

Preparatory Review of Literature on Humanitarian Negotiation¹

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This preliminary literature review is based on an assessment of academic articles, books, news publications, and policy documents relevant to humanitarian negotiations. The purpose of this literature review is to offer a foundation to inform the direction of further research, analysis, and policy development to benefit future humanitarian negotiation efforts. Humanitarian negotiations are inherently challenging. As one practitioner states, “everything has to be negotiated by teams on the ground and it will always be painful and difficult.”² Yet, negotiations are crucial for the overall success of humanitarian endeavors. Indeed, one analysis of humanitarian operations funded by the European Commission Directorate-General for Humanitarian Aid and Civil Protection found that “all implementing organizations interviewed for this study see private negotiations and acceptance strategies as essential for gaining and maintaining access to populations in need.”³

The research underlying this literature review indicated seven particular challenges relevant to negotiations for humanitarian access and protection. This document presents and elaborates on each of these seven issue areas, which are:

- 1) Determining the basis of negotiations (i.e., principles versus interests),
- 2) Employing traditional negotiation tactics,
- 3) Negotiating with armed groups,
- 4) Coordinating with different institutional entities,
- 5) Assessing and engaging with interlocutors,
- 6) Establishing credibility in the local environment, and
- 7) Learning lessons from past experiences.

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² Geoff Loane, “Barriers to Negotiating Humanitarian Access: The Experience of the ICRC,” available at http://www.flyktninghjelpen.no/arch/_img/9108791.pdf

³ “Evaluation and review of humanitarian access strategies in DG ECHO funded interventions,” available at http://ec.europa.eu/echo/files/evaluation/2012/GPPi_Access-Report.pdf

1) The Basis of Negotiations: Principles and Interests

One core difference between humanitarian negotiations and other types of negotiations is the role that principles play for humanitarian professionals in this context. The factors that guide humanitarian negotiators and the factors that guide these negotiators' interlocutors are different. As stated in a handbook on negotiations published by the United Nations Office of the Coordination of Humanitarian Affairs:

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.⁴

In one book chapter, Lakhdar Brahimi elaborates on this distinction and asserts that humanitarians must consider both principles and interests during humanitarian negotiations:

There is some truth in the assertion that negotiations in pursuit of humanitarian goals must necessarily differ to some extent from purely political deals that are the product of a traditional negotiation process. Humanitarian principles, again, must necessarily set the agenda for the negotiations conducted by humanitarian actors. Thus, it is important that those working in the international field recognize and give some space to their humanitarian colleagues.

At the same time, it is also clear that the relationship between the humanitarian and the political-military actors, and their roles, is a two-way street. Just as important as humanitarian principles and the respect thereof are the goals pursued by political and military actors. It is inevitable that the space operated in by humanitarian actors and political ones, although separate, will overlap in some areas. What is needed when that inevitable overlap takes place is mutual respect and deeper understanding of each other's motives and goals.⁵

⁴ "Humanitarian Negotiations with Armed Groups," OCHA, p. 50, available at <https://docs.unocha.org/sites/dms/Documents/HumanitarianNegotiationswArmedGroupsManual.pdf>

⁵ Lakhdar Brahimi, "Forward," in *Humanitarian Diplomacy: Practitioners and Their Craft*, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), xiv-xv.

Various authors have commented on the relatively weak position from which humanitarian professionals negotiate:

- “The relatively low ranking of humanitarian priorities, especially when high-level issues of national security and state survival are at stake, places humanitarian interests at a decided disadvantage, Speaking at an off-the-record session in late 2004, one senior UN official posted to an African country reached for a card-playing analogy to describe his plight. He had been, he said, dealt a weak hand from a stacked deck. When sitting down at the negotiating table with his opposite number, what, after all, can an aid official expect to extract, and at what price?”⁶
- “Humanitarian actors negotiate from a legal and moral high ground, but they lack enforcement mechanisms. Although they can offer some incentives by improving the image of the parties, humanitarian actors negotiate from a relatively weak position: they lack weapons, they do not control the territory, and they cannot impose sanctions. At times, the UN has explored conditionality and ‘carrot and stick’ approaches. However, such approaches are ethically questionable when they restrict aid from being delivered in order to obtain broader concessions.”⁷

Regarding how to grapple with this weak negotiating position, as well as with potential conflicts between principles and interests, one handbook emphasizes the need for creativity:

For example, imagine you are operating in a city in which four armed groups of child soldiers are active. You go to the local head of these groups and ask that they be disbanded. The overriding interest of the local leader of the armed groups is to win a war, while the humanitarian concern is to protect children from that war. Finding a creative way to reconcile this conflict of interests that meets both the needs of the children and those of the military commanders may not be possible, or legally and morally unsatisfactory from a humanitarian standpoint.⁸

⁶ Larry Minear, “The craft of humanitarian diplomacy,” in Humanitarian Diplomacy: Practitioners and Their Craft, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 15.

⁷ “Negotiating humanitarian access: Between a rock and a hard place,” PHAP, available at <http://phap.org/articles/negotiating-humanitarian-access-between-rock-and-hard-place>

⁸ “Humanitarian Negotiation: A Handbook for Securing Access, Assistance and Protection for Civilians in Armed Conflict,” HD Centre for Humanitarian Dialogue, p. 25, available at http://www.hdcentre.org/uploads/tx_news/188HumanitarianNegotiation.pdf

Given the prominence of both interests and humanitarian principles — in particular, neutrality, impartiality, and independence — how should humanitarian negotiators frame negotiations? Should humanitarians emphasize the language of interests or principles? In certain contexts, principles have been a necessary and effective element of humanitarian negotiations. As one paper notes of experiences in Angola: “Doggedly asserting the neutrality of the ERP was the best defence against manipulation by the warring parties. The fact that the ERP [Emergency Relief Plan] predominantly transported food, a highly political commodity, rendered it vulnerable to manipulation.”⁹

However, in many contexts, governmental or non-state actors do not accept or abide by humanitarian principles, leading one author to conclude: “The question for the negotiator is thus, how to negotiate from this clear universally accepted ‘legal and moral high ground’ when it is blatantly rejected, ignored or simply misused.”¹⁰ Another author makes a more drastic claim regarding the incorporation of interests into humanitarian negotiations:

The days when it was enough for humanitarian actors to simply invoke moral and legal obligations without referring to geostrategic and political considerations, if they ever existed, are long gone. While moral and legal arguments can still play an important role in negotiations, the expectations stemming from humanitarian actors’ leverage should be put into a more realistic perspective.¹¹

A different practitioner concurs: “You shouldn’t believe in yourself as the bearer of some absolute moral virtue. We have interests, the authorities have interests. And so we have to find common interests between those different parties and groups.”¹²

Indeed, one study conducted by Steven Ratner of the efforts of the International Committee of the Red Cross (ICRC) to promote compliance with international humanitarian law (IHL) found that, in many instances, invoking the language of interests — rather than the language of law — was more useful to the ICRC. Ratner

