

Towards Some Ethical Guidelines for Good Practice in Third Party Mediation in Armed Conflict

By Hugo Slim¹

Introduction

The following draft document is designed to begin a discussion to explore if and what core values, operational principles and standards of good practice might be commonly agreed by the majority of “track one” mediators in contemporary armed conflict.

The draft was prepared after consultations with a small number of active mediators and by a comparison with widely recognized codes for mediation in the commercial and legal sectors, plus other codes of ethics from the fields of medicine and anthropology. The draft guidelines are written for mediators and so say little about the conduct of the other parties to a mediation.

The document is tentative and incomplete, identifying some but by no means all critical issues in mediation. It deliberately takes positions on these issues in order to encourage agreement, disagreement and alternative suggestions. Its positions only represent one of many possible approaches. It also sets out a number of mediation values which may not be common to all conflict mediators but are intended to start a discussion of what basic values might be. It also suggests that mediators have moral obligations beyond the immediate parties to a peace process. Some may find this basic assumption problematic. It makes an attempt at some fundamental definitions – notably of the terms “mediation” and “peace facilitation” in armed conflict and draws a distinction between them. These definitions will also be a matter for discussion. Equally important, the document says nothing about how any such putative guidelines might be agreed, overseen or enforced in practice. This might be done by a mediator’s own systems of accountability or by an acceptable international body like the United Nations.

The purpose, at this stage, is simply to start a discussion about the desirability, utility and substance of any guidelines for mediation of this kind.

Preamble to draft guidelines

Third-party mediation in international and non-international armed conflict is highly political, fluid and complex. It involves careful long term engagement in situations where widespread human suffering is common and thousands of lives are at stake. Many armed conflicts are deep and protracted with painful histories of extreme violence, inter-group hatred, oppression, humiliation, profound political suspicion and active involvement of other states.

In such conflicts, mediators have a range of moral obligations to the people affected by the conflict, to the political parties to the conflict, to concerned observers and to the wider mediation profession.

¹ Dr. Hugo Slim is Chief Scholar at the Centre for Humanitarian Dialogue.

To meet these responsibilities, mediators must operate to a high standard of professional conduct which requires knowledge and skills in certain areas.

In addition to practical skills, mediators are also routinely required to make a succession of choices – which can be extremely difficult – about the process, the relationships and the substance of negotiations which they are initiating or facilitating.

The following values and standards are intended to guide mediators towards appropriate professional conduct and to help them make their choices and judgments with due moral care and deliberation.

Draft Guidelines

The values and standards in these guidelines are a general but practical guide to professional good conduct in armed conflict mediation, offering a simple frame of reference to support ethical and professional decision-making. Their purpose is to help mediators and, to some extent the parties to a mediation, to reach sound judgements about the particular choices they face.

Terminology

Conflict resolution activity can involve a variety of third party roles from conflict resolution organisations. These can be broadly distinguished as mediation and peace facilitation. In this document, *mediation* in armed conflict is understood as “a political process in which two or more parties to the conflict agree to the appointment of a third party to work impartially with the parties to help them talk through options and voluntarily reach an agreement to end the armed conflict and secure a just and sustainable peace.” While agreement on this common definition of mediation is essential to this document, it also recognizes that there is not one single operational approach to political mediation of this kind. Thus the document aims to be relevant whether a mediator is more hands-off or “enabling”, or more “interventionist” (presenting and recommending certain solutions), or even actually driving the process.

The term *peace facilitation* describes those different forms of conflict resolution work which are not full mediation but which also need to be guided by these standards. Various forms of peace and conflict resolution work frequently operate upstream of or alongside a mediation that is being led by others. Such peace facilitation typically involves: setting up initial bilateral contacts with each party alone; one-way message carrying to a party; back-channel communications with one party via an additional intermediary, or more explicitly one-sided capacity-building work with one party to enable their fair participation in a peace process. Such capacity-building may include negotiation support, logistical help or networking a party into wider civil and international society.

Much peace facilitation of this kind can and should be done in the ethical spirit of these mediation standards to ensure the confidence of the parties, maintain the impartiality of the organisation concerned and preserve the wider reputation of the conflict resolution profession. Sometimes, however, organisations choose to do such work in an explicitly partisan spirit of active solidarity with one preferred side. Such partisan peace work must be declared openly.

Mediation Values

Mediation in armed conflict has its own particular moral interests. These need to be made known to the parties to a conflict as early as possible as the core values and fundamental concerns of the mediator. They include:

Intent to alleviate human suffering – a mediator’s immediate concern in ending armed conflict is to ensure the end of human suffering from war.

Peaceful solution – a mediator’s ultimate concern is for the parties to reach an agreement, which begins to secure a just and sustainable peace in the best interests of society at large and taking all people’s interests into account. A good agreement finds ways to build on common interests, but also understand and tolerate significant differences. An incremental agreement, while an imperfect step in this direction, can be useful, if incomplete. But an agreement which favours one faction unfairly, arbitrarily and unjustifiably excludes others or actively condones a new or continuing pattern of human rights violations must be considered a bad agreement.

