



# BOFAXE

## Beyond Atrocities (PART 1)

### The Untapped Potential of Humanitarian Mediation to Advance Human Rights

— Priorities in international human rights are undergoing a significant transformation as a result of the growing preoccupation with “atrocities crimes”, argued recently New York University law professor and former UN Special Rapporteur on extreme poverty and human rights, Philip Alston ([Alston, 2023](#)). This development has manifested itself in a neglect of significant violations that do not meet the atrocity threshold, of the underlying structural causes of human rights violations, and of alternative techniques to criminal prosecution. According to Alston, this development risks entrenching an “atrocities-centered normative hierarchy” that empowers judges and lawyers over other fields of expertise, distorts international resource allocation, and is overly fixated on the past. By focusing on punishment and retribution, it also overshadows the inspirational project of human rights to shape a more just society ([ibid.](#)).

Alston’s warning did not fall on deaf ears. The urgency to refocus the attention of the international human rights community on ‘everyday’ violations and to challenge the centrality of the formal legal system has prompted much debate on the role of [Alternative Dispute Resolution](#) (ADR), specifically mediation, in promoting and upholding a holistic understanding of human rights (see: [DPPA-OHCHR Practice Note, 2023](#); [Månsson, 2023](#); [Berlin moot conference, 2024](#)). However, this debate is taking place exclusively in the realm of what is broadly defined as “peace mediation”, with no specific focus on humanitarian mediation, a field with a stark disparity between its growing use in practice and its low visibility in scholarship ([Roepstorff and Lidén, 2023](#)). This blog post addresses this gap.

I argue that humanitarian mediation can complement and enrich the formal international human rights regime. As discussed below, humanitarian mediators are uniquely positioned to enhance the commitment of armed non-state actors to a broad range of human rights. This should not, however, come at the cost of compromising the core principles of impartiality and neutrality, which are crucial for maintaining the integrity of both humanitarian action and mediation efforts.

#### What is Humanitarian Mediation

To date, there is no uniform definition of humanitarian mediation and several have been proposed. As for the “mediation” component of the concept, [Roepstorff and Lidén](#) have crystallized the following common denominator: “a process in which a) a third party (the mediator), b) assists parties to a conflict c) finding mutually agreed solutions. Commonly, the mediator is understood as a neutral and impartial third party and the process of mediation to be voluntary.” Mediation is a future-oriented process that aims at finding solutions based on the needs and interests of the parties. Unlike formal court proceedings, which are bound by rules of procedure, mediation is flexible and allows for greater involvement of parties who are denied the opportunity to be represented in court ([Moffitt, 2009, p. 1215-1216](#)).

What qualifies mediation as “humanitarian” is its link to humanitarian action. This is established first and foremost by the overarching objective of mediation – to save lives and alleviate human suffering. Humanitarian mediation has also been [characterized as such](#) based on its subject matter (humanitarian concerns), the identity of the mediator/party (a humanitarian actor); and the setting in which the mediation takes place (emergency contexts or other settings in which humanitarian issues are negotiated). This form of mediation has also been linked to peace mediation as a supporting or complementary process, in particular to [open communication channels](#), “where political dialogue may be difficult or impossible”. However, peace mediation is considered to be political in nature, often pushing the boundaries of mediation principles. This is because states, as political actors with vested interests in the outcome, frequently take on the role of mediators. In its form of “power mediation” ([Siniver, 2006](#)), peace mediation can particularly compromise principles such as neutrality or impartiality. Therefore, humanitarian mediators seek to distinguish themselves from peace mediators by arguing for the apolitical nature of mediation (an argument that has been controversial since the birth of the modern ADR movement – see e.g. [Fiss, 1985](#) and [Nader, 1988](#)) and by emphasizing their commitment, as humanitarians, to the principles of neutrality and impartiality ([Grimaud, 2023](#)).

#### Humanitarian Mediation as a Unique Setting for the Promotion of Human Rights

The ways in which human mediators practice and articulate mediation have undergone changes that reflect broader shifts in humanitarian action ([Gordon and Donini, 2016](#)). In the past, humanitarians utilized mediation perceived predominantly as a tool to solve problems encountered in the field, i.e. by facilitating the safe return of displaced communities, the release of prisoners, or restoration of peace in prisons (see [ICRC mediation in the Colombian conflict](#)). They used mediation in response to acute problems of a humanitarian nature, especially in the context of limited crises where the relevant parties were unable to negotiate directly with each other and reach amicable solutions. While they [recognized](#) the empowerment of civil society and the promotion of a culture of consensus-thinking as an added value of humanitarian mediation, it was not perceived as its primary objective.



