2012; Vasilyeva 2017) but, to our knowledge, not in relation to why and how they make disagreement explicit.

Strategic maneuvering is composed of three interrelated aspects, which correspond to distinct choices made by the arguer; the *topical selection, audience demand*, and *presentational devices*. The *topical selection* is the "choice made from the available "topical potential", the (not always clearly delineated) repertoire of options for making an argumentative move" (van Eemeren 2010: 93). The *adjustment to audience demand* refers to the way argumentative moves are adjusted to the intended audience (van Eemeren 2010: 94). The *presentational devices* are the stylistic tropes and figures by which the argumentative move is designed strategically best (van Eemeren 2010: 94). Because the three aspects of strategic maneuvering are connected to each stage of the critical discussion, it is important to discuss the confrontation stage, which, as said in Section 2.1, is of importance here because mediators need to help parties with the construction of their difference of opinion. Now, if the dialectical aim of the confrontation stage is described as achieving "clarity concerning the specific issues at stake and the positions held in the difference of opinion" (van Eemeren 2010: 45), the rhetorical aim is "to establish the definition of the difference of opinion that is optimal for the party concerned" (van Eemeren 2010: 45). With regard to the manner in which the parties will try to maneuver strategically when presenting the issues, "each party will attempt to achieve a definition of the difference of opinion that favors the issues this party wants to discuss and the positions this party likes to assume" (van Eemeren 2010: 43). However, in order to find a lasting resolution of the conflict on the actual issue, it is important for the mediator to maneuver strategically in a way that the dialectical aim of the parties' confrontation stage overpowers the rhetorical aim, because the mediators try to establish issues that are central to the conflict for the sake of resolution, instead of aiding one of the parties to 'win' in the dispute. Interestingly, we might say that because the mediators' rhetorical goal

is to help parties in such a way that they can solve their conflict through (reasonable) discussion, *their rhetorical goal coincides with making the parties adhere to the dialectical goal of the confrontation stage*. In fact, it is important that the real issues that represent the parties' interests emerge clearly and are not left out of the conflict resolution process; otherwise, profound issues are left unresolved, which would make the resolution of the conflict false (Greco Morasso 2011:169ff). In this sense, even though it is in a mediator's best interest to formulate a conflict in such a way that it seems manageable for the parties, it is also in their best interest to formulate a conflict in a dialectically appropriate way, otherwise the whole resolution process is based on incomplete and 'fragile' starting points. This particular situation – having a rhetorical goal that makes mediators push parties in a direction of adopting a reasonable manner of conduct – means mediators are non-canonical participants of the parties' discussion. Their role is best described as *designers* of the parties' discussion (see Aakhus 2007; Vasilyeva 2017).

In this paper, the three aspects of strategic maneuvering will enable us to discuss two interrelated aspects: *how* (through which means) mediators make disagreement explicit, but also, and even more importantly, *why* (with what specific aims in mind) they do so.

## 3.   Methodological framework

Section 3 is dedicated to the data and method of analysis. In 3.1, the data collection method is presented. Additionally, the nature of the excerpts selected for this study, and how the two different corpora were constructed, is explained. In 3.2 the data treatment is presented. In 3.3 we will briefly summarize the method of this qualitative discourse analytical study by explaining how the theoretical framework introduced in Section 2 is applied to the data in order to uncover the functions (*why*) and the means (*how*) by which disagreement may be made explicit.

### 3.1   Data collection

One of the key elements of mediation is *confidentiality* (see for example Freedman and Prigoff 1986; Deason 2001; and Burr 2002), which gives parties the opportunity to solve the conflict without the danger of the content of the conversation becoming public in any way. The confidentiality, however, does pose a problem for mediation research in terms of accessibility to data. As a result, the corpora are made up of role-play sessions by professional mediators. This type of demonstrative mediation simulations have been acknowledged as a good basis for the analysis of discourse and argumentation in dispute mediation by different authors (see

for example Putnam and Holmer 1992:136; Susskind 2010; Janier and Reed 2017). The data consists of dialogues between two to five participants, of which at least one mediates the interaction. As is the case in natural mediation, in some cases there are more than two participants who need to be part of the mediation process in order for a realistic and durable mutually beneficial solution to be found. In addition, some cases are mediated by more than one mediator, which is conventionally referred to as *co-mediation*.

The data come from two different corpora that are part of a growing collection of data assembled by our research group on argumentation in dispute mediation at Università della Svizzera italiana. The corpora are composed of audio- or video-recorded sessions of mock mediations in which the discussions are led by certified mediators.

We will now briefly describe the two corpora in a chronological order, i.e., in the order in which the mediation sessions were recorded. The first corpus (approximately 51'000 words) is comprised of six video-recorded sessions (about 60 minutes per session) mediated by two internationally renowned mediators.[8] Three of the sessions were recorded in Canada in the 1980s and three were recorded in the Netherlands in the early 2000s; these cases have been used for mediation training internationally. All cases in this corpus are in English.[9] All these sessions concern interpersonal conflicts in different domains, ranging from family mediation to business mediation and workplace mediation.

The second corpus (approximately 29'000 words) was constructed in collaboration with ADR Instituut[10] in Amsterdam, the Netherlands. This prominent institute for the education of professional mediators and prospective mediators in the Netherlands, has granted exclusive access to their courses in order to make audio-recordings of their mediation simulations performed during the specialization course on labor dispute mediation (workplace disputes) by ADR Instituut.[11] The role-plays are done by certified mediators with different levels of experience,

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**8.** One of the two mediators is John Haynes, who is often considered a pioneer in the field of dispute mediation (see www.acrnet.org, last visited May 2018). Since 2001, the Association for Conflict Resolution awards the 'John Haynes Distinguished Mediator Award' in his memory. The other mediator is Larry Fong (see www.fongmediate.com, last visited May 2018), who is the president elect of the Association for Conflict Resolution (ACR) and has been training mediators in different countries since 1997.

**9.** The cases mediated in Canada in the 1980s were produced by Kent Taylor (Haynes and Haynes 1989:xv); the cases mediated in the Netherlands in the early 2000s were produced by Edumonde Mediation.

**10.** For more information on ADR Instituut see www.adrinstituut.nl (last visited May 2018).

**11.** The data was collected on 21 March, 22 March, 4 April, and 5 April 2016, in Amsterdam, the Netherlands.

from beginners to mediation veterans who have been practicing mediation, full-time, since the 1990s or early 2000s.[12] Specifically, the cases selected for the mediation simulations are introduced by the mediators and are based on actual cases encountered by the participating mediators whilst mediating labor disputes. The cases were recently recorded by van Bijnen in 2016. The sessions were originally in Dutch and were transcribed and translated into English. Excerpts 2, 4, and 6 are taken from this corpus. Excerpts 2 and 6 belong to the same case (see 4.2 and 4.4), and Excerpt 4 to a separate case (see 4.3). Whilst Excerpt 4 is taken from a session that lasted approximately 55 minutes, Excerpts 2 and 6 were taken from a case that lasted over 1.5 hours.[13] All three excerpts from the corpus presented in this paper feature female mediators, and Excerpts 4 and 6 are interventions by the same mediator.

