



Centre for
Humanitarian
Dialogue

HUMANITARIAN NEGOTIATION

A HANDBOOK FOR SECURING
ACCESS, ASSISTANCE AND
PROTECTION FOR CIVILIANS
IN ARMED CONFLICT

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Deborah Mancini-Griffoli and André Picot
Geneva, October 2004

PREFACE

In 1985, when I was a 24-year-old humanitarian worker with Save the Children in Ethiopia, I remember sitting and watching two only marginally older United Nations (UN) officials negotiating with a charming but ruthless district official of the Ethiopian Communist Party in Korem. The government's programme of forced resettlement had caused some 50,000 people to flee from the relief camp at Korem overnight and the UN officials had been sent by the Secretary-General's Special Representative (SRSG) to find out where they were and to ensure that the local authorities provided guarantees that would allow them to return to the camp and to receive badly needed food and healthcare. It was a difficult, formal meeting complete with tea and much resolve on both sides.

The two officials wore UN badges and armbands and carried a letter from the SRSG. Their visit to Korem had been announced that morning on the BBC World Service. They spoke at length to underline the concern of the United Nations for the 50,000 people now missing and cut off from humanitarian assistance. After listening for ten minutes, the Ethiopian official thanked them for coming and said that the problems in this area were being addressed by the government. Showing them to the door, he then turned, and said politely: "*By the way, what is the United Nations?*"

The meeting ended and the UN was rebuffed. My two friends had done their best to put their case but they had not negotiated. They were not particularly aware that it was their job to negotiate. They had certainly never been trained in negotiation and were given no brief to negotiate. Subsequently, I always knew that I needed to be a good negotiator, but I had little idea how to become one. I did my best by watching others and by trying to think a little before meetings with key people. I have to assume that I was never really much good!

This is why I am so delighted to introduce this handbook on humanitarian negotiation, researched and written by Deborah Mancini-Griffoli and André Picot here at the Centre for Humanitarian Dialogue. Two years ago, we identified negotiation as a critical transferable skill in all humanitarian work, but one that was not well understood by humanitarian workers and, in general, one that was very poorly resourced by the

agencies that employ them. It is our hope that this first handbook on the subject will begin to address the gap in knowledge. We hope, too, that it might be the first part of a longer process in which the humanitarian sector refines and improves its negotiation skills.

In putting the handbook together we have been greatly assisted by an expert Advisory Committee. An important part of the discussions of this group have centred on whether or not it makes sense to produce a single handbook on negotiation for humanitarians who will be working in so many different cultural settings. Some wondered if there really are aspects of negotiation practice that are trans-cultural. Are there universal principles that always guide the way people communicate, argue, confront, bargain, agree or disagree with one another? Are we right to try and recommend a particular negotiation framework for humanitarian workers? Or are we imposing a singular and culturally specific way of doing things, rather than encouraging humanitarians to explore the many different ways in which people interact in various contexts?

These are important questions, and we do not pretend to have found satisfactory answers to them. We do believe, however, that there is value in offering a general framework for planning and implementing a negotiation strategy. Our overall aim is not to prescribe a single approach that is valid in all cases, but, rather, to make humanitarians realise that they need to take negotiation seriously. We would be very pleased if one result of our suggesting a general model was that others refined and adapted it to take account of cultural, social or other factors specific to a given situation in which they find themselves, or even rejected it outright in favour of a different model altogether. In short, this handbook is intended to begin the discussion.

We are very keen to receive feedback on our approach, so please feel free to send us your thoughts and comments on the handbook and to tell us about your experiences of using it. You can write to us at info@hdcentre.org or to the Geneva International Academic Network (www.ruig-gian.org) at info@ruig-gian.org.

Hugo Slim
Chief Scholar
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INTRODUCTION

How many humanitarian workers have walked empty-handed out of a government office, emerged frustrated from a long meeting with militia commanders, or reluctantly turned away from a military checkpoint wondering if they could have done better?

Many people in United Nations (UN) agencies, the Red Cross movement and non-governmental organisations (NGOs) spend a great deal of time presenting the case for humanitarian action. This is despite the fact that the international norms on which humanitarian action is based are, in principle, recognised as absolute and so, in an important sense, as non-negotiable.

International law imposes obligations on states, non-state parties and individuals alike, which they cannot bargain over. In reality, however, power enables parties to a conflict to violate people's rights, avoid their obligations or pick and choose when and where they decide to meet them. Humanitarians thus constantly need to remind, affirm, encourage, convince, persuade and pressurise all parties in an armed conflict to agree on humanitarian action and ensure respect for international law. This creates a difficult operational paradox for humanitarian workers, as they find themselves inevitably negotiating *in practice* that which is non-negotiable *in principle*. This paradox constitutes a humanitarian's typical operational environment and his or her foremost day-to-day challenge.