⁹ “Negotiating humanitarian access in Angola: 1990 – 2000,” available at <http://www.unhcr.org/3ae6a0c9b.html>

¹⁰ “Humanitarian Negotiation: Observations from Recent Experience,” HPCR, available at <http://eisf.eu/resources/library/HumanitarianNegObservationsrecentExperience.pdf>

¹¹ “Negotiating humanitarian access: Between a rock and a hard place,” PHAP, available at <http://phap.org/articles/negotiating-humanitarian-access-between-rock-and-hard-place>

¹² “Negotiating Medical Aid in Conflict Zones,” VOA, available at <http://www.voanews.com/content/decapua-msf-negotiations-3feb12-138634034/159549.html>

writes that “the ICRC engages in a process of decision-making on whether to invoke international law at all. For despite its stated goal of promoting IHL and the historic centrality of IHL to the institution, the ICRC often avoids IHL arguments entirely.”¹³

Ratner elaborates on the ways in which the ICRC frames issues of legality in terms of interests:

But the organization often makes its case for IHL compliance in what is best regarded as non-legal terms. The ICRC’s alternatives to law talk include principally: (a) humanitarian arguments, i.e., that changed behaviour will reduce the suffering of innocent victims of the conflict; (b) political arguments, i.e., that changed behaviour will improve the target’s domestic or international reputation; (c) economic arguments, i.e., that changed behaviour will lead to additional sources of foreign or domestic revenue; (d) pragmatic arguments, i.e., that changed behaviour will improve the efficiency, discipline, or internal functioning of the target’s armed or security forces; (e) moral arguments, i.e., that changed behaviour is the morally right (either permissible or obligatory) way to respond in the sense of the way a decent military or security force should act; and (f) customary arguments, i.e., that changed behaviour is demanded by the customs and mores of the society.¹⁴

Ratner also discusses at length his findings regarding the ICRC’s rationales for this policy choice:

Although the ICRC’s institutional thinking on these questions is still evolving, it has clearly recognized the limitations of legal argumentation. Officials talk about a need for an appreciation of the target audience; one spoke of an ‘opportunistic evaluation’ as to whether invocation of law will add to their powers of persuasion. They noted various situations where ICRC delegates will not merely argue for compliance based on humanitarian, political, economic, pragmatic, or moral grounds, but in fact refrain from invoking the law. In particular, alternative argumentation is critical when interlocutors (a) are ignorant of, or might be confused by, the law’s contents; or (b) see the law as a creation or tool of their enemy (as is common among rebel groups, who do not become parties to

¹³ Steven Ratner, “Law Promotion Beyond Law Talk: The Red Cross, Persuasion, and the Laws of War,” 22 *The European Journal of International Law* No. 2, 2011, at 477.

¹⁴ *Ibid.*, at 478.

IHL treaties). Their very non-legal rejection of IHL can demand a non-legal response.¹⁵

A publication produced by the Kennedy School of Government at Harvard University also emphasizes the importance of interests: “The interests of the belligerent parties underlying the acceptance of these access conditions are thus decisive in setting the parameters of negotiated access.”¹⁶ Additionally, the policy guidance that has been produced also addresses this issue. However, this guidance places perhaps an overemphasis on the role of principles in humanitarian negotiations. In certain instances, this guidance might leave the impression that humanitarian principles alone are enough to persuade governmental and non-state actors to facilitate humanitarian access and protection. A potential gap in the literature is how, specifically, humanitarian negotiators can use the language of interests during negotiations in a manner that, on the one hand, is effective, and on the other hand, does not compromise humanitarian principles. The next section elaborates on this challenge. For examples of policy guidance that emphasize the use of humanitarian principles during humanitarian negotiations, see:

- “Humanitarian Negotiations with Armed Groups,” OCHA, available at <https://docs.unocha.org/sites/dms/Documents/HumanitarianNegotiationswArmedGroupsManual.pdf>
- “Humanitarian Negotiation: A Handbook for Securing Access, Assistance and Protection for civilians in Armed Conflict,” HD Centre for Humanitarian Dialogue, available at http://www.hdcentre.org/uploads/tx_news/188HumanitarianNegotiation.pdf
- “Humanitarian Access in situations of armed conflict: Field Manual,” available at http://www.cdint.org/documents/FDFA_Humanitarian%20Access_Field%20Manual.pdf

2) Employing Traditional Negotiation Tactics

Whether or not humanitarian negotiators emphasize the language of principles in their negotiations, the challenge remains how negotiators can effectively seek outcomes without compromising humanitarian principles. The relevant literature reveals many

¹⁵ Ibid., at 480 (internal footnotes omitted).

¹⁶ “Negotiated Access: Humanitarian Engagement with Armed Non-state Actors,” An essay by Max P. Glaser, Research fellow of the Carr Center for Human Rights Policy, available at <http://www.hks.harvard.edu/cchrp/pdf/NegotiatedAccess.pdf>

case studies where negotiations led to outcomes that existed in tension with humanitarian principles. One author writes:

- *Impartiality* is tested by situations such as the former Yugoslavia, when UNHCR, in exchange for access to Muslim areas, was under continuing pressure to distribute relief supplies from the Sarajevo airlift to Serbian populations in amounts exceeding their proportionate need.
- *Neutrality* comes under pressure when assistance is viewed as taking sides in a conflict, either by aid agencies, which are perceived as supporting one protagonist, or by recipient authorities, which seek to parlay assistance into international endorsement of their cause. Again, the Iraq experience is case in point.
- *Independence* is jeopardized when agencies are denied the necessary freedom to conduct operations and monitor distribution. The constraints faced by the World Food Programme (WFP) and associated agencies in North Korea constituted a threat to independent humanitarian action.¹⁷

In Sudan, in order to retain access, aid agencies avoided activities that could have been viewed with suspicion by the government, even if this choice risked flying in the face of the need to abide by the humanitarian principle of impartiality. According to one author:

The reactions of aid agencies to this situation show some of the tendencies that it is hoped may be addressed through a greater use of historical analysis. Some agencies have agreed to provide aid to government areas even while access to areas under SPLM-N control remains blocked. Many avoid activities the government may see as suspicious or offensive: some have chosen not to provide aid in refugee camps for people from Southern Kordofan and Blue Nile in South Sudan for fear of being perceived by the government of Sudan as supporting the SPLM-N. While SPLM-N frustration with the international community grows and many within the SPLM-N believe that the UN has been infiltrated with government spies, some aid agencies hold out hope that the government can still be persuaded through private advocacy or 'good behaviour' on the part of aid agencies.¹⁸

¹⁷ Larry Minear, "The craft of humanitarian diplomacy," in Humanitarian Diplomacy: Practitioners and Their Craft, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 15.

