Humanitarian Negotiations with Armed Groups

A Manual for Practitioners

United Nations

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Gerard Mc Hugh • Manuel Bessler

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Humanitarian negotiation with armed groups –

- ⇨ to ensure provision of assistance and protection to vulnerable groups;
- ⇨ to safeguard humanitarian space; and
- ⇨ to improve respect for international law

– can often be a humanitarian necessity!

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in collaboration with members of the Inter-Agency Standing Committee (IASC).

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Preface

For humanitarian workers, the ability to negotiate with all actors in situations of crisis or conflict is essential to effective and timely provision of humanitarian assistance and protection. Indeed, where the humanitarian imperative dictates, negotiation – conducted in an independent, impartial and neutral manner – can sometimes be a humanitarian necessity!

Every day, humanitarian workers are faced with situations that require some form of negotiation, from seeking agreement on how best to access those in need, to reaching an understanding with other actors of how best to protect civilians in times of armed conflict. This often involves interaction with non-state armed groups.

The absence to date of a structured approach to humanitarian negotiations with armed groups resulted in these interactions having been undertaken in an ad hoc manner, sometimes with less than optimal outcomes.

For that reason I am delighted to present this *Manual on Humanitarian Negotiations with Armed Groups*, which provides a much-needed structured approach to humanitarian negotiations in a clear and user-friendly manner. I am confident that this Manual and the accompanying set of Guidelines will become essential guides for humanitarian practitioners in the field.

The project to develop these negotiation tools was made possible through the generous support of the Government of Switzerland, the primary sponsor of this project, and of UNICEF and UNDP. The project also benefited immensely from the active participation of several IASC members as well as academic reviewers and field colleagues in a number of organizations.

Finally, I would like to commend the authors for their excellent work; they have managed to combine new negotiation techniques with lessons drawn from field experiences to provide us with a structured, easy-to-follow approach to humanitarian negotiations with armed groups.

Jan Egeland
Under-Secretary-General for Humanitarian Affairs and
Emergency Relief Coordinator

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Summary and Quick Reference

Chapter 1 Introduction and Objectives

Section 1.1

Humanitarian negotiations are those negotiations undertaken by civilians engaged in managing, coordinating and providing humanitarian assistance and protection for the purposes of: (i) ensuring the provision of protection and humanitarian assistance to vulnerable populations; (ii) preserving humanitarian space; and (iii) promoting better respect for international law.

This manual provides guidance on humanitarian negotiations with non-State armed groups and is intended for use by humanitarian, development and human rights organizations and by humanitarian personnel tasked with conducting these negotiations. Humanitarian negotiations do not in any way confer legitimacy or recognition on armed groups, nor do they mean that the humanitarian negotiators support the views of an armed group.

Section 1.5

The guidance presented here is not intended to supplant or circumvent existing security policies and procedures. At all stages of negotiations, humanitarian organizations must consult with designated security officials and must ensure that the operational aspects of the negotiations are conducted in accordance with the relevant security procedures.

Chapter 2 Humanitarian Negotiations: Motivations and Partners

Section 2.2

The overall objective of humanitarian negotiations should be to secure the cooperation of an armed group in reaching an agreed outcome or understanding that will facilitate or enhance humanitarian action. Once it is clear that the intended objective of negotiation justifies the interaction, the actual process itself can provide additional, collateral reasons for negotiation.

There are certain situations when humanitarian organizations may need to adopt a more cautious approach to negotiations, including: when the negotiations could negatively impact humanitarian conditions; when armed groups attempt to use the negotiations to enhance their perceived legitimacy; and when armed groups are believed to be playing humanitarian actors off against each other for their own gain.

Chapter 2	Humanitarian Negotiations: Motivations and Partners
Sections 2.3, 2.4 & Annex I	In approaching the negotiations, humanitarian organizations should learn as much as possible about the armed group, building a profile of the group's: (*a*) motivations; (*b*) structure; (*c*) principles of action; (*d*) interests; (*e*) constituency; (*f*) needs; (*g*) ethno-cultural dimensions; (*h*) control of population and territory.
Section 2.5	Humanitarian organizations must be cognizant of the motivations, needs and interests of other humanitarian partners that are active in the same context, and should aim towards collective humanitarian negotiations on behalf of all humanitarian partners in that context. For such collective or coordinated humanitarian negotiations, one or more lead negotiators should be identified. Humanitarian negotiations should remain distinct from political negotiations, and humanitarian agencies must agree on the process and intended outcomes of the negotiations.
Chapter 3	**Framing the Negotiations**
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Section 3.3	In addition to fundamental humanitarian principles, the provisions of international law—including International Humanitarian Law (IHL), International Human Rights Law (IHRL), and International Criminal Law (especially The Rome Statute of the International Criminal Court (ICC)) — provide important framing elements for humanitarian negotiations. International law helps to guide humanitarian negotiations by: (1) defining boundaries within which to seek agreement; (2) framing the legal obligations of armed groups; (3) identifying the substantive issues for negotiation, and providing an entry point for discussion on these issues; (4) providing reference benchmarks for evaluation of options and monitoring implementation; and (5) providing incentives to armed groups to negotiate.
Section 3.4	Humanitarian policies assist in translating and implementing humanitarian principles and legal provisions into an operational setting, and hence can provide a source of options for humanitarian negotiators to consider in undertaking negotiations with armed groups.

Chapter 4 — Working Towards More Effective Negotiations

Section 4.2

The approach to humanitarian negotiations with armed groups presented in this manual consists of nine steps, spanning three phases of negotiation:

See Figure 1

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1. Coordinate Approach With Humanitarian Partners
2. Decide on Objectives and Strategy
3. Learn About Your Negotiating Partner

Phase II - SEEKING AGREEMENT >>

4. Build Consensus on the Process of Negotiations
5. Identify the Issues
6. Develop Options
7. Work to Seek Agreement on the Option(s) that Best Meet the Humanitarian Objectives

Phase III - IMPLEMENTATION >>

8. Define Criteria for Implementation
9. Follow-up: Monitoring and Relationship Building

Section 4.5

When humanitarian negotiations fail to converge on a shared perspective or agreed outcome, humanitarian negotiators can consider some or all of the following actions: (i) review strategy, confirm issues and develop more options; (ii) keep open alternatives on substance; (iii) try building on the process; (iv) explore alternative approaches to engagement; (v) don't burn bridges; and (vi) reinforce lines of communication.

Chapter 5 — Negotiating on Specific Issues

Section 5.2

Humanitarian negotiations frequently involve several humanitarian issues in the same round of negotiations. The various substantive areas for negotiation (some of which were listed previously in Section 2.2) span the two inter-related dimensions of humanitarian action: assistance and protection.

Sections 5.3, 5.4 & 5.5

The specific areas for humanitarian negotiation addressed in Chapter 5 are: (i) ground rules for humanitarian action; (ii) securing humanitarian access; (iii) rules and behaviour of belligerents that will improve the protection of civilians, in accordance with international law.

Chapter 6	So You're Negotiating … Now What?
Section 6.2	In addition to their intended positive humanitarian impacts, humanitarian negotiations can have unintended or unanticipated consequences for humanitarian organizations; the armed groups; and third-party stakeholders, including: (i) changes in perceived neutrality and impartiality of humanitarian actors engaged in negotiations; (ii) impacts on humanitarian security; and (iii) third-party influence and sanctions on humanitarian negotiators.
Section 6.3	Commitment to implementation of an agreed outcome can be secured or enhanced through: (1) ensuring 'buy in' and ownership; (2) clear statement of implementation roles; (3) emphasizing accountability; and (4) including all parties in monitoring of implementation.
Section 6.4	To help ensure successful implementation of an agreed outcome, mechanisms to resolve disputes associated with implementation should be identified by the humanitarian organization(s) and the armed group during the negotiations. These mechanisms could include: (*a*) establishment of an implementation monitoring commission; (*b*) appointment of a neutral mediator to assist the parties in resolving disputes; or (*c*) referral of disputed provisions to an independent, non-binding arbitration mechanism.

1 Introduction and Objectives

1.1 Humanitarian Engagement and Negotiation with Armed Groups

To effectively undertake their work, United Nations humanitarian, development and human rights practitioners must interact with a diverse range of stakeholders—including national governments, inter-governmental institutions (e.g. EU, ECOWAS), and non-State actors such as non-governmental organizations (NGOs), rebel groups, and private entities. Depending on the context and intended outcomes, **engagement** with these different actors can take several forms, including: advocacy, negotiation, mediation and liaison interactions. These different types of engagement generally share some common elements of process and objectives.

As one form of engagement, **negotiation** is defined as a process of communication and relationship building undertaken with the objective of arriving at an agreed outcome around a particular set of issues, in situations where the parties are not in complete accord on those issues to begin with.

Purposes of Humanitarian Negotiations:

- ➔ *to ensure provision of protection and assistance to vulnerable groups;*
- ➔ *to preserve humanitarian space;*
- ➔ *to promote respect for international law.*

Negotiation therefore seeks to reconcile differences in perspectives, positions and/or interests to reach outcomes that no individual party could achieve independently. Successful negotiations result in outcomes that all parties agree to abide by or implement. Such an agreed outcome can be informal (e.g. verbal agreement to facilitate access) or formal (e.g. a written agreement such as a Memorandum of Understanding).

Moreover, negotiation is sometimes described as a process of influencing individuals or groups through joint decision-making. It requires the consent of all parties to participate in the process and to accept and respect the agreed outcome.

Humanitarian negotiations are defined here as negotiations undertaken by civilians engaged in managing, coordinating and providing humanitarian assistance and protection for the purposes of: (i) ensuring the provision of humanitarian assistance and protection to vulnerable populations; (ii) preserving humanitarian space; and (iii) promoting better respect for international law.[1] As a means of achieving these objectives, negotiation at times becomes a humanitarian necessity!

[1] The term "humanitarian space" is defined to mean *"a conducive humanitarian operating environment."* See: UN Office for the Coordination of Humanitarian Affairs (OCHA), *Glossary of Humanitarian Terms in Relation to the Protection Of Civilians In Armed Conflict* (New York: United Nations, 2003). Another definition is given as: *"scope for neutral and impartial humanitarian action in the midst of conflict."* See: Meinrad Studer, "The ICRC and Civil-Military Relations in Armed Conflict," *International Review of the Red Cross* 83 No. 842 (June 2001): 367-391.

This manual provides guidance on humanitarian negotiations with **non-State armed groups** (referred to throughout this manual simply as **armed groups**), defined as groups that: have the potential to employ arms in the use of force to achieve political, ideological or economic objectives; are not within the formal military structures of States, State-alliances or intergovernmental organizations; and are not under the control of the State(s) in which they operate.[2,3] A more detailed characterization of armed groups is provided in Section 2.3 of this manual.

The guidance contained in this manual is applicable to humanitarian negotiations with all armed groups, including armed groups that employ terror tactics.

Humanitarian negotiations do not in any way confer legitimacy or recognition upon armed groups.

Because of their exclusively humanitarian character, humanitarian negotiations do not in any way confer legitimacy or recognition upon armed groups, nor do they mean that the humanitarian negotiators support or agree with the views or perspectives of an armed group.

Humanitarian negotiations with armed groups stand apart from other types of negotiation (such as negotiation between two private corporations) for several reasons:

1. the **stakes are high**: in many cases, a successfully-negotiated outcome can result directly in lives saved;
2. there exists **a *de facto* power imbalance** between the negotiating parties, for example in terms of ability to employ coercive armed force to exert control;
3. the **motivations, objectives and operational 'cultures'** of the parties **contrast sharply**;
4. ensuring **commitment to and implementation of an agreed outcome may be difficult** because of the less formal organizational and command structures of many armed groups; potential limitations in the capacity of an armed group to ensure implementation; and/or the fact that some armed groups may consider themselves immune from accountability for their actions;
5. the operating environment for humanitarian agencies generally imposes **acute time and communication constraints** on negotiations with armed groups.

The unique characteristics of humanitarian negotiations necessitate a targeted and nuanced approach to these types of negotiations. This manual prepares the reader for such an approach.

[2] This working definition of armed group draws on that defined in the OCHA Glossary of Humanitarian Terms (2003): "*Armed Group: An armed non-State actor engaged in conflict and distinct from a governmental force, whose structure may range from that of a militia to rebel bandits.*"

[3] The use of force by some armed groups may extend beyond that which actually requires weapons (e.g. sexual violence), however, the difference (by definition) between an armed group and another type of unarmed group is the ability of the former to employ weapons in their use of force.

1.2 Changing Operating Environment for Humanitarian Agencies

Since the early 1990s, humanitarian agencies have experienced increased exposure to situations in which they must negotiate with armed groups. This is due primarily to the changing nature of the operating environment in which humanitarian action is undertaken. Some aspects of the changing operating environment that are relevant to humanitarian negotiations with armed groups include the following:

First, contemporary conflicts take place predominantly within States rather than between them, with the result that one or more parties to a conflict are now more likely to be armed groups.[4] Humanitarian agencies responding to complex emergencies resulting from these conflicts (or other underlying conditions) are thus more likely to encounter armed groups in their work.[5]

Second, an evolving body of military doctrine on Peace and Peace Support Operations being developed by key military forces (individual States, State-alliances such as NATO, and UN peacekeeping operations), and the involvement of military forces in operations other than war — including relief operations — has increased the complexities of interactions between humanitarian and military actors. The engagement of military forces in relief operations and so-called "hearts and minds" operations to win local support blurs the distinction between military and humanitarian actors, thereby contributing to the erosion and constricting of humanitarian space. This fading distinction has placed increased emphasis on the need for humanitarian organizations to (i) negotiate for a safe and secure operating environment for humanitarian action, and (ii) maintain a distinct identity, separate from military actors.

Third, in light of experiences during the 1990s, there has been a move towards a more integrated approach to UN peace operations, which has seen the roles and work of UN humanitarian agencies included or integrated (to varying degrees depending on the mission) under the overall administrative and decision-making structure of a UN mission (e.g. UN missions in Liberia, Democratic Republic of the Congo and Burundi).[6] The issue of integrated UN peacekeeping missions is the subject of ongoing debate, but clearly these types of missions impose new opportunities and challenges for humanitarian agencies as they try to maintain

[4] In the twelve-year period from 1990 to 2001, there were 57 major armed conflicts (exhibiting at least 1,000 battle-related deaths per year) in the world, of which all but three were internal. Source: Mikael Eriksson, Ed. *States in Armed Conflict 2001* (Uppsala: Department of Peace and Conflict Resolution, Uppsala University, 2002).

[5] A complex emergency, as defined by the IASC, is: "A *humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing United Nations country program*."

[6] This move towards a more integrated approach to mission planning and execution within the UN system has its origins in the *Report of the Panel on United Nations Peace Operations* ("The Brahimi Report") (A/55/305) of 21 August 2000, and in subsequent reports of the UN Secretary-General on implementation of the Report's findings and recommendations (for example, *Report of the Secretary-General on the implementation of the Report of the Panel on United Nations Peace Operations*, UN Doc. Ref. A/55/502, 20 October 2000).

their impartial and neutral working environment to carry out their mandate. In integrated missions, humanitarian, military and/or political negotiations should still remain distinct from each other, but may be ongoing in parallel.

Ensuring coherence across these different negotiations poses a particular challenge that must be addressed because all of the negotiations will have an impact on the success or failure of the mission. Section 2.5 presents guidance for coordination of negotiations among humanitarian actors and for dealing with UN political and humanitarian negotiations.

Fourth, in recent years there has been a trend towards the direct targeting of humanitarian and development workers in conflict zones and in some situations of post-conflict transition. For example, in Afghanistan there was an average of 13 armed attacks on aid workers per month for the first five months of 2004, compared to an average of 8.8 attacks per month over the first five months of the preceding year.[7] In this environment, there is an increased need to negotiate with all parties to a conflict (including armed groups) to ensure the safety and security of humanitarian operations and staff, as well as the civilians they assist.

1.3 Background and Objectives

The increased need for humanitarian agencies to negotiate with armed groups has been reflected in successive reports of the UN Secretary-General on the protection of civilians in armed conflict since 1999. These reports have highlighted the importance of negotiations with parties to a conflict to ensure access to, and protection of, vulnerable groups.[8] For UN humanitarian agencies, the UN General Assembly has also recognized the need to enter into negotiations with all parties to a conflict to facilitate humanitarian action (specifically to secure humanitarian access).[9]

In particular, the 2001 *Report of the Secretary-General on the Protection of Civilians in Armed Conflict* identified the need for a structured, consistent approach to humanitarian negotiations with armed groups. In that report, the UN Secretary-General stated that he had requested the Inter-Agency Standing Committee (IASC) to,

> *"… develop a manual for access negotiations and strategies, including benchmarks for the engagement and disengagement of aid agencies, demands of conditionality, clearance*

[7] Source: Afghan NGO Security Office (ANSO) and British Agencies Afghanistan Group (BAAG) Monthly Update, June 2004. Quoted in: Gerard Mc Hugh and Lola Gostelow, *Provincial Reconstruction Teams and Humanitarian-Military Relations in Afghanistan* (London: Save the Children UK, 2004).

[8] Reports of the Secretary General on the Protection of Civilians in Armed Conflict were published in 1999 (UN document reference S/1999/957), 2001 (S/2001/331), 2002 (S/2002/1300), 2004 (S/2004/431), and 2005 (S/2005/740). Reports available at: *http://ochaonline.un.org.*

[9] See UN General Assembly resolution 46/182, *Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations*, 19 December 1991. UN Document ref A/RES/46/182. Paragraph 35(d).

procedures, needs assessments, and other principles outlined in the present report [on the Protection of Civilians in Armed Conflict]." [10]

In response to the request of the Secretary-General, the IASC set up an Informal Working Group — consisting of OCHA, OHCHR, UNHCR, UNICEF, UNDP, WHO and WFP — to oversee the development of a manual on humanitarian negotiations, and initial research and consultations began in 2002. This manual builds on that prior research and process of consultation, and also on field experiences of UN agencies and non-governmental organizations, to provide a practical tool for humanitarian, development and human rights workers to guide and enhance their negotiations with non-State armed groups. It is envisaged that more consistent and effective negotiations will assist in securing agreed outcomes that improve humanitarian conditions of those in need.

This manual is intended for use by humanitarian, development and human rights **organizations** — for example, during pre-deployment training sessions — and also by **individuals** tasked with conducting humanitarian negotiations with armed groups. A set of concise *Guidelines for Humanitarian Negotiation with Armed Groups* accompanies this manual and provides a distilled, field-ready version of the guidance provided in this manual.

Objective of this manual:

To provide a practical guide for UN humanitarian, development and human rights workers to enhance their negotiations with non-State armed groups.

