Informal Working Group on Humanitarian Mediation

Backgrounder - June 2016

and

Questions for discussions

Introduction

This backgrounder provides an overview of humanitarian mediation as a domain of professional engagements in situations of armed conflict. This note is designed to serve as a point of departure for an informed discussion between members of the Informal Working Group on the challenges and dilemmas of humanitarian mediation.

The objective of the first Working Group discussion is to identify key issues and questions in preparation for a dedicated panel on humanitarian mediation at the Annual Meeting of Frontline Negotiators and Mediators on 25 – 26 October 2016 in Geneva. The need for such a panel arises as humanitarian organizations express growing concerns regarding the politicization of humanitarian negotiations at the field level, particularly through mediation processes amalgamating humanitarian outcomes with political objectives.

While there is a general consensus around the concept and methods of mediation, the notion of humanitarian mediation is less clear. There are varying opinions about the meaning and objectives of humanitarian mediations. Questions also arise concerning the benefit of characterizing specific mediation processes as “humanitarian”, as compared to other more political or institutional denominations. Based on a definition of such mediation, how is this type of mediation instrumentalized to serve broader political aims? And finally, what are the common challenges faced by the humanitarian mediator?

With these open questions, this document will be structured as follows:

I. Definitions and clarifications
II. Humanitarian mediation as strategy to address the sources and consequences of violence: from a charitable to a political process
III. Challenges of the humanitarian mediator

I. Definitions and clarifications

There is evidently a vast literature on mediation, less so on humanitarian mediation. The purpose of this backgrounder is to provide succinct inputs into the discussion rather than a comprehensive review of the literature. From the outset, it appears that there is considerable confusion of terminology in defining the role and methods of mediators and negotiators working on the frontlines.
a. Dialogue, mediation and negotiation

First, a distinction between dialogue, mediation and negotiation seems warranted. One can observe significant mix-up in both the literature and in practice between these terms, and since dialogue is a primary component of both negotiation and mediation processes.

Essentially, for the purpose of clarifying the basis of this discussion:

- **Dialogue** is meant as a tool to develop understanding and trust between individuals or groups. This includes active listening and respectful communication. The outcome of dialogue is to create new human and political capacities to establish and maintain purposeful relationships.

- Conversely, a **negotiation** is understood as a more narrowed tool driven toward a specific outcome; a sort of a transactional dialogue between parties; a process of communication and relationship building undertaken with the specific objective of arriving at an agreed outcome around a particular set of issues or problems, in situations where the parties are not in complete accord on those issues to begin with.

- Finally, a **mediation** is understood here as a directed negotiation process between disputing parties in which a neutral third party assists these parties in resolving their conflict providing a framework of dialogue and guidance in their negotiation.

While a third party can provide support, advice and facilitation in both establishing a dialogue and conducting a negotiation, only mediation entails a formal third party role across an entire process.

b. Facilitator, intermediary and mediator

In this context, it may also be useful to clarify the distinction between a facilitator, an intermediary and a mediator, all of them engaging with parties, since the terms are sometimes used interchangeably.

- **A facilitator is mandated by a group to guide the group’s efforts towards achieving a collective outcome.** As compared to the intermediary or mediator, the facilitator interacts with the parties but does not actually intercede between them. He/she cannot be considered formally as a “third party” to a dispute resolution process, but rather as an enabler of a discussion. For example, an organization can facilitate an informal off-the-record discussion between parties who meet face-to-face informally to review options to resolve their dispute. The facilitation of this interface meeting may not entail as such a mediator or neutral intermediary role. It may help however identify opportunities for further mediation efforts.