Preference for dialogue – where talks are held fairly, in good faith and with a reasonable possibility of success, a mediator intrinsically prefers a process of dialogue to that of violence as a more moral means of resolving disputes.

Voluntary agreement – mediation sets out to achieve a mutually determined agreement. It believes that agreements which are truly co-generated and owned by all parties are most likely to be acceptable to all parties, to be most effectively implemented and to last longest. To this end, a mediator will not use force or coercion to impose a solution. However, this restraint on matters of substance does not preclude a mediator from using firm pressure to push forward the *process* of talks. This is often an important part of a mediator’s role.

Impartiality – the best way to help the parties to elicit and reach a mutually determined and peaceful solution is to remain a genuinely disinterested third party and not favour one side over the other. In all their considerations and actions, mediators should be free from bias or prejudice regarding any party. At all times, the mediator should make decisions that are based on *the best interests of the process* and not the interests of one or other party or of one or other particular solution.

Operational Standards

1) Trust

The need for a mediator to enjoy sufficient trust and confidence of the parties is essential to a successful and ethical mediation. Gaining and keeping this trust requires the mediator to combine personal confidences with transparency in his or her dealing with all parties. Certain standards of conduct can help to ensure that the mediator maintains the role of a genuine, trusted and impartial third party in the process. The mediator must:

- a. Operate with appropriate and equal levels of intimacy in its relations with the parties. A certain level of separate contact and confidences with each party is necessary to appreciate their particular situation but this must in no way lead to a real or perceived sense of unequal treatment or favouritism within the process. Before, during and after the process, the mediator must avoid any conduct which could give the appearance of partiality.
- b. Always be as consistent, predictable and reliable as possible with both parties throughout the peace process. This means always doing what has been agreed as matters of *procedure*, holding a consistently impartial position on different options raised in the *substance* of the talks, and taking due care to have similar kinds of *relationships* with individuals in each of the parties.

1

2

3

4

5

6

7

8

9

10

11

12

- c. Be as transparent as possible with each party about his or her relations with the other party and with any other interested parties to the conflict and peace process. If in doubt, a mediator should always tend towards transparency with the parties.
- d. Have no personal or professional conflicts of interests which may actively influence his or her role, or be perceived to do so. These may include material interests with one or more parties. Nor must a mediator's personal ambitions ever trump the best interests of the process so that an agreement is secured primarily in the interests of his own personal renown and professional advancement rather than in the interests of the parties. The mediator must always declare any relevant interests at the outset of a peace process or immediately when they arise during the process.

2) Confidentiality and Information Sharing

The careful management of information within a peace process is a critical responsibility for mediators. It concerns both private information sharing between the mediator and the parties *within the process* as well as *outside the process* to the public and other interested parties. In all matters of information sharing, mediators must judge between the needs for confidentiality and transparency that are both integral to trusted and effective peace work.

- a. Within the process, the mediator needs to know as much information as possible about each party's needs, interests, positions and capability to help make the most of any dialogue. However, information about one party can be abused by another or create an unfair advantage of some kind. Any sharing of information between the parties by the mediator must, therefore, usually be done with the informed consent of the party concerned. In exceptional circumstances, the mediator may judge that some information which a party seeks to keep confidential is in fact *process-critical information*. This is information which could make or break the process or prevent a significant violation of human rights. S/he may deem it necessary to pass such information without consent in the best interests of the process. In such situations, the mediator must also judge if it is best to inform the party concerned that s/he intends to do this with or without their consent to preserve, at least, the mediator's transparency with each party.
- b. Outside the process, the best interests of the process require that the mediator must be free to make his or her own relationships with other representatives of the public not present inside the talks and with other state parties or international agencies interested in and supportive of the process. In all these dealings, the mediator should not breach confidences agreed by the parties to the talks and only share information from within the talks with the informed consent of the parties. But in exceptional circumstances, in the interests of the process or to prevent significant violations of human rights, the mediator may also use his or her discretion to share process-critical information without consent. Once again, the mediator must judge if it is best to inform the party concerned that s/he intends to reveal the information with or without their consent to preserve, at least, the mediator's transparency with each party.

3) Competence and Qualifications

The mediator has a personal and organisational responsibility to be good at his or her job and to offer a service of the highest possible technical and professional standard to the parties concerned.

- a. The mediator and his/her team must be appropriately qualified and competent in mediation techniques through experience and/or professional education. They should also directly pos-

sess, or have immediate access to, the particular knowledge and skills necessary to the peace process in which they engage.

- b. Integral to a mediator's competence must be an ability to evaluate – consciously, self-critically and regularly – their own performance and to learn from and apply the lessons of previous experience within current and previous mediations.