More than this, power also usually dictates that humanitarians are seldom in a strong enough position to exert sufficient influence over the other party to achieve an outright victory for humanitarian norms – what negotiation theorists call a win-lose scenario. In the great majority of situations, therefore, the most that humanitarians can hope for is to secure a *second best* agreement. In business, second best may be good enough. In war, it usually means that, while good for some people, others remain extremely vulnerable.

In a terrible way, these three features of humanitarian work may need to be understood and accepted as the three laws – or three dilemmas – of humanitarian negotiation, such that:

- it involves negotiating the non-negotiable;

- it typically takes place from a position of relative weakness; and
- at most, it can usually only hope for second best outcomes.

No wonder that, in light of these challenges, many aid workers often feel discouraged. But how many of them have ever received effective training in negotiation? How many of them have thought of practical tools that could help them improve their performance? How many have really sat together as a team to work out the strategy and tactics that they will utilise in discussions that they hold on behalf of populations affected by war?

This book is based on the assumption that the picture of humanitarian negotiation need not be one of fatalism and despair. While not losing sight of the very real structural problems faced by humanitarian negotiators in political situations, which are profoundly and determinedly anti-humanitarian, we believe that good negotiation practice can make a difference when making the case for access, assistance and protection.

The Purpose of this Handbook

Our main goal in this handbook is to enhance individual and organisational negotiation skills. We hope that by reading, discussing and reflecting on the material that follows, individual humanitarian workers will become better negotiators and that humanitarian agencies will become more strategic and effective in the way they negotiate in any given situation. Ultimately, of course, we hope that this will secure greater protection and assistance for the people who need it most.

Humanitarian work is increasingly recognised as a profession in its own right. New standards of best practice have been set across the many technical fields required to protect and assist civilians in war. Healthcare, food security, water provision, sanitation, shelter, site planning, social work, staff security, legal knowledge and protection have all been the objects of extensive professionalisation in recent years. They have also been the subjects of a wide range of best practice manuals and monographs. In this process, one of the most transferable skills required in all humanitarian work – negotiation – has tended to be overlooked. As one humanitarian with more than 30 years of experience put it:

“We do nothing but negotiate, but are not always aware of it.”¹

Of course, the craft of negotiation will come easier to some individuals than others, but we hope that by offering a framework for managing and

planning negotiations and some practical suggestions, this handbook may contribute to good practice and fill a gap in the sector’s current professional toolbox.

Our Target Audience

This handbook is written for humanitarians negotiating access, assistance and protection with government authorities, military personnel, armed groups and civilians in countries enduring armed conflict. It is not targeted at political or peace negotiators in war zones, nor do we specifically address negotiations between humanitarians and donors, suppliers, other agencies or co-workers, although many of our recommendations should prove helpful in such situations. Finally, in addition, we do not address multilateral, diplomatic negotiations involving counterpart representatives from different states.

There are usually three levels at which humanitarians negotiate access, assistance and protection: a high or strategic level; a mid or operational level; and a ground or frontline level (these levels will be described in more detail in Chapter 1). Slightly different types of preparation and skills are required to operate at each of these levels, although there is also significant overlap in practice.

The framework and suggestions outlined in this handbook were developed especially for humanitarians negotiating at the operational and frontline levels with diplomats, civil servants, low level state functionaries, members of armed groups, civilian leaders, and hostile or angry people carrying weapons. However, we do not always distinguish explicitly between the different groups.

We made this choice for two reasons: because we think that the need for improving negotiation skills is greater at the mid and ground levels; and because we believe that these are the levels at which individual skills can have the greatest impact. High or strategic level decisions depend so much on political factors that skills may influence negotiation outcomes to a much lesser degree than on the operational or frontline levels.

Nevertheless, we hope that even those who negotiate on the strategic or diplomatic level may find the framework provided in this book helpful.

Our Methodology

The handbook is based on research of the literature concerning the theory and practice of negotiation, as well as on individual or group interviews

with more than 100 humanitarian workers who have worked in many different areas of armed conflict with a variety of UN, Red Cross and NGO agencies. Case studies were also conducted in Côte d'Ivoire, a country that is currently going through an intense armed conflict, and Macedonia, a nation in post-conflict transition. The former allowed us to gain insights into humanitarian negotiations as they happen; the latter enabled us to understand how humanitarian negotiations are perceived with hindsight and also afforded us easier access to former combatants.

In Côte d'Ivoire and Macedonia a number of government officials and representatives of armed groups who have negotiated with humanitarians in recent conflicts were interviewed alongside experienced humanitarian staff from national and international agencies. Quotes from these interviews are cited anonymously throughout the text. See Annexe I for more details on the methodology.