Despite the obvious differences in terms of language, setting, time of the recording, and parties involved, what is interesting is that these cases have a very similar structure. This is due to the fact that mediation, as said in Section 2, has become a standardized and institutionalized practice within ADR (see for example the discussion in Meier 2003), at least in some contexts and cultures (see footnote 2). For the present study, relying on data collected in different but homogeneous corpora is an advantage in terms of how much our findings will be representative: in fact, the recurrent strategies that have been found in the data are not specific of a particular mediator but have become part of a standardized practice. Moreover, relying on data collected at different times (from the 1980s to recent times) also increases generalizability of our findings, showing some invariant aspects that have established across time in this type of standardized institutionalized mediation.

### 3.2   Data treatment

All recordings, whether audio or audio-visual, are transcribed using a model for transcription based on Traverso (1999). Earlier research on argumentation has

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**12.**  The roles of mediators and parties in conflict are acted out by certified professional mediators. Since the ADR Instituut course was on 'labor dispute mediation', the participants in the mediation session often include the conflict parties as well as other third parties, such as legal counseling, who help judge the functionality and legal grounding for the possible solutions discussed by the parties.

**13.**  The mediation simulations in the second corpus take place during a mediation course; therefore, the precise duration is difficult to establish (the four-day course includes many coffee breaks, short and long intermissions, interruptions due to commentary, jokes, discussions, and so on). Instead, an approximate is given by calculating the total length of the recorded data by the responsible author of the simulated sessions.

discussed the need to define a transcription standard that is useful for argumentation analysis (van Rees 1992; Greco Morasso 2011); in this paper, we have followed the standard discussed in the work on argumentation in dispute mediation by Greco Morasso (2011). Personal information that could lead to the identification of the participants, such as names of persons, organizations, institutes, businesses, cities, countries, and addresses, were pseudo-anonymized whilst transcribing. The pseudonyms provided in the text and excerpts are arbitrary. In the case of the data from the ADR Instituut, the transcript was translated from Dutch to English. We will provide the translated English versions of the selected excerpts in this paper, as well as the original Dutch versions (see the Appendix).

### 3.3   Analysis of the three aspects of strategic maneuvering

In this paper, we analyze the strategic choices made by mediators in terms of the three aspects of strategic maneuvering when it comes to making disagreement explicit. By means of qualitative analyses of discourse and argumentation, we identify with what specific aims mediators make the disagreement in the conflict explicit, and more specifically, how they do so, by looking at the three aspects of strategic maneuvering.

Passages in which mediators try to make the disagreement explicit were extracted from the corpora for analysis; in particular, the examples that are most representative of a certain *function* are presented in Section 4, in which we also present how mediators realize that function. In fact, analyses based on strategic maneuvering allow us to focus on the mediators' functions of making disagreement explicit in the context of the resolution of the parties' difference of opinion; at the same time, these analyses allow us to show how these functions are achieved discursively by means of the three aspects of strategic maneuvering. In terms of topical selection, we will show how mediators select their topics in order to, strategically, make disagreement salient. In terms of audience demand, we will show how mediators adjust specific interventions to their intended audience, whether this is one of the parties or all of the parties. Finally, in terms of presentational devices we will identify some stylistic means used by the mediator to make their intervention optimally effective. Although all three of the aspects are "inseparable" (van Eemeren 2010: 93–122), we will focus on the aspects that may be seen as most striking in the examples.

## 4.    Three functions and ways of making disagreement explicit

As stated in the Introduction, to make the disagreement explicit, mediators must both identify and elucidate the issues at the center of the conflict. The different sections below will outline the different functions of making the disagreement explicit. Guided by the *confrontation stage* in the pragma-dialectical model of the critical discussion, and an elaboration of the definition of mediation from the literature (see Section 2), we identified sections in our corpus belonging to this stage. Then, we identified the specific functions bottom-up, based on the analyses of these corpus extracts. The three functions are performed through specific discursive means, which will be discussed using the three aspects of strategic maneuvering. Using excerpts from the corpora as examples, *how* mediators may move strategically to achieve these functions using specific means is analyzed. Three different functions of making the disagreement explicit can be identified, which correspond to Sections 4.1–4.3: (1) to uncover the *real issues*, which is important in order for the conflict to be resolved (Section 4.1), (2) to establish the conflict as *belonging to the parties* (Section 4.2), and (3) to make the conflict seem *manageable* to the parties, which is important when trying to move disputants out of a state of impasse (Section 4.3). In Section 4.4, we will show that one intervention may have all three of the identified functions. For each excerpt, we will discuss the *how* (based on what aspects of strategic maneuvering are prominent), followed by a discussion of the function, or the *why*, in detail (and how everything is connected to the mediator's goal to help parties resolve their conflict).

### 4.1    Uncover the real issue(s)

A first function of making disagreement between parties explicit is to unearth the real issues that are at the center of the parties' conflict. In the complex conflicts dealt with in mediation, the relevant issues are often, at least initially, hidden.

An example of this function is given in Excerpt 1, taken from a case in which the mediator is mediating an interpersonal dispute concerning adoption. Vivian (represented as V in Excerpt 1), the biological mother of a newborn (Rudolph) had previously agreed to give the boy up for adoption by a couple (Harrison and Jenny). However, once Rudolph is born, according to the law, Vivian still needs to sign the documents to finalize the adoption process. It is at this phase that it turns out that the terms of the previous agreement were not clearly defined; Vivian expected to be allowed more "contact" with her biological son than the adoptive parents have agreed to allow for. Seeing that the adoptive parents are reluctant to let her visit Rudolph from time to time, Vivian is wondering whether she should sign the documents or terminate the whole adoption process. The parties opt for

mediation to discuss their different interpretations of the adoption, thus allowing Vivian to make an informed decision about whether to sign the papers or not. Before the beginning of Excerpt 1, the parties voiced their disagreement, raising different issues in an unstructured way, and often leaving them unresolved (for example, how and when to tell Rudolph that Vivian is his biological mother, how to introduce her before telling him, what consequences this revelation could have, how much Vivian should see him, and what were to happen if Vivian starts a family of her own in the future)?.[14] Excerpt 1 begins with the mediator trying to formulate the different issues, in a structured way, as possible topics for the discussion (turn 190).