In addition to the guidance provided in this manual and the companion set of guidelines, individuals undertaking humanitarian negotiations must be provided with the necessary training and organizational support to effectively conduct these negotiations.

The process of drafting this manual was coordinated by OCHA's Policy Development and Studies Branch (New York), working in close collaboration with members of the IASC. The project was funded by contributions from the Swiss Federal Department of Foreign Affairs, OCHA and UNICEF's Office of Emergency Programmes (EMOPS).

OCHA's Policy Development and Studies Branch acts as a focal point for provision of support and advice on humanitarian negotiation with armed groups for particular inquiries or contexts, as and when requested. The relevant contact information is provided on the inside front cover of this manual.

1.4 Organization of this Manual

The following chapters address five key aspects of humanitarian negotiations with armed groups. Chapter 2 examines the motivations and partners for humanitarian negotiations — the "why" and "who" of these negotiations. Chapter 3 describes how humanitarian principles and policies

[10] Source: United Nations Security Council, *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, UN Doc. S/2001/331 (New York: United Nations, 30 March 2001) : Paragraph 26.

Three phases of negotiation:

Phase I – Preparation

Phase II – Seeking Agreement

Phase III – Implementation

can frame the negotiations for humanitarian actors, and how they can guide the process of negotiation.

Chapter 4 provides practical guidance for those tasked with undertaking humanitarian negotiations across three phases of negotiation: **Phase I** – Preparation; **Phase II** – Seeking Agreement; and **Phase III** – Implementation. Chapter 5 explores additional considerations related to negotiation on specific issues. The body of the manual concludes with the implications of negotiation and follow-up to negotiation in Chapter 6. Examples from field experiences are included as short case studies throughout the manual.

Supplemental material is provided in three annexes to this manual: Annex I provides a worksheet to 'map' the characteristics of armed groups; Annex II provides a summary listing of reference resources on humanitarian negotiations with armed groups; Annex III provides a glossary of key terms used in the manual.

1.5 Humanitarian Negotiations and Staff Security Policies, Procedures

As with any type of humanitarian activity which increases the exposure of humanitarian, development and human rights personnel to armed groups, humanitarian negotiations must be carried out within the framework of existing institutional security policies and procedures.

The guidance provided in this manual is not intended to supplant or circumvent existing security policies and guidelines. At all stages of humanitarian negotiations, humanitarian organizations must consult with designated security officials (UN/other) and must ensure that the operational aspects of the negotiations (e.g. travel to meet with members of an armed group) are conducted in accordance with the relevant security procedures.

In situations where security procedures require interaction with a party to a conflict (for example, requesting passage through territory controlled by the host government to reach an area controlled by an armed group), these interactions should be undertaken in a transparent and open manner. They will then be less likely to foster perceptions among armed groups of bias and lack of impartiality on the part of humanitarian organizations.

2 Humanitarian Negotiations: Motivations and Partners

2.1 Overview

This chapter addresses the "why" and "who" of humanitarian negotiation with armed groups: the "why" of humanitarian negotiations involves being clear about the reasons for negotiating, and how these motivations impact the process of negotiation.

Building on the working definition of armed groups presented in the introduction to this manual (Section 1.1), this chapter looks in more detail at the characteristics of these groups (the "who"), how those characteristics can shape the approach to negotiation, and the type of information that humanitarian workers should know about armed groups before they enter into negotiations with them.

2.2 Being Clear About Reasons for Negotiating

Since negotiation is but one form of engagement with armed groups (see Section 1.1), humanitarian organizations need to be clear about why they are entering into negotiations with these groups. It may be that some other type of interaction (perhaps an advocacy or liaison relationship) may in some cases be more appropriate.

For humanitarian actors, the **overall objective of humanitarian negotiations** should be to secure the cooperation of an armed group in reaching an agreed outcome or understanding that will facilitate or enhance humanitarian action.

Once it is clear that the intended objective of negotiation justifies the interaction, the actual process itself can provide additional, collateral reasons for negotiation:

- The process of negotiation can build trust and confidence between the parties, which can in turn result in humanitarian benefits separate from the actual substance of the negotiations.
- The process of negotiation can have a multiplier effect in terms of involving armed groups in a wider dialogue that may bring additional benefits (for example, the humanitarian negotiations may assist in resolving the underlying causes of the conflict). However, humanitarian negotiations must *never* be used as a substitute for political negotiations.

In some cases, the *process* of negotiation can take on a life of its own, overshadowing the purpose of the negotiations. For humanitarian negotiations it is crucial to keep the objectives of the negotiations clearly in sight, while ensuring that the process of negotiation stands the best chance of achieving those objectives.

2.2.1 The Substance of the Negotiations

The provision of humanitarian **assistance** to those in need and the provision and promotion of **protection** for vulnerable groups represent two interconnected dimensions of humanitarian action.[11] Humanitarian negotiations can be undertaken in pursuit of a number of goals spanning these two dimensions of humanitarian action:

- **To secure humanitarian access** to reach those in need;
- **To seek agreement on ground rules** for activities and behaviour of humanitarian actors and armed groups;
- **To secure agreement on operational mechanisms** to facilitate direct provision of assistance to those in need (especially in areas under the control or influence of armed groups);
- To agree on rules and behaviour of belligerents that will improve the **protection of civilians** in areas under the control or influence of armed groups, in accordance with **international humanitarian law and international human rights law**;
- **To safeguard humanitarian security** — a term used here to encapsulate the various aspects of physical and psychological safety of both humanitarian staff and the beneficiaries of humanitarian action;
- **To secure the release of persons being held by armed groups against their will**, including humanitarian workers held hostage and civilian detainees;
- **To secure agreement on special protection areas or periods** (for example, to secure agreement on conducting immunizations over a particular period of days).

Examples of humanitarian negotiations undertaken on some of these issues, and the different approaches to negotiation they may involve, are provided in Chapter 5.

2.2.2 Knowing When to Adopt a More Cautious Approach to Negotiation

In all cases of negotiation with armed groups, humanitarian, development and human rights organizations must carefully balance the expected outcomes against the possible consequences of negotiation (described in Section 6.2). In certain cases, conditions may dictate that humanitarian staff should approach negotiations more cautiously, or perhaps should not negotiate at all with certain armed groups.

The circumstances in which humanitarian organizations may need to take a more cautious approach to negotiations with armed groups include the following:

[11] A growing consensus has emerged within the humanitarian community on the need to better integrate protection and assistance as two dimensions of humanitarian action. For example, in its Policy Paper on Protection of Internally Displaced Persons, the Inter-Agency Standing Committee (IASC) recognized the need to "*integrate protection features into operational response and remedial action*." See: Inter-Agency Standing Committee (IASC), *Protection of Internally Displaced Persons*, IASC Policy Paper (New York: IASC, 1999).

- *When there is a likelihood that negotiations could negatively impact humanitarian conditions or jeopardize the security of the beneficiaries:* Armed groups may sometimes use their ability to exert force against civilian populations as a bargaining tool during negotiations. Humanitarian negotiators must be aware of this potential from the outset. In addition, negotiations that are undertaken poorly, especially multi-party negotiations, can in some cases actually exacerbate disputes between opposing armed groups, and may therefore lead to a worsening of humanitarian and security conditions.
- *When the humanitarian negotiations can put the lives of the armed group interlocutors at risk:* Identification of the armed group's negotiators can in some instances place them at risk of being targeted (physically or by indirect sanctions on a particular population group, e.g. the village home to the armed group representative(s)) by the group's adversaries. Targeting of armed group interlocutors as a result of their participation in humanitarian negotiations can in turn result in increased security risks for the humanitarian negotiators themselves, and possible termination of the negotiations.

Case Study: Impact of the Process of Humanitarian Negotiations on Armed Groups' Engagement in Political Dialogue

In July 2004 the UK NGO Conciliation Resources hosted a workshop on "Engaging Armed Groups in Peace Processes," which included participants from armed groups, official and unofficial mediators in peace processes, donor governments and academics.

One theme of the discussion focused on the impact of engagement on humanitarian issues on the broader process of engagement in political dialogue. Some of the main points captured in that discussion were:[12]

- ➔ *humanitarian negotiation can shed light on a group's willingness and ability to negotiate more generally and can serve as a confidence-building measure;*
- ➔ *investment in the success of negotiated humanitarian outcomes might give an armed group a greater stake in not returning to conflict;*
- ➔ *"engagement on humanitarian questions potentially creates the "political cover" for talks to spill over into more political issues, thus easing the armed groups into the peace process."*
- ➔ *"intermediaries and armed groups should think proactively about the possible positive impact humanitarian engagement could have in the process of political engagement."*

However, notwithstanding the perspectives on humanitarian negotiations being used as "political cover" captured in these discussions, humanitarian negotiations must remain separate from political negotiations; must retain a distinct humanitarian purpose and identity; and must not be used as a substitute for political negotiations.

[12] Source: Conciliation Resources, *Engaging Armed Groups in Peace Processes*. Joint analysis workshop report (London: Conciliation Resources' Accord Programme, July 2004).

- *When armed groups attempt to use humanitarian negotiations to enhance their perceived legitimacy:* Armed groups may seek to use humanitarian negotiations to enhance their positioning in other interactions (e.g. with political actors), and to misuse these negotiations as a vehicle for supporting their claims of legitimacy. In case of doubts in this regard, humanitarian negotiators should request a demonstration of commitment from the armed group before or during negotiations.
- *When armed groups are believed to be playing several humanitarian actors off against each other for their own gain:* Armed groups may attempt to enter into separate negotiations with different humanitarian agencies, in an effort to leverage their position and fragment the humanitarian community. This reinforces the need for humanitarian agencies to adopt a coordinated or collective approach to humanitarian negotiations (see Section 2.5).
- *When the armed group attaches conditions for the implementation of an agreement that could adversely affect the civilian population:* Humanitarian negotiators should not enter into negotiations or agreements with armed groups when there are conditions attached that may adversely affect the humanitarian circumstances of others.

2.3 Characteristics of Armed Groups

A working definition of non-State armed groups was provided in Section 1.1 of this manual. Table 1 elaborates on the key characteristics of armed groups captured in that definition, and identifies what those characteristics mean for humanitarian negotiations with such groups.

Table 1
Characteristics of armed groups and what they mean for humanitarian negotiators

Characteristics of Armed groups: They…	What humanitarian negotiators need to be aware of based on these characteristics:
Have the potential to employ arms in the use of force for political, ideological, or economic objectives;	➔ Humanitarian negotiations do not infer any legal status, legitimacy or recognition of the armed group; ➔ Humanitarian negotiators should explore the driving motivations and interests behind the actions of the armed group (See Section 2.4); ➔ Humanitarian negotiations do not in any way dilute the accountability of the armed group for past/current/future actions, especially in cases where armed groups act outside the norms of international law (Section 3.3);

Table 1 (continued)

Characteristics of Armed groups: They…	What humanitarian negotiators need to be aware of based on these characteristics:
Have a group identity, and act in pursuit of their objectives as a *group*;	➔ Individual members of an armed group will always have their own agendas, however an armed *group* (different from a group of armed individuals) shares some common history, aspirations, objectives, or needs that are attributes of the *group*; ➔ Members of an armed group will be strongly influenced by group conformity pressures such as depersonalization of victims; perceptions of impunity; moral disengagement and obedience to group authority;[13]
Are not within the formal military structures of States, State-alliances or intergovernmental organizations;	➔ This characteristic of non-State armed groups has important implications for enforcing accountability for the actions of members of the group. The 'extra-State' status of armed groups means that the applicable legal provisions relating to the duties and obligations of these groups under international law may differ from the duties and obligations of States, and for certain provisions there remains some legal uncertainty as to the extent that those provisions apply to armed groups; (see Section 3.3 below)
Are not under the command or control of the State(s) in which they operate;	➔ Armed groups may not be under the command or control of the State(s) in which they operate, but they may receive direct/indirect support of the host government or other States, or may be provided with a safe haven in certain countries; ➔ Humanitarian negotiators need to be aware of the potential for influencing parties that support armed groups. Hence there may be other counterparts for humanitarian engagement (including negotiation) beyond the initial targeted armed group;

[13] For more information on group conformity and the actions of combatants, see: Daniel Munoz-Rojas and Jean-Jacques Frésard, *The Roots of Behaviour in War: Understanding and Preventing IHL Violations* (Geneva: International Committee of the Red Cross, October 2004).

Table 1 (continued)

Characteristics of Armed groups: They…	What humanitarian negotiators need to be aware of based on these characteristics:
Are subject to a chain of command (formal or informal).	➔ This is an important attribute of armed groups, because it means (at least in theory) that there is some degree of centralized command and control, however limited, over the actions of group members. When this centralized command structure breaks down, it can no longer be considered to be one armed group, and humanitarian negotiators may have to identify interlocutors within several factions of the original group; ➔ When a chain of command (however limited) is functioning, it increases the likelihood that lower-ranking members of the group will respect the undertakings and agreed outcomes negotiated by and with their leaders; ➔ In implementing an outcome agreed with the leaders of an armed group, humanitarian workers should attempt to identify the local chain of command to increase the likelihood that any agreed outcome will be respected and implemented by lower-ranking members of the group; ➔ Humanitarian negotiators should communicate their expectations that an agreed outcome will be respected by all members of the armed group.

Case Study: Encouraging communicating through chain of command

In Sierra Leone during 1999/2000 the UN World Food Programme (WFP) found that in many cases it could not be taken for granted that armed group leaders had communicated the existence, scope or objectives of any negotiated agreement to local-level commanders and members of the group. One approach used to bridge this communication gap was 'sensitization' of members of the group on the ground by influential armed group commanders:

"As a way to reduce the lack of communication between official leaders of armed groups and their local commanders, and ensure that access would be given on the ground, major international food distributions led by WFP were preceded by a sensitization of the forces on the ground carried out by influential RUF commanders."[14]

[14] Source: World Food Programme (WFP), *Review of WFP Experience in Securing Humanitarian Access: Compilation of Past Practice*, 2000.

2.4 Learning About the Armed Group(s)

In a negotiation setting, each party is a partner in the process. Humanitarian practitioners may not wish to consider representatives from armed groups as "partners", *per se*, but since the objective of the negotiation is to arrive at an outcome that no one party could achieve independently, each party must view the other as having a shared role and responsibility in reaching such an agreed outcome.

Finding out as much as possible about the motivations, interests and needs of the other party can greatly assist negotiators in securing better outcomes. Each armed group is different, but consideration of the following characteristics of armed groups can increase the efficiency of the negotiations as well as the desired outcomes and means for implementing/monitoring them: (*a*) motivations; (*b*) structure; (*c*) principles of action; (*d*) interests; (*e*) constituency; (*f*) needs; (*g*) ethno-cultural dimensions; (*h*) control of population and territory.

These characteristics of armed groups are presented in a 'Worksheet' provided in Annex I to this manual. This worksheet can be used by humanitarian negotiators to prepare for their interactions with an armed group. In addition, the following observations and questions can assist humanitarian negotiators in finding out more about their negotiating partners.

Motivations

What was the original motivation for the formation, behaviour and conduct of the armed group, and for using armed force (rather than pursuing other means)?

In terms of founding motivations, armed groups generally fall into three categories: they can be *reactionary* (reacting to some situation, or something that members of the groups experienced or with which they identify); they can be *opportunistic*, meaning that they seized on a political or economic opportunity to enhance their own power or positions; or they founded to further *ideological* objectives.

The motivations underlying the formation and activities of the armed group may in some cases be carried over into the armed group's negotiating strategy. Knowing more about these driving motivations can help humanitarian negotiators prepare for negotiation and anticipate the choices and decisions that the armed group may make prior to, during or following negotiations.

What are the current motivations of the armed group?

It may be possible to identify current motivations of the group from statements / interviews by the group's leader(s) or representatives. The group's motivations and objectives may have changed over time. Humanitarian negotiators should not assume that the group's stated motivations are shared among all group members.

Structure

What is the organizational and leadership structure of the armed group? Does it have a single leader; a group of leaders; changing membership?

The organization's leadership structure has implications for the ability to secure commitment and implementation from the leadership to any agreed outcome of negotiations. Is the structure of the armed group hierarchical or flat? Armed groups with several layers in their organizational structure may require that proposals developed during negotiations be elevated through successive levels for a decision. The stability of the leadership (have there been recent changes in leadership?) will also have implications for the sustainability and implementation of any agreed outcome of negotiations.

What is the power structure of the armed group? Are there coalitions and alliances between and within groups?

Identifying the locus of power within the armed group will assist in identifying the appropriate interlocutors with whom to negotiate, and the extent to which the armed group interlocutors can 'deliver' on their commitments.

What is the level of autonomy among regional/local sub-commanders? Is there a regional command structure, or is it cell-like?

If regional- or local-level field commanders of the armed group act with high levels of autonomy, these commanders may decide not to honor the outcome agreed with the group's leadership, or may indeed seek to negotiate further for local implementation. Humanitarian negotiators may need to enter into these additional local-level negotiations to ensure local implementation.

Principles of Action

Just as humanitarian negotiators are guided by core principles (see Section 3.2), so too will armed groups be guided to some degree by their own principles of action.

The principles of action of armed groups will most likely be very different from the humanitarian principles guiding humanitarian actors: armed groups may be guided by principles of guerrilla warfare; religious, ideological, political or cultural principles; or purely economic objectives. For example, the Lord's Resistance Army (LRA) armed group operating in Northern Uganda is guided by the vision of the group's leader, Joseph Kony, to establish a government based on the biblical Ten Commandments.

Humanitarian negotiators don't have to agree with the principles of action of the armed group, but learning more about, and understanding, these guiding principles can improve the likelihood of a successful negotiation.

Interests

What are the group's interests… in general, and in the context of a specific negotiation?

To learn more about the interests of an armed group, humanitarian negotiators should, first and foremost, ask! Too often, humanitarian negotiators enter the interaction with pre-conceived notions of the group's interests.

At the same time, humanitarian negotiators need to be aware of the potential for armed groups to mis-state their interests as part of their negotiation strategy. In all cases, time invested in preparing for the negotiations will enhance understanding of the group's interests.

In humanitarian negotiations, the interests of the armed group and the interests of the humanitarian organization may in some cases be divergent. For example, the humanitarian organization's interests include alleviating human suffering; the armed group's interests may center on defeating an adversary, expanding control of territory, which may cause civilian suffering.

Nevertheless, humanitarian negotiators should seek to highlight areas of shared interest **where they exist**, and should seek to influence the armed group's interests in situations where the respective interests diverge, through persuasive negotiation based on principles of humanitarian action and international law (See Section 3.3).[15]

Constituency

Does the armed group claim a legitimate constituency?

Armed groups may profess to act on behalf of a particular group (e.g. ethnic group, tribe), when in many cases the group has no basis for claiming a mandate from the purported constituents.