Terminology

Throughout the handbook we use the term *negotiator* to denote any member of a humanitarian agency, at whatever level, who is engaged in negotiations for humanitarian ends. We also use the term *interlocutor* to refer to any person with whom a humanitarian negotiates to secure humanitarian ends. This might be a representative of a government, armed group or directly affected civilian communities. In francophone discussion of humanitarian negotiation interlocutor is the term of choice to describe people with whom humanitarians negotiate. In English, though, this term is rather cumbersome and not widely employed, so we also use phrases like the *other party*, the *other side*, your *opposite number* or even *counterpart* to refer to interlocutors. To non-native English speakers *counterpart* may sound like a confrontational term. However, it actually implies complementarity and a degree of partnership. We have refrained from using the stronger word *partner*, due to the different objectives that the two parties in the humanitarian negotiation may possibly have.

At several points in the handbook we refer to and use some of the jargon from negotiation theory – this is explained in the text. Those of you who wish to pursue such theory further will find additional references at the end of the book. Throughout the handbook, we are assuming that readers are familiar with the technical terms of our own humanitarian profession. Hence, references to protection, assistance, access, advocacy and so forth receive no further explanation.

How the Handbook is Organised

The handbook is arranged into five parts – each consisting of several chapters.

- Part 1 provides a general overview of humanitarian negotiation.
- Parts 2–5 outline our negotiation framework. They describe the four key negotiation phases (analysis, strategy, face-to-face and follow-through), as illustrated in the diagram below.

At the end of each part, a short summary recapitulates the main argument. Furthermore, each chapter in parts 2–4 contains a practical checklist that sums up its basic points.

Content at a Glance



Note

- 1 Interlocutors equally lack awareness of the fact that they are negotiating. A government official in Southeast Asia said, for example: "I am often meeting with humanitarians. They provide me with information. I provide them with information. They ask me for passage that I grant them if I have the power, but we are not really negotiating."



HUMANITARIAN NEGOTIATION AN OVERVIEW

CHAPTER 1 WHAT IS HUMANITARIAN NEGOTIATION?

The overall purpose of humanitarian negotiations is to ensure the impartial protection of, and the provision of assistance to, civilians affected by armed conflict and other people rendered *hors de combat*, as stipulated by international humanitarian law, human rights law and refugee law. The four key characteristics of humanitarian negotiations are thus that they are conducted:

- **by humanitarian actors**, such as members of appropriately mandated and impartial organisations like UN agencies, NGOs or the International Committee of the Red Cross (ICRC);
- **for humanitarian objectives**, including humanitarian access, protection, assessment and assistance, as set out in international humanitarian law;
- **in countries affected by armed conflict**, either of an international or non-international character; and
- **with the parties to the conflict**, that is, those with power and responsibility for the conduct of war, for the humane treatment of civilians and those *hors de combat* and for the distribution of assistance.

Negotiating What?

International law obliges governments to grant the people living on the territory under their control access to assistance and protection. In cases where they fail to fulfil their obligation, humanitarian action seeks to prevent, limit and put an end to the violation. Frequently, therefore, humanitarians have to negotiate with respect to one or a combination of the following: assistance and protection programmes, including their content, timing and targeting; and access as a precondition for any kind of humanitarian action.

In many cases, access is the most challenging and difficult factor to negotiate. The UN Emergency Relief Coordinator has made access the first action point of his 'road map on the protection of civilians', which establishes a shared agenda for, and a commitment to action among,

humanitarian players.¹ In his briefing to the UN Security Council, he emphasised that, without access, humanitarians fail to meet their responsibility to protect.² Table 1 defines each of the key objectives negotiated by humanitarians.

| ACCESS | ASSISTANCE PROGRAMMES | PROTECTION PROGRAMMES |
|---|---|--|
| This is the legal guarantee that protected persons must have access to the protection and assistance they need when they need it. It largely involves the free and unimpeded movement of people to relief services or the free movement of humanitarian agencies to reach people who are trapped, unable to move or detained. ³ In both circumstances, access enables an impartial assessment of, and response to, people's needs and is thus often the precondition for any humanitarian action in a particular region. | They aim to provide specific relief items to meet the physical, social, economic and spiritual needs of protected persons as defined under international humanitarian and human rights law. Assistance usually includes the provision of nutrition and/or health services, including the distribution of food items, construction or repair of water supply systems or medical facilities and training of healthcare staff. ⁴ Such aid can be provided directly by a humanitarian agency itself or indirectly by supporting governments, occupying powers or other bodies already operational in the area. | They aim to ensure "full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law, and refugee law." ⁵ In particular, protection refers to the means by which humanitarian agencies alert, advise, monitor and insist upon the responsibility of the warring parties and other states to prevent civilian suffering and the abuse of those now <i>hors de combat</i> . ⁶ |

Overall responsibility for a humanitarian negotiation does not normally lie with a single individual. Negotiation objectives and corresponding strategies are best developed in collaboration with others in any organisation and also with relevant people outside of the negotiating organisation. It is common – and desirable – for senior, medium and lower level staff members all to be involved in formulating the negotiation strategy and in negotiating the same objectives at their respective levels.