## Excerpt 1.  Adoption

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190  M  (2) There are a number of things that have to be considered here the first one is (.) WHEN does (.) Rudolph KNOW
        (.) that eh: (2) his mom (.) his biological mom (.) if we might call it that way is Vivian↑(.) the SECOND one is (.)
        WHEN (.) is he told now (.) while he's growing up↑ (.) if you pick an arbitrary age (.) X (.) what is he told until
        then↑(.) and: (.) another issue is (.) at this time (.) how much time can be spent (.) ah (.) in your busy schedule↑
        (.) seeing Rudolph (.) in their busy schedule (.) caring for Rudolph↑ (.) I've always got the feeling so far (.) that
        (.) you're not concerned about them as being good parents↓
191  V  No not at all
192  M  I only get the feeling that (.) you wanna become SURE (.) that Rudolph doesn't forget about you (.) and that you have
        (.) a good relationship (.) with (.) Rudolph
193  V  Mmh
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Excerpt 1 is interesting from a *topical selection* perspective: what is prominent here is the mediator's choice to introduce the disagreement explicitly, and it is interesting to see why the mediator decides to do so. In turn 190, the mediator introduces the possible issues that should be considered because the parties do not agree on them. In addition, parties are given the opportunity to indicate whether or not they agree with the topics that are introduced as important in their conflict, as V does in turn 191. Firstly, why would a mediator introduce reasons for possible disagreement?, and secondly, why does this mediator introduce these specific issues? The answer to the first question becomes clear when we look at the *design* function of mediators (Aakhus 2003, 2007): mediators need to design a disagreement space for the parties that is based on their real issues and deep interests, rather than on their initial positions. If the deep issues are not identified, then it is impossible to have a discussion on a durable solution to the conflict (Greco Morasso 2011).

However, more often than not, such issues do not emerge naturally. The reason for the parties' initial reluctance to share some of the issues relevant to the disagreement in the mediation sessions could be that these issues are tied to deeper personal interests and emotions of the parties. Also, parties enter into mediation having lived, at least partially, different lives, and they might not be aware of how the other party has experienced the conflictual events or what feelings the conflict has evoked. Finally, it must be noted that usually, when conflicting parties choose mediation, they recognize, and acknowledge, that they are unable to solve their

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**14.**   In both corpora, the numeration is relative to the mediation sessions.

conflict without external aid. In this sense, the conflict has already *escalated* (Glasl 2004) to a point that it has become unmanageable for the parties. At this stage, parties might have already forgotten the original issues, whilst opting for a negative interpretation of the conflict instead, in which the person sitting opposite of them is painted as the problem.[15] When Fisher, Ury and Patton (1991: 40ff) advise to "focus on interests, not positions", what they mean is that often deep interests reveal more of what the parties want than parties are actually able to voice at the beginning of a mediation session.[16] In other words, in the beginning of the mediation process parties put forth standpoints, whilst the underlying interests show actual wishes and needs that may be less opposing. Thus, in order to solve the dispute, the mediator must unearth the real issues that underlie the dispute. Mediators try to strategically uncover the disagreement by separating the issues from the "noise" that parties include in their contributions to the interaction.

We now come to the second question. Why does the mediator select these issues instead of others? A possible reason for choosing these issues instead of others may be that they concern issues that are, at least relatively, less 'loaded' compared to the bigger and possibly heavier underlying issues closer to the core of the conflict that brought the parties to the mediation table. By setting the agenda like this, the mediator seems to consider these issues easier to resolve than the deeper issues, which the mediator may sense are present.[17] From a perspective of *topical potential,* these choices could be seen as points of departure that will help the parties unravel the knotted and tangled ball of yarn that has come to represent their conflict. The things that the mediator suggests to resolve first, in Excerpt 1, concern age (at which the child is told that he is adopted and what will be told until that age), and time (for example, how much time will be spent with the child). Although the complexity of these issues should not be underestimated, the possible 'age' and 'time' related issues that parties may disagree on, and the solutions to the possible problems these issues represent, should be considered relatively

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15.    See Greco Morasso (2008) for a description of this escalation of conflict.

16.    Fisher, Ury and Patton (1991: 40) give this illustrative example to show that, at least in some cases, digging into the parties' interests reveals that it is only an apparent conflict: "Consider the story of two men quarrelling in a library. One wants the window open and the other wants it closed. They bicker back and forth about how much to leave it open: a crack, halfway, three quarters of the way. No solution satisfies them both. Enter the librarian. She asks one of the men why he wants the window open: "To get some fresh air". She asks the other why he wants it closed: "To avoid the draft". After thinking a minute, she opens wide a window in the next room, bringing in fresh air without a draft".

17.    Earlier on in this case, in turn 83, speaking about the right time to tell Rudolph that he has been adopted, the mediator refers to this as "one of the easiest (issues) to resolve": "Why don't we talk about (.) the one that may be the easiest to resolve (.) right now (.) and that is if Rudolph was to be told (.) who his biological Mom is (.) when might he be told (.) in the future".

straightforward compared to the deeper issues, which are likely related to more emotionally charged interests of the parties, which they, as of yet, are unwilling to fully divulge, whether this is due to their own lack of commitment to mediation, lack of trust in the other conflict parties, or because it requires parties to be vulnerable in an already emotional conflict.[18] In order to create more party commitment and to instill a belief in the parties that it is possible to discuss and resolve issues with their adversaries, and do so in a reasonable manner, mediators may opt to introduce the possible issues surrounding the main disagreement, which are expected to be issues that are more straightforward, and which seem more easily resolved. By means of this belief instilling and commitment conceiving strategy, a mediator may be able to build a stronger basis for tackling the heavier, and/or more personal, issues.

Obviously, because uncovering the conflictual issues might be a potential source of distress and further conflict, this must be done strategically by also emphasizing that these conflictual issues are not overwhelming for the parties. In particular, two aspects might be important to highlight here. Firstly, as can be seen in Excerpt 1 with the phrase "you're not concerned about them as being good parents", in turn 190, the mediator makes the parties' *agreement* explicit in the same intervention the disagreement is made explicit. The reason for the focus on agreement, other than to mitigate the possible damage to the "shared perception" caused by emphasizing disagreement, is that in order for a conflict to be resolvable *at all*, the issue must be set against common starting points. If there are not enough relevant shared common starting points, coming to a resolution is virtually impossible. In disagreements at a point of impasse, which is almost per definition the case in mediation, parties need to be assured that these shared common starting points exist in order for them to believe in, and be committed to, the win-win resolution of the conflict (see also Section 4.3).

