

The role of norms in international peace mediation

By Sara Hellmüller,
Julia Palmiano Federer
and Mathias Zeller

■ Executive summary

This policy brief assesses the role of norms in international peace mediation. Despite the topic attracting growing attention, the ways in which norms influence mediation processes are often not analysed systematically but rather prescriptively. In order to shed light on this debate from an analytical point of view, the brief suggests a three-step analytical framework. First, it suggests a categorisation of norms, then it assesses how mediators prioritise norms within this framework and finally it calls for a context-specific inclusion of norms in mediation processes. Thus, it argues that explicitly elucidating the different categories of norms, as well as their prioritisation by mediators, mandate-givers and negotiating parties, will lead to a more constructive debate and provide sustainable solutions that are owned by national, and supported by international, actors.

Introduction

The expectations towards mediation processes are growing: not only are mediators supposed to bring a conflict to an end, but they are also increasingly asked to integrate gender, human rights, justice and other norms into their overall strategy.¹ The *UN Guidance for Effective Mediation* (United Nations, 2012), is an example of the increasing normative framework for mediation practice, providing insights on eight fundamentals, among them national ownership, inclusivity, and international law and normative frameworks. In parallel, many international organisations and foreign ministries increasingly base their work on their sets of norms, demanding compliance from the mediators they mandate.

This development has sparked intense debate in the mediation community in the recent past. Positions are scattered along the spectrum, from those who urge including as many normative propositions as possible to those who advocate maximum flexibility with regard to the inclusion of norms. Despite this the topic attracting growing attention, the role of norms in mediation processes has so far not been analysed systematically.

Thus, this policy brief seeks to provide some key insights from research conducted by swisspeace and NOREF in

2014. It aims to explore how the normative framework influences mediation practice and makes some practical suggestions intended to provide clarity around the question of how to deal with norms in mediation. It is based on interviews with more than 20 mediators and mediation experts.

The research shows that mediators welcome the increasing relevance of normative frameworks as another step in the growing professionalisation in the field. However, given their large number, the various norms need to be categorised and prioritised in order to be applied in a given context. Although this appears to be common practice among mediators, it has so far only been implicit, lacking clear and transparent criteria. Therefore, this policy brief proposes a three-step framework of analysis in which different norms can be assessed and evaluated systematically.