¹⁸ "From the Spanish civil war to Afghanistan Historical and contemporary reflections on humanitarian engagement with non-state armed groups," p. 10, available at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8974.pdf>

Another writer states that in Bosnia, the efforts of UNHCR to maintain the appearance of impartiality actually led to efforts that were not at all impartial:

UNHCR initially attempted to distribute humanitarian supplies on the basis of needs, rather than on the basis of relative population figures for the different areas. However, under pressure from the warring parties, and wanting to demonstrate its impartiality, UNHCR distribution plans came to represent a compromise solution. They were based mainly on population figures, although slightly larger quantities of food were sent to areas where conditions were worst. This led to genuine confusion. It was not enough to convince the Bosnian government that the UNHCR distribution plan was based on relative needs, but it was enough to convince the Bosnian Serb authorities that distributions were not equitable and that UNHCR was not an unbiased social welfare provider.¹⁹

UNICEF faced similar problems when operating in Lebanon between 1987 and 1990:

The difficulty of finding an acceptable formula in respect of a “fair” distribution of assistance remained a challenge. The problems of finding objective ways to assess each partner’s capacity, to document actual delivery and to control the use of funds and equipment were daunting. How could UNICEF collaborate and assist without this being perceived as endorsement? How could UNICEF supply the Hezbollah with drugs and medicines and not be seen by the Israeli-backed Christian militia forces in south Lebanon as supporting their enemy? How could UNICEF help the children in the Christian enclave to go to school and not be accused by the Syrian army of taking sides in the conflict?²⁰

But how can humanitarian professionals, in such politicized environments, navigate through negotiations while distinguishing between what is and is not an acceptable outcome? Typical negotiations involve compromises by both sides. But as the above examples indicate, compromises can be highly problematic. Another typical negotiation tactic entails threats to pull out of negotiations entirely. But when should humanitarians withdraw from negotiations? How should this tactic be employed during negotiations? When is it better to reject a bad deal (thus providing humanitarian aid to no one) than to accept a bad deal (thus providing aid subject to restrictions imposed by governing

¹⁹ Mark Cutts, “The humanitarian operation in Bosnia, 1992-95: dilemmas of negotiating humanitarian access,” Policy Research Unit, UNHCR, May 1999, p. 15.

²⁰ Andre Roberfroid, “Negotiating for results in the Lebanon,” in Humanitarian Diplomacy: Practitioners and Their Craft, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 95.

authorities that counter humanitarian principles)? One author describes these challenges at length:

The debate over conditionality raises concerns about the viability of traditional negotiation concepts when applied in humanitarian contexts. In classical negotiation theory, parties must always bear in mind their “reservation prices” (the point at which each will not “sell” or “buy”), and what Roger Fisher and his collaborators famously called the BATNA, or “best alternative to a negotiated agreement[.]” This is the imagined best-case scenario should negotiations break down, and correlates to “the point at which a negotiator is prepared to walk away from the negotiation table.” If a party has not settled on a reservation price or thought through his BATNA, he is seriously disadvantaged in subsequent negotiation. Consider what the lack of conditionality implies for humanitarian negotiators-- especially if the other party learns of that deficiency. The principle that one gives aid or renders protection to those in need, irrespective of identity, past actions, or “politics,” means that there is no “reservation price” available to humanitarians, save in the field an operational withdrawal point if the situation becomes too dangerous. Also, in humanitarian negotiation there is no real BATNA for access or aid or protection--all the alternatives are bad ones, and inaction becomes unthinkable. Humanitarians thus face ethically precarious options of negotiating how many sacks of rice a warlord takes for allowing the convoy through, or (even more unsavory) of allowing militias or genocidaires to distribute the food in a refugee camp so that any is distributed at all.²¹

In terms of red lines that humanitarian negotiators should set, various practitioners have stated that this issue is context specific, thus requiring a certain degree of flexibility:

- “No parameter is fixed from the outset: the safety of personnel, the presence of expatriates, MSF’s intervention priorities, the quality of the assistance provided, control over resources, etc. They are all the result of concessions, some justified by harsh realities — employing armed guards, for example — and others by their temporary nature, such as the remote management of programmes. Negotiation frameworks do not include universal markers indicating the line that must not be crossed; and MSF must therefore pay attention to the developing dynamic of

²¹ Kevin Avruch, “Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators,” 9 *Harvard Negotiation Law Review*, at 393.

each situation and to its own ability to revoke compromises that were only acceptable because they were temporary.”²²

- “The way you actually manage negotiation is always driven by the benefit that you expect for patients. This is why you cannot define a priori where is the red line, because the red line is going to be the time you think the compromise outweighs the medical benefit you can have in this country. Given that medical impact and the magnitude of crisis depends from one country to another, then the red line is also moving.”²³

However, one practitioner has stated that there are limits to what can be negotiated away: “The fundamental legal norms of the humanitarian product are not negotiable — you could not tailor a humanitarian product so that you accept an armed group killing half rather than all of a village.”²⁴ Still, other practitioners have emphasized the importance of compromise:

- “There is a space of work that varies according to the crisis, that needs to be gained and to be conquered through negotiation with all the actors. These negotiations...always involve a degree of compromise.”²⁵
- “[T]here is huge responsibility from the aid actors themselves to defend and conquer their own space of work through negotiations, through compromises, through power struggle with authorities intersecting with civil society groups, international organizations, governments.”²⁶

The following passages offer perspectives on the use of withdrawal — or the threat of withdrawal — during humanitarian negotiations:

- “At the end of the day, the ultimate card in the high-stakes negotiation game involves suspending or withdrawing operations. But here, too, complications

²² Marie Pierre Allie, “Introduction,” in *Humanitarian Negotiations Revealed*, eds., Claire Magone, Michael Neuman, and Fabrice Weissman (London: Hurst & Company, 2011), 5.

²³ “Delaunay: Negotiation Key to Gaining Humanitarian Access,” IPI, available at <http://www.ipinst.org/events/panel-discussions/details/350-delaunay-negotiation-key-to-gaining-humanitarian-access.html>

²⁴ Hugo Slim, “Marketing Humanitarian Space: Argument and Method in Humanitarian Persuasion,” available at http://www.hdcentre.org/uploads/tx_news/219-Marketing-Humanitarian-Space.pdf

²⁵ “Delaunay: Negotiation Key to Gaining Humanitarian Access,” available at <http://www.ipinst.org/events/panel-discussions/details/350-delaunay-negotiation-key-to-gaining-humanitarian-access.html>

²⁶ “Negotiating Medical Aid in Conflict Zones,” VOA, available at <http://www.voanews.com/content/decapua-msf-negotiations-3feb12-138634034/159549.html>

abound. The withdrawal of humanitarian operations can represent a victory for principle or a defeat for the agencies and their needy clientele, as in “Let them eat principles”. Conversely, accepting as a price for sustaining aid activities the constraints on humanitarian space that authorities impose can have short-term benefits but be a recipe for future failure. Offering “incentives” to the belligerents in exchange for access may represent a slippery slope and can compromise the integrity of a humanitarian initiative.”²⁷