Secondly, the list of issues that the mediator presents in turn 190 might also be seen as an attempt to *normalize* the case, which is on the sensitive topic of adoption.[19] Looking at the mediation session in its entirety, the corpus shows that throughout this adoption case, the parties seem to be a bit lost, and seem to be having difficulties proceeding. Normalizing the case could aid the parties in opening up and moving forward in the mediation procedure, whilst removing allocated guilt from the parties. The reason for choosing this specific list of issues could, in this sense, simply be motivated by the fact that they are the most com-

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**18.** Nevertheless, the cards that the parties play very close to their chests need to be put on the table at some point during the session in order for the conflict to be resolved, and for the solution(s) to contain all the relevant interests of the parties.

**19.** We are grateful to one of our anonymous reviewers for pointing out this interpretation of the data.

mon issues in similar cases. Normally, mediators base interventions in which they identify and elucidate disagreement on the contents of previous contributions by the parties involved in the session. However, when mediating new cases, mediators can be expected to take their experiences with/in cases of a similar nature with them to future mediations. The presence of experience can be implicitly or explicitly present, and can be expected to be more present in situations where their experience may help lead the parties towards an agreement quicker. In Excerpt 1, the line "there's a number of things that have to be considered here" (turn 190) seems to be asserted with the confidence that could be explained by the mediator's experience with family mediation in general and with adoption in specific; such experience also surfaces explicitly at other points during the case.[20]

## 4.2    Emphasize the parties' ownership of conflict

When making disagreements explicit, mediators will also want to make explicit that they do not have ownership of the disagreement. Therefore, when identifying and elucidating disagreement, mediators may distance themselves from the parties and their conflict, by presenting the dispute explicitly as belonging to the parties. This is because it is the role of mediators to help parties solve their problem but not to replace them in the discussions. In Excerpt 2, and throughout the corpora we have examined, mediators do so strategically by stating the different positions of the parties vis-à-vis the issue, instead of the issue itself.

Excerpt 2 concerns a conflict between a newly instated church board and the sexton of the same church, located in a small town. Bonnie (presented in Excerpt 2 as B) has been the sexton of the church for the last twenty years, and is in charge of the maintenance of church properties, such as the town's community center. Bonnie receives a small salary, but has been allowed by the previous board to earn some extra money by organizing events at the community center. The new chair of the church board, Colin (presented in the excerpt as C) has been tasked with restructuring the church's management and funds. Colin thinks the current

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20.    Haynes was an experienced mediator and author on family mediation (see Haynes and Haynes 1989; Haynes 1994). In this case, he explicitly refers to his previous experience at multiple moments during the discussion. For example, at turn 46 (thus, before the excerpt that considered here), speaking about the ambiguity that was present in the parties' adoption contract, the mediator says: "*That's generally my experience what happens is* that (2) couples who want to adopt (.) are excited (.) and (.) moms who (.) are: (.) going to (.) consider (.) eh (.) giving up (.) their child (.) to a family have a lot going on in their MIND at once (.) so (.) it might appear that it would be easy for eh something like this to slip by" (emphasis added to signal where the mediator speaks about his personal experience). The use of the plural form ("couples who want to adopt") is also a sign of normalization by means of generalization.

arrangement with Bonnie is not transparent and would like some insight into her event earnings and expenses. He wants the proceeds of the events organized at the community center to go to the church's funds, which can then be used to restore the church buildings and so on. Colin wants to pay Bonnie a fixed monthly salary only. Bonnie is outraged by this proposal and refuses to provide access to her books, saying she deserves the money because she works hard and needs the money to complement her meager salary. Excerpt 2 takes place very much at the beginning of the first session. As is customary for this exploratory phase of the mediation session, here, the mediator tries to gather the necessary relevant information about the conflict in order to establish all the issues, by hearing out the parties, one at a time.

Excerpt 2.   Church board versus sexton

```
22  M                                    [I eh will come to you shortly, I will come to you shortly↓
23  C  If if the church would solely rely on the people who still live in the old village e:h, then you would have to close
       the church in about a year because that's just what the numbers show↓
24  M  I hear you say, we are worried about the financial situation of the church, and without the influence of the new
       inhabitants of the new neighborhood we would have been worse off↓ That is the reality with which everyone will
       have to live↓=
25  C              =yes
26  M  And I hear you say, I don't have to do anything (.) eh [eh I
27  B                                                         [No↓
28  M  It sounds a bit like I don't want to let anybody tell me what to do, is that correct↑
29  B  Well I think (.) I think it is so I was not raised like this↓
```

The function of showing that the conflict belongs to the parties is performed by making disagreement explicit using specific *presentational devices* in Excerpt 2: the mediator makes the disagreement more salient by means of a presentational device that could be labeled as a *reflections*, or *mirroring*, in dispute mediation (Brenninkmeijer et al. 2005). In this study, we may refer to them as *'I hear you say'* interventions. In turn 24, the mediator uses the *'I hear you say'* intervention to mirror the supposed stances of Colin vis-á-vis specific issues that remain largely implicit. Specifically, we should focus on Colin's supposed standpoint that is reconstructed by the mediator as "that is the reality with which everyone will have to live" (turn 24). In turn 26, the mediator reconstructs Bonnie's negative stance to the same unexpressed issue as "I don't have to do anything". From this we may infer, 'I' being a part of the category 'everyone', that the mediator's intervention, "I don't have to do anything", in turn 26, is a reflection of Bonnie's argument to the implicit negative standpoint 'no, that is not the reality with which everyone will have to live'. In short, using the *'I hear you say'* interventions the mediator does not explicitly state the issue, but instead reflects the different stances the parties have towards the issue. In so doing, mediators signal that they have identified some disagreement, whilst at the same time solidifying their position as a neutral third party by not taking the ownership of that disagreement. Thus, here, the mediator shows that only the parties involved have ownership of

the conflict, whereby she distances herself from the parties' disagreement that she has identified.[21]

Although the 'I hear you say' interventions often refer to previous verbal contributions by parties, which may be phrased in various ways, such as 'you are saying', it should be stated that mediators may also use this intervention type to refer to the parties' non-verbal moves. Excerpt 3 is again relative to the adoption case, which has been illustrated above. Specifically, Excerpt 3 takes place before Excerpt 1; at this point, the mediator has just finished helping the parties realize that there is a problem with Vivian's definition of being able to "have contact" with her biological son. Before the beginning of Excerpt 3, Vivian said that she does not want Rudolph to think that she has abandoned him; to this, Jenny and Harrison respond that it is better for Rudolph not to be confused and to know that his adoptive parents are "his parents". At this very difficult moment, the mediator uses what we might identify as an *"I hear you say"* intervention to reformulate the problem and show where the parties are (turn 60).