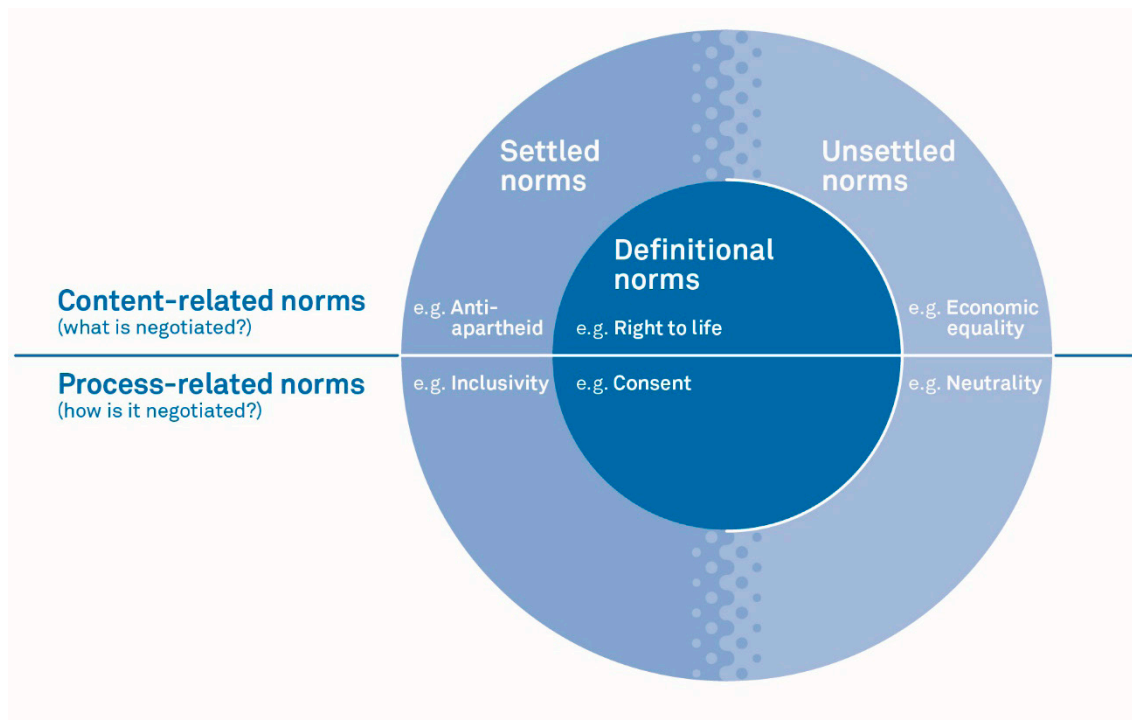
1. Categorisation

The first step in the framework is a categorisation of norms. In most scholarly writing and practice, the distinction is made between legal and non-legal norms – and within the former between hard and soft law.² Owing to the blurred application of international law in conflict situations, this policy brief focuses on less legalistic typologies of norms. It proposes a new categorisation based on three distinctions, as illustrated in Figure 1.

¹ Norms are commonly defined as “collective expectations about proper behavior for a given identity” (Katzenstein, 1996). We distinguish norms from values. Whereas the former provide guidance for social behavior, the latter are more abstract and reflect beliefs about what is good and what is evil.

² For more information on the distinction between hard and soft law, see Abbott and Snidal, 2000.

Figure 1: Categorisation of norms in mediation processes



First, it distinguishes content-related from 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. Process-related norms, on the other hand, define how a mediation process is planned and conducted. Second, academic literature makes a distinction between settled and unsettled norms (Frost, 1996: 97–105). A norm is considered settled in international relations when “it is generally recognised that any attempt to deny it requires special justification” (Raymond, 1997: 224). These norms have often become internalised and therefore they are not necessarily visible, as it has become “normal” to follow them. In contrast, as long as norms can be overridden without justification, they are considered unsettled.³ Third, some norms underpin the very definition of a mediation process. These pertain to its nature and are essential elements of its definition. A process that does not respect these norms would no longer be called mediation.

All the interviewees implicitly placed different norms within this categorisation framework. The following are examples of each of the six categories in the graph:

1. **Content-related definitional norms:** The right to life is an example. The objective of a mediation process is based on norms that value non-violent resolution of conflicts and thus respect the right to life. A process that calls for military action would no longer be called mediation.
2. **Process-related definitional norms:** An example is consent. If a process happens without the consent of the parties, it no longer qualifies as mediation. As soon as

a mediator starts negotiating with the parties to forcefully advance his or her own agenda, the process is no longer compatible with the core definitional norm of consent in mediation.

3. **Content-related settled norms:** *Jus cogens*⁴ norms are examples of content-related settled norms in the strongest sense. They include, among others, the anti-genocide, anti-slavery and anti-apartheid norms. These norms cannot be violated by any mediator and are thus settled in mediation.
4. **Process-related settled norms:** An example is inclusivity, in the sense of involving all the main stakeholders in a process. It can be seen as settled, as it is difficult to imagine that any mediator would question the importance of this norm, even if there is often no unanimity about who the main stakeholders are.
5. **Content-related unsettled norms:** Economic equality is an example. Although it is an important norm in many social systems, and despite wealth-sharing clauses that might figure in a final peace agreement, the norm is not upheld in all instances and can thus be considered unsettled.
6. **Process-related unsettled norms:** An example is the neutrality of the mediator, understood as the absence of decided views or strong feelings. Many mediators have both personal opinions and principles under their mandate that prevent them from being strictly neutral. However, they do not justify themselves for that, as it is generally accepted that impartiality – defined as being able to run an unbiased and balanced process – is more important than neutrality.⁵

³ For literature dealing with the process of how norms become settled, see also Finnemore and Sikkink, 1998.

⁴ Fundamental, overriding principles of international law, from which no derogation is permitted.