- **An intermediary is mandated by the parties to specifically intercede between them in an exchange of information, assets, people, etc.** While all sides must agree on the terms of involvement of this intermediary, the intermediary does not aim to solve a particular conflict over time but only to enable a specific exchange between the parties whom, without the intermediary, would not be able to proceed with this exchange. For example, the International Committee of the Red Cross (ICRC) acts in its capacity as neutral intermediary

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1 GPPAC South Asia. “Dialogue and Mediation.”
3 GPPAC South Asia. “Dialogue and Mediation.”
between Israel and Syria when facilitating the transport of apples from the Golan Heights in Israel to Syria.\(^4\)

- A mediator is mandated by the parties to act as a “third party” expert in enabling a negotiation process to take place through the intercession with the parties toward a negotiated outcome. While he/she often acts as an intermediary between the parties in terms of exchange of information, he/she is acting over time in search of a substantive outcome, i.e. the resolution of the dispute. The mediator works with the parties to help them identify avenues and possibilities of a negotiated outcome to their conflict\(^5\).

Why do these distinctions matter? The degree of control over the process tends to increase as one’s role moves from facilitator to intermediary to mediator. As this control increases, the perception of the neutrality and independence of the agent as a “third party” becomes more important in the eyes of the parties. Hence, there seems to be a direct link between the scope of the methodologies used to engage with the parties on their dispute and the significance of the perception of neutrality/impartiality/independence of the third party agent. Likewise, questions on the neutrality of the third party may prompt a change of role to a less controlling actor of a dispute resolution process.

c. What is humanitarian mediation?

With these broad definitions in mind, we now turn to the discussion of humanitarian mediation. Throughout the literature, mediation has been characterized as “humanitarian” based alternatively on the subject of the mediation, the character of the mediator, the context on the negotiations or a combination of the three.

i. The subject of the mediation

Mediation can be defined as “humanitarian” based on the subject of the mediation. Professor of International Relations Jacob Bercovitch of the University Canterbury qualifies a mediation as “humanitarian” based on the goal of the negotiation in question: to alleviate humanitarian suffering and to respond to increasingly inhuman wars.\(^6\) According to the Centre for Humanitarian Dialogue (HD),

> “Humanitarian mediation enables the parties in conflict to address key issues, such as safe access and protection of civilians, the special needs of women and children, displaced populations and any affected minority groups.”\(^7\)

Other goals cited include reducing the human cost of the conflict, increasing security and ultimately contributing to the resolution of the overarching conflict. The “humanitarian” subject of the mediation entails a question regarding the compatibility of such humanitarian mediation with parallel “non-humanitarian” mediations. For example, a mediation between a government and an armed group on a vaccination program in a contested area could be conditioned on or linked with a ceasefire agreement or the demobilization of the members of the armed group.

ii. The character of the mediator


Alternatively, mediation can be defined as “humanitarian” based on the character of the mediator, drawing attention on the credentials and neutral/impartial aspects of the mediator as a third party. Hugo Slim evokes the example of the Centre for Humanitarian Dialogue as a neutral intermediary between the Sudan Liberation Army and Movement and the Justice and Equality Movement into international talks. Professor David Forsythe of the University of Nebraska-Lincoln qualifies the work of the ICRC as humanitarian mediation in view of ICRC’s engagement with political actors on behalf of prisoners. The Community of Sant’Egidio, in mediating peace in Mozambique, refers to the perception of the mediators as pivotal in pacifying conflicts: “the choice of mediators known as honest brokers by both parties and not their imposition on the basis of clan interests, internal or regional or international entities."

iii. The context of the mediation

The context in which the mediation operates can also define the mediation as “humanitarian”. In conflict situations, or natural disasters to that effect, or any other situations qualified as “humanitarian”, mediators may act to facilitate the resolution of a wide scope of disputes, many of which are not “humanitarian” per se, for example access to markets, freedom of movements, the use of religious sites, etc. The humanitarian character of the mediation is therefore used to increase the acceptance of the process in such politically tense circumstances, especially at a community level. HD notes, for example, that this type of mediation is used in contexts where political dialogue is non-existent, or in post-conflict zones where ongoing humanitarian issues have resulted in tensions.