- “The teams faced a terrible reality when they realized that they were basically treating patients between torture sessions. Patients would be brought to them after they’d been tortured by the police and MSF would help the authorities to put them back on their feet. And after a few days they would be sent back to the detention centers to be tortured again. And of course that’s where you start to believe that your work is meaningless. And in that case the decision was to suspend the project.”²⁸
- “WFP was able to establish some degree of productive dialogue with Al-Shabaab, but later withdrew from some areas under its control, citing the 11 conditions as part of the reason behind this decision. The organisation was subsequently banned by Al-Shabaab in January 2010.”²⁹

Another possibility — undertaken in Bosnia — is to accept a bad deal in the hopes that a better deal might be struck later:

Perhaps the greatest problem faced by those who were involved in negotiating humanitarian access in Bosnia was the fact that the international community was more interested in ensuring the continuation of the humanitarian operation than in ensuring its effectiveness in protecting and assisting the most vulnerable. To be successful at the negotiating table, one must have a clear strategy. In Bosnia, the strategy of the international community was to keep the humanitarian operation going at all costs, on the assumption that this would ‘buy time’ for further negotiations on the political front. After the incident in February 1993, when Sadako Ogata’s decision to suspend UNHCR operations in Bosnia was

²⁷ Larry Minear, “The craft of humanitarian diplomacy,” in *Humanitarian Diplomacy: Practitioners and Their Craft*, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 18.

²⁸ “Negotiating Medical Aid in Conflict Zones,” VOA, available at <http://www.voanews.com/content/decapua-msf-negotiations-3feb12-138634034/159549.html>

²⁹ “Talking to the other side: Humanitarian negotiations with Al-Shabaab in Somalia,” HPG Working Paper, available at <http://www.heritageinstitute.org/wp-content/uploads/2013/12/Humanitarian-Negotiations-with-alShabaab-in-Somalia.pdf>

overruled by the Secretary-General, UNHCR found it had little alternative but to accept this.”³⁰

In addition to threatening to withdraw entirely from a context, another tool at the humanitarian negotiator’s disposal is the threat of public denunciation. Regarding when to resort to public denunciation, the following guideline has been offered: “During the second world war, the ICRC, agonizing over the dilemma between silent action and public denunciation, received the following advice: ‘when you can act, act and don’t protest. When you can’t act, protest. But don’t not act and not protest.’”³¹ One practitioner discusses threats of public denunciation offered during negotiations with armed groups in the DRC:

I tell the military that GAA works with the civilian population. I am direct and unambiguous: ‘If you — militia X — want to cooperate with us, you will do so as an ally to your civilians.’ GAA has a basic understanding with all the armed groups. We listen to them, they listen to us. They know we are neutral, and we tell everyone that we are. Militias that refuse access when we are trying to reach a zone they do not control, are told in the clearest of terms: ‘If you do not let us pass to reach the other group, we will tell the world. We will tell your people.’ We are tough with the militias. Even the Ngiti of Songolo, deemed to be exceptionally difficult to negotiate with, listened to us and let us rebuild the road [to Getty]. I use a language militia leaders understand.³²

A risk, though, is that engaging with the media might backfire: “Denunciation has the advantage of being faster and less costly than persuasion. However, it poses the risk of antagonizing the parties, burning bridges between parties, and prompting officials to close ranks and join forces to rebuff criticism.”³³

In other instances, remaining silent, even when witnesses incidents of grave concern, can be essential in order maintain relations — and hence, access — with the host government. For example, MSF initially did not say anything publicly about air strikes witnessed by MSF personnel in Yemen despite the following MSF public commitment:

³⁰ Mark Cutts, “The humanitarian operation in Bosnia, 1992-95: dilemmas of negotiating humanitarian access,” Policy Research Unit, UNHCR, May 1999, p. 25.

³¹ Arafat Jamal, “Access to safety? Negotiating protection in a Central Asian emergency,” UNHCR, p. 14, available at <http://www.unhcr.org/3ae6a0c30.html>

³² Johan Pottier, “Roadblock Ethnography: Negotiating Humanitarian Access in Ituri, Eastern DR Congo, 1999-2004,” *Africa* 76 (2), 2006, at 23.

³³ “Negotiating humanitarian access: Between a rock and a hard place,” PHAP, available at <http://phap.org/articles/negotiating-humanitarian-access-between-rock-and-hard-place>

“We have learned to be cautious in our actions [...] without precluding MSF from denouncing grave and ignored crimes such as the bombing of civilians, attacks on hospitals and diversion of humanitarian aid. Taking a stand in reaction to such situations and confronting others with their responsibilities remains an essential role of MSF.”³⁴ One MSF programme manager writes of this decision:

How did MSF justify remaining silent about a serious crime that few direct witnesses relayed to the outside world? Operational managers at MSF felt that condemning the air strikes would amount to placing blame squarely on the government, and would jeopardise MSF activities in Yemen with little clear benefit. Would speaking out about civilian deaths in the fighting prompt the combatants to show restraint in their use of violence?³⁵

MSF later mentioned the air strikes publicly in a publication, “Top Ten Humanitarian Crisis,” and the media focused extensively on the ‘Yemen’ portion of this publication, evoking the concern of the Yemeni government. The same author referenced above stated that this publication had particular ramifications for MSF’s ongoing negotiations with the government:

The authorities were explicit about the terms of the negotiation: if MSF agreed to deny that the Yemeni government was creating problems of access and that there was a lack of healthcare services in government zones, and to stress that the media’s sole use of the Yemen case out of the Top Ten report reflected that same media’s viewpoint only, the government would lift the sanctions. MSF accepted the deal.³⁶

3) Negotiating with Armed Groups

Three particular challenges exist regarding negotiating with armed groups. First, some armed groups are particularly inclined to distrust, or even blatantly express hostility toward, humanitarian organizations. Second, engaging with armed groups is often resisted by governments who fear that doing so would legitimize these entities. Third, engaging with armed groups listed on domestic and international terrorist lists evokes legal concerns for humanitarian professionals. This section focuses on these three factors.

³⁴ Michel-Olivier Lacharite, “Yemen: A Low Profile,” in *Humanitarian Negotiations Revealed*, eds., Claire Magone, Michael Neuman, and Fabrice Weissman (London: Hurst & Company, 2011), 43-44.

³⁵ *Ibid.*, at 44.