Humanitarian negotiators should be aware of the potential for the armed group to use the process of negotiations as a means of exerting further control over their stated constituency. Humanitarian negotiators should therefore establish and maintain separate lines of communication with *bona fide* community and civil society leaders from within the population that may be under the control of the armed group (e.g. tribal elders; women's committees; religious leaders).

[15] Focusing on areas of shared interest is one of the key elements of the "interest-based" approach to negotiation pioneered by Professor Roger Fisher and colleagues. See: Roger Fisher et al. *Getting to Yes: Negotiating Agreement Without Giving In*. Second Ed. (New York: Penguin Books, 1991).

Needs

What are the needs of the armed groups?

Needs are not the same as interests. An armed group may express an interest in achieving a certain outcome, but it will also have organizational, resource- and identity-related needs to satisfy throughout the negotiation process and beyond. In some cases, these needs may be reduced to the needs of the person negotiating on behalf of the armed group. Is he/she using the negotiations purely to bolster his/her position within the organization?

Humanitarian negotiators must be attuned to the potential for the existential or functional needs (e.g. financial needs) of the armed group to influence the negotiation strategy of the group.

Cultural and Ethnic Dimensions

Are there certain cultural, religious or ethnic characteristics of the armed group that may influence the armed group's strategy/approach?

Humanitarian negotiators should consider how cultural, religious or ethnic characteristics of an armed group might influence the group's strategy, commitment to implementation and/or conduct.

In this regard, knowledge of the local culture and the population from which the armed group is drawn can be invaluable. There may be traditional 'warrior' or 'hunter' identifications with being a member of an armed group, or the group may state that it is acting legitimately in accordance with the religious beliefs/traditions of its members.

Control of Population and Territory

What is the extent of control exerted by the armed group over a given population or territory?

Armed groups may claim more extensive control over populations or territories than is actually the case. In the case of negotiations related to protection of civilians in a particular area or delivery of assistance to a particular population group, humanitarian negotiators should attempt to assess the actual level of control exerted by the armed group prior to entering into negotiations.

Once again, humanitarian negotiators must make it clear to their counterparts during the negotiations that any discussion of de facto population/territorial control does not represent recognition or legitimization of that authority.

In addition to these characteristics of the armed group, the **negotiating history of the group** can provide valuable information on the group's strategy, objectives and commitment to the negotiations. Hence, humanitarian negotiators should review previous negotiations with the

group. The easiest way to do this may be to gain the perspectives of previous interlocutors (even if they were observers and not negotiators) with the armed group.

2.5 Humanitarian Partners in Negotiations

In addition to learning more about the armed group(s) participating in the negotiations, humanitarian agencies must be cognizant of the motivations, needs and interests of other humanitarian partners that operate in the same context or region. This is especially true when humanitarian negotiators come from different organizations. Each humanitarian negotiator brings a different perspective to the table and therefore it is critical for humanitarian negotiators to arrive at a common understanding of motivations, desired outcomes and alternatives to negotiation before entering into the process with the armed group.

The following points should be taken into consideration in multi-agency negotiations with armed groups:

- Among the humanitarian parties to the negotiations, **one or more lead negotiators should be identified** who should act as the primary representative(s) of humanitarian agencies, to ensure that the humanitarian community in a specific context speaks with one voice. In addition to a lead negotiator, it is useful to identify an alternate person to lead the interactions to ensure continuity and consistency throughout the negotiation process.
- In situations where humanitarian negotiations are undertaken by a civilian representative whose areas of responsibility extend beyond purely humanitarian issues (for example, if a United Nations Special Representative with overall authority over an integrated UN mission were also to lead humanitarian negotiations), the **humanitarian negotiations and their underlying humanitarian objectives should remain distinct from political and other negotiations**. Political negotiations should not incorporate humanitarian provisions that are contingent on political actions or agreements. In this regard, the negotiating party should include a prominent member from the humanitarian community such that the humanitarian nature and objectives of the negotiations can be demonstrated and maintained (e.g. UN Humanitarian Coordinator, or head of a humanitarian country programme).
- Before entering into collective negotiations with an armed group, humanitarian agencies (especially those within the UN system) should **agree on the process and intended outcomes of the negotiation.** They should agree also to abide by any outcome negotiated by a designated representative of the humanitarian community.
- Getting early 'buy in' from a broad range of humanitarian agencies will assist in securing commitment from these agencies to any agreed outcome with the armed group.

Case Study: Confusion, but then clarification, of UN political and humanitarian roles in Angola

There was no clear strategy for negotiating humanitarian access in Angola in the months immediately following the resumption of fighting between UNITA and government forces in September 1992. This renewed fighting followed rejection by UNITA of the September 1992 election outcome.

In response to worsening humanitarian conditions, the UN Security Council passed resolution 811 (12 March 1993) which called on parties to the conflict to allow unimpeded access to those in need, and mandated the SRSG to "coordinate humanitarian assistance with the resources at her disposal." This resolution provided the mandate for the SRSG to conduct humanitarian negotiations, at a time when she was also facilitating political negotiations. Concerns about this linkage between political and humanitarian negotiations lead the Department of Humanitarian Affairs to set up a Humanitarian Assistance Coordination Unit (UCAH) in April 1993.

UCAH's mandate included negotiation of humanitarian access and protection of humanitarian space. The UN Humanitarian Coordinator directing UCAH drew up an Emergency Relief Plan (ERP) for humanitarian assistance, to which both parties to the conflict subsequently agreed, if only in principle.

By establishing itself as a distinct humanitarian entity, thereby severing the linkages between political and humanitarian negotiations, UCAH played a central role in negotiations with the Government of Angola and UNITA on humanitarian issues, and worked to maintain a neutral and impartial posture by referring issues of a political nature to the SRSG.[16]

[16] This case study is drawn from: Anna Richardson, *Negotiation Humanitarian Access in Angola: 1990–2000*, New Issues in Refugee Research, #18 (Geneva: UNHCR, June 2000).

Points to Remember — Humanitarian Negotiations: Motivations and Partners

MOTIVATIONS

- ➔ For humanitarian actors, the overall objective of humanitarian negotiations should be to secure the cooperation of an armed group in reaching an agreed outcome or understanding that will facilitate or enhance humanitarian action.
- ➔ Collateral process-related motivations: (i) building trust and confidence between the parties, and (ii) the process of negotiation can have a multiplier effect in terms of involving armed groups in a wider dialogue that may bring additional benefits.

SUBSTANTIVE AREAS FOR NEGOTIATION

- ➔ To secure humanitarian access to reach those in need;
- ➔ To seek agreement on ground rules;
- ➔ To agree on rules and behaviour of belligerents that will improve the protection of civilians in areas under the control or influence of armed groups;
- ➔ To safeguard humanitarian security;
- ➔ To secure the release of persons being held by armed groups against their will;
- ➔ To secure agreement on special protection areas or periods.

KNOWING WHEN TO ADOPT A MORE CAUTIOUS APPROACH TO NEGOTIATIONS

- ➔ When there is a likelihood that negotiations could negatively impact humanitarian conditions or jeopardize the security of the beneficiaries.
- ➔ When the negotiations put the lives of the armed group interlocutors at risk.
- ➔ When armed groups attempt to use humanitarian negotiations to enhance their perceived legitimacy.
- ➔ When armed groups are believed to be playing several humanitarian actors off against each other for their own gain.
- ➔ When the armed group attaches conditions for the implementation of an agreement that could adversely affect the civilian population.

CHARACTERISTICS OF ARMED GROUPS

- ➔ They: (1) have the potential to employ arms in the use of force for political, ideological, or economic objectives; (2) have a group identity, and act in pursuit of their objectives as a group; (3) are not within the formal military structures of States, State-alliances or intergovernmental organizations; (4) are not under the command or control of the State(s) in which they operate; and (5) are subject to a chain of command (formal or informal).

Points to Remember (continued)

➔ Consideration of the following characteristics of armed groups can increase the efficiency of the negotiations as well as the desired outcomes: (*a*) motivations; (*b*) structure; (*c*) principles of action; (*d*) interests; (*e*) constituency; (*f*) needs; (*g*) ethno-cultural dimensions; (*h*) control of population and territory (Annex I).

HUMANITARIAN PARTNERS IN NEGOTIATIONS

➔ One or more lead negotiators should be identified who should act as the primary representative(s) of humanitarian agencies.

➔ The humanitarian negotiations and their underlying humanitarian objectives should remain distinct from political and other negotiations.

➔ Humanitarian agencies (especially those within the UN system) should agree on the process and intended outcome of the negotiations.

3 Framing the Negotiations

3.1 Overview

Humanitarian principles, humanitarian policies and international law provide a framework and source of guidance for humanitarian negotiations with armed groups. They can be potent tools for humanitarian negotiators to: (i) **define boundaries** within which to seek agreement; (ii) assist in **generating options** for consideration during negotiations; (iii) **provide reference benchmarks for evaluation** of options and monitoring implementation; (iv) **frame the legal obligations** of armed groups; and (v) **provide incentives** for armed groups to negotiate.

This chapter briefly reviews humanitarian principles, humanitarian policies, and relevant provisions of international law, and suggests practical ways in which they can guide humanitarian negotiations with armed groups.

3.2 Humanitarian Principles Underlying Negotiations With Armed Groups

Humanitarian negotiations are a tool to enable, facilitate and sustain humanitarian action, and therefore they must be undertaken in accordance with the three core principles of humanity, neutrality and impartiality that underpin all humanitarian action (Box 1).[17]

Box 1 - Fundamental principles of humanitarian action

Humanity: Human suffering must be addressed wherever it is found, with particular attention to the most vulnerable in the population, such as children, women and the elderly. The dignity and rights of all victims must be respected and protected.

Neutrality: Humanitarian assistance must be provided without engaging in hostilities or taking sides in controversies of a political, religious or ideological nature.

Impartiality: Humanitarian assistance must be provided without discriminating as to ethnic origin, gender, nationality, political opinions, race or religion. Relief of the suffering must be guided solely by needs and priority must be given to the most urgent cases of distress.

These three fundamental principles have their origins in operational humanitarian practice, and are reflected to varying degrees in the Charter of the United Nations, International Humanitarian Law, and International Human Rights Law. These principles have also been

[17] The guiding principles of humanity, neutrality and impartiality were adopted by the United Nations General Assembly in resolution 46/182 (19 December 1991).

incorporated into voluntary codes of conduct and organizational mission statements guiding humanitarian agencies and donors.[18]

Additional principles complementing these three core tenets of humanitarian action include: Dignity; Respect for Culture and Custom; "Do No/Less Harm"; Operational Independence; Sustainability; Participation; Accountability; Transparency; and Prevention.[19]

3.2.1 Using Humanitarian Principles to Frame Humanitarian Negotiations

Humanitarian principles help to frame humanitarian negotiations in three ways:

1. by providing a source of guidance for humanitarian negotiators on **how** negotiations should be undertaken;
2. by defining boundaries within which to seek agreement (they set limits to **what** humanitarian actors can commit to during negotiations); and
3. by providing a set of criteria for **developing options** for consideration by the negotiating parties.

Based on these three modalities, Table 2 suggests ways in which the humanitarian principles mentioned above can be used to guide the actions of humanitarian negotiators.

Table 2
Humanitarian principles and what they mean for humanitarian negotiations

Humanitarian principle	What the principle means for humanitarian negotiations …
Core Humanitarian Principles	
Humanity	➔ Humanitarian negotiators should clearly communicate to the armed group the paramount interest of their organization(s) as being to alleviate human suffering; ➔ Armed groups that have limited or no knowledge of the motivations and objectives driving humanitarian action may be suspicious of the motives of humanitarian actors. They may believe that assistance is being provided to opposing groups, or that all the assistance should go to their group, rather than to civilians that are most in need;

[18] See, for example: International Red Cross Movement and NGOs, *The Code of Conduct of the International Red Cross Movement and Non-Governmental Organisations in Disaster Relief* (1994). Available through the Steering Committee for Humanitarian Response (SCHR).

[19] These principles are drawn from: *The Code of Conduct of the International Red Cross Movement and Non-Governmental Organisations in Disaster Relief* (1999) and OCHA documents on principles and policies for humanitarian engagement.

Table 2 (continued)

Humanitarian principle	What the principle means for humanitarian negotiations …
Neutrality	➔ Humanitarian negotiations should never endorse, or be perceived to endorse, a particular political aspiration or objective of the armed group; ➔ **Negotiation does not mean acceptance**, and humanitarian negotiators must make clear that by entering into negotiations they are not endorsing or according any recognition to the armed group;
Impartiality	➔ Humanitarian negotiators must not enter into an agreement with the armed group that would constrain humanitarian action such that it is no longer delivered on the basis of need alone; ➔ Humanitarian negotiators cannot accept conditions that the armed group may wish to impose restricting beneficiaries of assistance and protection to those within certain ethnic, political or religious groups;
Additional Principles of Humanitarian Action	
Operational independence	➔ Humanitarian negotiators must ensure that humanitarian actors retain operational control and direction of humanitarian activities in any agreed outcome (for example, on issues such as decision-making regarding beneficiaries; modes of assistance etc.);
Participation	➔ Wherever possible, the perspectives of the beneficiary population should be incorporated into the substance and process of negotiation; ➔ In many cases, representatives of groups that humanitarian organizations seek to assist may be unable to participate directly in the negotiations, due to logistical constraints; difficulties in identifying legitimate representatives; and security concerns (e.g. possible reprisals by armed group);
Accountability	➔ Humanitarian negotiators and their parent organizations are accountable—to those they seek to assist, to their governing bodies as well as to their donors—for any outcomes to which they may agree in the course of negotiations;
Transparency	➔ Humanitarian negotiations should be undertaken in a transparent manner, with honesty, openness and clarity about the purposes and objectives of the negotiations. By conducting negotiations in this way, humanitarians will be less likely to be perceived as being partial to a particular group.

Table 2 (continued)

Humanitarian principle	What the principle means for humanitarian negotiations …
Additional Principles of Humanitarian Action (continued)	
Do No/Less Harm	➔ Humanitarian negotiators should strive to "do no harm" or to minimize the harm that may be inadvertently done simply by humanitarians being present and providing assistance (e.g. where aid is used as an instrument of war by denying access or attacking convoys). ➔ Humanitarian negotiations, and any agreed outcome between humanitarian organizations and armed groups, should at a minimum not cause harm or result in reduced protection of civilians.
Respect for culture and custom	➔ Humanitarian negotiators should strive to understand local customs and traditions to ensure that humanitarian work can be conducted with respect for local values to the extent that they do not conflict with internationally recognized human rights (e.g. some interventions require particular sensitivity to local customs, such as dealing with victims of rape). (See Section 4.4).

Case Study: Two dimensions of impartiality

REDUCTION IN PERCEIVED IMPARTIALITY OF WFP IN ANGOLA: In Angola during 1993/1994, constraints on access by WFP assessment teams to UNITA-controlled areas resulted in a greater percentage of food aid being delivered to government-controlled areas (where WFP had more access). WFP subsequently faced accusations of impartial delivery of assistance in favor of the government-controlled areas. UNITA asserted that these areas were better able to withstand UNITA advances due to the food aid, and this resulted in tensions between UNITA and WFP, which at times manifested itself in blockage of road convoys and incidents of shooting at aid aircraft.[20]

ARMED GROUP PERCEPTION OF IMPARTIALITY: In Colombia, the Autodefensas Unidas de Colombia (AUC) armed group has expressed criteria for accepting contacts with humanitarian organizations, which include impartiality, neutrality and confidentiality. This represents a rather unique example of an armed group that is well informed of humanitarian principles and monitors the actions of humanitarian organizations that may wish to engage with the armed group.[21]

[20] Source: World Food Programme (WFP), Review of WFP *Experience in Securing Humanitarian Access: Compilation of Past Practice* (Rome: World Food Program, 22 November 2000).

[21] Source: Centre for Humanitarian Dialogue (CHD), *Humanitarian Engagement with Armed Groups: Colombian Paramilitary* (Geneva: Centre for Humanitarian Dialogue, October 2002).

By providing limits beyond which humanitarian negotiators cannot compromise ("No Pass" limits), humanitarian principles can actually strengthen the position of the humanitarian negotiator, enabling him/her to use the principles to set clear limits to the other parties' demands. For this purpose, humanitarian negotiators can invoke the fundamental principles, and could argue, for example:

> *"Our organization cannot agree to distribute food only to camps under your control, because, as you know, we provide assistance wherever there is a need"*

When using humanitarian principles and policies as "No Pass" limits beyond which humanitarian agencies cannot trespass, it is important that humanitarian negotiators communicate these limits in non-threatening language and tone, and clearly communicate the reasons why the organization cannot agree to operate outside these principles.

In addition to establishing "No Pass" limits to negotiations, humanitarian principles provide a basis for developing options to be considered by parties to the negotiations. Continuing with the example above, an option for agreement could be presented as follows:

> *"Our organization cannot agree to distribute food only to camps under your control, because, as you know, we provide assistance wherever there is a need [USE PRINCIPLE TO DEFINE BOUNDARY]. What we can do, however, is to include the civilians in those camps in our needs assessment … and that will ensure that those most in need in the camps also can be helped." [USE PRINCIPLE TO GUIDE OPTIONS]*

Case Study: Communicating Humanitarian Principles

"Regarding Burundi, during a first meeting called by the Henry Dunant Center in Geneva in 1999, gathering representatives of the Burundian army, opposition forces and the humanitarian community, it became clear that in order to gain greater access to populations caught up in conflict zones, humanitarian agencies should first explain their roles and mandates. Until then, none of the [warring] parties understood clearly the role or the activities of the humanitarian community or the UN in Burundi. The Burundian army accused the UN of "feeding the rebels", while the opposition forces accused the UN of being too close to the government and for distributing aid only where the government dictated. The opportunity to explain the programmes and assert the neutrality of the international humanitarian community was a key breakthrough in this meeting." [22]

[22] Source: World Food Programme (WFP), *Review of WFP Experience in Securing Humanitarian Access: Compilation of Past Practice, 2000.*

3.3 Elements of International Law Relevant to Humanitarian Negotiations

In addition to fundamental humanitarian principles, the provisions of international law — including International Humanitarian Law (IHL), International Human Rights Law (IHRL), and International Criminal Law (especially The Rome Statute of the International Criminal Court) — provide important framing elements for undertaking humanitarian negotiations.[23]

This section briefly reviews select elements of international law that are most relevant to humanitarian negotiations with armed groups, and suggests ways in which these legal provisions can guide humanitarian negotiations.

3.3.1 International Humanitarian Law (IHL)

International Humanitarian Law is a set of rules, codified in legal instruments and/or expressed in customary norms, that seeks to restrict the means and methods of armed conflict, and to protect civilians and others who are not, or are no longer, participating in hostilities from the effects of armed conflict.[24] International Humanitarian Law applies to situations of international armed conflict (between two or more States) and non-international armed conflict (within a State, and involving non-State armed groups) and binds all parties to an armed conflict. It does not apply in situations of internal disturbance or tension short of armed conflict. Moreover, IHL contains rules that apply to State actors and rules that apply to non-State actors.