II. Humanitarian mediation as strategy to address the sources and consequences of violence: from a charitable to a political process

This classical model of humanitarian mediation can be employed with political purpose. The process involved in a humanitarian mediation is often part of a broader political project. Humanitarian organizations at times have proposed their services as mediators to resolve issues of a political or economic nature. This may happen when the humanitarian issue at hand is inextricably linked to the political conflict. The humanitarian organization may well-positioned, by virtue of its relationship to the belligerent parties, to engage in peace talks.

a. Humanitarian mediation as bridge to political mediations

Regarding the context of the dialogue at hand, humanitarian mediation can be used as a strategy to initiate, complement or support potential peace efforts, which is desired by multiple actors. Humanitarian mediations allow discrete channels of communication to open and contribute to a confidence-building process. Several authors note the usefulness of the humanitarian mediator in opening doors to further political negotiations, such as peace talks. Slim indicates that:

“Leading discussions with humanitarian edge can make moral and diplomatic sense can stop people suffering and dying and can create conditions for working on deeper political negotiations.”

Ulrich Schneckener, Professor of International relations and Peace Conflict at the University of Osnabrück, argues that when initiating contacts with conflicting parties, HD presents itself as a

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humanitarian actor aiming first to mediate humanitarian issues, in particular improving the protection and access to suffering populations. Thus the political agenda of the humanitarian mediator has an impact on the mediator’s identity.

Bercovitch cites HD’s experience in the Indonesian Aceh in 1999: HD’s first aim in Indonesia was to prevent a humanitarian crisis in Aceh, and decided to reduce the violence through a mediated dialogue between the Government of Indonesia (GoI) and the Free Aceh Movement (GAM). HD also aimed to “promote confidence of the parties and the Acehnese in an endeavor towards achieving a peaceful solution to the conflict situation.” The mandate of humanitarianism was used to move beyond conventional concerns such as minimizing civilian casualties or resettling refugees, toward a goal of a negotiated political settlement of the root causes of the conflict.

b. Humanitarian mediation as fallback strategy within political mediations

Not only can humanitarian mediation open talks, it can also play a role in keeping discussions alive when progress stalls. Within a given mediation, moving between humanitarian and political discussions can be a highly impactful tactic that allows the negotiation process to be fluid and preserve fallback positions. According to Slim,

“The humanitarian track of the Darfur talks [of 2004] acted as a critical fallback position for all parties. It meant that contact and talks could keep going on humanitarian matters when the politics got too hard.”

There is a risk that falling back to humanitarian talks can become political procrastination. However, as described by Slim regarding the Darfur talks,

“This fallback to humanitarian talks happened at crucial moments in both N’djamena and Abuja. With broad political talks and conference procedure still in crisis after the first eight days in N’djamena, President Deby intervened personally to chair a neat sidestep into essentially humanitarian talks around which the parties were able to regroup and from which emerged the final ceasefire agreement-which was nevertheless imbued with political principles about Darfur’s future. In Abuja, when similar deadlock was reached over the disarmament issue in the first week of September, the AU mediator, Hamid Algabid, was able to refocus the parties onto a humanitarian protocol.”

In addition, engaging in a dialogue of a humanitarian nature provides a face-saving opportunity for both parties involved. Compromise becomes a noble act rather than a strategic loss, according to Bercovich. Opposing parties also have little lose from failed mediations, which makes them more likely to engage.

c. Humanitarian output, political outcome

At other times, humanitarian mediation can have a humanitarian output, but a political outcome. For example, a mediation regarding prisoners of war has a humanitarian output (the release of prisoners to their families) but a political outcome (the release of Palestinian prisoners by Israeli authorities is

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14 Ibid.
15 Slim, Hugo. "Dithering over Darfur? A preliminary review of the international response"
16 Slim, Hugo. "Dithering over Darfur? A preliminary review of the international response"
inscribed in the larger political context of the Israel-Palestine conflict). The success or failure of the mediation results in political interests.

III. The challenges of the mediator

Beyond the potential political instrumentalisation of the humanitarian mediation, the mediator faces several challenges related to the concepts of mandate, neutrality and impartiality, inclusivity, consent, strategies of persuasion and substandard outcomes.

a. The mandate of the mediator

In the classical model of mediations, the mandate of the mediators comes from the belligerents. The mediator operates with the consent, support and commitment of the parties to a mediation process. They provide the mediator with the space to facilitate a dialogue, act as an intermediary and finally direct a negotiation process between the parties through his/her “bons offices”. Evidently, this mandate can be withdrawn at any time, if mediators either lose the trust of one or both parties, or the political environment is no longer conducive for such mediation.