Excerpt 3.  Adoption

```
60  M  I watch you two and sometimes you nod your head which means you're in agreement when I (.) I heard Vivian
       say that (.) she wanted (.) to be able to be ensured that (.) her SON (.) which is (.) now ( ) in your home (.) is
       not forgotten by her I didn't see you guys nod your head no I'm not sure (.) if you were in agreement with that
       (.) or (.) you know/
```

More precisely, in turn 60, the mediator seems to make an attempt at having the parties make their (assumed) disagreement explicit themselves. "Sometimes I see you nod your heads" and "I didn't see you guys nod your head" are variants of the *'I hear you say'* intervention strategy, through which the mediator verbalizes the non-verbal behavior of the parties, considering it as a non-verbal communicative act.

Similar to what was discussed in the analysis of Excerpt 2, the *"I hear you say"* interventions help mediators construct the issue – and, thus, design the parties' discussion – whilst also presenting the content of their intervention as merely reflecting what the parties say. In other words, the content of the interventions on disagreement do not present, or represent, the mediator's own stance, thoughts or views on the issue. Strategically, this helps the mediator safeguard his or her *mediator neutrality*. The mediator is a participant in the mediation interaction but not

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**21.** As was pointed out by an anonymous reviewer, we are aware that our analyses of function 2, and indeed function 3 (Section 4.3), could be interpreted as functions of the aspects of strategic maneuvering – in this case, of presentational devices. However, in strategic maneuvering, form and function are interrelated; in our interpretation, it is making disagreement explicit that has the functions identified in Sections 4.1–4.3; however, making disagreement explicit happens through specific means each time (in the case discussed in this section, through presentational devices). Moreover, it is important to say that our findings so far do not reveal a strict bijective relation between an aspect of strategic maneuvering and a function of making disagreement explicit; in fact, the same function can be realized by one or more aspects of strategic maneuvering.

one of the protagonists or antagonists in the discussion. He or she may procedurally guide the interaction; however, a mediator should not determine its outcome or take the role of active discussant who expresses a stance vis-à-vis the issues in the mediation process. By means of this strategy, mediators construct the issue for the parties' discussion as something that comes from them. The issue is something that is present in the parties' discourse, and something which can simply be heard or seen if one pays attention. As a result, the issue is presented not as something that must be defined or constructed by the mediator; but as something that can be recognized by simply listening to what the parties are saying. This places the mediator back into his or her role as the designer of the parties' discussion who does not own the dispute. At the same time, this permits mediators to empower the parties; it is necessary for parties to have ownership of the discussion in order to find a joint solution to their problem.

Subordinate to this main function, there might be other functions of the *'I hear you say'* intervention and its variations. Firstly, because this issue might encompass a high level of emotional involvement (both for the biological mother and for the adopting parents), the mediator arguably makes the disagreement explicit because he does not want any of the parties' concerns to be left out even if they are difficult to formulate verbally.[22] This also makes the parties feel like they are being heard. Listening being an important task of the mediator, it is an intervention strategy by which a mediator can show that he or she is paying attention to the parties' contribution in the mediation session; it contributes to the fact that both parties might feel more listened to. Secondly, in a sense, they are used by mediators to make the sources of their inferences explicit, regardless of whether the sources are audible, as in "I hear you say" (Excerpt 2), or visual, as in "I see you nod" (Excerpt 3). Usually, the sources from which interlocutors draw their specific inferences remain mostly implicit in the interaction. In fact, by making verbally explicit what they have seen or heard, mediators make them salient and explicit. Some of the parties' words or some of their non-verbal communicative behavior might simply go unnoticed; by making them verbally explicit, mediators make them central to the interaction.[23] When presenting this intervention,

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**22.** This connects the *"I hear you say"* intervention to the function of *uncovering the real issues* (Section 4.1); the mediator may use this intervention to make the disagreement explicit in a way that includes a signal that the parties' disagreement has been inferred without having to formulate the issue verbally.

**23.** Also, in terms of *presentational devices*, something else is worth noting in this excerpt, namely the *positive* formulation. Instead of saying 'it seems that you (may) disagree', the mediator formulates his inference as "no I'm not sure if you were in agreement with that" (turn 60 in Excerpt 3). Again, as explained in Section 4.1, this strategy to make disagreement explicit, whilst at the same time placing emphasis on agreement, could be regarded as an attempt to counteract the possible threat making the *disagreement* explicit forms to the mediator's aim of creating a *shared perception*.

the mediator expects parties to accept these formulations, or *call outs*[24] (see for example Aakhus 2001; Ghosh et al. 2014). A *call out* is explained as "the argumentative relationship among contributions to the discussion" (Ghosh et al. 2014:39). If we try to apply this to the "I hear you say" intervention, we can say that something in a previous contribution by a party is "targeted" (2014:39) by the mediator using this specific intervention. The relevance of this intervention is related to the targeted contribution because "in producing a message, a speaker intentionally commits herself to a perspective and unintentionally expose herself to beliefs, wants, or intentions that a hearer can infer from the message" (Aakhus 2001:55). Although the mediator generally does not "make problematic any of these intentional or unintentional commitments" (Aakhus 2001:55), in calling out the contribution the mediator does directly target the commitments, which are related to possibly relevant issues in the disagreement.

### 4.3   Make the disagreement manageable

Making a clear and manageable disagreement space emerge helps turning the hostile and complex conflict into something seemingly resolvable. The conflict that is being mediated is almost per definition a conflict at deadlock. At the beginning of the mediation, the disagreement space is, or appears to be, very emotion-charged, making the idea of reaching a resolution seem like an impossible feat. Believing that the conflict is resolvable may increase the parties' commitment to the resolution process and their willingness to construct and take part in a reasonable discussion that could lead to a win-win solution. This makes explicating the parties' disagreement as manageable an important function of making the disagreement explicit in mediation, for which mediators need to maneuver strategically.

   In Excerpt 4, the conflict is at a clear state of impasse, which has resulted in the seeming unwillingness of both parties, Agnes (presented as A in Excerpt 4) and Brenda (presented as B in Excerpt 4), to cooperate in the resolution process. Brenda is a manager at a charity organization. Agnes works in the same department where Brenda is manager. The department organizes events for people with mental disabilities; they make products that are subsequently sold. A couple of years ago, the organization decided to modernize. As a result, new laws and regulations have been introduced and implemented. Agnes, who is slowly nearing a legal retirement age, is unable to adapt to the changes that were made. Brenda has offered Agnes various forms of coaching to get Agnes up to the required skill level, but according to Brenda, without any success. She wants to terminate Agnes' contract, stating that it is impossible to continue work effectively as long as Agnes is

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**24.**  We are grateful to one of our anonymous reviewers for suggesting a parallel with the concept of *call out*.

employed at the organization. Agnes does not want to leave, saying she will never be able to find another job at her age. She says she is putting in effort, but that Brenda is not providing her with any realistic opportunities for improvement.