International Humanitarian Law consists of treaty-based law and customary international humanitarian law.

Treaty-based International Humanitarian Law

The legal instruments that make up this body of law include (among others): the Hague Conventions of 1907; the four Geneva Conventions of 1949; and the two Protocols Additional to the Geneva Conventions (1977). Treaty-based IHL is based on agreements between *States*.

The provisions of treaty-based IHL that are most relevant to armed groups (as opposed to States) engaged in armed conflict are Common Article 3 of the Geneva Conventions of 1949 (see Box 2), and Additional Protocol II of 1977.[25]

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[23] For a practical primer on elements of international law, see: Inter-Agency Standing Committee Task Force on Humanitarian Action and Human Rights, *Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law in the Context of Armed Conflict* (Geneva: IASC, 2004). Available at: *http://www.humanitarianinfo.org/iasc/*.

[24] For more information, see: International Committee of the Red Cross, *What is International Humanitarian Law?* (ICRC, Geneva, July 2004). Available at: *http://www.icrc.org*.

[25] For more information on the applicability of IHL to armed groups, see: Marco Sassoli, *Possible Legal Mechanisms to Improve Compliance by Armed Groups with International Humanitarian Law* and International Human Rights Law. Paper submitted at the Armed Groups Conference, Vancouver, 13-15 November 2003; Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law* (Cambridge, UK: Cambridge University Press, 2002).

Common Article 3 of the Geneva Conventions specifies a number of minimum provisions that each party to the (non-international) armed conflict, including an armed group, is required to uphold. Common Article 3(2) also includes a provision for "special agreements" between parties to a non-international armed conflict to bring into effect other provisions of the four Geneva Conventions.[26] The special agreements referred to in this article are bilateral agreements between the parties (e.g. between an armed group engaged in conflict with a State), which could include, for example, agreements on provision of humanitarian relief to those not or no longer taking part in the conflict.

Additional Protocol II (1977) to the Geneva Conventions develops and supplements the provisions of Common Article 3, and applies to armed conflicts which,

> *"take place in the territory of a [state signatory to the Protocol] between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory…"*

Additional Protocol II contains provisions relating to humane treatment of those not taking part in hostilities; care of the sick and wounded; and protection of the civilian population.

Common Article 3 and Additional Protocol II therefore define criteria for regulating the means of armed conflict and for protecting civilians in relation to non-State armed groups.

Box 2 - Common Article 3 of the Four Geneva Conventions of 1949

"In the case of armed conflict not of an international character occurring in the territory of one of the [Parties to the Four Geneva Conventions] each party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat *by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.*

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

[26] For a discussion on the "special agreements" provision of Common Article 3, see the Commentary to Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. Available at: *http://www.icrc.org.*

Box 2 continued

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

Customary International Humanitarian Law

Customary international law is the body of rules and norms that emanate from established practice— and the widely-held belief that such practice is warranted as a matter of law.

For example, even if a State is not a signatory to some of the treaties governing conduct of hostilities in international humanitarian law, the established practice of that State may dictate that it does not deliberately target infrastructure essential to survival of civilians (e.g. water treatment plants). Another example of international customary law is the practice of protecting religious and cultural objects during armed conflict.

One of the most salient provisions of customary international humanitarian law as it relates to situations of armed conflict is the so-called Martens Clause, which appeared in earlier international law treaties and is included in the preamble of Additional Protocol II to the Geneva Conventions of 1949.[27] This Clause states that:

> *"…in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience…"*

The implication of this clause and other provisions of customary international humanitarian law is that the actions of armed groups in times of conflict—even if not governed explicitly by the more formal treaty law—are constrained by norms of established practice regarding protection of those not or no longer engaged in hostilities.

In March 2005, the International Committee of the Red Cross (ICRC) published a study of customary international humanitarian law which aims to overcome some of the challenges associated with the application of *treaty-based* international humanitarian law.[28] The study identifies 161 rules of customary international humanitarian law clustered in six subject areas: (i) principle of distinction; (ii) specifically protected persons and objects; (iii) specific

[27] For more information on the origins, legal interpretation and scope of application of the Martens Clause, see: Rupert Ticehurst, "The Martens Clause and the Laws of Armed Conflict," *International Review of the Red Cross* 317 (April 1997) 125-134. Available at: *http://www.icrc.org.*

[28] Source: Jean-Marie Henckaerts and Louise Doswald-Beck, Eds. *Customary International Humanitarian Law* [Volumes I & II]. International Committee of the Red Cross (Cambridge: Cambridge University Press, 2005).

methods of warfare; (iv) weapons; (v) treatment of civilians and persons *hors de combat*; and (vi) implementation.[29] The rules are identified as applicable to situations of international armed conflict and/or non-international armed conflict.

3.3.2 International Human Rights Law (IHRL)

International human rights law is a body of international law made up of international treaties, declarations and covenants that define the universal, interdependent and indivisible entitlements of individuals. These instruments—including (among others) the Universal Declaration of Human Rights (1948) and the International Covenants on Civil and Political Rights (1966) and on Economic, Social and Cultural Rights (1966)—define obligations of (primarily) States towards individuals in upholding, fulfilling and ensuring respect for those rights.

As in the case of international humanitarian law, the treaties and covenants that constitute international human rights law are signed and ratified by *States*. While States hold primary responsibility for safeguarding the human rights of populations within their territories, the rights themselves are accorded to individuals. An armed group cannot be a party to the existing human rights treaties/covenants, although individual members of the group can be held accountable for breaches of human rights norms, either under national law, or under international law, especially when such breaches also constitute crimes against humanity (see section on International Criminal Law below).

International human rights law applies both in peacetime and in times of conflict, although States parties to some human rights treaties may exceptionally derogate from certain civil and political rights under strictly defined circumstances (in a state of public emergency, for example). There are nevertheless certain rights that can never be suspended—not even in war. The International Covenant on Civil and Political Rights (ICCPR) provides that the following rights may never be derogated from:

- Right to life (art. 6),
- Prohibition of torture or cruel, inhuman or degrading treatment punishment (art. 7),
- Prohibition of slavery (art. 8, paras. 1 and 2),
- Prohibition of imprisonment because of inability to fulfil a contractual obligation (art. 11),
- Prohibition of retroactive application of criminal law (art. 15),
- Right to recognition as a person before the law (art. 16), and
- Freedom of thought, conscience and religion (art. 18).

[29] The 161 rules of customary international humanitarian law are listed as an Annex in the following article: Jean-Marie Henckaerts, "Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict," *International Review of the Red Cross* 87 No. 857 (March 2005).

Most human rights treaties, among them the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child and its two Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflicts, do not provide for the possibility of derogation at all.

In addition, certain provisions of international human rights law constitute customary law (as discussed above). Consequently, the norms listed below are considered to be binding on all States, regardless of whether the State has explicitly consented to be bound by a certain treaty. These include:

- freedom from slavery;
- freedom from torture and cruel, inhuman or degrading treatment or punishment;
- freedom from arbitrary deprivation of life;
- freedom from arbitrary arrest and detention;
- freedom of thought, conscience and religion;
- presumption of innocence;
- prohibition of executing pregnant women or children;
- prohibition of advocacy of national, racial or religious hatred;
- prohibition of denial to persons of marriageable age the right to marry; and
- prohibition of denial to minorities of the right to enjoy their own culture, profess their own religion, or use their own language.

3.3.3 International Criminal Law – Focus on The Rome Statute of the International Criminal Court (ICC)

International criminal law is a body of law derived from general principles of international law, agreements between States on particular aspects of criminal activity, and criminal law commonly recognized by nation States. It is considered by many as encompassing the interface between criminal law aspects of international law, and the international or transnational aspects of national (domestic) criminal law.

Treaty-based international criminal law is codified in agreements such as, The Rome Statute of the International Criminal Court (1998), The United Nations Convention against Transnational Organized Crime (2000), and The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). This section focuses on the Rome Statute of the International Criminal Court as one international criminal law treaty which has direct and significant relevance for the conduct and accountability of non-State armed groups and hence to humanitarian negotiations with these groups.

The Rome Statute of the International Criminal Court

The International Criminal Court (ICC) is the first, permanent, international court established to promote the rule of law and to exercise its jurisdiction *"over persons for the most serious crimes of international concern."* [30] The Court was established by the Rome Statute of the International Criminal Court on 17 July 1998, which entered into force on 1 July 2002.

The Rome Statute sets out the Court's jurisdiction, structure and functions. The Statute contains provisions that apply in peacetime *and* times of armed conflict (e.g. those pertaining to crimes against humanity), as well as provisions that apply *only* in situations of international or non-international armed conflicts (e.g. taking of hostages and other war crimes). In situations of non-international armed conflict, the Statute also applies to conflicts *between* armed groups. Moreover, for armed conflicts, the Statute expands on the protections afforded to those not participating in hostilities under the four Geneva Conventions of 1949.

The Rome Statute and the International Criminal Court are highly relevant to armed groups participating in conflicts, because:

- The Rome Statute establishes jurisdiction of the ICC over **individual members of an armed group** in situations of **non-international armed conflict;** [Rome Statute, Articles 1, 8(2)(*c*)-(*f*)]
- In the context of non-international armed conflicts, The Rome Statute defines "war crimes" to include, ***"serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949"*** [Rome Statute, Article 8(2)(*c*)] and twelve other specific types of actions;[31] [Article 8(2)(*e*)]
- The Rome Statute applies to armed conflicts that take place in the territory of a State where there is **protracted** conflict between either *"governmental authorities and* ***organized armed groups*** *or between such groups";* [Rome Statute, Article 8(2)(*f*)]
- The ICC can exercise its jurisdiction when either (i) the State on the territory of which the conduct occurred is a party to the Rome Statute; OR (ii) the State of which the accused person is a national is a party to the Statute; [Rome Statute, Article 12(2)]
- The ICC can also exercise its jurisdiction in situations where the crime of genocide, crimes against humanity, war crimes or the crime of aggression appear to have been

[30] Article 1 of the 1998 Rome Statute of the International Criminal Court. For more information on the International Criminal Court, see: *http://www.icc-cpi.int/*.

[31] The twelve categories of action covered by Article 8(2)(e) include: (i) attacks against the civilian population; (ii) attacks against buildings etc, using the distinctive emblems of the Geneva Conventions; (iii) attacks against humanitarian and peacekeeping personnel/resources; (iv) attacks against religious, charitable and other types of building; (v) pillaging a town/place; (vi) acts of sexual violence; (vii) conscripting/enlisting children (< 15 years) in armed groups; (viii) forced displacement of civilians; (ix) "Killing or wounding treacherously a combatant adversary"; (x) declaring that no quarter will be given; (xi) subjecting detainees to physical mutilation or medical/scientific experiments; (xii) destroying of seizing the property of the adversary.

committed in a **situation referred to the ICC by the UN Security Council** (acting under Chapter VII of the UN Charter);[32] [Rome Statute, Article 13(*b*)]

- The Rome Statute provides for **individual criminal responsibility** for members of armed groups for acts that constitute crimes under the Statute; [Rome Statute, Article 25]
- The Rome Statute establishes **criminal responsibility of armed group military commanders** for acts defined as crimes under the Statute committed by their subordinates within the jurisdiction of the ICC [Rome Statute, Article 28].

The Rome Statute and the International Criminal Court can have a powerful deterrent effect on members of an armed group as they can now be held individually accountable for acts they commit that constitute crimes under the provisions of the Statute, and within the jurisdiction of the Court.

However, humanitarian negotiators should be careful not to use, or be seen to use, the International Criminal Court as a threat to armed groups to advance humanitarian negotiations. Humanitarian negotiators need to strike a delicate balance between identifying actions of the armed group that may constitute crimes under the Rome Statute, and being seen to act as agents of the ICC.

3.3.4 Additional Legal Provisions Relevant to Armed Groups

In addition to the provisions of IHL, IHRL and international criminal law, there are additional legal provisions and judicial entities of which humanitarian negotiators should be aware in terms of their relevance to the conduct and accountability of armed groups. Some of these provisions/entities are summarized in Table 3 on the opposite page .

3.3.5 Using International Law to Frame Humanitarian Negotiations

International law helps to guide humanitarian negotiations by:

1. **Defining boundaries** within which to seek agreement;
2. **Framing the legal obligations** of armed groups concerning the conduct of hostilities and the protection of civilians;
3. **Identifying the substantive issues** for negotiation, and providing an entry point for discussion on these issues;
4. Providing **reference benchmarks** for evaluation of options and monitoring implementation;
5. Providing **incentives** to armed groups to negotiate.

[32] For example, in its resolution 1593 (2005) the UN Security Council, acting under Chapter VII of the Charter of the United Nations, referred the situation in Darfur to the Prosecutor of the ICC.

Table 3
Summary of additional legal provisions and entities that are relevant to the conduct and accountability of armed groups

Legal provision/entity	Observations/What humanitarian negotiators should be aware of …
Accountability of individual members of armed group for their behaviour	➔ It is established legal practice that individual members of armed groups can be held accountable for war crimes, crimes against humanity and genocide;
War crimes, crimes against humanity and genocide must be excluded from amnesty provisions and amnesty legislation, regardless of the perpetrator	➔ UN Peace Agreements are not permitted to include amnesty provisions for core international crimes. Those who commit or support the commission of war crimes, crimes against humanity or genocide must be held accountable, whether nationally or internationally;
International Criminal Tribunals of Former Yugoslavia (ICTY) and Rwanda (ICTR)	➔ These Tribunals have helped to clarify aspects of international law pertaining to the accountability of armed groups, including the criminal liability of those aiding and abetting serious violations of IHL; responsibility of a superior for actions of subordinates; consideration of acts of terror as crimes against humanity; and the concept of territorial occupation in IHL;[33]
Non-judicial reconciliation commissions and quasi-judicial traditional dispute resolution mechanisms	➔ "Truth Commissions" or "Truth and Reconciliation Commissions" have been used as non-judicial fora for perpetrators of large-scale violence to acknowledge their actions and for victims to be recognized (e.g. South Africa). Similarly, traditional dispute resolution processes may also be relied on for this purpose (e.g. quasi-judicial Rwandan *gacaca*);

[33] These clarifications to aspects of international law are described in detail in: United Nations Economic and Social Council, Commission on Human Rights, *Promotion and Protection of Human Rights: Fundamental Standards of Humanity*, (Report of the Secretary-General), UN Document ref. E/CN.4/2004/90 25 February 2004.

1. Defining boundaries within which to seek agreement

- International law helps to set the boundaries within which humanitarian negotiators can work to seek agreement with armed groups. The process and any outcome of humanitarian negotiations must be in coherence with IHL, IHRL and international criminal law.
- Even though armed groups cannot be parties to many of the treaty-based elements of international law, humanitarian negotiations should seek to secure agreement on recognition and/or support by the armed group for the principles and spirit underlying international law.

Case Study: Support for International Law in Agreement with SPLM on Ground Rules

The agreement on 'Ground Rules' for delivery of humanitarian assistance and protection of civilians agreed between Operation Lifeline Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) in 1995 included in the preamble an explicit expression of support for elements of international humanitarian law and international human rights law:[34]

"In signing this agreement, we [OLS and SPLM/A] express our support for the following international conventions and their principles, namely:

i. Convention on the Rights of the Child, 1989.

ii. Geneva Conventions of 1949 and the 1977 Protocols additional to the Geneva Conventions."

2. Framing the legal obligations of armed groups concerning their conduct of hostilities and the protection of civilians

- The provisions of international humanitarian law that relate to the actions of armed groups in times of non-international armed conflict constitute the legal basis for holding these groups accountable in cases where they fail to fulfill their duties and obligations under international law.
- To the extent that some of these rules of customary international humanitarian law pertaining to situations of non-international armed conflict (for example, as listed in the ICRC study on customary international humanitarian law) extend into areas not explicitly covered in treaty-based international law, they can also assist in framing the obligations of armed groups.

[34] For more information on the OLS-SPLM/A Ground Rules Agreement, and the text of the Agreement itself, see: Mark Bradbury, Nicholas Leader and Kate Mackintosh, The *'Agreement on Ground Rules' in South Sudan* Study 3 in: The Politics of Principle: the principles of humanitarian action in practice] HPG Report 4 (London: Overseas Development Institute-HPG, March 2000).

- Humanitarian negotiators should ensure that armed groups are aware of their duties and obligations under international law. In communicating the responsibilities of the armed groups, humanitarian negotiators should take care that this is not perceived by the armed group as a threat. Nonetheless, humanitarian negotiators should not give the impression that by entering into negotiations the group members will be absolved or exempt from being held accountable for past, ongoing or future abuses of human rights and breaches of international humanitarian law.
- Humanitarian negotiators frequently feel that they are the "weak" party in negotiations with armed groups. However, the provisions of international law and the demonstrated willingness of the UN Security Council, international legal courts and tribunals to hold armed groups accountable for their actions can strengthen the position of humanitarian actors during negotiations.

3. Identifying the substantive issues for negotiation, and providing an entry point for discussion on these issues

- International law can provide a basis for identifying the issues upon which the humanitarian negotiations will focus. For example, the humanitarian negotiators could draw on Common Article 3 and Additional Protocol II of the Four Geneva Conventions of 1949 and customary rules of international law to catalogue issues upon which to secure agreement, including: humanitarian access; protection of those not taking part in conflict; care of wounded and sick, etc.
- Depending on the particular context, certain provisions of international law can provide an entry point for negotiations with an armed group. There may be particular issues on which the armed group may be more willing to negotiate. For example, negotiations on protection of children from induction into the armed group may provide a starting point for discussion on a range of other issues (e.g. prevention of sexual exploitation of girls). This does not in any way suggest a hierarchy of provisions of international law, but rather seeks to assist in building a foundation for ongoing negotiations.

4. Providing reference benchmarks for evaluation of options and monitoring implementation

- International law provides a set of criteria—independent from both parties to the negotiations—against which to evaluate options for agreement and implementation of any negotiated outcome. For example, the Convention on the Rights of the Child (CRC, 1989) defines the special protections afforded to children over and above those contained in other human rights treaties. These rights, and measures of the degree to which they are being fulfilled (such as the UN Common Country Assessment Indicator Framework), provide reference benchmarks for monitoring implementation of an agreement, for example to facilitate humanitarian access for the purposes of immunizing children in a given area.