| SUBSTANCE | ACTORS | EXAMPLE |
|--|---|---|
| HIGH-LEVEL STRATEGIC | | |
| Negotiate organisation's entry into an armed conflict. Determine the extent of the organisation's operational presence and set general parameters for its operations in terms of mandate or mission (health, food, detainees, refugees), geographical coverage (area and populations), lines of reporting with respect to the relevant authorities (ministerial liaison), freedom of movement (travel routes and timings) and liaison with military elements. These negotiations may take months or years. | Senior humanitarian staff negotiating with one or more parties to the conflict at the highest political level of the state. | Negotiations with senior national authorities to start operations or to agree on the principles and procedures governing humanitarian action in the conflict zone. |
| MID-LEVEL OPERATIONAL | | |
| Negotiate a set of practical and effective daily activities that is in line with the general strategic agreement and that is acceptable to all parties and improves the lives of people. | Programme or project level humanitarian workers negotiating with regional or district level authorities. | Negotiating with a military commander of a conflict zone to define the duration and frequency of regular access to populations; negotiations with Ministry of Health officials to set objectives for a public health assistance strategy involving the sites of new wells and the dates of urgent immunisation campaigns for children in villages and camps for internally displaced persons (IDPs). |
| GROUND-LEVEL FRONTLINE | | |
| Sudden, reactive and often also high-risk negotiations requiring quick decision-making in the face of unexpected developments. | Programme or project level staff negotiating with junior level state and armed group authorities or community leaders. | An unexpected influx of IDPs, a serious deterioration of humanitarian conditions following a military attack, a increased threat to the security of humanitarian staff, checkpoint negotiations to ensure the free and safe passage of humanitarian assistance or discussions with a village leader who is refusing entry to a place of distribution previously agreed to in upstream strategic and operational negotiations. |

Typical Levels of Humanitarian Negotiation

Humanitarian negotiations usually take place on three levels: a high or strategic level; a mid or operational level; and a ground or frontline level. These levels differ according to the substance and actors of the negotiation. Table 2 describes these differences and illustrates them with examples.

Most of the negotiation guidelines in this book can be generally applied to all three levels, although they will be most useful to operational and frontline negotiators. If you are interested in more specific examples and recommendations concerning these two levels, please see Annexe II.

CHAPTER 2 THE PARTICULAR CHALLENGES OF HUMANITARIAN NEGOTIATIONS

Most negotiations between human beings have similar general dynamics whether they are personal negotiations between a parent and a child or more general commercial, legal and political negotiations. Usually, two parties negotiate because they feel that they can gain something by interacting. Negotiation theorists use the term *interdependence*⁷ to describe this desire or need that parties feel to engage with each other. Whether the two parties achieve their objectives often depends on how they perceive one another, to what extent they can predict each other's actions, or how much influence they can exert over one another. It is fair to say, though, that the context and goals of humanitarian negotiations differ in several ways from such generic negotiation scenarios.

Box 1: A Little Bit of Negotiation Theory ...

Interdependence

Individuals willingly enter negotiations if they expect to gain more than their *bottom line*. For example, someone selling a car will only negotiate on prices above a certain value. This value depends on two elements. First, the subjective appraisal of the seller: his/her belief that the car has a certain market value. Second, the *fallback options* available to the seller.⁸ For instance, if the seller must leave the country in a hurry and faces the alternative of abandoning the car, he/she will be ready to accept a price even lower than his/her initial appraisal. Interdependence, therefore, means that two parties can find common ground, or that their bottom lines (made up of a subjective and a contextual component) are within a common range.

Rejection, Resistance and Resentment

Interdependence often does not exist in humanitarian scenarios. In many instances, humanitarians are simply not wanted by warring parties that

are determined to win their fight at all costs, harbour grave suspicions about interfering outsiders or feel that humanitarian obligations will compromise their political and military objectives. Recurrent killings of humanitarian workers make this shockingly evident.

Humanitarians feel increasingly rejected by their counterparts:

“The environments in which humanitarians operate are increasingly hostile and without concern for humanitarian values. With economic interests prevailing and governments or armed groups caring less about their moral image ... humanitarians are often not even granted the space to start negotiations.”

(Aid worker talking about experiences in the Great Lakes region)

Humanitarians lack power over the territory and people they want to assist and protect and whether negotiations take place often depends, therefore, on their counterparts' willingness to receive them. In situations where counterparts believe that they will be able to achieve their objectives more effectively without negotiating, humanitarians can only try to *persuade* them to come to the table. Persuasion involves many of the same activities as negotiation and good negotiators are usually also good persuaders. The guidelines described in parts 2–5 of this handbook are thus applicable to both situations.