A mediator can also be mandated by an external authority (a government, a regional organization, the United Nations, or even a court) to work with the parties for a mediated solution. In such case, the mediator benefits from the outside actor’s political pressure to support the establishment of a conducive space for a mediation process. Such mediation, however, remains classical in terms of relationships with the parties. A UN-mandated mediator needs the consent, support and commitment of the parties to be able to operate in any circumstances. However, an externally mandated mediator will benefit from the support of the external authority, who endorses the results and supports the implementation of the outcome, most evident in UN-mediated processes.17

In humanitarian mediations, arguments are at times made that the mandate comes in fact from the victims themselves, being civilians under threat, hostages, prisoners, etc. Building on a human rights accountability concept, it puts nevertheless the mediator in an awkward position. For example, while vulnerable groups under siege may be the legitimate beneficiaries of a humanitarian mediation process driven toward the establishment of a humanitarian corridor, they are not party to the mediation. However, one could imagine affected community mandating a mediator to help the parties find a solution to a situation affecting them. The parties to the mediation remain the parties to the conflict.

Yet, there are growing concerns about seeing the mediator only as a tool of the parties, acting only for their benefits. In current conflicts, many would like to attribute “humanitarian” values or safeguard to the mediator, thereby providing a minimum principled framework. Others argue that imposing a mission on the mediator may in fact infringe on his or her impartiality. The mediation is no longer based solely on the will of the parties. This contradicts the idea that mediators should not have any effect on the negotiation’s outcome. According to Nicholas Haysom, head of the UN Assistance Mission in Afghanistan,

“Mediators must be careful not to dominate the substance of the agreement. The parties have to implement it, so offer them ideas, but respect their decision because in the end, implementation will depend on them.”18

b. Neutrality and impartiality

Delving into this point, one may explore the particular characteristics of mediators, and especially humanitarian mediators. In classic mediations, the mediator is identified as “an acceptable, impartial and neutral third party who has no authoritative decision making power to assist contending parties in voluntarily reaching their own mutually acceptable settlement.” The mediator can take an active role in the mediation process: going as far as to “investigate and define the problem and then usually approach each group separately with recommendations designed to provide a mutually acceptable solution.” Mediators must be faithful and trustworthy transmitters of words and ideas, balanced in their efforts to contact and listen to all parties, and dedicated to eliciting an outcome that is the product of the parties. Impartiality is a cornerstone of mediation: without it, a mediation process could be perceived as biased and could be undermined. However, mediators are not necessarily neutral by virtue of their mandate. Alan Doss, the Executive Director of the Kofi Annan Foundation, and former diplomat, explains the distinction:

“We tend to mix up the words neutrality and impartiality, yet there is a distinction. As a mediator, you do not always have to be neutral, because if you are, it means that you have no values. But you can be impartial. For example, as a United Nations mediator, you operate within a set of values from the Charter on, downwards to specific instructions given to you based on human rights norms and different standards of conduct and behavior. So you are not neutral in that sense, as you are coming with a particular set of values and beliefs, but you can be impartial treating both sides objectively without bias. If you apply those standards, you must apply them evenly to both sides, particularly if you are between a government and rebel forces. For example, you cannot simply blame rebels for atrocities and violence against civilians if you don’t look at what the government forces are doing as well. It is important that you develop, because of that impartiality, the trust of both sides.”

Within the notion of the humanitarian mediator is the confusion about the requirements of neutrality and impartiality. Neutrality in a strict humanitarian context is defined as refraining from taking side, which, paradoxically is understood as “impartiality” in a classical mediation model. Conversely, impartiality in the humanitarian context is defined as providing assistance solely based on needs and without any political, social or ideological discriminations, which is not actually relevant in the mediation domain. Yet, the humanitarian character of the mediation, whereby mediators offer their service with specific humanitarian goals, very much resemble the notion of having values, i.e. not being neutral to the particular case on point. There is space for clarification and the elaboration of a common understanding of the requirements of humanitarian mediation that can be palatable to both professional communities.

c. Inclusivity and consent

Another point of interest that could be further explored concerning the aspects of inclusion and consent contrasted in political mediation vs. humanitarian mediation.