Beyond the six examples above, different mediators, conflict parties and other stakeholders might not view the same norms as being settled or as being definitional norms. For example, opinions on norms pertaining to aspects of gender equality, transitional justice and some human rights standards are likely to be diverse. These questions cut to the heart of the current debate, as the perceptions of the categorisation of many existing norms, and thus their position in the framework, may vary from one actor to another. They are all the more important because assigning these norms to a specific category also influences how they are prioritised, which is the second step of the analytical framework.

2. Prioritisation

Mediators implicitly seem to prioritise definitional and settled norms in terms of both content-related and process-related norms. The manner in which non-definitional norms, such as the norm of neutrality or economic equality, are brought into a process depends largely on their perceived compatibility with definitional norms such as the right to life or consent.

With regard to the right to life, most mediators affirmed that they would prioritise ending violence over other norms when the situation requires a hard choice. According to their rationale, stopping the killing is paramount and will lead to the fulfilment of other norms, such as improved respect for human rights and gender equality. They thus urged humble expectations when it comes to normative standards in mediation. This argument builds on the assumption that violence is the major source and root cause of a plethora of other human rights violations.

Many of the examples used as illustrations in interviews, ranging from Bosnia to Sri Lanka to Kenya, contained a conscious tempering of some normative standards in order to achieve the overarching goal of ending violence and respecting the right to life. Interviewees recognised the important role of those who advocate non-definitional norms, such as the human rights framework, and that those actors need to “hold the line firmly.” From the perspective of a mediator, however, they often described concepts such as partial amnesties as a lesser evil if they can stop a situation in which “thousands of people are dying.”

This seems to stand in contrast to the widespread affirmation that a mediation process should lead to more than just an end to violence. It should not be inferred, however, that mediators do not strive for more, rather that – when the situation requires a hard choice – they seem to prioritise ending violence and thus the definitional norm of the right to life. Although other norms might also be encouraged, they are not prioritised in the immediate term, as they do not form part of the definitional core group of norms in mediation processes.

With regard to the process-related definitional norm of consent, it is also prioritised in mediation processes. This is mostly visible when it comes to its interaction with some norms related to transitional justice. Hesitance about including the latter is mostly based on the challenges they contain with regard to the incentive structure that runs against consent. The thinking is that a lingering indictment might weaken consent, as it goes against the interest of the concerned party. At the same time, if mediators are not allowed to talk to indicted individuals (a process-related, unsettled, non-definitional norm), it may severely constrain their room for manoeuvre to foster consent and thus reduce their chances of success.

Thus, how non-definitional and unsettled norms are brought into the mediation process depends on whether or not they are perceived as compatible with definitional norms. Between definitional and settled norms, the former are given priority (e.g. consent and inclusivity), even if most of the time they are considered to be compatible (e.g. anti-apartheid and right to life). This shows that, once the norms are categorised, the implicitly made prioritisation becomes more explicit. This process is always context specific, which is taken into account in the third step of the analytical framework.

3. Context specificity

The question of which norms influence a mediation process has to be assessed on a case-by-case basis. In this sense, mediators had strong reservations against them actively lobbying the parties, as they do not see their role as norm advocates. Rather, mediators primarily focus on how to engage with parties to find out what norms they would consider relevant. Their understanding is that all unsettled and non-definitional norms depend on the context and should be discussed with and decided upon by the parties.

This does not mean that mediators do not bring any norms to a mediation process. On the contrary, the mediators interviewed emphasised the importance of being clear and transparent about what norms they have from their own socialisation as well as their mandate. By doing so, they hope to earn the respect and trust of the parties, and clearly signal in which direction they want to steer a process. Context specificity means, however, that the influence of different norms is discussed with the parties rather than imposed from outside.

Moreover, virtually all the interviewees agreed that different norms are rarely mutually exclusive if brought in carefully and according to what is most appropriate for a given context. It is often not an “either/or” question (e.g. inclusivity vs efficiency) but a question of how norms are sequenced. One interviewee said, for instance, that the negotiations in the Kenya process in 2008 did not have an

5 This has also become evident in recent literature on insider mediators. See, for instance, Berghof Foundation, Center for Security Studies and swisspeace, 2009, and United Nations Development Programme, 2015.

extensive agenda influenced by a broad variety of content-related norms. This was justified, however, because only eight people were sitting at the negotiation table. Therefore, important issues had to be addressed in different forums. A second example was Afghanistan. As one interviewee explained, the parties had to navigate how to integrate certain rights in the Constitution, as well as include the Taliban in the political system. Justice may have been tempered in this example, but it was measured alongside “the benefit of having a stable state.” These examples show that the inclusion of norms in mediation is less about trade-offs and more about careful navigation within a specific context.