Concluding Only Second Best Agreements

The best agreement a negotiator could possibly aim for is a principled agreement. This means that both parties can achieve their objectives without having to make concessions.⁹

Although often impossible to achieve, many humanitarians and their counterparts favour principled agreements:

“Ideally, humanitarian negotiation is a dialogue in a more or less conflictual situation where the opinions of both sides are considered and where finally, when leaving the discussions, each party has

the impression that their point of view has been taken into account. It is a dialogue where there is neither a winner nor a loser.”

(Aid worker reflecting on experiences in West Africa)

“A successful humanitarian negotiation is a situation where one frankly and openly arrives at equilibrium. Each side has to recognise its responsibilities.”

(Military representative in West Africa)

“A good humanitarian negotiation is one that makes everyone smile. It is a negotiation that brings stability to our relations. Each party has to have the impression to have gained something.”

(Civil servant in West Africa)

In humanitarian situations, however, there are often real obstacles to obtaining principled agreements because the values and interests they defend – legal norms to protect and assist everyone – are often profoundly incompatible with those of their military and political counterparts. 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.

If principled agreements cannot be reached, the parties in typical negotiation situations, such as in business, may often agree to a compromise. However, humanitarians may often not be able to accept compromise. Finding a middle ground may require that humanitarians make intolerable and tragic concessions or satisfy illegal and immoral interests. Imagine, for instance, that the local head of the four armed groups mentioned above shows some interest in your concerns. For military reasons, he/she is only willing to disband one group and feels that he/she is being very reasonable in agreeing to do so. Given these starting

positions, if you negotiate to reach a compromise, two groups instead of one may be disbanded. But such an agreement still leaves many children unprotected. Aid workers are thus bound to be dissatisfied to some degree when meeting their counterparts half way because there is likely to be tragedy in any humanitarian compromise.

In many instances, humanitarians may feel, therefore, that they face a win–lose scenario, necessitating a hard-line approach and an all out effort to win and prevail over the other side.¹⁰ But, unfortunately, humanitarians do not usually have the requisite power to adopt such an aggressive stance. Experience also shows that agreements reached through coercion seldom lead to durable arrangements on the ground as they are often contested. The use of hard-line tactics by an agency or individual can also be remembered with hostility for a long time to come and prevent good negotiations in future. As a result, it will often be the humanitarians who are the losers in a win–lose scenario.

Humanitarian workers often consider it impossible to achieve win–lose agreements:

“In a win-lose scenario, we are going to be the losers. As humanitarians, we simply do not have the levers to win.”

(Aid worker sharing experiences in Southeast Europe)

“Going for a win-lose agreement rarely plays out in our favour. In most cases, we are the losers. But even if we do win, our counterparts will always resent and impede the implementation of the agreement and we can be sure there will be security incidents.”

(Aid worker reflecting on experiences in South Asia)

In sum, humanitarians often find themselves between a rock and a hard place. On the one hand, they feel frustrated by apparently mutually satisfactory agreements for ethical reasons. On the other hand, they lack the means to conduct effective win–lose negotiations and risk spawning counterproductive outcomes if they play hard.

Tragically, this is why many humanitarian negotiations fail. Or, even if they succeed to some degree, they cannot be celebrated as an unambiguous success. Negotiations fail or are protracted in many other professional areas too, but the consequences are not always as disastrous as they are

when humanitarian negotiations do not succeed. Delayed agreements or partial achievements still mean death, suffering or lack of protection for many people whose needs were great before the agreement was reached or who still lie beyond the reach of the latest deal. Humanitarian negotiators live, at most, with the reality of second best agreements and highly compromised notions of success. Nevertheless, though, second, third or fourth best results still save lives, offer protection to people who are not yet affected and leave the door open to incremental progress.

Box 2: More Negotiation Theory ...

Types of Agreements

Negotiation theorists distinguish between win–lose, compromise and principled agreements.¹¹ These three types differ in terms of:

- the satisfaction the agreement accords to each negotiation party. Win–lose agreements enable only one party to reach their goals; compromise agreements enable both to fulfil some of their objectives, although they need to make concessions; principled agreements satisfy the interests of the two parties perfectly.
- the negotiation approach they require.

Win–Lose Negotiation

In a win–lose, also called a zero-sum or distributive negotiation, the interests of the two parties are irreconcilable, making mutually satisfactory outcomes impossible. For example, in a struggle over a cake, if one person sets out to eat more cake than the other, the other person is by implication going to get less cake. In such a contest, negotiators are forced to take a tough and aggressive approach in order to *prevail* over the other side.

