

Norm-pushers or deal-brokers? Normative challenges of modern-day mediators

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Introduction

Mediation processes are faced with increasing expectations. Mediators are not only asked to assist negotiating parties to bring a conflict to an end, they are also increasingly expected to integrate gender, human rights, justice, democracy and other norms into the mediation process. The *UN Guidance for Effective Mediation*,² published by the Secretary-General in 2012, is a cornerstone of the growing normative framework. In line with this, many international organisations and foreign ministries increasingly follow norms-based policies and ask compliance from the mediators they mandate.

The growing normative expectations in mediation processes have sparked intensive debates in the mediation community. How do norms influence mediation processes, and how far should a mediation process be guided by normative expectations? Is there a hierarchy of norms in mediation processes? What is the role of the mediator in managing different normative demands? These questions cut to the heart of the debate among mediation practitioners. While some urge mediators to integrate as many normative propositions as possible, others argue for a maximum amount of pragmatism and flexibility for mediators.

Normative frameworks in mediation have undoubtedly changed over the past few years, reflecting a greater professionalisation of the field. Despite acknowledgement of their importance, and growing attention to the topic, the role of norms in mediation processes has so far rarely been analysed. Therefore, swisspeace and the Norwegian Peacebuilding Resource Centre (NOREF) carried out a research project in 2014 interviewing some 20 senior mediation practitioners to explore how norms influence their mediation practice.³ The insights, arguments and quotes in this report are based on these interviews.⁴

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- 1 swisspeace is a practice-oriented peace research institute in Switzerland. The authors would like to thank Christina Buchhold, Paul Dziatkowicz and Mathias Zeller for their most helpful support in drafting this report. This report is based on earlier research conducted with substantive and financial support from the Norwegian Peacebuilding Resource Centre (NOREF) and the Mediation Support Project (MSP). MSP is a joint venture between swisspeace and the Center for Security Studies at ETH Zurich, and is funded by the Swiss Federal Department of Foreign Affairs. The content of this report binds only the authors and does not reflect the views of NOREF or the Swiss Federal Department of Foreign Affairs.
 - 2 United Nations, 2012. It provides guidance on eight fundamentals, among them national ownership, inclusivity, international law and other normative frameworks.
 - 3 At the time of interviewing, they represented the following institutions: international organisations (four), non-governmental organisations (seven), think-tanks and academic institutions (four), religious institutions (one) and foreign ministries (six). The interviews took place from May to December 2014.
 - 4 The full findings of the report and the list of interviewees is available in: Hellmüller, Sara, Palmiano Federer, Julia and Zeller, Mathias 'The role of norms in international peace mediation'. Bern: swisspeace/NOREF, 2015.

This research shows that most mediators welcome the growing relevance of normative frameworks. However, when faced with demands to include a mushrooming set of norms in increasingly complex conflict contexts, the lack of a clear strategy on how to address them can result in an overloaded mediation agenda and the conflation of different objectives within the same process. Therefore, various norms must be categorised and prioritised in a given context. This appears to be already common practice among mediators, but is often done implicitly, without clear and transparent criteria. This paper thus proposes an approach that helps mediators to assess and navigate the challenges of including norms in mediation more systematically.

Making sense of it all: how to categorise norms in mediation

Norms are commonly defined as ‘collective expectations about proper behaviour for a given identity’.⁵ For the purpose of this report, the identity refers to that of mediators involved in official international mediation processes aimed at resolving violent conflicts. The current debate on norms is linked to advocacy for a growing set of norms from different sources. Norms in mediation can stem from international conventions, UN General Assembly and UN Security Council Resolutions, foreign ministries’ administrative guidance, and civil society campaigns and donor requirements.

The extent of concrete demands on mediators largely depends on the specific organisation mandating the mediation: the UN, the EU, a state or an NGO’s own institutional frameworks will determine different normative expectations for the mediators they mandate. A mediator’s own normative socialisation also plays a role. If mediators themselves are convinced of a certain norm, they design the process accordingly, are less likely to question it, and will try to ensure that it will be included and respected in a peace agreement.

So how can one categorise the plethora of norms that affect mediation? Three distinctions are important, as illustrated in Figure 1. First, there is a distinction between **content-related and process-related norms**. Content refers to what might (and might not) be negotiated during a mediation process, and what will eventually figure in the final peace agreement. For example, the prohibition of any unconstitutional change of government, or the inclusion of topics such as security, power-sharing or wealth-sharing in a peace agreement are all based on content-related norms.⁶ Process-related norms, on the other hand, define how a mediation process is planned and conducted. Examples include norms such as inclusivity and impartiality.