Excerpt 4.  Team leader and employee

```
((Interruption))
93  M  And the difficult thing is that of course I would not mind but I don't have a magic wand↓ So the moment that you
       are on two sides of a (1.0) you stand you stand on the other side of the of the (.) you're almost sitting at the other
       side of the table but also stand at two different sides of what for you, would be the solu[tion↓
94  B                                                                                            [That we knew beforehand
       (.) that was of course also the starting point and
```

In Excerpt 4, the strategy of *visualization*, which is part of the *presentational devices* within a mediator's strategic maneuvering, is particularly interesting. As a *presentational device,* the mediator visualizes the space of disagreement and thereby tries to make the abstract concept of the disagreement space more tangible in turn 93: Agnes and Brenda are looking at the same issue(s) from opposite sides – they are sitting at opposite sides of the table. By framing the conflict in a tangible manner through the image of sitting at the same table, the idea of finding a resolution to the conflict is presented as more probable than the parties may initially think, for two reasons. First, saying that the parties sit at opposite sides of the same table means framing the conflict as a mere problem of (almost physical) perspectives: the parties are seeing the same problem from different perspectives and, if they are able to listen to each other, they might understand their different points of view and come to a shared solution. Seeing something from different perspectives means that the problem is in the framing and the interpretation of the situation, however, there are no irreconcilable underlying issues. Secondly, sitting at the same table is a powerful image that also conveys some commonalities between the parties: when people agree to sit at the same table, they accept to be participants in a dialogue. In other words, by making the conflict *spatial,* the mediator places the conflicting parties in the *same space*.

Excerpt 5 is taken from a conflict in a family real estate business. Paul (P) is the father, founder and main owner of the business and, in his words "the boss". Therese (T) is Paul's eldest daughter. At the time of the mediation, she had been working with Paul as director of one of the sub-divisions of his business for some years. Father and daughter end up in mediation after a major disagreement concerning a problem with one of Therese's employees. This employee had made a serious mistake with an order whilst Therese was on holiday; Paul fired him following this mistake without asking his daughter, who is upset about this unilateral decision. Later on in the interaction, it was revealed that Therese was romantically involved with this employee at the time and that Paul disagreed with their relationship. Prior to Excerpt 5, the mediator had been asking general questions about the conflict to reconstruct what happened. Just before the discussion in Excerpt 5, the mediator asked Paul whether he has other children. Paul says that he has a

younger daughter, Evelyn. The discussion Excerpt 5 begins with the mediator asking whether Evelyn would change her mind about possibly working at the real estate agency, if she were aware of the conflict between her father and older sister.

Excerpt 5.  Father and daughter in business

```
79  M  =Does she know the difficulty between the two of you your sister ↑
80  T  No [no no
81  M     [She doesn't ↑
82  T  Evelyn doesn't (.) bother with the business
83  P  [No
84  M  [Yes
85  T  °I mean (.) no°
86  M  If she knew about the business ah:: (.) do you think that (.) she would want to be (.) and she knew about the problem
       between the two of you today (.) do you think that she would want to become part of the business ↑
87  T  [Ah::
88  P  [Do you- excuse me (.) do you think that it is all relevant ↑ (.) of course you are leading but (.) is this a relevant
       question ↑
89  M  Well (.) maybe I'll ask your daughter first and (.) if it's not relevant she will tell me
90  T  I have no idea which direction you're going but if you think it's a relevant question okay well (.) Evelyn ↑ (.) I don't
       think she would care (.) anyway of the other
91  M  Ya
92  T  I don't
93  M  Would that be about the same (.) for yourself ↑ (.) if she knew about the difficulties today about the two of you (.)
       would she (.) be more likely to come into the business or not ↑
```

In Excerpt 5, a different presentational device is used to show that the disagreement is manageable: the nouns "*the difficulty*" (turn 79) and "*the difficulties*" (turn 93), in the last turn, are used to describe the conflict. These nouns refer to the disagreement between the parties. It is noteworthy that the labels 'difficulty' or 'difficulties' are '*mitigated*' labels (Caffi 2007), which are used instead of 'the conflict', 'the argument', 'the fight', or 'the dispute', which are less vague and more concrete than 'difficulty'. This choice to mitigate frames the conflict as being resolvable in a way that the straightforward alternatives do not. Here, a resolution is presented not as an impossible feat but as merely 'difficult' to accomplish. Compared to the other options mentioned above, 'difficulty' has a less final and less permanently damaging connotation because it simply signals a rough patch in the normal state of the relationship. Interestingly, choosing to adopt this presentational device obviously implies a choice at the level of topical potential (showing that the parties' tangled mess is actually quite manageable, because it 'only' means discussing a specific selection of issues) based on an evaluation of the audience demand (deep down, parties in mediation want to resolve their conflict, which can be inferred from the fact that they have sought out a third neutral for help). In this case, thus, it is evident how the aspects of strategic maneuvering work together, also at the micro-level of a mediator's linguistic choices, for the functions of making disagreement explicit in mediation.

## 4.4   One intervention, all three functions

As a final example, an excerpt is included in which all three strategic functions of making the disagreement explicit, described in the sections above, can be found in one intervention. As in the preceding sections, this section will primarily focus on

the functions of making disagreement explicit; in relation to that, using the three aspects of strategic maneuvering, we will show *how* the mediator constructed this intervention for these three functions. With this section, we would also like to confirm something that has emerged in the previous analyses: the correspondence between functions and aspects of the strategic maneuvering is not bijective, because one and the same function can be achieved through different aspects at the level of strategic maneuvering.

Mediation of a case is often extended to multiple sessions before possible solutions are found. Excerpt 6 is taken from the first minute of the second mediation session in the mediation process of the 'church board versus sexton' case (see Section 4.2). A co-mediator, who remained passive during the first session, takes over the case between C (head of the church board) and B (church sexton). Fearing that the parties may resume their hostilities with fresh vigor, the mediator takes charge by setting the agenda for this session, by which she tries to establish the *real issues* of the conflict (function 1).