³⁶ *Ibid.*, at 45.

a) Distrust of Humanitarian Actors

Humanitarian professionals have encountered outright hostility from armed groups in various contexts. The following passages discuss issues faced in Afghanistan and Somalia:

- “One Taliban fighter claimed he would never allow aid agencies into his area because they all ‘work under the universal powers who drink the blood of Muslims’ and ‘have converted people to Christianity’.”³⁷
- “While UN data shows the greatest humanitarian needs in southern Afghanistan and South-Central Somalia, aid agencies are disproportionately concentrated in the more peaceful northern and central parts of Afghanistan and work outside Al-Shabaab areas in South-Central Somalia. This disparity has reinforced resentment and suspicion.”³⁸

The question is how humanitarian negotiators can make any successful negotiating inroads with entities predisposed to distrust humanitarian organizations. Furthermore, these organizations are unlikely to pay much heed to humanitarian principles, further complicating the challenges mentioned in Section 1, which discusses the role that principles and interests play during humanitarian negotiations.

b) Legitimizing Armed Groups

The fact that engaging with non-state armed groups is not intended to bestow legitimacy on these entities is widely acknowledged. As the OCHA handbook on humanitarian negotiations states: “Humanitarian negotiations do not infer any legal status, legitimacy or recognition of the armed group.”³⁹ However, governments carry this concern nonetheless. For example, in Afghanistan in 2008, the government endeavored to prevent humanitarian organizations from engaging with anti-government armed groups.⁴⁰ Concerns about engaging with armed groups have also been expressed by the United States, as described by a representative from the ICRC:

³⁷ “Negotiating perceptions: Al-Shabaab and Taliban views of aid agencies,” HPG Policy Brief 61, available at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9104.pdf>

³⁸ Ibid.

³⁹ “Humanitarian Negotiations with Armed Groups,” OCHA, p. 14, available at <https://docs.unocha.org/sites/dms/Documents/HumanitarianNegotiationswArmedGroupsManual.pdf>

⁴⁰ See “Preserving the integrity of humanitarian negotiations,” Humanitarian Exchange Magazine, available at <http://www.odihpn.org/humanitarian-exchange-magazine/issue-58/preserving-the-integrity-of-humanitarian-negotiations>

Donald Rumsfeld wrote a memo to all the departments of defence: anything that the ICRC says or writes to anybody, must be communicated to the Pentagon within 24 hours. They perceive us as a bigger threat than we are. One problem is the legitimising of non-state actors. They do not understand, we are too small, but we are perhaps bigger than we say we are.⁴¹

Concerns about the legitimization of armed groups can impact the entire tenor of humanitarian negotiations, as occurred in Angola:

UCAH had to be tactful in its dealings with the two parties. The GoA, having for the first time been elected in the 1992 ballot, insisted that its sovereignty, and UNITA's illegitimacy, be reflected in the tone and conduct of the negotiations. However, dealings with UNITA, especially about such serious issues as security for UN flights and staff, had of necessity to be formal in tone. The GoA did not object to UN officials travelling to Huambo for talks with UNITA, but expected to be asked for permission for flights to UNITA territory, and appraised of the contents of their discussions. While the GoA was consulted about plans, UNITA was simply given the choice to say yes or no, without making alterations. This often annoyed UNITA.⁴²

How should humanitarian negotiators grapple with this fundamental aspect of engaging with armed groups? This question constitutes another area for which existing policy literature offers little practical guidance. This dilemma is particularly acute because one reason that some armed groups engage with humanitarian organizations is to derive the very form of legitimacy about which governments have expressed concern. This reality is expressed by the following passages:

- "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."⁴³

⁴¹ Geoff Loane, "Barriers to Negotiating Humanitarian Access: The Experience of the ICRC," available at http://www.flyktninghjelpen.no/arch/_img/9108791.pdf

⁴² "Negotiating humanitarian access in Angola: 1990 – 2000," available at <http://www.unhcr.org/3ae6a0c9b.html>

⁴³ "Humanitarian Negotiations with Armed Groups," OCHA, available at <https://docs.unocha.org/sites/dms/Documents/HumanitarianNegotiationswArmedGroupsManual.pdf>

- “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.”⁴⁴
- “They also noted the importance the RUF leaders attached to presence aid agencies for the purpose of their own credibility and legitimacy, according to one of the leaders of the RUF: ‘to prove to the world we are not the beast we are held to be.’”⁴⁵
- “Armed actors may also be more mindful of International Humanitarian Law (IHL) or willing to permit aid agency access in the hope that doing so will earn them greater legitimacy among the international community (as with the Sudan People’s Liberation Movement-North (SPLM-N N), for example). Other groups may compel aid agencies to hand over relief items so that they can take credit for their delivery (as with Al Shabaab). There are also instances where armed groups may perceive that it is more beneficial to their interests to attack or expel aid workers than allow them to work safely (as with Al-Shabaab and the Taliban).”⁴⁶

As these passages suggest, humanitarian organizations — and negotiators, specifically — face a conundrum. On the one hand, negotiators must assure governments that engaging with anti-government non-state entities will not confer legitimacy upon these groups. On the other hand, the potential for legitimacy can be one of humanitarian negotiators’ strongest selling points for drawing armed groups into productive negotiations. As a consequence, humanitarian negotiators find themselves caught between the irreconcilable interests of governments and non-state actors.

c) Engaging with Groups Subject to Counter-terrorism Legislation

In addition to the challenges mentioned above, additional dilemmas arise when humanitarian organizations negotiate with entities listed on domestic and/or international terrorist lists. In such instances, engaging with these groups could lead humanitarian organizations to face legal ramifications. Literature that addresses this issue includes:

⁴⁴ Ibid.

⁴⁵ “Negotiated Access: Humanitarian Engagement with Armed Non-state Actors,” An essay by Max P. Glaser, Research fellow of the Carr Center for Human Rights Policy, available at <http://www.hks.harvard.edu/cchrp/pdf/NegotiatedAccess.pdf>

⁴⁶ “Preserving the integrity of humanitarian negotiations,” Humanitarian Exchange Magazine, available at <http://www.odihpn.org/humanitarian-exchange-magazine/issue-58/preserving-the-integrity-of-humanitarian-negotiations>

- “Humanitarian Action under Scrutiny: Criminalizing Humanitarian Engagement,” HPCR, available at <http://c0186748.cdn1.cloudfiles.rackspacecloud.com/HPCR%20CHE%202011.pdf>
- “Countering Terror in Humanitarian Crises: The Challenges of Delivering Aid to Somalia,” HPCR, available at <http://www.hpcrresearch.org/sites/default/files/publications/Somalia%206-30-12%20final.pdf>
- “Humanitarian engagement under counter-terrorism: a conflict of norms and the emerging policy landscape,” *IRRC*, available at <http://www.icrc.org/eng/assets/files/review/2011/irrc-883-modirzadeh-lewis-bruderlein.pdf>⁴⁷

Because of this issue, some humanitarian organizations adopted an official policy of cutting off ties with Hamas.⁴⁸ For humanitarian organizations operating in the context of Somalia, this issue has led to the need for “new layers of staffing to oversee administration and monitoring and significantly enlarged operational budgets.”⁴⁹ Another context in which this issue has arisen is Colombia, where “contact with guerrilla groups is prohibited by law.”⁵⁰