Second, academic literature makes a distinction between **settled and unsettled norms**.⁷ A norm is considered settled in international relations when “it is generally recognised that any attempt to deny it requires special justification”.⁸ These norms have usually become internalised and therefore they are not necessarily visible since it has become ‘normal’ to behave in line with them. In contrast, as long as norms can be overridden without (or with little) justification, they are considered unsettled.⁹ Settled norms can be content-related or process-related. *Jus Cogens* norms, such as the anti-genocide, anti-slavery and anti-apartheid norms, provide an example of content-related settled norms in the strongest sense. Inclusivity, in the sense of involving all the relevant conflict parties (e.g. those who hold power) and main stakeholders (e.g. those who are probably going to be most affected by the outcome of

5 Katzenstein, 1996. We distinguish norms from values. While the former provide guidance for social behaviour, the latter are more abstract and reflect beliefs about what is good and what is evil.

6 For instance, security might be based on the norm of the right to life, power-sharing on the norm of self-determination and wealth-sharing might be based on the norm of economic equality. Sometimes norms are confused with other “distinct and interrelated elements of social institutions” (Finnemore and Sikkink, 1998: 891). Anti-apartheid, for instance, is not a norm, but a political programme based on a normative framework composed of norms such as equality, non-discrimination and social justice.

7 Frost, 1996.

8 Raymond, 1997.

9 For literature dealing with the process of how norms become settled, also see Finnemore and Sikkink, 1998.

a peace agreement) can be seen as a process-related settled norm. It would be hard to imagine a mediator questioning the importance of this norm.

Third, some norms underpin the very definition of a mediation process. These pertain to its nature and are thus necessary **definitional** elements. They can also be content- or process-related. For example, the right to life is a content-related definitional norm. If a third party started making military alliances or striking arms deals with other conflict parties, one would no longer consider such an intervention to be truly ‘mediative’. Consent could be considered an example of a process-related definitional norm.¹⁰ As soon as a mediator starts negotiating with the parties to advance forcefully his or her own agenda, it is no longer mediation, but would qualify as another form of third-party intervention (e.g. high-powered diplomacy or sanctions).

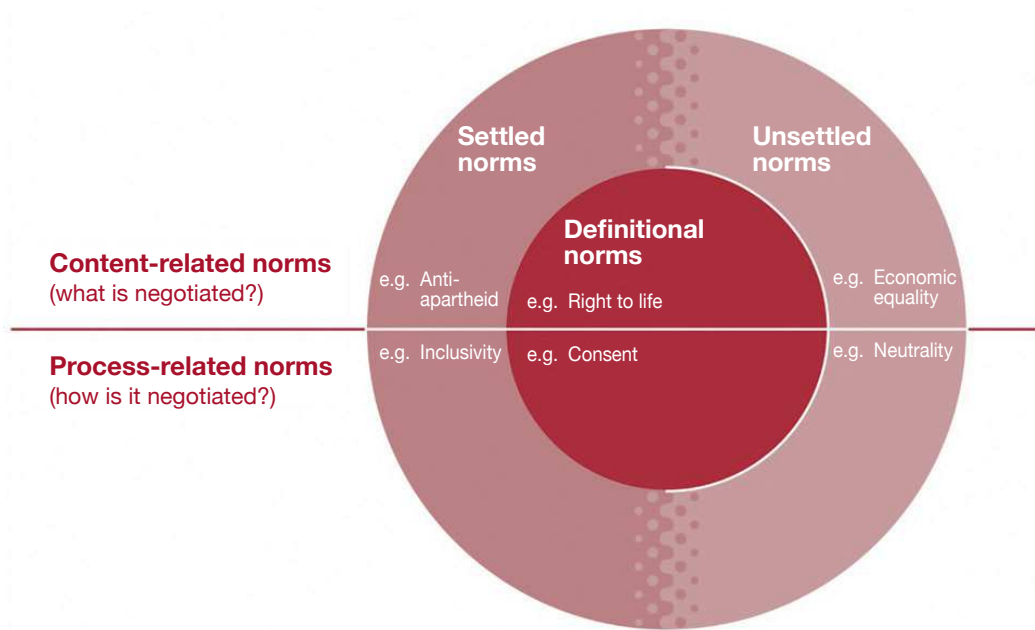


Figure 1: Categorisation of norms

At the centre of the current debate is the question of which norms are settled and which are unsettled. Different mediators, mandate-givers and negotiating parties might view different norms as settled or unsettled. Moreover, since there is no unequivocal definition of mediation, the debate might go further and not everyone might see the same norms as necessary definitional elements. These discussions are even more salient since the categorisation also influences how the different norms are prioritised.

¹⁰ For instance, the definition in the UN Guidance for Effective Mediation (United Nations, 2012) includes consent: “Mediation is a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements.”

Not all norms are created equal: how to prioritise norms in mediation

Mediators generally implicitly prioritise norms like the right to life and consent (settled and definitional) over norms like neutrality or economic equality, for instance (unsettled and non-definitional). If and how such other norms are brought into a process depends largely on whether they are seen as compatible with definitional norms.