Compromise Negotiation

In a compromise negotiation an agreement can be found that satisfies both parties, if interests can be recognised as at least somewhat compatible – although it may require that each side make significant concessions and compromises. For example, a seller and a buyer

negotiating the price of a cake may both want to achieve a sale. If the buyer gets a reasonable discount but the seller still feels that he/she has sold the cake at an acceptable price, then both gain from the transaction, even if each might have hoped to have done slightly better. Compromise approaches to negotiations tend to be soft and friendly, usually avoiding confrontation and focusing on meeting each other half way.

Principled Negotiation

According to Roger Fisher and William Ury, who first coined this approach to negotiation, principled agreements are the most effective kind.¹² They tend to deal with the issue at hand rather than play to the temperaments of the negotiators and so can emerge as the most reasonable. Principled negotiations satisfy the interests of both parties without necessarily forcing either of the parties to compromise. They do this by using a problem-solving approach that focuses on the needs and interests of both parties.

The classic example of a principled negotiation is two people fighting over an orange.¹³ Both want the orange but, it emerges, for different reasons. One wants the orange to make a drink of orange juice, while the other wants it for its peel in order to make a cake. Once the respective needs and interests of each party have been uncovered through a problem-solving (as opposed to bargaining) approach to negotiation, the orange can be peeled and squeezed to make both parties better off without either having to enter into a compromise.

Principled negotiators avoid hard- or soft-line approaches in favour of an 'exploratory problem-solving attitude'.¹⁴ They apply reason to reach results and avoid contests of will.¹⁵ This example shows that principled agreements are possible when interests are complementary and compatible. A conflict over an orange might be more complicated when both sides want the orange to make their own marmalade – for which you need both peel and juice!

Fear, High Risk and Low Trust

Unlike many other types of negotiation, humanitarian negotiations occur in times of war and in unstable places. The extreme positions taken in

an armed conflict and the destructive nature of war itself can render people's actions very aggressive and their reasoning unpredictable. War can also push extreme personalities into positions of power they would not normally achieve in peacetime. Depending on how the war is going, a situation can be as risky – or even more dangerous – for the counterpart as for the humanitarian negotiating team. In many instances, both groups of people are risking their lives.

The constant fear and insecurity associated with conflict environments makes it problematic to build trust between negotiating parties, sometimes impossible. Rather, parties perceive each other in hostile terms and refuse to share information. As a result, negotiators often take extreme or defensive positions, thereby reducing their chances of reaching a successful agreement.

360 Degree Negotiations

Humanitarians usually operate within a dense web of relationships with different individuals and groups, usually at several different levels. All of these groups have to be negotiated with in order to achieve a specific objective. This means that humanitarians are seldom simply negotiating a single linear relationship but are engaged negotiations taking place all around them often simultaneously, with different authorities and community representatives.

For example, if humanitarians want to provide medical assistance to a hospital for those wounded in war, they must first talk with the Ministry of Health about material and staffing needs. Once an agreement has been reached, humanitarians may be obliged to consult with the Ministries of Security, Defence and Interior, as well as with representatives of rebel groups, to secure safe delivery of the goods and to ensure people's safe passage to hospital. Finally, it may be necessary to hold discussions with members of the civilian populations in order to determine which of the wounded will be referred to hospital.

Useful tools such as *stakeholder mapping* can help aid workers to keep track of the plethora of actual and potential parties in any set of humanitarian negotiations (see Chapter 5).

No Common Negotiating Culture

Negotiators in many other professions usually enjoy some kind of common setting and shared culture of negotiation and bargaining that facilitates

agreement. For instance, lawyers meet in court and rely on objectivity and accuracy to make a good case. Business people come together in boardrooms or restaurants and draw on familiar vocabulary and customs to open and close a deal. In contrast, and more like international salespersons, humanitarians negotiate all over the globe in locations as diverse as small villages in rural areas to five-star hotels in capital cities. Their interlocutors include heads of state, government ministers, local authorities, rebel fighters, religious leaders, soldiers at checkpoints, community leaders and destitute civilians. This makes it impossible to adopt and refine a single way of doing humanitarian business.

Humanitarians often find it difficult to develop a common understanding with their counterparts:

“To gain access to communities that lived in remote mountain areas we had to negotiate with local chiefs, representatives of churches, local authorities, rebels, the army ... as well as [with] the groups from the communities themselves. This is where I realised that penetrating the culture of all these different actors and understanding their way of thinking would be a major challenge.”

(Aid worker talking about experiences in Central America)

Asymmetry in Power and Knowledge

In other types of negotiations, the two parties are often on a relatively equal footing in terms of power and knowledge. In a courtroom, for example, the defence and prosecutor enjoy equal standing before the judge. Both have the ability to research the case carefully and to prepare their negotiations. This is not always the case in humanitarian environments. When negotiating with government representatives, for instance, humanitarians may often feel that they are the weaker party because they do not have authority over the territory and population they want to assist and protect. In contrast, they may give the impression of being the more powerful actor when discussing assistance with civilians. In terms of knowledge, humanitarians often have access to information networks that help them to understand their counterpart's institutional role and personal background. This information may give them a negotiation advantage. Their counterparts, in comparison, often know little about the

organisation the aid worker is representing and his/her individual life story. The fact that aid workers often speak English fluently can also result in an imbalance in the relationship when negotiations are conducted in this language. In general, such asymmetries make it more difficult for the two parties to forge an effective partnership.