5. Providing incentives to armed groups to negotiate

- Some armed groups may have aspirations to pursue political approaches to achieving their objectives (whether in parallel with or following an approach based on the use of force). In these cases, armed groups may be more sensitive to the perception of the group among national and international actors. If an armed group is fighting for territorial autonomy with a view to establishing a State in the future, the group may be more attuned to the need to respect international human rights law (even though they are not a party to any international human rights treaty). For example, in dealing with international aid agencies, the Kosovo Liberation Army (KLA) always portrayed themselves as "freedom fighters" or "liberators". In anticipation of the post-war phase, the KLA was actively working to cultivate a positive image of the group among members of the international community, and therefore had a strong incentive to facilitate humanitarian assistance and abide by international human rights norms.
- Armed groups may perceive compliance with international legal norms as enhancing their credibility and their own perceived legitimacy with internal or external audiences, including their own diasporas.
- Armed groups may fear reduction in economic and/or military support if they are found to be acting in breach of international law.

In using elements of international law to frame negotiations with armed groups, humanitarian organizations should be aware that the issue of whether a State of armed conflict exists may be contested or subject to interpretation. A State may argue that the situation in its territory does not constitute an armed conflict, but rather an internal disturbance, leading to the assertion that the relevant provisions of IHL are not applicable. Moreover, a State may claim or declare a state of emergency, which would permit it to derogate from certain human rights (…albeit in certain limited circumstances; See Section 3.3.2).

In these cases, humanitarian organizations should develop a clear understanding of the provisions of IHL and IHRL that apply in the particular context, drawing on legal expertise as required, prior to entering into the negotiations.

3.4 Translating Principles into Practice: Humanitarian Policies

Humanitarian policies assist in translating humanitarian principles and legal provisions into an operational setting, generally focusing on a particular area of humanitarian action. Humanitarian policies contextualize the core principles mentioned above, and elaborate options for humanitarian action that adhere to those principles. Two examples of humanitarian policies in particular areas are:

On the issue of **civil-military relations:** IASC Reference Paper on *"Civil-Military Relationship in Complex Emergencies"* (28 June 2004);

On the issue of **internally-displaced persons:** IASC Document: *"Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams"* (2004); and OCHA *"Handbook for Applying the Guiding Principles on Internal Displacement"* (1999);

In general these types of policy documents define the scope of humanitarian operations in a particular area.

3.4.1 Using Humanitarian Policies to Frame Humanitarian Negotiations

While many of the existing humanitarian policy documents do not relate specifically to actions of armed groups, they nonetheless provide a source of options for humanitarian negotiators to consider in undertaking negotiations with armed groups. For example, elements of the guidelines on civil-military relations that generally relate to official military forces can also provide useful insight into the limits of interaction with armed groups (as another type of military actor).

Points to Remember—Framing the Negotiations

➔ Humanitarian principles, policies and international law provide a framework and source of guidance for humanitarian negotiations with armed groups.

HUMANITARIAN PRINCIPLES

➔ Three core humanitarian principles of humanity, neutrality and impartiality; Additional principles: Dignity; Respect for Culture and Custom; Do No/Less Harm; Independence; Sustainability; Participation; Accountability; Transparency; and Prevention.

➔ These principles guide humanitarian negotiations by: (1) providing a source of guidance for humanitarian negotiators on how negotiations should be undertaken; (2) defining boundaries within which to seek agreement; and (3) providing a set of criteria for developing options for consideration by the negotiating parties.

INTERNATIONAL LAW RELEVANT TO HUMANITARIAN NEGOTIATIONS

➔ International Humanitarian Law (IHL) applies to situations of armed conflict (international and non-international); includes treaty-based and customary international humanitarian law.

➔ Armed groups are not party to international humanitarian law treaties, however, IHL binds all parties to an armed conflict, State and non-State actors. Common Article 3 of the Geneva Conventions of 1949 specifies a number of minimum provisions that the parties to an internal armed conflict, including armed groups, are required to uphold (see Box 2).

➔ Customary international humanitarian law is the body of rules and norms that emanate from established State practice—and the widely-held belief that such practice is warranted as a matter of law.

➔ International human rights law (IHRL) applies in peacetime as well as in conflict; Defines rights of individuals and duties and obligations of States (primarily) to safeguard and fulfill those rights; International human rights treaties are adopted by States.

➔ The International Criminal Court (ICC) is the first international court established to promote the rule of law and to exercise its jurisdiction over persons for the most serious crimes. The Court was established by the Rome Statute of the ICC in July 1998.

➔ The Rome Statute establishes jurisdiction of the ICC over individual members of an armed group; It defines "war crimes" to include, "serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949", and provides for

Points to remember (continued)

individual criminal responsibility for members of armed groups for acts that constitute crimes under the Statute.

➔ The ICC can exercise its jurisdiction when either (*a*) the State on the territory of which the conduct occurred is a party to the Rome Statute; OR (*b*) the State of which the accused person is a national is a party to the Statute.

➔ International law guides humanitarian negotiations by: (1) defining boundaries within which to seek agreement; (2) framing the legal obligations of armed groups; (3) identifying the substantive issues for negotiation; providing an entry point for discussion on these issues; (4) providing reference benchmarks for evaluation of options and monitoring implementation; and (5) providing incentives to armed groups to negotiate.

HUMANITARIAN POLICIES

➔ Humanitarian policies assist in translating and implementing humanitarian principles and legal provisions into an operational setting, generally focusing on a particular area of humanitarian action (e.g. guidelines on civil-military relations, IDPs).

➔ Humanitarian policies can guide humanitarian negotiations by broadening the range of options that parties to the negotiations can consider as a basis for agreement.

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4 Working Towards More Effective Negotiations

4.1 Overview

When humanitarian negotiations with armed groups are planned and carried out in an unstructured or *ad hoc* manner they increase the risk that:

1. these groups will attempt to play off humanitarian actors against each other;
2. the negotiations will result in sub-optimal agreements;
3. the armed group may be less willing to enter into negotiations and reach agreement in the future; and,
4. delivery of humanitarian protection and assistance to those in need will face increased constraints because of the factors listed above.

This chapter suggests practical steps for humanitarian organizations to guide and enhance their negotiations with armed groups. The guidelines presented here constitute a framework or template for a more structured, consistent approach to negotiations with armed groups. Humanitarian organizations can adapt this template to the particular negotiation or operational setting.

Moreover, the guidance presented here aims to increase the effectiveness of humanitarian negotiations with armed groups. More effective negotiations are those that achieve better humanitarian outcomes, optimize the time spent negotiating with armed groups, and build long-term relationships with armed groups.

These guidelines are presented across three phases of negotiation: **preparation**, **seeking agreement** and **implementation**. This chapter also briefly explores issues concerning the different modes of negotiation (direct, indirect, written, oral) and inter-cultural aspects of negotiation, concluding with suggested actions to be considered if the negotiations break down.

4.2 Three Phases of Humanitarian Negotiation: A Step-by-Step Guide

The approach to humanitarian negotiations with armed groups presented here consists of nine steps, spanning three phases of negotiation: **preparation**; **seeking agreement** and **implementation**. The first preparatory phase is undertaken by the humanitarian negotiators, while the second and third phases of negotiation require the participation of both the humanitarian and armed group parties to the negotiations.

Before presenting the three phases of humanitarian negotiation, this section provides some observations and guidance on making contact with the armed group.

4.2.1 Making Contact with the Armed Group and the Role of Intermediaries

During or following the preparation phase of negotiations, humanitarian organizations will need to initiate contact with the armed group. If contact has already been established for some other type of engagement, the organization can use existing modes of communication to express its interest in entering into a dialogue with the armed group on certain issues.

When there has not been prior contact with the armed group, initial contact is often best facilitated by intermediaries, especially if the humanitarian organization(s) seeking negotiations are not known to the armed group, or if they do not have a history of operational activities in the country/region. Intermediaries can include church representatives/groups, other humanitarian organizations with existing contacts with the group, community or tribal leaders, or business persons.

The use of intermediaries to initiate contact with armed groups as a precursor to humanitarian negotiations should be guided by the following considerations:

- It is important to establish the history and extent of the intermediary's interactions with the armed group, and (where possible) the perception of the intermediary in the eyes of the armed group;
- Ideally, the role of the intermediary at this early stage should be to facilitate the process of the negotiations, and not to begin discussions on the substance of the negotiations;

Case Study: Exploring Options for Initiating Contact with LRA in Northern Uganda on a Range of Humanitarian Issues

Excerpt from interview with UN Under-Secretary General for Humanitarian Affairs, Jan Egeland in November 2003:[35]

Q: Do you think that the Lord's Resistance Army (LRA) can be positively engaged in a process that could bring the conflict to a peaceful and permanent conclusion? If LRA leader Joseph Kony is unwilling to negotiate, what then?

A: There have been a number of initiatives in recent years and they have not borne fruition, for a variety of reasons, and certainly it is not within my mandate to suggest or initiate new political initiatives. However, through our humanitarian staff, we will try to reach out on humanitarian issues, such as humanitarian access, security for humanitarian operations and convoys, protection of civilian populations, and demobilization and reintegration of child soldiers. And it remains to be seen which channels we can use to send these messages to the LRA. We are already in full contact with the government. But as for the LRA, it is more difficult. However, we have been speaking to community leaders and others who have regular contact with them.

[35] UN Integrated Regional Information Network (IRIN) interview with UN Under-Secretary General Jan Egeland in Nairobi, 12 November 2003. *http://www.irinnews.org.*

- Intermediate church or community groups from the same religious or ethnic group as the armed group, or from the same region, can often more easily facilitate contact through shared affinities or mutual connections;
- Intermediaries that have had prior interactions with an armed group can be an extremely useful source of knowledge on the armed group and its negotiators.

4.2.2 Nine Steps for Humanitarian Negotiations

The nine steps presented here provide a generic framework which can be applied to humanitarian negotiations on a range of issues. This step-by-step approach is summarized in Figure 1 (see page 51).

	PREPARATION >>
Phase I	**Coordinate Approach, Decide on Strategy, and Gather Information**

1: Coordinate Approach With Humanitarian Partners

- Coordinate and liaise with humanitarian partners on overall approach to humanitarian negotiations with the armed group(s), including, for example, by pooling the negotiating interests of various agencies consistent with their mandates, or agreeing on mutually complementary sectoral negotiations.[36] [Section 2.5, "Humanitarian Partners in Negotiations"]
- From the outset, coordination of the approach to humanitarian negotiations should involve a humanitarian security advisor to ensure that the intended negotiation process is developed in accordance with the relevant security guidelines. [Section 1.5, "Humanitarian Negotiations and Staff Security Policies, Procedures"]
- Identify by consensus a senior-level, experienced lead negotiator. This will depend also on the approach to be taken (lead negotiating agency, pooling of agency interests, sectoral approach, etc.)

2: Decide on Objectives and Strategy

- Clearly identify the reasons for entering into negotiations and the desired outcome(s); Identify whether there are ways, other than through negotiation, to achieve the same outcomes. [Section 2.2, "Being Clear About Reasons for Negotiating"]
- Use humanitarian principles, policies and elements of international law outlined in Chapter 3 ("Framing the Negotiations") as the basis for identifying a "bottom line"

[36] These suggestions for a coordinated approach to humanitarian negotiations are drawn from the 2001 *Report of the UN Secretary-General on the Protection of Civilians in Armed Conflict*. United Nations Security Council, Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, UN Document ref. S/2001/331 (New York: United Nations, 30 March 2001).

Case Study: When Lack of a Common Position Among Humanitarian Agencies can be Detrimental

In dealing with the warring parties, humanitarian officials in Bosnia often failed to present a united front. On the contrary, they often undermined and contradicted each other. Approaches taken by different staff depended largely on which side of the front line they were based. For example, those based in Bosnian Serb areas were often far more sympathetic to the Serb positions than those in Bosnian government areas. Unfortunately, differing points of view on the way in which the humanitarian operation should be conducted were not reconciled. This led to inconsistency at the negotiating table and was invariably exploited by the warring parties.

Source: Based on interviews with UNHCR staff members.

— the least favorable option which humanitarian negotiators can still agree to, or the furthest extent of compromise possible — for reaching agreement;

- Ensure that the various humanitarian, development and human rights agencies have achieved consensus on the objectives of the negotiation.
- Consider possible alternatives to a negotiated agreement that could be pursued in the event that the negotiations are unsuccessful.

3: Learn About, Analyze Your Negotiating Partner

- Identify the main representatives/interlocutors from the armed group; If not a member of the senior leadership of the armed group, the designated interlocutor should be a representative of the armed group. Opportunistic local commanders may attempt to leverage their position within the armed group by promoting themselves as representing the senior leadership.
- Learn about the armed group's motivations; structure; principles of action; interests; constituency; needs; cultural and ethnic influences. Assess the level of control exerted by the armed group over a given population/territory. [Section 2.4, "Learning About the Armed Groups"]
- Use the worksheet included as an Annex to this manual to summarize the characteristics of the armed group. ["Annex I – Worksheet for Mapping Characteristics of Armed Groups"].

"Do not assume that the good assessment of the armed group that you have done in one place is automatically valid in another place, even just 40 or 50 kilometers away. Personalities, agendas and the balance of power within the armed group may change dramatically even over short distances."

(Quote from interview with UNICEF staff member)

Phase II — SEEKING AGREEMENT >> Process, Issues, Options, Outcomes

The next four steps in the process of negotiation are undertaken during the actual "face-to-face" interactions with the armed group.

4: Build Consensus on the Process of Negotiations

- As a precursor to discussing issues of substance, work to build consensus among all parties to the negotiation on how the process of negotiation should unfold. This could include, for example, agreement on the primary and alternate representatives from each party, the location to be used for the negotiations, the number of meetings to be held, enabling conditions for the negotiations (what each party will do to provide an environment conducive for negotiations).
- Agree on procedures for revising the process during the negotiations.

5: Identify the Issues

- Once there is agreement between the parties on the process of negotiation, work to identify the substantive issues to be discussed. Different parties may see the issues very differently. For example, in negotiations to facilitate better participation of girls in the post-primary education system, humanitarian and human rights organizations may view the issue as one of fulfilling the human rights of the girls, while a particular armed group may view it purely as a cultural or religious issue.
- Focus on the issues to be negotiated without casting judgment on the armed group's perspectives on the issue.

6: Develop Options

- Once the issues to be negotiated are agreed upon, develop options as the basis for possible agreement. Use humanitarian principles, international law and humanitarian policies both to assist in developing options and as criteria for evaluating the available options [Chapter 3, "Framing the Negotiations"].
- Humanitarian and armed group negotiators can develop options jointly by brainstorming ideas and identifying possible outcomes acceptable to both parties.
- Keep in mind that the options being developed should all be better—in terms of fulfilling the humanitarian objectives of the negotiations—than the alternatives considered in advance of the negotiations.[37]

[37] The work of Roger Fisher and colleagues identifies the concept of a BATNA or "Best Alternative to a Negotiated Agreement." If a negotiators BATNA is better than any of the options on the negotiating table, then the best route may be for the negotiator to turn to his/her BATNA. See: Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving* In 2nd Edition (New York: Penguin Books, 1991).

7: Work to Seek Agreement on the Option(s) that Best Meet Humanitarian Objectives

- Humanitarian negotiations differ from many other types of negotiations because the parties to the negotiations have different core interests: armed groups want to achieve certain political, economic or military objectives and humanitarian agencies want to protect and assist those in need. Some approaches to negotiation focus on solutions that maximize the interests of both parties. However, for humanitarian negotiators, the primary objective of the negotiations must be to arrive at the best humanitarian outcome, not necessarily to reach an outcome which best serves the interests of both parties.
- Humanitarian negotiators should evaluate options under consideration during the negotiations using criteria for determining likely humanitarian impact (for example, the indicators used to evaluate humanitarian program impact).

Phase III — **IMPLEMENTATION >>**
Define Criteria for Implementation, Follow-up

8: Define Criteria for Implementation

- Once an outcome or solution has been agreed upon by the humanitarian negotiators and the armed group, negotiations should focus on defining criteria for implementation of the outcome. Such criteria include: specification of roles and timeframe (who does what, when); reference benchmarks against which to measure implementation; safeguards for the safety and security of humanitarian workers; and procedures for resolution of disputes arising during the implementation (described in more detail in Section 6.4).

9: Follow-up: Monitoring and Relationship Building

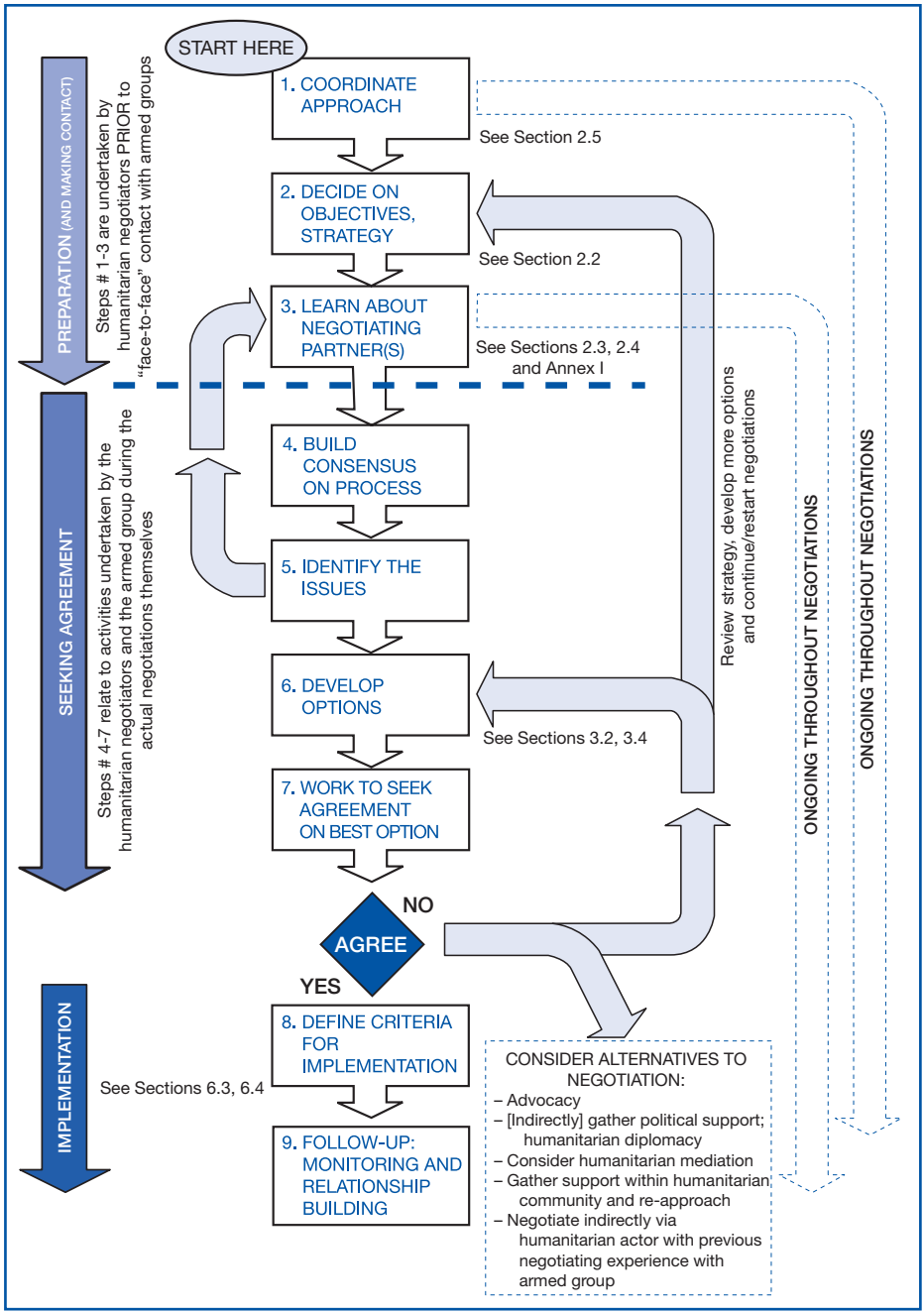
- Identify mechanisms to facilitate joint monitoring of implementation.
- Identify process-related actions that will help to maintain communications with the armed group, such as regular meetings to review implementation. These actions should aim to build on the relationship developed throughout negotiation.