Inclusivity refers to the manner in which the views and needs of belligerent parties and other stakeholders are included in the process and outcome of a mediated negotiation. The greater the degree of impartiality/ neutrality, the greater the number of parties it is possible to include in the

21 Raymond Hinnebusch and William Zartman, “UN Mediation in the Syrian Crisis: from Kofi Annan to Lakhdar Brahimi,”
24 United Nations, Guidance for Effective Mediation, p.11.
process. Inclusivity also increases legitimacy of the negotiated agreement by reducing the possibility of spoilers. Yet there are several challenges in including many stakeholders. Regarding cooperation, UN mediators may feel trapped between fulfilling norms of broader participation and exclusive arrangements that simplify the mediation process. It may also be difficult to include groups who lack a clear leadership, such as social movements or youth groups. Regarding support, mediations conducted by humanitarian actors will eventually require the support of official actors for the sustainability of the deal. In Indonesia, HD saw its role as mediator who advocates:

“Increased attention to the situation in Aceh helped the process move forward, and helped contribute to the momentum that HDC was trying to create in order to ensure both parties adhered to the COHA. HDC worked with the media, diplomatic and donor communities, as well as with human rights and other humanitarian organizations. HDC had to be careful not to be seen to ‘talk up’ the process, however, as it was sometimes accused of being overly optimistic about the situation.”

Furthermore, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA), the humanitarian mediator is operating in an environment that is increasingly politicized, deterring coordination.

“Donors are making greater demands of humanitarian actors to uphold performance standards and increase accountability. For some, this requires greater field capacity to scrutinize and even coordinate humanitarian activity... The added momentum given to debates on peacebuilding strategies by the Brahimi report, with its as yet undefined role for humanitarians in such activities may prove the latest attempt to explicitly coopt humanitarian action to deliver on wider political goals of peace and security. This could have commensurate coordination difficulties as NGOs and other humanitarians are forced to distance themselves explicitly from a non-neutral UN in the interest of preserving their humanitarian identity, central to efforts to sustain access to civilians in need.”

The reliance of humanitarian actors on the consent of the parties is a key bridge to the mediation community. As much as humanitarian operators require consent to operate, mediators can act only with the consent of the conflicting parties. The parties may either be looking for a mediator to help them out of a conflict, or the mediator will have to convince them that they need mediation support. The humanitarian mediator may have an advantage in this regard. Humanitarian mediations can engage actors who might otherwise be excluded for political reasons, such as non-state actors and local communities. International non-governmental organizations (INGOs), according to Schneckener, are not subject to the same diplomatic constraints and commitments as other state actors or multilateral organizations. Engaging with armed groups has potentially less consequences regarding the status of these groups and the sovereignty of the host states. Armed groups may also attribute greater credibility to INGOs because they may seem removed from interests such as strategic power, resources and business. For example, while mediating peace in Mozambique in 1990, the Community Sant’Egidio notes:

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“The Roman mediation created waves because it was not composed of state powers or international institutions but of a group of people that could not be defined other than by their good will. Their ‘institutional lightness’ was a weakness, but also a chance because it allowed a greater liberty of action by conferring a different credibility than those of states and large powers: the fact that they did not have personal interests of a political or economic nature.31”

Regarding inclusivity or consent, there is a risk that a belligerent party gains legitimacy that it did not previously have. There may be political reasons why parties give consent to mediation32. In including parties, mediators may be awarding an unfounded or risky legitimacy and authority to such groups. Regarding the Aceh negotiations, HD reported that,

“There were negative consequences of drawing attention to Aceh. Because the views of the parties became more visible and public, Acehnese society became polarized into pro-Government or pro-opposition camps. By bringing together the belligerents, HD increased their legitimacy which eventually forced the Acehnese to choose a side or be threatened by the other, often a matter of life or death.33”