Conclusion

The framework proposed in this policy brief can be used as a tool to facilitate the discussion on norms between mediators and negotiating parties. Together, they could map their norms in order to categorise and prioritise them jointly. Making these different priorities explicit will help to identify common ground and allow further discussions where needed. Only then can solutions be found that are owned by national, and supported by international, actors.

References

- Abbott, Kenneth W. & Duncan Snidal. 2000. “Hard and soft law in international governance.” *International Organisation*, 54(3): 421–456.
- Berghof Foundation, Center for Security Studies & swisspeace. 2009. *Insider Mediators: Exploring Their Key Role in Informal Peace Processes*. Berlin: Berghof Foundation.
- Finnemore, Martha & Kathryn Sikkink. 1998. “International norm dynamics and political change.” *International Organisation*, 52(4): 887–917.
- Frost, Mervyn. 1996. *International Relations: A Constitutive Theory*. Cambridge: Cambridge University Press.
- Katzenstein, Peter. 1996. *The Culture of National Security: Norms and Identity in World Politics*. New York: Columbia University Press.
- Raymond, Gregory A. 1997. “Problems and Prospects in the Study of International Norms.” *Mershon International Studies Review* 41(2): 205-245.
- United Nations. 2012. *UN Guidance for Effective Mediation*. New York. <[http://www.un.org/wcm/webdav/site/undpa/shared/undpa/pdf/UN Guidance for Effective Mediation.pdf](http://www.un.org/wcm/webdav/site/undpa/shared/undpa/pdf/UN_Guidance_for_Effective_Mediation.pdf)>
- United Nations Development Programme (UNDP). 2015. *Supporting Insider Mediation: Strengthening Resilience to Conflict and Turbulence*. New York: UNDP.

THE AUTHORS

Sara Hellmüller holds a PhD in Political Science from the University of Basel. She joined swisspeace in 2009. She works as a researcher and programme officer in the Mediation Programme and is the swisspeace research coordinator and regional focal point for Syria. Before joining swisspeace, she interned with the United Nations Development Program in eastern Democratic Republic of the Congo, the Swiss Embassy in Nigeria and with local non-governmental organisations in Mongolia and South Africa.

Julia Palmiano Federer holds a MA in International Affairs from the Graduate Institute of International and Development Studies in Geneva. Before joining swisspeace, she interned with the United Nations Office for the Coordination of Humanitarian Affairs, Human Rights Watch and the Centre for Humanitarian Dialogue. She has also worked as a research assistant for the Political Science Department of the University of British Columbia and as a project assistant for the Department of Foreign Affairs, Trade and Development Canada.

Mathias Zeller holds a MA in International Affairs from New York’s Columbia University. He spent three months in 2013 with the Mediation Support Unit of the United Nations Department of Political Affairs in New York. He joined swisspeace in July 2012 as a programme officer in the Mediation Programme. Before joining swisspeace, he interned with the Swiss Federal Department of Foreign Affairs, supporting the mediation desk and the peace policy programmes in Indonesia and Thailand.



- The Norwegian Peacebuilding Resource Centre
- Norsk ressurscenter for fredsbygging

The Norwegian Peacebuilding Resource Centre (NOREF) is a resource centre integrating knowledge and experience to strengthen peacebuilding policy and practice. Established in 2008, it collaborates and promotes collaboration with a wide network of researchers, policymakers and practitioners in Norway and abroad.

Read NOREF’s publications on www.peacebuilding.no and sign up for notifications.

Connect with NOREF on Facebook or @PeacebuildingNO on Twitter

Email: info@peacebuilding.no - Phone: +47 22 08 79 32

Disclaimer

The content of this publication is presented as is. The stated points of view are those of the authors and do not reflect those of the organisations for which they work or NOREF. NOREF does not give any warranties, either expressed or implied, concerning the content.