4.3 Different Modes of Negotiation: Oral, Written, Direct, Indirect

Each instance of humanitarian negotiations requires consideration of the best approach (direct or indirect) and medium (oral or written) given the particular context. In many cases, a combination of approaches and media may be required.

To assist in deciding how best to employ these approaches and media, humanitarian negotiators should consider the following points.

Figure 1—Summary of 3 phases, 9 steps in humanitarian negotiations



4.3.1 Direct versus Indirect Negotiation

- Direct negotiation with the armed group helps to foster personal relationships that can assist in building consensus and securing agreement. Direct negotiation can help to build trust and respect between negotiating parties, and a strong relationship can bring personal commitment to ensuring implementation of an agreed outcome. In many instances, strong personal relationships can overcome differences on substantive issues.
- Indirect negotiations using an intermediary can leverage the negotiating experience and contacts of that intermediate organization, and can free up resources (such as personnel, logistics, time) within a delegating humanitarian organization to enable it to focus on other aspects of its humanitarian work.
- In using an intermediate negotiator (often called an "agent"), humanitarian organizations must ensure that the intermediary shares the humanitarian motivations, ethos and interests of the delegating organization. Intermediate agents bring their own interests to the negotiations, and the delegating agency must ensure that its interests are adequately represented in the negotiations.
- Building a relationship with the armed group and maintaining direct control of the negotiating strategy are two factors that suggest direct negotiations with armed groups are preferable to indirect negotiations. However, humanitarian organizations may wish to consider entering into indirect humanitarian negotiations when: (1) political or security concerns favor indirect negotiations with the armed group; (2) the intermediary humanitarian organization has ongoing negotiations/contacts with the armed groups and can effectively represent the organization's interests; and (3) the intermediary has experienced negotiators available to lead the process.

Case Study: Personal Relationships Can be a Double-Edged Sword

Personal relationships developed between humanitarian negotiators and their armed group counterparts can bring both advantages and disadvantages.

In Bosnia, some UN humanitarian agencies invested considerable time and energy in building relationships with local authorities and other groups. Because of the friendships that developed as a result of these interactions, in some cases humanitarian organizations became reluctant to challenge the authorities/groups as they otherwise might have; The value of future interactions shaped the extent to which the humanitarian agency would 'push' achieve a particular outcome.
(Source: Based on example provided by UNHCR.)

4.3.2 Oral and Written Communications

- Humanitarian negotiators can employ a combination of oral and written communications in advance of, during and following humanitarian negotiations. While written statements of negotiating process — for example, statements of intent (to negotiate)—may be useful

tools to keep the process of negotiations 'on track', the benefits of such agreements need to be balanced with the time investment required to jointly develop them, and to secure agreement on them with the armed group.

- Written communications bring significant added value when it comes to concluding an agreement. Many armed groups will be reluctant to 'sign on' to any written agreement. However, a written agreement has the potential to capture unambiguously the scope and objectives of the agreement; the obligations of each party; and mechanisms for implementation, dispute resolution and enforcement.
- Written agreements can also assist in communicating the substance of the agreed outcome to members of the armed group, to other armed groups and to other humanitarian partners.
- When drafting a written agreement two options present themselves: negotiators can either use a 'single text' method, or can compile a document working from two draft agreements that are developed separately by the parties. Using the 'single text' approach, the negotiating parties work together on a single text and include inputs and concerns simultaneously or sequentially. The benefit of a single text method is that it gathers the concerns/provisions of both parties in a single document, and allows for quick review of the provisions suggested by the other party.

Case Study: Benefits of Written Agreement in Somalia

Although Somali is basically not a written language, and the drafting and signing of agreements is not part of the tradition of the Somali people, humanitarian negotiators did manage in a few cases to have faction leaders sign up to written documents. Referring to those was very useful, particularly concerning the demand for taxes which kept coming back over and over again.
(Source: UNICEF.)

4.4 The Role of Culture in Humanitarian Negotiations

In the context of humanitarian negotiations, culture has been defined as *"the socially transmitted values, beliefs and symbols that are more or less shared by members of a social group."*[38] These values, beliefs and symbols, and their expression or utilization, can be powerful influencing factors in humanitarian negotiations.

Some of the facets of culture that can influence humanitarian negotiations with armed groups include:

- Differences in cultural norms regarding social and formal communications and conduct of meetings;

[38] Avruch, Kevin, "Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators," *Harvard Negotiation Law Review* 391 (Spring 2004).

- Differences in cultural perspectives on substantive issues being considered;
- Cultural precepts that may shape the behaviour of negotiating parties (bargaining; honor; commitment to an agreement, etc.);
- Cultural views of authority, gender and social standing;
- Disparities between cultural beliefs, customary law and international law.

> *"The Taliban are in fact the children of the Afghan countryside. A lot of their cultural and behavioural reflexes—their behaviour vis-á-vis women and children, for instance—are in fact archaic elements of a culture very deeply rooted in the society, and this was often overlooked by the Western negotiators."*
>
> (Quote from interview with UNICEF staff member)

To mitigate the potential for cultural influences and considerations to complicate humanitarian negotiations with armed groups, humanitarian negotiators should:

1. Learn about the cultural background of the armed group and armed group negotiator. Don't assume a particular cultural stereotype, as most parties come to the table with a variety of cultural influences, not only the most widely perceived or expected ones. Don't assume that the armed group knows your organization's cultural influences, either; exchange and share this type of information, rather than assuming it;
2. Be aware of cultural sensitivities associated with the process of negotiation. Don't expect the armed group to approach the process of negotiating with the same cultural viewpoint;
3. Identify possible areas of cultural differences that may impact on the substance of the negotiations. These differences may include, for example, cultural views on the role of women and children in society;
4. Be respectful of the other party's cultural perspectives without diminishing your humanitarian argument during the negotiation. Respecting the other party's perspective does not mean that the humanitarian negotiator has to agree with it, or let it override the humanitarian objectives of the negotiations;
5. Identify cultural similarities as a foundation for bridging cultural differences.

4.5 What to do if Negotiations Fail to Converge or if They Break Down

Clearly not all negotiations lead to an agreed outcome. Humanitarian negotiations may fail to converge on a shared perspective or agreed outcome, or may break down completely. This section provides guidance for humanitarian negotiators in such situations.

Review Strategy, Confirm Issues and Develop More Options

When the negotiations fail to converge, humanitarian negotiators should re-assess the strategy being used. Perhaps a different line of argument or a more forceful expression of the legal obligations of the armed group is required. Humanitarian negotiators should also confirm with the armed group that the issues have not changed during the negotiations. Development of more options for both parties to consider may also provide new space for agreement.

Case Study: Persistence by Operation Lifeline Sudan (OLS) in humanitarian negotiations pays off.

"In September 1997, for the first time in the history of OLS, both the Government of Sudan and the SPLA agreed, in principle, to allow OLS to access rebel-controlled areas of the Nuba Mountains. However, negotiations on access modalities halted in November. Despite this setback, OLS continued to push both sides to reach agreement on a means for OLS to assess the needs of the populations in the area. The UN was finally able to send an inter-agency assessment team in the Nuba mountains mid-2000."
(Source: WFP.)

Keep Open Alternatives on Substance

Even before entering into negotiations, humanitarian actors should consider what alternatives are available to their organization in the event that the negotiations are unsuccessful in fulfilling the desired objectives, or collapse completely. These may not be good alternatives, but they must be considered.

Try Building on the Process

If the negotiations reach an impasse on the substantive issues being discussed, humanitarian negotiators can suggest changes in the negotiation *process* that may provide some space for additional consideration of the substance by the armed group. Continuing with the process provides additional opportunities for dialogue during which the substantive issues might be resolved.

Explore Alternative Approaches to Negotiations and Engagement

In the event that negotiations with the armed groups collapse, humanitarian negotiators should consider alternative approaches to achieve the desired humanitarian outcome, or to bring about an environment more conducive to successful humanitarian negotiations. These process alternatives include:

- Working indirectly through UN political representatives to gather political support—in the country, and externally—for the humanitarian negotiations;
- Indirect negotiation through an intermediary with previous or ongoing contacts with the armed group;

- Making renewed approaches to more senior leaders in the armed group;
- Gathering broader support for humanitarian negotiations within the humanitarian community in the country/region, and conducting negotiations through a coalition of humanitarian organizations; and
- Engaging in public and/or private advocacy efforts to influence the armed group and its supporters.

Don't Burn Bridges

When negotiations fail to converge or if they break down completely, it is important that humanitarian negotiators do not make any statements or take actions that could preclude future negotiations or interactions with the armed group.

Reinforce Lines of Communication

Even if negotiations threaten to break down completely, humanitarian negotiators should keep open and indeed reinforce lines of communication between the parties. It is precisely when negotiations are not going well, that lines of communication need to be maintained.

4.6 Linkages Across Different Levels of Negotiation with Armed Groups

Humanitarian negotiations with armed groups can take place at global, regional, national and local levels. The guidance provided in this chapter is applicable to all these levels of negotiation. However, humanitarian negotiators should be aware of the opportunities to leverage ongoing negotiations and existing agreements at other levels, or in other contexts, to assist in securing an agreed outcome.

A good example of the potential for leveraging the linkages between global and local level negotiations/agreements lies in the *Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and For Cooperation in Mine Action*.[39] The *Deed of Commitment* is a mechanism developed by the NGO Geneva Call to engage armed groups in an agreement to prohibit them from using, manufacturing, stockpiling, or transferring anti-personnel landmines. As of December 2004, 26 armed groups had signed the Deed of Commitment. This instrument, once signed by an armed group, is deposited with the Government of the Canton of Geneva. It includes in its preamble:

> *"Accepting that international humanitarian law and human rights apply to and oblige all parties to armed conflicts;*
>
> *Reaffirming our determination to protect the civilian population from the effects or dangers of military actions, and to respect their rights to life, to human dignity, and to development;"*

[39] Geneva Call, *Deed of Commitment Under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action* (Geneva: Geneva Call [undated]) Available at: *http://www.genevacall.org.*

Armed groups that have signed the *Deed of Commitment* have therefore recognized the relevant provisions of international humanitarian and human rights law. Knowledge of this type of recognition can assist humanitarian organizations in approaching the armed group for negotiations on other humanitarian issues.

Moreover, issue-specific agreements such as the *Deed of Commitment* can provide a basis for negotiating similar agreements with the armed group. Once armed groups have been engaged in the process of entering into an agreement, and have developed a sense of ownership of the agreement and the process, it is more likely that they will enter into negotiations on other humanitarian issues, potentially using similar mechanisms or processes.

Points to Remember—Working Towards More Effective Negotiations

NINE STEPS ACROSS THREE PHASES OF NEGOTIATION (Figure 1)

PREPARATION >>

1. Coordinate Approach With Humanitarian Partners
2. Decide on Objectives and Strategy
3. Learn About, Analyze Your Negotiating Partner

SEEKING AGREEMENT >>

4. Build Consensus on the Process of Negotiations
5. Identify the Issues
6. Develop Options
7. Work to Seek Agreement on the Option(s) that Best Meet the Humanitarian Objectives

IMPLEMENTATION >>

8. Define Criteria for Implementation
9. Follow-up: Monitoring and Relationship Building

MODES OF NEGOTIATION: DIRECT, INDIRECT

- ➔ Direct negotiation with the armed group helps to foster personal relationships between negotiators that can assist in building consensus and securing agreement; can bring personal commitment to ensuring implementation of an agreed outcome.
- ➔ Indirect negotiations using an intermediary can leverage the negotiating experiences and contacts of that intermediate organization, and can free up resources (personnel, logistics, time) within a delegating humanitarian organization to enable it to focus on other aspects of its humanitarian work.
- ➔ Considerations of whether and when to enter into indirect negotiations should include: (1) political or security concerns dictate indirect negotiations with the armed group; (2) the intermediary humanitarian organization has ongoing negotiations/contacts with the armed groups and can effectively represent the organization's interests; and (3) the intermediary organization has experienced negotiators available to lead the process.

WHAT TO DO IF NEGOTIATIONS FAIL TO CONVERGE OR BREAK DOWN

- ➔ Review Strategy, Confirm Issues and Develop More Options
- ➔ Keep Open Alternatives on SUBSTANCE

Points to Remember (continued)

- ➔ Try Building on the Existing Process
- ➔ Explore Alternatives to PROCESS
- ➔ Don't Burn Bridges
- ➔ Reinforce Lines of Communication

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5 Negotiating on Specific Issues

5.1 Overview

Humanitarian negotiations frequently involve several humanitarian issues in the same round of negotiations. For example, securing humanitarian access, ensuring respect for international law, and establishing ground rules for provision of assistance and protection may all need to be negotiated simultaneously with an armed group. The many substantive areas for negotiation (some of which were listed previously in Section 2.2) span the two inter-related dimensions of humanitarian action: assistance and protection.

This chapter identifies some of the ways in which these two dimensions of humanitarian action can influence humanitarian negotiations. Guidance is also provided for three specific areas of negotiation: (i) ground rules for humanitarian action; (ii) securing humanitarian access; and (iii) protection of civilians in accordance with international law. This more specific guidance supplements the generic guidance provided in Chapter 4.

Because humanitarian negotiations can feature several of these individual subject areas, the guidance presented here should not be viewed in isolation. For a multi-faceted negotiation, humanitarian negotiators will need to amalgamate the guidance provided for the individual issues.

5.2 Negotiation and the Two Dimensions of Humanitarian Action

In recent years, the IASC and the United Nations have focused increased attention on the duality of humanitarian assistance and protection, and the need to better integrate these two complementary areas of humanitarian action.[40] The IASC has used the following working definition of protection in its recent policy documents:[41]

> *"[encompassing] all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. international human rights law, international humanitarian law, refugee law)."*

[40] For example, in relation to Internally Displaced Persons, the IASC acknowledged the importance of "*an agreed, comprehensive strategy for linking protection of, and assistance to internally displaced persons*," and the IASC identified strategic areas to integrate protection features into operations response. See: Inter-Agency Standing Committee (IASC), *Protection of Internally Displaced Persons*, IASC Policy Paper (New York: Inter-Agency Standing Committee, 1999). United Nations policy documents have also increasingly highlighted assistance and protection as two dimensions of humanitarian action. See, for example: United Nations General Assembly, Economic and Social Council, *Strengthening the Coordination of Emergency Humanitarian Assistance of the United Nations*, UN Document Ref. A/58/89 (New York: United Nations, 3 June 2003) : para. 4.

[41] See, for example: Inter-Agency Standing Committee, *Implementing the Collaborative Response to Situations of Internal Displacement*. Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams (Geneva/New York: IASC, September 2004): Annex 3.

While there is recognition of the need to integrate these two dimensions, there is also recognition of the different characteristics of each element:

- Provision of humanitarian assistance is viewed as act of substitution on behalf of the host-country government or other authorities, the objective of which is to provide goods and services to meet the core physical, psychological and socio-economic needs of the target group;
- Humanitarian activities focusing on protection aim to ensure that the rights of the individual, as specified in international law, are fully respected by those in a position to exert influence or control over the individual (armed group, host government, etc.).

It is useful to keep these two dimensions of humanitarian actions in mind when approaching humanitarian negotiations, as each of the two components will have implications for the negotiations:

- Protection focuses on ensuring respect for the rights of the individual in accordance with international law; therefore, negotiations on issues of protection will revolve around securing agreement with the armed group to ensure its behaviour is consistent with the group's obligations under international law. In these situations, the humanitarian negotiators have little scope to maneuver or compromise; the boundaries for negotiation are formed by international law (outlined in Section 3.3);
- In preparation for negotiations on issues of protection, therefore, humanitarian negotiators should identify the elements of international law that relate most directly to the particular context. For example, negotiations on protection of children from forced induction into armed groups should take into consideration elements of international law relevant to that specific issue. Humanitarian negotiators should be prepared to use these elements to frame the negotiations (see Section 3.3);
- In negotiations focusing on issues of provision of humanitarian assistance, operational issues feature more prominently in the negotiations. Because the humanitarian organization will be the party delivering the assistance, the objective of the negotiations will often be to secure agreement from the armed group to permit, or at least not obstruct, the provision of that assistance;
- Depending on whether the primary focus of the negotiations is protection or assistance, the role of the humanitarian and armed group parties in implementing any agreed outcome will change. For negotiations on issues of protection there is often a positive obligation on the armed group to take action. For assistance-related negotiations the primary provider of assistance will be the humanitarian organization; the role of the armed group will be to facilitate that assistance.

Case Study: Protection Activities and Humanitarian Negotiations

In Bosnia during the early- to mid-1990s, in spite of the restrictions on freedom of movement and limited access to vulnerable communities, UNHCR did manage to provide numerous reports on ethnic cleansing, harassment of minorities, evictions, expulsions and human rights abuses in general.

These reports provided vital information, particularly since journalists were barred from large parts of Bosnian Serb territory for most of the war. These reports, as well as public denunciations made by UNHCR officials against those committing atrocities, naturally strained relations with the warring parties concerned, complicating negotiations over access and potentially jeopardizing ongoing assistance programmes. It was difficult for staff to cooperate with local authorities while at the same time condemning them over human rights abuses.

(Source: Based on interviews with UNHCR staff.)