In the interviews conducted, mediators strongly argued for prioritising the norm of the right to life. This does not mean that they would not want to strive for more holistic objectives also including longer-term societal transformation, but if the situation requires a hard choice, they would give priority to ending the violence. Other actors who support mediation processes from more of a distance were less adamant about this prioritisation. They see mediation processes as a one-time opportunity to lay down options for viable co-existence in the future – hence, mediators need to bring in the right norms whenever they can.

This is also linked to a difference in the interpretation of the overall objective of mediation. Some see mediation primarily as an attempt to stop violence. As one mediator rhetorically asked in reference to the question of giving amnesty to former Yemeni president Saleh, despite the lack of a transitional justice law and before the reality of a national dialogue (two things that would counterbalance the amnesty): “Would I have argued that it’s better to continue the conflict [in Yemen] in 2011 and have people die? At least for two years people didn’t die.” Such views consider wider processes of societal change as efforts for the longer term, that are beyond the scope of mediation. In this sense, many mediators would weigh the ‘lesser of two evils’, prioritising ending violence and the right to life while disregarding certain norms when the situation requires a hard choice. As one interviewee said with regard to another mediation process, “It was very openly accepted that human rights have to be disregarded in this peace agreement so that the war can end”.

Most mediators also implicitly prioritise the norm of consent, meaning that parties approve of the mediation process and how it is conducted. For example, the prohibition against talking to indicted individuals may severely constrain a mediator’s ability to foster consent, and thus reduce their chances of success. When Sudanese president Omar Al-Bashir was indicted, only some African leaders and hardly any Western leaders would meet with him, according to one interviewee, which “made the peace process a lot more complicated”. Similarly, a lingering indictment may also work against the consent of the conflict parties. The ICC indictment of Joseph Kony in Uganda for example directly affected the opportunity to have him at the table for a discussion. As one interviewee stated:

“Some would say that it was the right thing to do from a rights perspective, because he was responsible for bad things. But then you would also lose the opportunity to get him to the table.”

Pushing too vehemently for non-definitional norms, like democracy promotion for instance, was therefore seen in some cases as running against the norm of consent. In this regard, mediators were often questioning whether the conflict parties really accepted these norms and whether they had roots in the communities. As one mediator observed:

“Whose norms are they? Are they Western norms? Or are they norms for human society globally? Unfortunately I think many of these norms... would be seen as Western agendas.”

Another interviewee spoke of the same danger of non-definitional norms undermining consent in different conflicts in Africa:

“The danger with the normative framework is that we are imposing a series of ideas that don’t have roots in the community. The danger in that is that we take these things

and try to impose them on every process. [The topics underlying these] norms such as constitutionalism or elections are two of these examples. CAR is a great example: not only have they said in the agreement that there need to be elections within a year – which is crazy – but it's in the UN Security Council resolution. There's an obsession around elections also in Somalia, and the UN is helping the elections in Sudan.”

These examples show that how mediators bring in non-definitional norms, such as democracy promotion, depends on whether or not they are perceived as compatible with the definitional norm of consent – that is, whether the parties want them included.

The norm of inclusivity, a settled, but non-definitional norm, provides another example of how definitional norms are prioritised. If mediators see inclusivity as running against the objective of ending violence in the immediate term, they will not uphold it. The Dayton process serves as an example here. It was highly exclusive as a process, in order to guarantee a quick settlement. If, however, mediators perceive an opportunity to allow for a more inclusive and hence more sustainable process as also the most effective way to end violence, then they will promote it. This was the case in Guatemala which “ranks among the peace processes that made the most determined effort to broaden its agenda and to maximise civil society participation”.¹¹ Similarly, if inclusivity fosters consent of the main parties who themselves push for it, then mediators also strongly defend it. In Afghanistan, the main conflict parties promoted more inclusion to increase their own legitimacy.¹² If, however, the parties might fear a loss of power for themselves or are not in favour of including more actors or topics, mediators might also be hesitant to do so, in order to maintain the consent of the main stakeholders.

Notwithstanding this prioritisation, however, different norms should not be seen as incompatible in general. Rather, it is a question of how to sequence them. By focusing too much on only a small part of a peace process – the mediation phase – we risk imposing overly high expectations on the mediator and forgetting that norms can also be sequenced. As one mediator said:

“when we finished the process in Burundi, we had no idea what the Constitution would look like... But that was not our debate. That was a debate for Parliament that was going to be credibly elected.”

Indeed, the interviewees repeatedly stressed that more emphasis should be given to the implementation of peace agreements. Mediators gave examples of agreements such as Northern Ireland's Good Friday Agreement, Nepal's Comprehensive Peace Agreement, and Sudan's Comprehensive Peace Agreement, that were signed years ago and where implementation is still incomplete. Therefore, respondents argued for a more holistic view of the peace process, rather than focusing all the attention and efforts on the mediation.