4) Coordinating with Different Institutional Entities

The literature on humanitarian negotiations also emphasizes the importance of coordination across different humanitarian organizations involved in the same context, as exemplified by the following passages:

- “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

⁴⁷ Links to several other resources on this issue can be found on the website of the Program on International Law and Armed Conflict, available at <http://pilac.law.harvard.edu/counterterrorism-and-humanitarian-engagement-project/>

⁴⁸ “Preserving the integrity of humanitarian negotiations,” *Humanitarian Exchange Magazine*, available at <http://www.odihpn.org/humanitarian-exchange-magazine/issue-58/preserving-the-integrity-of-humanitarian-negotiations>

⁴⁹ “Talking to the other side: Humanitarian negotiations with Al-Shabaab in Somalia,” HPG Working Paper, available at <http://www.heritageinstitute.org/wp-content/uploads/2013/12/Humanitarian-Negotiations-with-alShabaab-in-Somalia.pdf>

⁵⁰ “Negotiated Access: Humanitarian Engagement with Armed Non-state Actors,” An essay by Max P. Glaser, Research fellow of the Carr Center for Human Rights Policy, available at <http://www.hks.harvard.edu/cchrp/pdf/NegotiatedAccess.pdf>

any outcome negotiated by a designated representative of the humanitarian community.”⁵¹

- “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.”⁵²
- “Equally, every negotiation pursued on behalf of your own agency must seek to complement rather than compete with the negotiation efforts of humanitarian colleagues in other organisations. It is important to be well informed about other agencies’ negotiations, the bottom lines they have set and the lessons they have learned and to exchange information accordingly so that you can achieve complementary agreements and outcomes. Without such cooperation, the warring parties will find it all too easy to divide and dominate the humanitarian effort in a given conflict.”⁵³
- “Strong leadership and coordination seem to be necessary ingredients in successful negotiation. The robust UN coordination mechanisms on the ground during Taliban times were effective tools for facilitating assistance and protection activities. For the Taliban, the fact that there was a unity of purpose in the aid community, and donors, UN agencies and NGOs were giving out the same message on issues of access and protection, was a reality that they could not afford to ignore.”⁵⁴
- “An independent, nation-wide UN radio communications network was crucial to humanitarian negotiations, the coordination of the ERP, and the gathering and dissemination of information.”⁵⁵
- “It is also important for organisations to get their policies and field level approaches aligned. Grand policies, through which organisations want to position themselves, have to be balanced against the fact that in war and violence it is about what the individual team can negotiate in terms of access.”⁵⁶

⁵¹ “Humanitarian Negotiations with Armed Groups,” OCHA, available at

<https://docs.unocha.org/sites/dms/Documents/HumanitarianNegotiationswArmedGroupsManual.pdf>

⁵² Ibid.

⁵³ Humanitarian Negotiation: A Handbook for Securing Access, Assistance and Protection for Civilians in Armed Conflict,” HD Centre for Humanitarian Dialogue, available at

http://www.hdcentre.org/uploads/tx_news/188HumanitarianNegotiation.pdf

⁵⁴ Antonio Donini, “Negotiating with the Taliban,” in Humanitarian Diplomacy: Practitioners and Their Craft, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 170.

⁵⁵ “Negotiating humanitarian access in Angola: 1990 – 2000,” available at

<http://www.unhcr.org/3ae6a0c9b.html>

⁵⁶ Geoff Loane, “Barriers to Negotiating Humanitarian Access: The Experience of the ICRC,” available at

http://www.flyktninghjelpen.no/arch/_img/9108791.pdf

However, due to highly political climate in which humanitarian organizations operate, as well as the secrecy required for humanitarian negotiations, coordination between negotiators from different organizations has often been challenging. The following passages describe these difficulties:

- “Few aid agency staff share complete details of access negotiations with their headquarters, other aid agencies (even those operating in the same geographic area) or donors. Internal transparency is profoundly lacking when it comes to talking to armed groups.”⁵⁷
- “Al-Shabaab exploited the secrecy and division among aid agencies when extorting payments in exchange for access by telling aid workers that ‘all of the others are paying’. On key issues such as payments more is likely to be gained by collective bargaining – or at least a common bargaining position – than acting alone.”⁵⁸
- “Third, the often conflicting agendas of UNPROFOR and UNHCR meant that they sometimes allowed themselves to be played off against one another by the warring parties. Although relations between UNPROFOR and UNHCR were generally good, the fact that they often negotiated separately with the warring parties led to misunderstandings and confusion. For example, in October 1995 UNHCR refused to accept a deal which the UNPROFOR French battalion in Sarajevo made with the Bosnian Serbs. The deal was for UNHCR convoys to use a new route through Hadzici into Sarajevo, with one truck from each convoy being off-loaded into a Serb warehouse in Hadzici, in addition to that which was already being supplied to Hadzici from another warehouse.”⁵⁹

The core challenge in this area is that, while transparency is crucial for coordination, humanitarian negotiators deem confidentiality to be necessary for negotiations to succeed. The vexing policy question is how humanitarian organizations can reconcile these conflicting factors.

⁵⁷ “Humanitarian negotiations with armed non-state actors: key lessons from Afghanistan, Sudan and Somalia,” HPG Policy Brief, available at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8847.pdf>

⁵⁸ Ibid.

⁵⁹ Mark Cutts, “The humanitarian operation in Bosnia, 1992-95: dilemmas of negotiating humanitarian access,” Policy Research Unit, UNHCR, May 1999, p. 11.

5) *Assessing and Engaging with Interlocutors*

The policy literature also emphasizes the importance — as well as the challenges inherent in — assessing and effectively engaging with interlocutors during humanitarian negotiations. This section focuses on two areas: personality and culture. The following passages indicate the importance of personality to humanitarian negotiations:

- “Personality assessment is another key judgement that humanitarian negotiators need to make as they seek to persuade people. Understanding what makes a person tick is essential to gauging how best to tick with them. Is your interlocutor essentially a loner or gregarious? Is he or she intrinsically happy or sad? Is she or he driven by power, insecurity, ideals or circumstance? What and who are important to his or her life? What makes them laugh and what makes them angry? Are they trustworthy? Are they sane?”⁶⁰
- “When [as a humanitarian] you must challenge or make a challenging point, you must do so calmly. I remember once, in Gobu, how a Lendu militia leader who had stopped our car made a verbal attack on my organization. ‘You, [agency X],’ he shouted, ‘are here to spy on us. You work for the other side, you give them arms. I am the extremist!’ He looked very aggressive, but I knew from his speech and demeanour that he just wanted to impress. It was bluff. Unimpressed, I challenged him according to appropriate etiquette, staying calm throughout.”⁶¹
- “The personal style of the humanitarian coordinator was vital in creating a spirit of collaboration not competition, and in winning the confidence of UN agencies, NGOs, GoA and UNITA officials.”⁶²
- “Whether at headquarters or in the field, humanitarian diplomacy calls for interpersonal skills and gifts that are not innate. Most humanitarian aid workers are specialized in operational, logistical, or technical tasks, and the emergency and insecurity inherent in crisis situations leave them little space to work on their, usually improvised, humanitarian diplomacy skills. Although there is as

⁶⁰ “Humanitarian Negotiation: A Handbook for Securing Access, Assistance and Protection for civilians in Armed Conflict,” HD Centre for Humanitarian Dialogue,” available at http://www.hdcentre.org/uploads/tx_news/188HumanitarianNegotiation.pdf

⁶¹ Johan Pottier, “Roadblock Ethnography: Negotiating Humanitarian Access in Ituri, Eastern DR Congo, 1999-2004,” *Africa* 76 (2), 2006, at 19.