5.3 Negotiating Ground Rules for Humanitarian Action

The first of the three specific areas for humanitarian negotiation is the development of common operational guidelines for provision of humanitarian assistance and protection. These common guidelines have been adopted for specific complex emergencies, and have been codified in what are commonly referred to as *Ground Rules* documents. *Ground Rules* agreements generally fall into two categories, depending on the intended target audience for the guidelines:

I. *Ground Rules* for **multiple humanitarian organizations** themselves, or for **humanitarian organizations and host/third-party** national governments. Examples of these types of agreements, include: United Nations Principles of Engagement for Emergency Humanitarian Assistance in the Democratic Republic of the Congo (1998); United Nations Operational Criteria for the Implementation of Humanitarian Assistance Programs in Angola (1999) and the previously proposed Memorandum of Understanding between the United Nations and the Russian Government (concerning the Republics of Chechyna, Dagestan and Ingushetia).

II. *Ground Rules* for **humanitarian organizations and armed groups**. An example of this type of agreement is that between the Sudan People's Liberation Movement/Army (SPLM) and Operation Lifeline Sudan (OLS).

The first category of *Ground Rules* agreements frequently includes statement of core humanitarian principles and agreements between humanitarian actors. Some of these agreements have also identified the parameters for entering into negotiations with armed groups. In the past, the UN Office for the Coordination of Humanitarian Affairs (OCHA) has prepared this kind of guidance on behalf of the IASC to assist UN Country Teams in defining

common ground rules for UN activities in specific countries, and to facilitate negotiations with national and local authorities on acceptance of humanitarian principles.[42]

The guidance provided in this manual can provide useful input for the sections of these ground rules documents dealing with humanitarian negotiations with armed groups.

It is the second category of *Ground Rules* — those negotiated and agreed between humanitarian organizations and armed groups — that is the focus of this section. Negotiating an agreed set of ground rules with an armed group(s) can provide the basis for subsequent agreement on a range of issues related to provision of humanitarian assistance and protection.

For negotiation of *Ground Rules* between humanitarian actors and armed groups, the following points should be kept in mind:

1. Humanitarian negotiators should be clear about the purpose and scope of any *Ground Rules* to be agreed with an armed group;
2. Any common *Ground Rules* should be based on principles agreed in advance by the participating humanitarian organizations;
3. Agreement on *Ground Rules* does not infer or accord legitimacy to the armed group;
4. Based on existing guidance (e.g. OCHA guidance mentioned above), humanitarian negotiators can draft **an outline** of the ground rules prior to negotiations (see below); Humanitarian agencies should take care, however, not to present a completed set of *Ground Rules* to the armed group as a *fait accompli*.

Previous agreements on ground rules agreed between humanitarian organizations and an armed group point to a number of elements that should be included in these types of agreements, which generally emerge as written agreements signed by two or more parties.

Elements of a ground rules agreement could include, for example:

Purpose and Scope: objective of the *Ground Rules* | listing of participants/signatories | scope (what do the agreed rules cover?) and duration (are the rules time limited?) | statement of mutual interests

Guiding Instruments: applicable elements of International Humanitarian Law (IHL), International Human Rights Law (IHRL) | statement of recognition for these elements of IHL, IHRL | obligations of parties to the agreement

Humanitarian Principles: statement and recognition of core humanitarian principles | statement of relevant humanitarian policies

Definition of Operational Principles: operating guidelines for issues to be covered by agreement, including some/all of: identification of humanitarian workers, vehicles and property; free passage of humanitarian workers; tolls, rents and taxes;

[42] See, for example: Inter-Agency Standing Committee (IASC), *Guidance for the Development of Common UN Ground Rules Based on Agreed Principles*, paper prepared by OCHA for the XXXIVth meeting of the Inter-Agency Standing Committee Working Group held in Geneva, 19 November 1998 (Geneva: IASC Secretariat, 1998).

Implementation: criteria for evaluating and monitoring implementation | obligations of both parties to ensure implementation | the process of implementation

Dispute Resolution: stipulation of dispute resolution mechanisms

5.4 Negotiating Humanitarian Access

One of the most common reasons for humanitarian organizations entering into negotiations with armed groups is to secure access to provide assistance and protection to those in need. Negotiations with armed groups on humanitarian access face additional challenges that may not be present when humanitarian organizations negotiate with other actors (host governments, for example) on the same issue. These challenges include the following:

- Because armed groups generally do not have sovereign control over an internationally-recognized territory, the **regulation of access to populations or territory controlled by these groups often represents an expression of authority** by the group.
- **It may be difficult to identify, at the outset, the mechanisms of access** (now many convoys, locations, etc.) that will be required to meet humanitarian needs.
- Negotiations with armed groups on issues of access **may lead others to believe that the humanitarian organization is recognizing the authority of the group** in a certain territory.
- Because the need for humanitarian access to those in need is often most acute when conflict is most intense, **identification of armed group interlocutors and negotiation of transit routes can prove very difficult** and include security risks for all parties involved.

To assist in securing humanitarian access through negotiation with an armed group, and to overcome the challenges outlined above, humanitarian organizations should keep in mind the following points:

1. When entering into humanitarian negotiations with the armed group, the humanitarian organization should present the issue of access as one of access to **meet the humanitarian needs of a population**, rather than access to a **particular territory**; Access should be needs-driven, rather than territory-specific;
2. Humanitarian organizations should approach the negotiations with a **set of working principles of humanitarian access** to guide the dialogue on the mechanics of access. Suggested 'working principles of access', derived from the core principles of humanitarian action and international law (Chapter 3), are presented in Table 4;
3. Humanitarian negotiators should make it clear to the armed group, and to external parties, that the **access negotiations do not confer recognition** by the humanitarian organization of the armed group or of its control over a population or territory;
4. In situations where the humanitarian needs of the population to be accessed are not precisely known, the early stages of the negotiations could usefully focus on an **assessment mission** to determine more precisely humanitarian needs;

5. Access negotiations should include consideration of: (i) **logistics** associated with access routes and convoys (when, where, how); (ii) **liaison arrangements** to ensure free passage to reach the intended beneficiaries (through roadblocks etc.); (iii) the need for both parties to **communicate agreed access procedures** within their organizations.

Table 4
Suggested working principles of humanitarian access to guide negotiations with armed groups

Working principle of humanitarian access	Description
Humanity and Impartiality	➔ Humanitarian access is an essential prerequisite to and enabler of humanitarian assistance; ➔ For humanitarian organizations, humanitarian access serves to identify and address essential needs of all the civilian population, with particular attention to the most vulnerable in the population; ➔ Humanitarian access must be facilitated for the purposes of delivering humanitarian assistance, protection in an impartial manner.
Obligation to ensure humanitarian access under international law [43]	➔ Armed groups must allow and facilitate unimpeded passage of humanitarian relief to civilians in need; ➔ Where demonstrated humanitarian needs exist, armed groups must facilitate the freedom of movement of authorized, impartial humanitarian relief personnel;
Effectiveness	➔ The effectiveness of humanitarian access is measured by the degree to which access facilitates delivery of humanitarian assistance;
Transparency	➔ A key aspect of this efficiency is the use of clearly-defined and traceable procedures and decision-making processes on the part of the armed group and the humanitarian organization;
Sustainability	➔ Humanitarian access must be facilitated with a view to sustaining humanitarian assistance and protection activities to address humanitarian needs for as long as they persist;
Accountability	➔ Failure to ensure the passage of essential goods, services and personnel, constitutes a breach of international law;

[43] The two points relating to the obligation of armed groups to ensure humanitarian access are drawn from customary international humanitarian law. See, for example, Rules 53-56 presented in the ICRC Study on Customary International Humanitarian Law published in March 2005 (referenced in Section 3.3).

5.5 Protection of Civilians in Accordance with International Law

The protection of civilians is enshrined in international humanitarian law (for international and non-international armed conflicts), customary international humanitarian law (international and non-international armed conflicts), international human rights law (applicable in times of peace and conflict); and humanitarian principles and policies. The relevant elements of international law and humanitarian principles, polices are presented in Section 3.3.

In the context of humanitarian negotiations with armed groups, negotiations on the protection of civilians focus on three inter-connected areas: (1) protection for those civilians under the influence or control of the armed group; (2) the armed group's obligations to protect those civilians; and (3) the role of humanitarian organizations in ensuring protection of those civilians. In addition to the armed group, other actors, including the State in which the civilians are located, have obligations to protect the civilians.

It should be clear to the humanitarian negotiators that the protections afforded to civilians cannot be negotiated; what can be negotiated are the approaches and strategies by which the armed group and the humanitarian organization can work to ensure the protections afforded to civilians are operationalized.

When negotiating with armed groups to ensure protection of civilians, humanitarian negotiations should consider the following points:

1. Members of the armed group may not be aware of their obligations to protect civilians, nor of the legal mechanisms that can hold them accountable for failure to protect civilians or for causing harm to civilians. Part of the process of negotiation, therefore, should focus on raising awareness among members of the armed group regarding the need for civilians to be protected in armed conflicts and the armed groups obligations in this regard;
2. Since the actual protections themselves (legal provisions, etc.) cannot be negotiated, humanitarian negotiators should attempt to demonstrate to the armed group,, using a persuasive approach to negotiation that it is also in their interest to ensure the protection of civilians;
3. Humanitarian negotiators should generate options (e.g. by brainstorming within their own organizations, and with the armed group negotiators) for consideration that can lead to enhanced protection of civilians. The options will depend on the particular context, but could include, for example, agreement on procedures to register and arrange for appropriate care of orphaned children in areas controlled by the armed group; agreement by the armed group not to engage in abduction and sexual exploitation of girls;
4. Even though the armed group is not a party to the international human rights treaties, the human rights themselves can provide a basis for discussion with armed groups on the type and scope of protections that need to be afforded to civilians.

Points to Remember—Negotiating on Specific Issues

NEGOTIATION AND THE TWO DIMENSIONS OF HUMANITARIAN ACTION

- ➔ Negotiations on issues of protection will revolve around securing agreement with the armed group to ensure its behaviour is consistent with the group's obligations under international law. In preparation for negotiations, humanitarian negotiators should identify the elements of international law that relate most directly to the particular context.
- ➔ In negotiations focusing on issues of provision of humanitarian assistance, operational issues feature more prominently in the negotiations.
- ➔ Depending on the primary focus of the negotiations (protection or assistance), the roles of the parties in implementing any agreed outcome will change.

NEGOTIATING GROUND RULES FOR HUMANITARIAN ACTION

- ➔ Humanitarian negotiators should be clear about the purpose and scope of any ground rules to be agreed with an armed group.
- ➔ Any common ground rules should be based on principles agreed in advance by the participating humanitarian organizations.
- ➔ Agreement on ground rules does not infer or accord legitimacy to the armed group.
- ➔ Based on existing guidance, humanitarian negotiators can draft an outline of the ground rules prior to negotiations (See Table 4).

NEGOTIATING HUMANITARIAN ACCESS

- ➔ Humanitarian negotiators should present the issue of access as one of access to meet the humanitarian needs of a population, rather than access to a particular territory.
- ➔ Humanitarian organizations should approach the negotiations with a set of working principles of humanitarian access to guide the dialogue on the mechanics of access.
- ➔ Humanitarian negotiators should make it clear to the armed group, and to parties external to the negotiations, that the access negotiations do not confer recognition by the humanitarian organization of the armed group or its control over a population or territory.
- ➔ In situations where the humanitarian needs of the population to be accessed are not precisely known, the early stages of the negotiations could usefully focus on an assessment mission to determine more precisely humanitarian needs.
- ➔ Access negotiations should include consideration of: (i) logistics; (ii) liaison arrangements; (iii) need to communicate agreed access procedures within organizations.

Points to Remember (continued)

PROTECTION OF CIVILIANS IN ACCORDANCE WITH INTERNATIONAL LAW

- ➔ Humanitarian negotiators should raise awareness among members of the armed group on the need of civilians to be protected in armed conflicts.
- ➔ Since the actual protections themselves cannot be negotiated, humanitarian negotiators should attempt to demonstrate (using a persuasive approach to negotiation) to the armed group that it is also in their interest to ensure the protection of civilians.
- ➔ Humanitarian negotiators should generate options for consideration that can lead to enhanced protection of civilians.
- ➔ Even though the armed group is not a party to the international human rights treaties, the human rights themselves can provide a basis for discussion with armed groups on the type and scope of protections that need to be afforded to civilians.

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6 So You're Negotiating … Now What?

6.1 Overview

Getting to the negotiation table and actually having an ongoing dialogue with armed groups are sometimes wrongly viewed as the primary measures of successful negotiations, especially because of the challenges involved in initiating the dialogue in the first place.

Of course these steps are crucial, however, the primary objective of the negotiations should be: to work, over time, towards an agreed outcome that will ensure provision of protection and assistance to those in need; preserve humanitarian space; and promote respect for international law. In pursuit of these objectives, the *process* of negotiation itself can have important 'spin off' effects in terms of building a relationship with the armed group which may help fulfill additional humanitarian objectives, separate from those being negotiated.

This chapter outlines some of the issues to be considered by humanitarian negotiators once negotiations are underway or have concluded, including: the implications of humanitarian negotiations with armed groups; commitment to, and enforcement of, any agreed outcome; and defining measures of success.

6.2 Possible Implications of Humanitarian Negotiations with Armed Groups

In addition to their intended positive humanitarian impacts, humanitarian negotiations can have unintended or unanticipated consequences for humanitarian organizations; the armed groups; and third-party stakeholders (for example, those the humanitarian actors seek to assist).

Some *possible* implications of humanitarian negotiations with armed groups, and suggestions for how to mitigate these consequences, include:

1. **Changes in perceived neutrality and impartiality of humanitarian actors engaged in negotiations:**

   Humanitarian negotiations with armed groups can generate or reinforce a perception by other armed groups, the host government, and/or other States that the humanitarian organization is biased or lacking impartiality.

   To mitigate this negative perception, humanitarian actors must clearly communicate the objectives and the scope of the negotiations with armed groups, and must communicate and negotiate with all parties to a given conflict. Humanitarian agencies must make it explicitly clear that the negotiations: (i) are focused solely on humanitarian issues; (ii) are not a substitute for political negotiations; and (iii) do not confer legitimacy or recognition on the armed group.

2. Impacts on humanitarian security:

The very act of entering into negotiations with an armed group can have potentially serious consequences for the security of the negotiators themselves, colleagues in the parent and/or other humanitarian organizations, and the populations the humanitarian actors serve. The security risks associated with humanitarian negotiations should be assessed prior to entering into negotiations. Negotiators can draw on the experience of qualified field security officers and knowledge of the armed group's tactics and previous approaches to negotiating with humanitarian organizations.

Physical security risks can be mitigated to some extent by meeting with the armed group in a neutral location/venue; by requesting security guarantees from the armed group prior to entering into negotiations; and by ensuring that all necessary parties are informed of the humanitarian negotiations (e.g. the host country government should be informed of humanitarian negotiations with armed groups).

3. Third-party influence and 'sanctions' on humanitarian negotiators:

Parties external to the humanitarian negotiations may attempt to exert pressure on the humanitarian organization to limit or cease contacts with armed groups, or may attempt to influence the humanitarian negotiations in pursuit of political objectives. Host country governments, third-party States and regional organizations, among others, may seek to apply pressure or otherwise sanction the humanitarian organization negotiating with an armed group.

Host country governments may see the contacts between humanitarian organizations and armed groups as legitimizing the armed group, or as recognizing *de facto* territorial control exerted by the armed group. When some armed groups are labeled as "terrorist" groups by a State or States, there may be added pressure, including restrictions to funds or potentially legal sanctions through national judicial courts, to refrain from negotiating with the armed group.[44]

Attempts to constrain or limit the scope of action of humanitarian organizations in negotiations with armed groups can be mitigated to some degree by:

- Engaging in parallel advocacy efforts and bilateral humanitarian diplomacy with regional organizations, the host country government, and neighbouring States to gain support for the humanitarian negotiations. These efforts may be best undertaken by a political delegate representing the United Nations in the country (e.g. Special Representative of the Secretary-General).

[44] This point was highlighted in the 2004 Report of the UN Secretary-General on the Protection of Civilians in Armed Conflict: *"The designation of certain non-State armed groups as terrorist organizations has had an adverse impact on opportunities for humanitarian negotiations. The prohibition on dialogue with armed groups in Colombia, for example, has resulted in severe restrictions on access to populations in need." See: United Nations Security Council, Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, UN Document ref. S/2004/431 (New York: United Nations, 28 May 2004): Paragraph 41.

- Ensuring that the objectives and process of negotiating with the armed group are effectively communicated to those actors that may seek to exert pressure to constrain the negotiations.
- [For the host country government in particular] presenting the humanitarian negotiations as a necessary component of humanitarian action. For UN agencies, humanitarian negotiations with armed groups have been recognized by the UN General Assembly as a legitimate and appropriate approach to securing humanitarian outcomes. This role may need to be highlighted in interactions with the host country government on the issue of humanitarian negotiations with armed groups.[45]
- Building consensus and support across humanitarian organizations active in the country/region on the need for humanitarian negotiations with an armed group.

Finally, if negotiating with an armed group is deemed a humanitarian necessity, then the designation of that group as a "terrorist" group by some States or institutions should not automatically preclude negotiations with the group.[46] As with negotiations with all armed groups, negotiations with those that employ terror tactics must focus solely on humanitarian issues and not on the political demands or aspirations of the armed group.

6.3 After Negotiations: Commitment to the Agreement

When humanitarian negotiations lead to an agreed outcome (formal or informal) between the humanitarian organization(s) and the armed group, it is imperative to secure the commitment of the armed group to implement the agreement. The following points suggest ways in which commitment to implementation of an agreed outcome can be secured or enhanced.

- **Ensuring 'Buy In' and Ownership** — One of the best ways in which to secure commitment to implementation of an agreed outcome is to ensure that all parties feel a sense of ownership of the final agreement. It is important to get the 'buy in' of all stakeholders, including those that may not be represented directly at the negotiating table. Even during the negotiations, the negotiators should take the time to 'sell' the process and potential agreed outcomes to their organizations and constituencies.
- **Clear Statement of Implementation Roles**—Any agreement arising from the humanitarian negotiations, be it oral or written, should include a clear statement of the roles of each negotiating party, and other third parties, in implementing the agreement. An armed group will be more likely to commit to an agreement if there is a clearly-identified set of actions for the group in implementing the agreement.
- **Emphasizing Accountability**—Humanitarian negotiators should not shy away from communicating the legal duties and obligations of the armed group, both during the

[45] See, for example, UN General Assembly resolution 46/182 (19 December 1991): Paragraph 35.

[46] Criteria for adopting a more cautions approach to humanitarian negotiations with particular groups are outlined in Section 2.2.

negotiations and once/if an agreement has been reached. Armed groups may have more commitment to implementing an agreement if they feel that by not doing so they may be held accountable under the relevant legal regimes (See Section 3.3). For example, the written 'Ground Rules' Agreement reached between Operation Lifeline Sudan (OLS) and SPLM/A in 1995 included an explicit statement of "support" for the UN Convention on the Rights of the Child (CRC, 1989) and the Geneva Conventions of 1949. This recognition of support for the Conventions infers recognition of the duties and obligations of the armed group.