Based on the above, most interviewees talked about challenges rather than dilemmas when it comes to the issue of how to manage seemingly incompatible norms. The most important aspect, it seems, is to have more clarity and to make the distinctions explicit between well-established norms (settled and definitional) and those that have developed more recently (unsettled and non-definitional). At the same time, the question of the exact role of the mediator in promoting norms is also of central importance.

11 Arnault, 2014.

12 Paffenholz, 2014.

Defining their power: the role of the mediator in promoting norms

Most of the mediators in this research see themselves as facilitators who can influence the parties but not impose normative standards. The majority view was that those who feel particularly strongly about certain norms should not expect mediators to uphold these norms. Rather, they should focus their efforts to sensitise and convince the negotiating parties and their constituencies directly that certain norms are in their own interest. Indeed, many mediators experience being constantly lobbied during peace processes to include certain normative provisions in peace agreements. As one interviewee stated with regard to Darfur:

“we had gender advocates... that were trying to convince the mediator to put all the right gender provisions in the text. We’re on board. We support a gender agenda. But the mistake is that it is not ours. It’s the parties’ peace agreement and the gender advocates made absolutely no effort to work with the parties.”

Mediators can make their normative expectations more explicit, but only within the boundaries and obligations of their mandates. Where mediators’ requirements are incompatible with the norms that the parties want to include, there are not many options for the mediator other than to withdraw. The natural power asymmetry between the mediator and the parties means that the mediator can be easily replaced. Thus, some mediators see their role clearly delineated to “help the parties resolve their conflict in the broad interests of peace, stability and democracy, but they are not going to be overly principled or overly rigid.”

Despite these challenges, many mediators see norms as a tool that they can use pragmatically to advance a mediation process and reach an agreement. Norms can serve as a starting point to engage in discussions about their potential benefits for the negotiating parties – not necessarily for ideological reasons, but with the promise of a certain return. For example, mediators can argue that the normative framework of democracy promotion can confer more legitimacy on the parties. As one respondent stated:

“with democracy... there is a growing recognition among armed groups that there needs to be some type of democratic validation of the agreement and of their movement...; they need to demonstrate that they do represent the people.”

In that sense, mediators can encourage parties to consider certain questions, for instance related to gender equality or transitional justice. They can act as role models by reflecting cultural and gender diversity in their own teams, but mediators do not see themselves as ‘norm entrepreneurs’. In other words, mediators do not necessarily consider it their main responsibility to promote these norms. As one mediator stated:

“the key thing is to realise that there are limitations to the power of the mediator... They can enable women’s participation in a process, enable parties to look at questions of gender and... wider questions of inclusivity, but they can’t uphold or be the implementers or guarantors of those standards. That’s beyond their power.”

The difference in role perception between mediators and actors supporting mediation processes from a distance becomes more pronounced in this regard. The latter underline the importance of mediators bringing in norms such as gender, transitional justice and democracy promotion. This is understandable, since as representatives of foreign ministries or entities such as the UN or the EU, they are mandated to promote these norms which are at the heart of their foreign policy agendas. In this sense, the assumption is that these norms are already settled in mediation and have a clear value added also in the eyes of the conflict parties.

This is not always in line with the self-perception of mediators, however. For them, all roads lead back to the definitional norms that sit at the core of mediation: the consent of the parties and the main objective to move the mediation process toward an agreement that ends violence and thus respects the right to life. Yet, as shown above, it is of course possible – although not compulsory – for mediators to enable parties to adhere to certain norms beyond these definitional norms.

Conclusion

The normative framework has changed over the past few years and undoubtedly plays a significant role in mediation processes. Mediation practitioners welcome a more systematic and explicit approach to addressing norms as a step towards the professionalisation of the field. The vast arena of different actors, mandates, and interests, however, has made mediation and the role of norms within it considerably more complex. While there seems to be consensus about the generally positive impact of norms such as gender equality, human rights, transitional justice, and democracy promotion, there is still considerable debate about how these norms can be categorised and prioritised, and about the mediator's role in promoting them.

We need a more open discussion about the role of norms in mediation. An explicit and commonly shared hierarchy of norms relevant to mediation processes will provide for more clarity about the essence and the limitations of mediation in general, and the specific mandate of a mediator in particular. This paper provides a first step by offering a way of categorising and prioritising norms (as illustrated in Figure 1). Mediators can apply this both to their own normative socialisation and to norms that their mandate-givers promote. At the same time, categorising and prioritising norms is always context-dependent. Mediators must work with conflict parties to see how they view the placement and role of these norms. This would bring the focus of mediation closer to local needs and concerns, and provide mediators with an opportunity to delve into the particularities of their working contexts.

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