Counterparts sometimes feel that humanitarians do not treat them equally:

“Although humanitarians often make an effort to feel equal to us and not be patronising, it does not always work and they feel superior for some reason.”

(Military representative in Southeast Africa)

CHAPTER 3 GOOD PRACTICE IN HUMANITARIAN NEGOTIATION

Low chances for satisfactory agreements, limited negotiation opportunities, high risk, complex and often asymmetric working relationships – the picture facing humanitarian negotiators seems to look bleak. But good humanitarian negotiators can and do rise to many of these challenges, usually by consciously or unconsciously applying a set of best practice techniques.

The rest of the handbook explores this framework of negotiation practice in detail, so that humanitarians can actively reflect on the key dynamics of the negotiation process and identify the specific knowledge, activities and skills necessary to improve their capacity as negotiators. This chapter outlines some general guidelines that will be taken up and elaborated in the following parts of the book.

Focusing on Substance, Relationships, Process and Results

Substance, relationships, process and results are the four main things that humanitarians need to keep constantly in mind as they plan and implement any negotiation. These four aspects will run as continuous themes throughout the handbook.

The first three are the *what*, *who* and *how* of negotiation – the things you want and thus need to talk about; the people you need to talk to and convince; and the time and place at which you choose to talk. Finally, you need to make sure that, after the negotiations, any agreement moves effectively from paper to practice or from handshake to action.

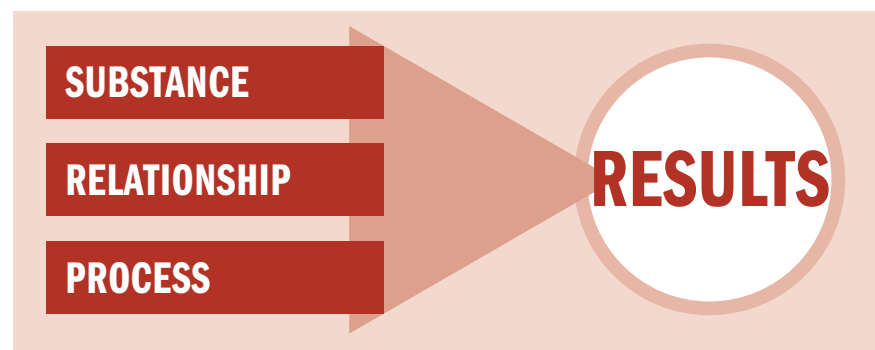
Substance – engaging in discussions on specific subject matters to achieve specific goals. For example, you may want to provide medical services to a population in a raided village or your counterparts may want to protect children from exploitative labour practices. You need to be talking about things that are relevant to making this happen.

Relationships – establishing sustainable working relationships with your interlocutor is critical. While this need not be a deep bond

of friendship, it needs to be some kind of connection that allows talks to continue, respects agreements, and permits joint oversight of their implementation.

Process – setting ground rules and procedures and determining venues and meeting times, so that the process of talking actively aids the act of talking.

Results – negotiating to achieve practical results that make a positive difference to the lives of war-affected populations must be your goal at all times. Reaching an agreement is a necessary condition for such an impact, but an agreement alone is not sufficient. Ensuring that any agreement is feasible and is followed by action on the ground is the true test of the results of negotiation. The agreement is but the *output* of your talks. The *outcome* of any negotiation is what happens to the affected population when the agreement is implemented.



Working Through the Four Phases of Negotiation

Good negotiation practice consists of four phases: an analytical phase during which the situation is assessed; a strategic phase in which a negotiation plan is devised based on the analysis; actual face-to-face negotiations where you come to the table and engage in dialogue; and the follow-through phase when the agreement is implemented and monitored on the ground. Depending on how implementation goes, it may be necessary to restart negotiations.

While this division into four phases is conceptually useful, in reality, the phases often overlap and recur throughout the entire negotiation process.



Yet it is important to be conscious of them and to understand the activities that occur during each stage.

Developing Interest Compatibility and Leverage

According to negotiation theorists, every negotiator brings some predefined positions and interests to the negotiation table. Positions are statements of what a party would like to achieve through negotiation. For example:

"I would not like you to distribute aid items in my village."