- **Including All Parties in Monitoring of Implementation** — Armed groups may feel more committed to the implementation of an agreed outcome if they play a role in monitoring the implementation of the agreement. Joint monitoring mechanisms can include, for example: regular monitoring meetings between representatives of the armed group and of the humanitarian organizations (at various levels within the respective organizations); planned simultaneous (humanitarian organization–armed group) visits to sites/access routes features in the agreed outcome (e.g. an IDP camp; or a particular village within the area controlled by the armed group).

6.4 Enforcement and Dealing with Non-Compliance

Any agreed outcome reached during humanitarian negotiations should include methods of enforcement of the agreement and dispute resolution mechanisms. Moreover, humanitarian negotiations should consider the options available to their organizations in the event of non-compliance with the agreement on the part of the armed group.

6.4.1 Enforcement

Enforcing the provisions of an agreement reached between humanitarian actors and an armed group can generally be undertaken by coercing or providing incentives to the armed group. Humanitarian organizations are not well placed to apply coercive pressure to armed groups to enforce the provisions of an agreement. However, other third party States, regional organizations or UN peacekeeping/peace-enforcement troops can assist in applying graduated diplomatic or other pressure to ensure that the agreement is enforced.

Through persuasion and persistence, humanitarian organizations can continue negotiating with the armed group on issues related to enforcement of the agreement, highlighting the legal obligations of the armed group, and the accountability mechanisms under international law (See Section 3.3).

6.4.2 Dispute Resolution Mechanisms

Mechanisms to resolve disputes associated with implementation of an agreement should be identified by the humanitarian organization and the armed group during the negotiations, and

should be incorporated into the provisions of any oral or written agreement. As a starting point for resolving disputes, the humanitarian organization(s) and armed group(s) should undertake to document any disputed issues as a starting point for seeking resolution of the issue concerned. Possible dispute resolution mechanisms could include, for example:

- Establishment of an **implementation monitoring commission** to include representatives from the armed group and humanitarian organizations which would consider, and attempt to resolve by consensus, any disputed issues associated with implementation of an agreement.
- Appointment of a **neutral mediator** to assist the parties in resolving disputes.
- Referral of disputed provisions to an **independent, non-binding arbitration mechanism**; a neutral organization not participating in the negotiations could arbitrate on disputed aspects of an agreement. For humanitarian organizations, it should be made clear that any solution arising from arbitration would have to be in coherence with the intent of the original agreement, and would further need to satisfy the humanitarian principles, humanitarian policies and the relevant provisions of international law (See Chapter 3).

6.4.3 Dealing with Non-Compliance

When an armed group fails to comply with the provisions they agreed to implement, and when enforcement actions fail, the humanitarian organization may need to consider one or more courses of action:

- Enter into a **further series of negotiations** with the armed group to arrive at an agreed outcome which may resolve the issues of non-compliance arising from the original agreement;
- [As in the case of enforcement (see above)] Identify and engage (directly or indirectly) third party States, regional organizations or UN/donor State political representatives, in **advocacy and humanitarian diplomacy** to get these actors to apply pressure (diplomatic, other) to the armed group to comply with the agreement.
- If non-compliance with the agreement results in an operating environment which compromises humanitarian security; consider, as a last resort, **suspension of humanitarian activities** until such time as a conducive humanitarian operating environment is re-established.

6.5 Measuring Effectiveness of Humanitarian Negotiations

By measuring the effectiveness of humanitarian negotiations, humanitarian actors can learn from ongoing and past interactions with armed groups, and can better prepare for future negotiations. Self-evaluation by the humanitarian negotiators themselves and their parent

organization(s) can highlight what worked, what didn't work, and what could have been done differently.

Case Study: Humanitarians' Views of Factors Influencing Success/ Failure of Negotiations in Angola between 1998 and 2001

These factors were identified by humanitarians working in Angola through a series of interviews in Luanda (November and December 2001).[47]

Structural Factors ➔ *(1) Existence of framework agreements; (2) level of national social engagement and commitment to humanitarian values; (3) institutional (un)certainty; (4) level of international political engagement;*

Organizational Factors ➔ *(1) institutional credibility; (2) organizational mandate; (3) level of institutional autonomy; (4) organizational resources, technical expertise and capacity;*

Individual Factors ➔ *(1) local/cultural knowledge; (2) extent of negotiation preparation; (3) organizational seniority of humanitarian negotiators; (4) negotiating skill level.*

Very often, humanitarian negotiators will not have the time available to undertake extensive lessons learned studies in the field. In such cases, the following guidance points may assist humanitarian agencies in measuring the effectiveness and success of their negotiations with armed groups:

- Humanitarian negotiators should debrief following each negotiation encounter to assess progress towards achieving the humanitarian objectives that necessitated the negotiations in the first place. Negotiators should assess what approaches worked well, and what could be done differently in future interactions. Is the dialogue converging (e.g. is there agreement on the issues to be negotiated), or diverging?
- Humanitarian negotiators should identify measures of effectiveness for evaluating the humanitarian negotiators. These could include simple measures such as changes in humanitarian access (area/population served) that resulted from the humanitarian negotiations or changes in number of attacks on humanitarian workers that can be attributed to agreements arrived at between humanitarian organizations and armed groups.

6.6 Conclusion: The Elements of Humanitarian Negotiation in Practice

The elements of humanitarian negotiations with armed groups presented in this manual provide a template for humanitarian agencies to develop a negotiating strategy and approach targeted to a particular country or thematic context. Every case of humanitarian negotiations will be different, but the structured elements of the negotiations presented in this manual provide the basis for more consistent and predictable negotiations with armed groups.

[47] Source: This case study drawn from: Alex Costy, *Managing the Compromise: Humanitarian Negotiations in Angola, 1998-2001* (Geneva: Centre for Humanitarian Dialogue, January 2002).

The case study presented below captures some of UNICEF's experiences of negotiating with the Liberation Tigers of Tamil Eelam (LTTE) group in Sri Lanka, and serves to review elements of humanitarian negotiation that have been presented in this manual. UNICEF experiences are presented beside the relevant chapter/section headings of the manual.

Case Study: UNICEF Negotiations with LTTE

The UNICEF Country and Field Offices in Sri Lanka have engaged with the Liberation Tigers of Tamil Eelam (LTTE) because it is a significant group involved in the 2 decade armed conflict with the Government of Sri Lanka and controlling parts of the war-affected North Eastern provinces of the country. This case study captures aspects of UNICEF's experience of negotiating with the LTTE armed group.

Reasons for negotiating

(Section 2.2)

Primacy of Humanitarian Mission:

➔ *UNICEF has made it clear to the LTTE that the organization's priority is the protection of children. UNICEF also expressed its neutrality regarding its involvement with the 2 parties to the conflict.*

Substantive Issues:

➔ *Ensuring that the LTTE does not recruit children in their armed forces under the age of 17, as the LTTE committed in 1998 to the Special Representative of the UN Secretary-General on Children and Armed Conflict (SRSG-CAC).*

➔ *Ensuring LTTE commitment not to recruit children under 18 years [as given to UNICEF in 2002].*

➔ *LTTE signing of the Action Plan for Children affected by War in 2003.*

➔ *Access to populations in LTTE-controlled areas.*

➔ *Negotiation of travel passes and general security issues.*

Learning about the armed group

(Section 2.4)

➔ *The LTTE has a sophisticated structure, including a political wing and a military wing; UNICEF has mainly interacted with the political wing.*

➔ *UNICEF experience highlights the fact that It is important to be cognizant of the power politics that take place within a group, and understand whether or not the person with whom the humanitarian organization is engaging is in a position to make commitments on behalf of the group as a whole.*

Case Study (continued)

Issue of legitimacy *(Section 2.4)*	➔ *The LTTE has been recognized by the government as a group with which it must negotiate peace.* ➔ *UNICEF has always engaged with the LTTE with full knowledge of the Government of Sri Lanka, and with the understanding that this engagement will not confer any additional legitimacy to the group.*
Humanitarian partners in negotiation *(Section 2.5)*	➔ *In the LTTE-controlled area of Vanni, only UNICEF and UNHCR engage regularly with LTTE from the UN system; but there have also been some contacts between the LTTE and other UN agencies.* ➔ *Agency engagement with the LTTE is discussed both at the level of the UN Country Team (monthly) and on a more regular basis bilaterally.* ➔ *Generally, each UN agency in Sri Lanka engages separately based on its own agenda.*
Framing the negotiations *(Chapter 3)*	➔ *Neutrality is essential if one is to influence the armed group, as the perception may exist that the UN is on the side of the government.* ➔ *The human rights instruments of the UN Convention on the Rights of the Child (CRC), the Optional Protocol on children and armed conflict to the CRC and the commitments made by the LTTE to the SRSG-CAC are the standards used by UNICEF Sri Lanka in its negotiations with the LTTE.* ➔ Aggressive *promotion of international law may generally not be as successful as expected. Many armed groups have not been sensitized to agree with these laws;*
Three phases of negotiation *(Section 4.2)*	Phase II: Seeking Agreement ➔ *UNICEF has worked to seek agreement with the LTTE on a number of issues (identified above); Whilst many agreements have been informal and verbal (see below), a significant step forward was of the LTTE and GOSL both signing the Action Plan in 2003, which included reintegration of child soldiers.* ➔ *UNICEF representatives have worked with LTTE counterparts to develop options for agreement on particular issues.*

Case Study (continued)

Three phases of negotiation *(Section 4.2)*	Phase III: Implementation ➔ *In 1998, the SRSG-CAC met with the LTTE and secured a statement from the group that it would cease the recruitment of children into their armed forces, allow freedom of movement for the civilian population, and greater freedom for women. UNICEF was responsible for follow-up on this. No specific mechanism was put in place to monitor adherence to the agreement at that time.* ➔ *Consistent advocacy led to the development of the Action Plan.* ➔ *Regular and repeated engagement ensures that the group understands not only UNICEF's priorities, but also that UNICEF is working for the good of the communities in areas under their control.*
Direct vs. Indirect negotiation *(Section 4.3)*	➔ *UNICEF has engaged with the LTTE at all levels of the agency;* ➔ *Direct engagement between the LTTE and the Sri Lanka UNICEF Country Office has been through advocacy, leading to verbal commitments from the LTTE.* ➔ *While most of the negotiations, agreements and exchanges between UNICEF and LTTE have been purely verbal and informal, UNICEF has documented some discussions and provided this to the LTTE.* ➔ *Written communication, whilst limited, has been significant in later stages of negotiation.* ➔ *UNICEF has never negotiated indirectly with the LTTE.*
Possible implications of negotiations (Section 6.2)	➔ Third-party influences: *Governments may express concerns about anyone engaging with opposition armed groups, especially the UN, but they can be persuaded that it is in the best interest of affected communities.* ➔ Staff Security: *National staff may have difficulties remaining neutral, especially if they are members of one of the groups in conflict. They may also be put in situations of insecurity because of their engagement; Due to this concern, in Sri Lanka, it has been found essential to have an international staff presence at all levels.* ➔ *UNICEF's negotiations with the LTTE have never prejudiced its ability to engage with the government.*

Case Study (continued)

Ensuring commitment *(Section 6.3)*	➔ *UNICEF's experience highlights that even in situations where an agreement is reached and commitments have been made between high-level leaders in an armed group and high-level UN personnel, there is never total guarantee that these commitments will not be violated. However, having a formal agreement has meant that the LTTE could be held accountable for violations and gave strength to UNICEF's advocacy.*

Points to Remember—So You're Negotiating … Now What?

POSSIBLE IMPLICATIONS OF HUMANITARIAN NEGOTIATIONS

➔ **Changes in perceived neutrality and impartiality of humanitarian actors engaged in negotiations;**

TO MITIGATE: (A) clearly communicate the objectives and the scope of the negotiations with armed groups; (B) communicate and negotiate with all parties to a given conflict.

➔ **Impacts on humanitarian security;**

TO MITIGATE: (A) meet with the armed group in a neutral location/venue; (B) request security guarantees from the armed group prior to entering into negotiations; (C) ensure that the necessary parties are informed of the humanitarian negotiations (e.g. the host country government).

➔ **Third-party influence and 'sanctions' on humanitarian negotiators;**

TO MITIGATE: (A) engage in parallel advocacy efforts and bilateral humanitarian diplomacy with regional organizations, the host country government and neighbouring States to gain support for the humanitarian negotiations; (B) ensure that the objectives and process of negotiating with the armed group are effectively communicated to those actors that may seek to exert pressure to constrain the negotiations; (C) build consensus and support for humanitarian negotiations across humanitarian organizations.

COMMITMENT TO THE AGREEMENT

➔ Secure/enhance commitment by: (1) Ensuring 'Buy In' and Ownership; (2) Clear Statement of Implementation Roles; (3) Emphasizing Accountability; and (4) Including All Parties in Monitoring of Implementation (Section 6.3).

ENFORCEMENT

➔ By incentives or coercion ("carrot and stick")

➔ Other actors (States, regional organizations) better placed to apply diplomatic/other pressure to armed group.

➔ Humanitarian organizations can continue negotiating on issues of enforcement, attempt to persuade armed group, focusing on accountability of armed group (See Section 3.3).

***Points to Remember** continues on page 82*

Points to Remember (continued)

DISPUTE RESOLUTION MECHANISMS

➔ (1) Establishment of an implementation monitoring commission; (2) Referral of disputed provisions to an independent non-binding arbitration mechanism; (3) Appointment of a neutral mediator to assist the parties in resolving disputes.

DEALING WITH NON-COMPLIANCE

➔ Enter into further negotiations with the armed group to arrive at an agreed outcome which may resolve the issues of non-compliance with the original agreement.

➔ Identify third party States, regional organizations or other actors and engage, directly or indirectly, in advocacy and humanitarian diplomacy to get these actors to apply pressure (diplomatic, other) to the armed group to comply with the agreement.

➔ If non-compliance with the agreement results in an operating environment which compromises humanitarian security; consider, as a last resort, suspension of humanitarian activities until a conducive humanitarian operating environment is re-established.

Name of Group:			Armed group negotiator:		Date:		
Motivations	**Structure**	**Principles of action**	**Interests**	**Constituency**	**Needs**	**Ethno-cultural dimensions**	**Control of population and territory**
Original motivations: — Economic — Political — Religious — Ideological — Other	Single leader Executive committee	What are the principles of action of the group? Guerilla warfare	What are the group's dominant interests? Achieving political outcomes Self-preservation	Stated constituency	Organizational Resource-related	Religious beliefs Cultural practices (e.g. role of tribal elders, community mediators)	Extent of control over: 1) Population
Current motivations	Hierarchical or flat	Economic principles Ideological principles	Economic interests Personal interests of leaders Other	Other community leaders: Do community leaders 'endorse' the armed group?	Identity-related Needs of individual negotiators	How does the armed group view members of other groups?	2) Territory How is control exerted?
What do leaders say about motivations?	Who are central/local leaders to be aware of? Sources of support	Political principles Religious principles	Do stated interests concur with actions of the group?				What is the basis for his control (coercion/ legitimate support basis etc.)?

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Annex II - Additional Resources for Negotiation with Armed Groups

This manual includes a Compact Disk (CD-ROM), which provides additional resources to guide humanitarian negotiations with armed groups. The CD-ROM includes resources in the following categories:

Bibliography with Links to Reference Documents

Internet Resources with Information Relevant to Humanitarian Negotiations

Reference Documents on Humanitarian Principles and Policies

➔ *Humanitarian Principles*
➔ *Select Humanitarian Policy Documents*

Reference Documents on International Law Relevant to Armed Groups

➔ *International Humanitarian Law*
➔ *International Human Rights Law*
➔ *Rome Statute of the International Criminal Court*

Negotiation Reference Documents

➔ *Negotiation in General*
➔ *Negotiation on Particular Issues*
  Humanitarian Access
  Protection of Civilians in Accordance with International Law
➔ *Collective Humanitarian Negotiations*

Sample Ground Rules Agreements Between Humanitarian Organizations

Sample Written Agreements Between Humanitarian Organizations and Other Actors

➔ *Agreements between Humanitarian Organizations and Armed Groups*
➔ *Agreements between Humanitarian Organizations and Governments*

Listing of Documents on Humanitarian Negotiations with Armed Groups by Country

Afghanistan
Angola
Bosnia
Burma/Myanmar
Burundi
Colombia
DPR Korea
Dem. Rep. of Congo
Liberia
Russian Federation
Sierra Leone
Sri Lanka
Sudan
Tajikistan
Turkmenistan
Uganda
Uzbekistán

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Annex III - Glossary of Key Terms

Armed Groups	groups that have the potential to employ arms in the use of force to achieve political, ideological or economic objectives; are not within the formal military structures of States, State-alliances or intergovernmental organizations; and are not under the control of the State(s) in which they operate.
Complex Emergency	a humanitarian crisis in a country, region, or society where there is a total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single and/or the ongoing UN country programme. [IASC definition]
Humanitarian Negotiations	negotiations undertaken by civilians engaged in managing, coordinating and providing humanitarian assistance and protection for the purposes of: (i) ensuring the provision of protection and humanitarian assistance to vulnerable populations; (ii) preserving humanitarian space; and (iii) promoting better respect for international humanitarian and human rights law.
Humanitarian Security	physical and psychological safety of both humanitarian staff and beneficiaries [working definition used in this manual].
Humanitarian Space	a conducive humanitarian operating environment. [OCHA definition]
Negotiation	The deliberation which takes place between two or more parties regarding a proposed agreement. In the context of armed conflict, negotiations often relate to permitting humanitarian access, agreeing upon a ceasefire, or establishing peace through a framework agreement or peace accord. [OCHA definition]
Protection	[encompassing] all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. international human rights law, international humanitarian law, and refugee law). [working definition used by IASC]

Notes

This Manual and the companion set of Guidelines provide a structured, easy-to-follow approach to humanitarian negotiations with armed groups. The publications fill a need which has long been recognized by operational humanitarian agencies.

The necessity for a more structured approach to humanitarian negotiation has been reflected in statements and resolutions of the UN Security Council and the UN General Assembly. Noting the obstacles posed by the lack of structured interaction with non-State actors, the Security Council, in particular, has expressed its encouragement for

> *"the ongoing work by United Nations agencies to prepare a manual of field practices of negotiations with armed groups to better assist coordination and to facilitate more effective negotiations." (S/PRST/2002/41)*

By providing that structured approach, this Manual and the companion set of Guidelines will assist humanitarian workers in achieving better humanitarian outcomes in situations that require negotiation with armed groups.

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