⁶² “Negotiating humanitarian access in Angola: 1990 – 2000,” available at <http://www.unhcr.org/3ae6a0c9b.html>

yet no formal training in humanitarian diplomacy available, several ideas have been put forward and are being tested.”⁶³

In many contexts, humanitarians have observed that personality is intertwined with the culture of the local context, as demonstrated by the below passages:

- “Hema are very sensitive, touchy (French: susceptible). They observe and interpret every move or gesture you make, every word you speak. For Hema, body language often speaks louder than words. Hema are reserved, they expect you to be humble. I always humbled myself when dealing with Hema, generally did everything right, and never had a close relationship with a Hema woman. But all my good behavior notwithstanding, I could not prevent speculation: ‘How can we/Hema be sure he is not a Terminator?’ people would say behind my back. It was always difficult to know what Hema really felt or thought. It is different with Lendu. When you talk to Lendu about rural development, for example, they get enthusiastic and will follow instructions beautifully. On the surface, Lendu appear spontaneous, it is easy to get along. But underneath there is a strong sense of inferiority, their historical past as vassals clings to them. So they too observe closely — and interpret. They watch out for any sign of superiority on your part, constantly. And gestures, here too, can speak louder than words. The moment Lendu detect that you put yourself above them, the relationship sours very quickly.”⁶⁴
- “Decisions, once made and communicated, were never retracted, which meant that pushing too hard in negotiations carried a high risk. If a confrontational approach was taken, the Koreans became confrontational as well, refusing to budge, and that was the end of the negotiations.”⁶⁵
- “The amount of time spent in the country was also significant in terms of understanding the context, the culture and the people. The processes of negotiation and liaison were helped by a knowledge of Arabic, familiarity with ‘hospitality’ procedures and an ability to work through ‘informal hierarchies.’”⁶⁶

⁶³ Philippe Regnier, “The emerging concept of humanitarian diplomacy: identification of a community of practice and prospects for international recognition,” IRRC, available at <http://www.icrc.org/eng/assets/files/review/2011/irrc-884-regnier.pdf>

⁶⁴ Johan Pottier, “Roadblock Ethnography: Negotiating Humanitarian Access in Ituri, Eastern DR Congo, 1999-2004,” *Africa* 76 (2), 2006, at 22.

⁶⁵ David Morton, “Steep Learning Curves in the DPRK,” in *Humanitarian Diplomacy: Practitioners and Their Craft*, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 207.

⁶⁶ Claudia Rodriguez, “The Legitimacy of Humanitarian Action in Iraq,” in *Humanitarian Diplomacy: Practitioners and Their Craft*, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 125.

The challenge in this area, though, is that humanitarian negotiators have often been unable to develop sufficient cultural expertise in the context in which these professionals operated. According to one author:

Culture is a crucial factor in negotiation. UN staff are often not equipped to understand the historical and cultural context that explains the behaviour of their interlocutors. Unnecessary offence may be given by arrogant personal behaviour or institutional posturing. Solid anthropological training or, better still, the routine deployment of anthropologists in UN coordination offices could go a long way to facilitating communication, if not agreement, with abusive authorities.⁶⁷

Though it is, of course, important to develop a strategic understanding of the interlocutors' interests, it is also important to develop a personal connection with these negotiating partners. At the same time, these personal relationships can also be a hindrance, as occurred in the context of Bosnia:

Apart from this, there were five main factors contributing to UNHCR's difficulties at the negotiating table. First, humanitarian personnel on the ground often misjudged their local interlocutors, underestimating their deceptiveness and making excuses for their obstructionism. They often devoted considerable time and energy to building up relationships with local authorities based on trust. In the process, friendships were established, with varying degrees of intimacy. In many situations, staff became reluctant to challenge these authorities and to be seen as being 'confrontational'.⁶⁸

6) Establishing Credibility

Humanitarian professionals have emphasized the importance of establishing credibility. According to one practitioner, "Above all, UNICEF learned that credibility is the main element in a successful operation and that operational objectives must be transparent."⁶⁹

But how can credibility be established? For UNICEF in Lebanon, the process involved a long-term presence in the country: "UNICEF found that there is no shortcut to gain

⁶⁷ Antonio Donini, "Negotiating with the Taliban," in Humanitarian Diplomacy: Practitioners and Their Craft, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 171.

⁶⁸ Mark Cutts, "The humanitarian operation in Bosnia, 1992-95: dilemmas of negotiating humanitarian access," Policy Research Unit, UNHCR, May 1999.

⁶⁹ Andre Roberfroid, "Negotiating for Results in the Lebanon," in Humanitarian Diplomacy: Practitioners and Their Craft, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 85.

people's confidence and that credibility can be gained only by practice and over time. UNICEF progressively gained the confidence of the population through its permanent and visible presence, throughout difficult years, in every part of the country."⁷⁰ A representative from Agro Action Allemande (GAA), which has operated in the DRC, has offered a similar statement, comparing GAA to MONUC: "When MONUC demonizes my organization for talking directly to the militias, all labeled 'war criminals', its criticism stems from frustration. MONUC has missed out on the chance to beat the militias and control them. The simple truth is that MONUC does not have the population on its side. Unlike MONUC, GAA has worked in Ituri since 2000, so we know — and know how to contact — all the key players, be they customary or military chiefs."⁷¹

The handbook on humanitarian negotiations produced by the HD Centre on Humanitarian Dialogue mentions that, for certain organizations, a positive reputation — or "brand" — is critical:

Certain humanitarian brands like the Red Cross, the United Nations, Oxfam and Médecins Sans Frontières are amongst the strongest in the world. In certain situations, this means that the very emblem or logo of an organisation on its vehicles conveys an enormous amount of meaning before a humanitarian negotiator even opens his or her mouth. The importance of making sure that the brand says what you want it to say is critical. The challenge of achieving, sustaining and developing a brand is vital to humanitarian agencies and a real asset to their negotiators.⁷²

In other contexts, a regional lead for humanitarian operations, as opposed to a lead operating under UN auspices, could be perceived as less threatening and thus more likely to succeed. As one write states of experiences in Myanmar:

But it was the meeting between UN Secretary-General Ban Ki-moon and Senior General Than Shwe in Naypyitaw on 23 May which produced a commitment to allow international access to affected areas. Earlier, on 19 May, a meeting of Association of South-East Asian Nations (ASEAN) Foreign Ministers in Singapore had proposed an ASEAN-led coordination mechanism for

⁷⁰ Ibid., at 96.