Excerpt 6.  Church board versus sexton

```
1 M  There are a couple of things that I noticed↓ The topic of the conversation at first seemed to be about eh how e:h the
     tally is accounted for, and and eh how the payment is done regarding (.) the revenue of the community center↓ But
     between the lines I hear some other issues as well, namely that some a sort of opposition seems to have been
     generated, °I would like to sound you out about that°, seems to have been generated between the old inhabitants of
     the village and I'll just call it the import (.) and that also caused a shift in the occupation of posts at the church (.)
     and i:ht seemed as if you linked this together↓ All the eh interventions concerning the finances (.) yes that there are
     new people °who are involved in that° (2.0) is that that that correct↑
2 C  Yes [that is correct
3 M      [°that is an element°
4 C  we do realize that↓ [That yes this
```

*Function 1: Uncover the real issues.* The first turn of Excerpt 6 reveals something interesting in terms of the *selection from the topical potential*. When the mediator says "the topic at first seemed to be…but between the lines I hear some other issues" the idea is presented that at first the *real* issues are clouded by other contributions to the mediation session. The nature of those "other issues" is sensitive, which could be the reason that these real issues have remained hidden. In any case, by switching the topic to the issues the mediator considers to be relevant to the resolution process, the mediator brings out the real disagreement space, which should be regarded as the main topic for the upcoming discussions on the disagreement. The mediator concludes the intervention itself with a *presentational device* commonly found at the end of interventions about a mediator's inferences on (the nature of) the parties' disagreement. When proposing a disagreement in such a way, mediators often ask the parties for confirmation of their inferences, with phrases such as "I would like to sound you out about that", or "is that correct", in turn 1. If the proposed main issue in the disagreement is accepted by the parties, an explicit agreement on the real source of disagreement is established and an essential topic for the discussion that may lead to a resolution has been selected for further discussion.

*Function 2: Emphasize the parties' ownership of the conflict.* As concerns the second function of making disagreement explicit i.e., to reestablish the conflict as belonging to the parties, the mediator also makes use of the *"I hear you say"* intervention strategy that we discussed in Section 4.2. In turn 1 of Excerpt 6, using this *presentational device*, she presents the underlying issues as coming from the parties, in the form of the *call out*: "I hear some *other* issues as well". When the mediator adds "All the eh interventions concerning the finances (.) yes that there are *new* people °who are involved in that°" (italics added for emphasis), she makes an explicit reference to the parties' previous interventions in the discussion; this is strategically done to show that the real underlying issues are not imposed by the mediator but come from the contributions made by the parties.

*Function 3: Make the disagreement manageable.* In Excerpt 6, when presenting the disagreement, the mediator also tries to make the conflict more manageable. For instance, at the level of *presentational devices*, she states that "*some sort of* opposition *seems to*" exist (both turn 1). The choice of phrasing that has a clear mitigating effect seems to be aimed at diminishing the possible negative effects of presenting the central issue in the conflict. As we previously stated, the parties did not divulge this issue themselves. Thus, it would seem that the mitigating wording was chosen with the intention of making the disagreement introduced by the mediator appear more manageable. The mediator also uses another *presentational device*, namely *nominalization* – the act of transforming verbs into nouns – when saying there is an "*opposition*" instead of, for example, '*you oppose*', for the same function. By turning the verb into a noun, the conflict is presented as an object that is detached from human responsibility. In other words, it has escalated naturally without the agency of any of the parties. The use of nominalization could be explained by the idea that "separating the people from the problem" (Fisher, Ury and Patton 1991) makes the conflict more manageable, because it does not permit a blame game. The nouns *"the difficulty'* and *'the difficulties'* signify problems that exist independently from the parties. When referring to the noun, the mediator and parties can address the problem as a separate entity. Although the noun *"the opposition"* is an abstract concept, conceiving it as such is a strategic move by the mediator. The disagreement as a problem that exists externally can, figuratively, be placed in the middle of the discussion table as something the parties can solve together without blame and concessions causing face loss of those involved in the conflict. It could be said that the choices made in terms of *presentational devices* to make the disagreement more manageable for the parties suggests that the wording was intentionally chosen and adjusted to meet *audience demands*. If the disagreement is to be made more manageable for the parties, a mediator may choose specific presentational devices, such as *mitigating* phrases or *nominalization*, to best suit the intended audience and their

needs at that moment, which in conflict mediation are the parties and their needs in light of the common aim of finding a mutually beneficial resolution.[25] Both these stylistic choices, *mitigation* and *nominalization*, help the mediator achieve the goal of this specific function of making the disagreement explicit: to make the disagreement (seem more) manageable.

## 5.    Conclusion

In order for mediation to be successful and the resolution to be sustainable, it is important that mediators are able to make the disagreement explicit. Our findings reveal that making the disagreement explicit seems to be a deliberate action undertaken by mediators in ways that are in line with both the rhetorical and dialectical goals – to *effectively* help the parties resolve their own conflict in a *reasonable* way.

In particular, three different functions of identifying and elucidating issues were identified: (1) uncovering the *real issues*, (2) establishing the conflict as *belonging to the parties*, and (3) presenting the *disagreement as manageable*.

The *first* function is essential for parties in their quest to find well-founded solutions for their problems. The image of an iceberg is often used in professional mediation training to show that the parties often start mediation knowing very little about their own conflict (the tip of the iceberg). Uncovering the real issues means enabling parties to discuss their real problems, whereby mediators are able to design a context in which argumentative discussions may take place on the issues relevant to the conflict. If this discussion on all relevant issues does not take place, the parties risk finding a resolution to the conflict that is incomplete, ill-focused and, therefore, not durable. When mediators attempt to make the issues

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**25.**   In this relation, the mediator's formulation of "between the old inhabitants and I'll just call it the import" is particularly striking in terms of *presentational devices* and *audience demand*. The mediator does not use the more conventional dichotomy of '*old* (inhabitants) versus *new* (inhabitants)', and instead presents the parties with the distinction between "*old* (inhabitants) versus *import*". This word choice could signal that Bonnie is the primary audience of this intervention and that the phrasing of the intervention is adjusted to the *audience's demands*. Bonnie is a longtime inhabitant of the old village, whilst Colin, and the rest of the church board, are from the nearby city. The word *import* objectifies the group of people that more conventionally could have been called the "new inhabitants". The wording seems to reflect the sentiment expressed by Bonnie about the group of new inhabitants making up the new church board, to which Colin belongs. Additionally, we may regard the mitigation "I'll just call it" as constructed with Colin in mind, since this mitigation helps the mediator to distance himself from the objectifying label of *import*, as if to say 'I'll just call it this for the sake of adjustment to audience demand, but this is not my personal stance'.

that are relevant to the conflict explicit, they move strategically. In the interventions in which mediators attempt to make the *real* issues explicit, the aspect of *topical selection* is most salient. However, putting any emphasis on disagreements by introducing them as topics to the mediation is risky, especially in conflicts where there are hidden issues that are related to emotion-charged interests. This makes a strategic design of interventions all the more important. In emotional cases, mediators may set the agenda of topics to be discussed by identifying some issues that they sense are more straightforward and more easily answered by the parties, before tackling the (even) heavier issue(s).

The *second* function of making the disagreement explicit is to identify and elucidate the conflict as a disagreement of which only the parties have ownership. More specifically, in order to warrant neutrality, mediators are shown to distance themselves from the conflict by establishing the disagreement as belonging to parties. In order to do this, mediators must move strategically, and may do so by means of a very specific *presentational device*, which we labeled: '*I hear you say*' interventions. In these interventions, mediators reflect the stances of the parties towards a specific issue that usually remains implicit. By making the standpoints, or arguments in support of the standpoints, explicit instead of the issues, disagreements are presented and emphasized as belonging to the parties. Distancing themselves from the conflict is important because mediators cannot take stances towards issues, or they risk becoming active participants in the discussion instead of neutral discourse facilitators.