4) Quality of the Process

An essential part of a mediator's competence is an ability to run a high quality mediation process which is in line with the values and principles of these standards, is representative, transparent, understood and agreed by all parties, and is run smoothly, fairly, consistently and efficiently.

- a. At the outset, the mediator should firmly agree with the parties the purpose and structure of the talks, including e.g.: the desired outcome; the mediator's role; whether this process is the sole track; terms of confidentiality within and beyond the process; the appointment of a legitimate spokesperson; the format, venue, agenda and spirit of the talks; certain acceptable procedures to get through blocks if they emerge; agreeing common deadlines, and a system of record of the process.
- b. The mediator should also clarify with the parties what constitutes appropriate and representative levels of participation in and around the talks: who qualifies as an appropriate participant; how the views and needs of men, women, children and minorities are fairly represented in discussions, and any protocol concerns around participants.
- c. These terms may usefully be set out in a single "Declaration of Purpose, Principles and Procedure" for the process.
- d. The mediator is responsible for securing and enabling a good working environment for the process to take account of participant safety as well as providing efficient administrative and logistical support. The mediator should ensure that the working environment fosters an atmosphere of mutual respect and gives no unfair advantage to one side over the other.
- e. As convenor, moderator or chair of the meetings, the mediator should ensure that the process of talks and any implementation of agreements are: well managed; keep to time and deadlines; are procedurally fair, and also sufficiently flexible to allow for the unexpected.

5) Respect for the Profession

Mediators have an obligation to enhance the reputation of the wider mediation profession. They should not engage in conduct which damages the integrity and reputation of the mediation profession or compromises the current work or future opportunities of other mediators in armed conflict. Mediators should always seek to operate in a way which exemplifies the highest standards of principle and practice in all their work.

- a. Mediators from different organisations should, wherever possible and appropriate, keep each other informed of their contacts and intentions within the same armed conflicts. This is to avoid conflicts of interests and the risk of undermining an existing process by seeking to establish a new or parallel track which may be abused by parties to the conflict. When a competing process is embarked upon, there must be good grounds to show that this is primarily in the interest of peace rather than organisational self-interest. The new mediator must then share his or her plans and progress with existing mediators as soon as possible.
- b. Mediators should refrain from generalised or ill-informed public criticism of fellow members of the profession in situations where they are unlikely to be in possession of all the facts of a process.

- c. Mediators should share experience and research across the profession, and beyond, so as to develop good practice and improve the performance and reputation of mediation in armed conflict and also to generate greater understanding of its purpose and potential within national and international society. In particular, mediators should explore the role of women mediators in enabling effective peace processes.
- e. Mediators should seek to increase diversity within mediation organisations wherever there is evidence to suggest that this will make a positive difference to the process by enabling a more appropriate culture of mediation, which has greater affinity with different groups represented, but which still holds to the values and principles of this code.
- f. The profession should enable more women to become mediators wherever evidence suggests that gender diversity is critical to a positive mediation process and could encourage important reciprocal participation by women from the parties to a conflict.

6) Marketing Mediation

Mediators must not exaggerate or misrepresent their services and skills in their marketing and public relations or unfairly denigrate the services of other mediation organisations. They should:

- a. Always give an accurate description of their aims, competence and capacity.
- b. Always secure the informed consent of any party to a conflict before referring to them in their public relations information.
- c. Never seek new business in a way which suggests their partiality for one party over another and so undermine the integrity of any eventual peace process.

7) Due Deliberation

A mediator must expect to face dilemmas and complex choices at every stage of a peace process which should be anticipated and engaged with, as a matter of professional competence.

- a. Mediators should employ a conscious and accountable process for careful consideration of difficult choices and options, which includes wherever possible active consultation with others in and around the process.
- b. A mediator could be deemed negligent if s/he were not able to show that they had given due consideration to any such matters arising in or from a process.

8) Withdrawal

A mediator may decide to withdraw from a peace process when, for example:

- a. The process is obviously being pursued in bad faith by one or more parties.
- b. The process is leading to a solution which the mediator deems to be wholly unworkable, illegal or profoundly at odds with mediation's core values of a humanitarian intent or a peaceful solution.
- c. The mediator finds it impossible to continue to operate impartially or is unable to secure a sufficiently high quality process.
- d. When an alternative track or different approach promise better results.

9) Accountability

A mediator must assume ultimate accountability for his or her choices, actions and decisions relating to the peace process, to the conflict parties, society at large, to other concerned parties, and to members of the wider mediation profession.

- a. Such accountability should be published in a variety of media and be circulated as widely as possible in the interests of transparency and learning, but not if this is detrimental to the interests of the process.
- b. When confidential information makes it impossible to give a full account of a mediator's decision-making, this must be made clear. However, confidentiality must never be abused to avoid accountability.

1

2

3

4

5

6

7

8

9

10

11

12