⁷¹ Johan Pottier, "Roadblock Ethnography: Negotiating Humanitarian Access in Ituri, Eastern DR Congo, 1999-2004," *Africa* 76 (2), 2006, at 23.

⁷² "Humanitarian Negotiation: A Handbook for Securing Access, Assistance and Protection for civilians in Armed Conflict," HD Centre for Humanitarian Dialogue, available at http://www.hdcentre.org/uploads/tx_news/188HumanitarianNegotiation.pdf

international assistance. This ‘international assistance with a regional character’ was less threatening, and provided a face-saving way for the Myanmar leadership to accept an international relief operation.⁷³

One issue that practitioners have noted as particularly important is to de-link humanitarian from political negotiations. This distinction was important to humanitarian negotiations that occurred in Angola: “A clear distinction between the political and humanitarian arms of the UN was key to the ERP’s success. The successful forging of distinct political and humanitarian identities enabled humanitarian negotiations to continue even when political negotiations had been called off.”⁷⁴ In other contexts, the blurring of humanitarian and political lines led to security issues:

We got ourselves 5 workers killed in Afghanistan in 2004. We got 3 workers killed in Somalia, expulsion in Niger and in Sudan. And all those incidents were tended to be seen as consequences of the blurring of the lines between humanitarian action and political and military intervention. And there was that overwhelming feeling that it was getting more and more difficult to work.⁷⁵

The overarching challenge for humanitarian negotiators is to establish and maintain perceptions of credibility in the midst of a shrinking humanitarian space, where humanitarian and political negotiations are often interconnected.

A final issue of credibility is that humanitarian professionals themselves must abide by the agreements they strike. The failure to do so in Bosnia had a detrimental effect on the humanitarian negotiations that were occurring:

[T]he exposure of attempts by humanitarian personnel to bypass rules laid down by the warring parties meant that they were often on the defensive when negotiating with them. Working on the principle that the ends justify the means, humanitarian personnel often considered that in dealing with ‘corrupt’ authorities, it was morally justifiable to find surreptitious ways of bypassing rules in order to deliver urgently needed supplies, even where this involved lies

⁷³ Julie Belanger and Richard Horsey, “Negotiating humanitarian access to cyclone-affected areas of Myanmar: a review,” Humanitarian Exchange Magazine, available at <http://www.odihpn.org/humanitarian-exchange-magazine/issue-41/negotiating-humanitarian-access-to-cyclone-affected-areas-of-myanmar-a-review>

⁷⁴ “Negotiating humanitarian access in Angola: 1990 – 2000,” available at <http://www.unhcr.org/3ae6a0c9b.html>

⁷⁵ “Negotiating Medical Aid in Conflict Zones,” VOA, available at <http://www.voanews.com/content/decapua-msf-negotiations-3feb12-138634034/159549.html>

and deception. The problem was that when they tried to make deals with these same authorities after having been caught acting in bad faith, they inevitably found themselves in weak negotiating positions. In many of their meetings, humanitarian staff were accused by local authorities of dishonesty and lack of professionalism.⁷⁶

7) *Learning Lessons From Past Experiences*

Much of the literature on humanitarian negotiations mentions barriers that have hindered the professionalization of this field. One policy document mentions that “no common negotiating culture” exists.⁷⁷ Practitioners articulate similar concerns in the following passages:

- “Without analysis of the core role of the humanitarian official as diplomat, the humanitarian enterprise will be jeopardized. This is because humanitarians engage in diplomacy often without understanding that this is what they are doing or, if understanding that they are engaged in something more than technical operational implementation, enter into the diplomatic role with reluctance — considering it to be “political” and outside their operational remit. The diplomatic role is an ineluctable aspect of post-Cold War humanitarian work. If humanitarians feel coerced into this role, either because they are untrained in political negotiating or because they feel it is not part of their role to engage in “political” negotiations, they will be less than optimally effective in meeting humanitarian needs.”⁷⁸
- “The NCCI [NGO Coordination Committee in Iraq] had no notion that the negotiations it was carrying out amounted to humanitarian diplomacy and certainly had no prior preparation, knowledge of techniques or training for undertaking these activities. It had, thus, no specific awareness of the importance of the process or how this process could have been better informed and better planned.”⁷⁹

⁷⁶ Mark Cutts, “The humanitarian operation in Bosnia, 1992-95: dilemmas of negotiating humanitarian access,” Policy Research Unit, UNHCR, May 1999.

⁷⁷ “Humanitarian Negotiations with Armed Groups,” OCHA, p. 50, available at <https://docs.unocha.org/sites/dms/Documents/HumanitarianNegotiationswArmedGroupsManual.pdf>

⁷⁸ Hazel Smith, “Humanitarian diplomacy: Theory and practice,” in *Humanitarian Diplomacy: Practitioners and Their Craft*, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 58.

⁷⁹ Claudia Rodriguez, “Negotiating the legitimacy of humanitarian action in Iraq,” in *Humanitarian Diplomacy: Practitioners and Their Craft*, eds. Larry Minear and Hazel Smith (Tokyo: United Nations University, 2007), 125.

One challenge of training negotiators is that different contexts and different types of negotiations require different skills. As one author writes:

Humanitarians must also tailor training to the different sorts of negotiation that will be required, whether we conceive of this difference in terms of institutional “levels” or the situation at hand. For example, there is a difference between the negotiation that might take place between the country team leader of an IO or NGO and a local governor or senior military officer about the ever-changing rules and understandings governing access, and the skills needed by perhaps a more junior IO or NGO fieldworker trying to negotiate a particular aid convoy past a checkpoint manned by equally junior counterparts. Likewise, the negotiation between principals over the absolute tonnage of food to be allowed into the port or airport requires distinct skills from those demanded of a humanitarian worker facing an incipient riot at a food distribution center or hospital.⁸⁰

As with the aforementioned obstacles to coordination between different organizations, the confidentiality required by humanitarian negotiations evidently also poses a barrier to sharing lessons learned and bringing professionals into networks to share best practices. As this literature review demonstrates, a wide array of literature exists that examines certain case studies to derive lessons applicable to future contexts. However, the gaps in the literature suggest that a dearth of practical guidance exists to assist practitioners in grappling with the seven challenges mentioned throughout this document.

⁸⁰ Kevin Avruch, “Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators,” 9 *Harvard Negotiation Law Review*, at 6.