The *third* function of making disagreement explicit is to make the disagreement seem (more) manageable to the parties. The parties that enter into mediation often regard their conflict as unresolvable, at least in a win-win format. In order to solidify the parties' commitment to the resolution process and motivate their constructive participation, mediators may attempt to present the conflict as resolvable, or manageable. Several *presentational devices* in particular may be employed to make the disagreement explicit whilst mitigating, namely; *visualization*, in order to make the abstract concept of the parties' disagreement more tangible; *mitigating* word choices to define disagreements and alleviate the negative connotation of labelling disagreements; and *nominalization* in order to separate 'the parties from the problem', by presenting the conflict's origins as detached from human responsibility.

We have used the concept of strategic maneuvering as a theoretical and analytical tool. This has enabled us to connect the functions of making disagreement explicit to the means that mediators use to achieve these functions. In strategic maneuvering, as we argued in Section 2.3, means and functions are connected. However, investigating the means as related to the aspects of strategic maneuvering cannot be done without taking into account, as the analyses often showed (see

Section 4), that the three aspects are actually interconnected, even when one is more prominent.

As shown in Section 4, the three specific functions of making disagreement explicit may be found in one single intervention as well, which are realized by means of a combination of aspects within the mediator's strategic maneuvering. There are some limitations of our study that need to be acknowledged. We relied on a relatively large corpus for this qualitative study; nevertheless, the study is intended as an explorative study. This implies that the three functions that we have identified as recurrent and prominent in our corpora are by no means final or exhaustive; further research on this topic could reveal other functions and other means of making disagreement explicit. In any case, so far, our findings do not reveal a strict bijective relation between one aspect of strategic maneuvering and one function of making disagreement explicit; the situation we have illustrated is more nuanced. This is the reason why we organized our analysis starting from functions and not from the aspects of strategic maneuvering.

Overall, this paper contributes to the argumentative study of mediators' strategic maneuvering by shedding light on new functions of specific strategies that had not been considered up to now. Our analysis is based on a growing collection of examples of dispute mediation, collected by our research group at the Institute of Argumentation Linguistics and Semiotics (IALS) at Università della Svizzera italiana (USI). Extending the empirical basis of the analysis could potentially reveal other functions of making disagreement explicit in mediation sessions.

At a more general level, this paper has demonstrated how strategic maneuvering and the conciliation between rhetorical and dialectical goals happens in a specific case: the design process of people's discussions by (external) neutral third parties. Despite their role as neutral third parties, mediators do have rhetorical goals: they want and need disputants to settle their conflict through a successful mediation process, if only to build their professional reputation. However, these rhetorical goals can only be achieved through the parties' dialectical commitment. In other words, if the parties are unwilling to enter a reasonable argumentative discussion about their disagreement, the mediator's rhetorical goals will not be attained. This allows us to identify a particular, other-dependent form of strategic maneuvering, which is typical for mediators: *mediators are dependent on the dialectical commitment of the parties in order to achieve their own rhetorical goals*. This *other-dependent strategic maneuvering* may qualify the neutral role of the mediator; it helps explain what it means for a mediator to be a non-canonical arguer (Greco Morasso 2011) who plays a paradoxical role (Aakhus 2003). Further research on dispute mediation and other forms of formal and informal conflict resolution might help determine whether this is applicable to all forms of neutral conflict resolution facilitation.

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## Appendix

The appendix includes the original Dutch versions of Excerpt 2 (Section 4.2), Excerpt 4 (Section 4.3), and Excerpt 6 (Section 4.4), which were selected from the corpora for this study.

*Original Dutch transcript of Excerpt 2 (Section 4.2)*

```
22  M                                   [ik uh ik kom zo bij u hoor, ik kom zo bij u↓
23  C  Als als de kerk het alleen zou moeten hebben van de mensen die nog in het oude dorp wonen u:h (.) dan zou je over
       een jaar of wat die kerk kunnen sluiten want zo liggen gewoon de getalsverhoudingen↓
24  M  Ik hoor u zeggen (.) wij maken ons zorgen over de financiele situatie van de kerk (.), en zonder de invloed van
       nieuwe bewoners van de nieuwe wijk stond het er nog veel slechter voor↓ Dat is een realiteit waar iedereen mee zou
       moeten gaan leven=
25  C  =ja
26  M  En ik hoor u zeggen (.) ik moet niks (.) uh [uh ik
27  B                                              [nee
28  M  Het klinkt een beetje van ik wil mij niet de wet laten voorschrijven (.) klopt dat↑
29  B  Nou ik vind (.) ik vind echt zo ben ik niet opgevoed↓
```

*Original Dutch transcript of Excerpt 4 (Section 4.3)*

```
93  M  En het lastige is natuurlijk ik zou best willen maar ik kan niet toveren↓ Dus op het moment dat u aan aan twee kanten
       van een (1.0)↓ U staat u staat beiden aan een aan een andere kant van het van het (.) u zit bijna aan de andere kant
       van de tafel maar u staat ook aan twee verschillende kanten van wat voor u de oplos[sing↓
94  B                                                                                      [Dat wisten we van tevoren (.)
       dat was natuurlijk ook de uitgangspositie en
```

*Original Dutch transcript of Excerpt 6 (Section 4.4)*

```
1   M     Er zijn een paar dingen die mij opvallen↑ Uh het onderwerp van gesprek leek aanvankelijk te gaan over uh hoe u:h
          de rekening verantwoording (.) en en afrekening wordt gepleegd met betrekking tot (.) he:↑ de verdiensten van het
          wijkcentrum↓ Maar ik hoor toch tussen de regels door ook wat andere zaken namelijk uh dat uh er een soort
          tegenstelling lijkt te zijn ontstaan (.) °ik wil dat eens even bij jullie peilen° (.) lijkt te zijn ontstaan tussen uh de
          oudere bewoners in het dorp en ik noem het maar even de import (.) en dat dat ook verschuiving in de he: de bezetting
          van de posten in de kerk heeft gegeven en (.) hh:et leek erop alsof u dat met elkaar in verband bracht↓ Alle uh
          interventies met betrekking tot financiën (.) ja dat er nieuwe mensen zijn die °daarbij betrokken zijn° (2.0) klopt
          dat dat dat ↑
2   Mr C  Ja dat [klopt wel dat
3   M            [°dat een element is°
4   Mr C  realiseren wij ons ook wel↓ Dat [Ja dit
```

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