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## Beyond Atrocities (PART 2)

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More recent examples, however, suggest that the added value has become an objective of humanitarian mediation in its own right. In addition to its use in the cases mentioned above, humanitarian mediation today has a broader scope – addressing not only the consequences but also the root causes of conflict and a wider range of human rights. It also aims not only to resolve a single dispute, but to empower local communities and arrive at lasting, peaceful solutions. A case in point is the mediation of land disputes in the context of humanitarian action. Despite being usually not perceived as such, land rights are a key human rights issue that affects additional economic and social rights such as access to food, housing, and development. As such, it does not lend itself to exclusively legal solutions (Alston, p.672). While in some contexts such disputes are purely intercommunal, in other scenarios they involve close cooperation with state authorities. Moreover, parties to humanitarian mediation are often members of non-state armed groups (see: Humanitarian mediation in The CAR, in Grimaud, 2023). Due to the thematic breadth of mediated disputes, the close ties that mediators have with local state authorities and non-state armed actors, and their extensive knowledge of their working context, humanitarian mediators are in a unique position to strengthen the commitment of these actors to human rights (for a discussion of the application of human rights to armed non-state actors and its preconditions such as the exercise of governmental functions or the de facto control over territory and a population, see: Academy In-Brief No.7, pp.18-34).

### Integrating Human Rights into Humanitarian Mediation: A Balancing Act

As argued hitherto, humanitarian mediators engage with human rights as a matter of fact and are well situated to do so. The question remains how to do so in light of tensions that may arise between the incorporation of human rights on one hand and commitment to humanitarian principles of neutrality and impartiality, on the other hand.

The approach of contemporary humanitarian mediation as presented above emphasizes the need to address both the causes and consequences of conflicts as a sine qua non for sustainable peaceful solutions. This reasoning resonates with “a holistic understanding of human rights”, i.e. the assumption that human rights violations are both a symptom and a cause of conflict and that conflict resolution, therefore, requires a “rights-based analysis and approach” (Månsson, 2023, p. 38). Specifically in the context of peace mediation, UN agencies have recently proposed to integrate human rights principles and considerations throughout the different phases of mediation, including the preparatory phase to determine who shall be a party to the mediation (inclusion and participation rights), for agenda setting (drawing on human rights standards to construct an agenda), to reframe the parties’ interests in human rights language, and to serve as an “objective” benchmark against which proposed solutions can be weighed (DPPA-OHCHR Practice Note, 2023).

While the desire to integrate human rights standards in such an all-encompassing way is understandable, it would be wise to tone it down a notch in the context of humanitarian mediation, where neutrality and impartiality play a more meaningful legitimizing role than in peace mediation. For example, while it is pertinent from a human rights perspective that all those affected by the conflict should be included in the mediation process, reframing the parties’ negotiation points in human rights language risks overstepping the role of the humanitarian mediator, which arguably should be limited to facilitating the process and not interfering with its content (Grimaud, 2023). Similarly, reframing interests conveyed by the parties in human rights terminology is difficult to reconcile with the centrality of interests in mediation as founded on the parties’ personal needs and desires. However, inviting the parties to assess their proposed solutions against human rights standards can be used as a welcomed opportunity to diffuse human rights norms into the mediation process.

### Conclusion

While the prosecution of serious violations is undoubtedly crucial for the international human rights regime, the buck does not stop there. Promoting and upholding human rights involves: first, adopting a “multi-dimensional approach to human rights” that situates the legal dimension of human rights in relation to other dimensions (Månsson, 2023, pp. 39-41). Second, giving due weight to human rights violations that too often fly under the radar of the international legal community such as those affecting economic and social rights. Third, diversifying the settings in which human rights are developed and the actors who put their meaning into practice. The integration of human rights as a normative framework into humanitarian mediation requires fine-tuning to ensure that the fundamental principles of mediation and humanitarian action are not unduly compromised. Nonetheless, humanitarian mediation offers a unique setting for shaping an international human rights regime that emerges from and responds to the concrete needs of conflict-affected societies.