The Carter Center also underlines the risk of legitimizing violent actors through engaging dialogue:

“[In North Korea], where such contact has involved interaction with regimes or individuals of questionable reputation, the commitment to high-level dialogue has provoked controversy. In Liberia, for example, where domestic human rights issues vie with those raised by transborder conflict, critics [fear that] the process itself may confer a modicum of legitimacy on individuals and regimes that have engaged in egregious violations of human rights.34”

d. Strategies of persuasion

Humanitarian and independent political mediators alike may not have the political clout or financial means to threaten or promise anything substantive35. Mediators borrow their power from one of the belligerent parties by promising restraint or concessions to the other party. They rely on persuasion, wisdom and the appeal of their arguments36. As the Carter Center explains:

“Unlike principal mediators such as government and IGOs, the Center cannot offer tangible resources- economic assistance, trade concessions or military force- to try to achieve a peaceful settlement among conflict parties. It can only bring to the table intangible resources, such as goodwill, persuasiveness, a passion for peace and an ability to help disputants think beyond their established positions to their fundamental interests.37”

In addition, according to Schnackener, the idea that Non State Armed Groups (NSAGs) are interested in engaging with a humanitarian mediator may rely on the assumption that NSAGs are themselves governed by norms and values. In particular, they are concerned with their public image, reputation, moral authority and legitimacy. This assumption may only be applicable to a certain type of NSAG, those who adhere to a political program and who are interested in providing governance in the territory that they control. If this is not the case, then the mediator has less leverage than supposed.

32 United Nations, Guidance for Effective Mediation, p.8
34 Nicola Reindorp and Peter Wiles, “Humanitarian Coordination: Lessons from Recent Field Experience.”
35 Raymond Hinnebusch and Willian Zartman, “UN Mediation in the Syrian Crisis: from Kofi Annan to Lakhdar Brahimi.”
36 Ibid.
e. **Substandard outcomes**

Perhaps the most crucial dilemma inherent to humanitarian mediation stems from the tension between the mediator’s humanitarian standards and the standards of the agreement reached. Mediating an agreement that sets standards too low could incur a dilemma related to the mediator’s mandate and reputational costs. HD in Aceh discusses this dilemma:

“*With the parties, however, there were limits to HDC’s effectiveness as an advocate. As a mediator, HDC was unable to advocate certain positions as vocally and as strongly as it did with the international community. For example, during the COHA talks, both parties agreed to strike an article that stated that civil society leaders imprisoned for their political views would be released. Because both parties accepted this omission, it was difficult for HDC to intervene and insist that it be included in the final text.*”

However, mediating based on the needs of the actors involved rather than the norms may be an intentional strategy of the mediator. The Swiss Peace Foundation, a peace research institute, comments:

“*Peaceful change in Syria is not possible without a genuine inclusion of local actors. However, in order for this to have positive effects, it should be based on needs and abilities of actors, rather than norms*.”

Mediators grapple with the urgency of ending violence and upholding international law. Finally, the applicable law may not be the same for each party, who may have a varying understanding of international laws and norms39.

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39 United Nations, Guidance for Effective Mediation, p.16
Questions for discussion

1. In view of participants, how can one distinguish a humanitarian negotiation process from a humanitarian mediation process?

2. What are the cost/benefits of distinguishing these domains of professional engagements with parties to armed conflict?

3. What are the comparative advantage of a mediated vs. negotiated humanitarian outcome, if any?

4. How can one respond to the concern about substandard outcome of mediation processes vs. negotiation processes in humanitarian terms?

5. How can characterize the requirements and distinctiveness of humanitarian negotiation vs. humanitarian mediation in terms of identity, role, perceptions of neutrality/impartiality, etc.?

6. How participants foresee the blurring of the two domains, in terms of political mediators engaging in humanitarian mediation, and humanitarian organizations engaging in political mediation?

7. How can further research on cases and professional experience help clarify the core concepts of humanitarian mediation vs. humanitarian negotiation, and help humanitarian negotiators better use mediation tools/support on the frontlines?