Interests are the broader, more vital desires, concerns, needs and fears that are situated beneath these positions. Negotiators who focus on the satisfaction of interests will often achieve more effective outcomes than those who concentrate on satisfying a specific position, since interests are broader and thus offer more options for reaching mutually satisfactory agreements without compromise.¹⁶ Good negotiators focus on interests and think hard about where areas of compatibility lie and identify options that can meet the needs of both parties. Experienced negotiators also work on developing their leverage – that is, the sources of power with which they can influence the other party. They think about what specific humanitarian offer they can provide to the other party and what other possible means they have to gain more influence.

Negotiating Continuously

Negotiation is very rarely, if ever, a one-off interaction where the parties go straight from the airport to a meeting room, sign a document and never see each other again. On the contrary, negotiation usually starts long before the two parties actually meet for the first time and continues beyond any meetings.

Long before you sit down to negotiate anything specific, you are already communicating and sending messages through everything you do. Your presence in a country, the way you drive through villages, the manner in

which you interact with vendors at the local market, or your style of dress may emit signals to your potential counterparts and shape attitudes that will colour future negotiations. Negotiation involves constant interaction and so requires humanitarians to behave consistently, thoughtfully, courteously and professionally at all times and in all places.

It is often hard to define a clear beginning and end to humanitarian negotiation:

“Whether we choose to drive our land cruisers at full speed through villages raising clouds of dust that disturb the inhabitants or whether we drive slowly and respectfully, will make a difference on how we are viewed and can determine the future relationship we will have with our counterparts.”

(Aid worker talking about experiences in Central Africa and the Great Lakes Region)

Working as a Team and Aligning Goals

Humanitarians always negotiate as part of an organisation and as representatives of a wider international system of values, principles and legal standards. At all times, it is important to ensure that negotiation strategies and objectives take into account, and are communicated to, colleagues above, below and beside you in the organisational hierarchy.

It is important to keep everyone in the loop and to feed information about substance, relations, personalities, procedure and the results of your negotiation continuously back through your organisation. A good agency team will often consist of a unique mixture of international and national staff, men and women, old and young. This diversity is a great resource for thinking through and leading negotiations if you know how to utilise it.

A humanitarian from Southeast Asia shared this example of good team work with us:

She and an international colleague developed a creative working relationship in advance of talks. He always gave her the agenda he imagined for a specific negotiation. She would then make changes to the order of items on the agenda or to the title of certain items knowing what issues and phrases were likely to be more politically sensitive, briefing him accordingly.

Complementing the Negotiations of Other Agencies

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.

Producing a Successful Agreement

Whether your negotiation is successful or not depends on the kind of agreement that you and your opposite numbers are able to reach. No matter whether it is a win-lose, compromise or principled outcome, a good agreement will always have to offer some kind of advantage to your interlocutors. It will at least meet some of their needs or aspirations. Usually, a good agreement has the following five characteristics.

- **It meets the needs of the affected population.** Any agreement will only be of real value if the affected population benefits from it. Its interests, needs and desires should always be at the heart of your negotiation objectives and agreements.
- **It can be implemented.** Signing a piece of paper will be of little value if the actions agreed on are not feasible in practice. Make sure that all the lines of command are functioning and that the structures, resources and materials necessary for the implementation of an agreement are available and ready to be deployed. Do not agree to things that one or other side cannot or will not actually do, unless it buys you valuable breathing time and prevents the complete breakdown of a process.
- **It details specific obligations and responsibilities.** It is important to assign specific tasks and to include them in the final text of the agreement. Clearly defining *who* will do *what* and *when* will ensure effective monitoring of the agreement, as it enables the parties to keep track of each other's responsibilities.
- **It is sustainable.** A good agreement is one that lasts over a significant period. This means that both parties must be fully conscious of

the long-term consequences of an agreement. They must appreciate the length of their commitment.

- **It nurtures relationships for future negotiations.** A successful agreement will be the beginning, not the end, of a good working relationship with your counterpart. The rapport established during the negotiation should enable collaboration to continue on even better terms in future.

Implementation is key to a successful agreement:

“Never lose sight of the concrete impact that your negotiation will have on the victims. All too often, we engage in negotiations that remain relatively theoretical. Hypothetically, we will be able to live with the outcome but when we start implementing the agreement, we realise that there are many things we did not think about, that we did not expect. And then we find ourselves with a very good agreement, the implementation of which is completely unrealistic. For example, in one country we signed an accord ... that had to be renewed every six months. So, we constantly had to re-sign the agreement and every new signature involved new negotiations. In effect, we ended up in a situation where there wasn't really any agreement at all anymore.”

(Aid worker talking about experiences in Eastern Europe)

Unfortunately, whether a negotiation is successful and whether the final agreement is of high quality will not always be under your control. There are many external factors that can jeopardise an agreement. Your counterpart may find it difficult to convince his or her colleagues to buy into the agreement, making implementation impossible. The conflict may evolve dramatically and lead to changes in local or national command structures, which may effectively nullify an agreement. Identifying as many risks as possible to an agreement and taking steps to pre-empt them is essential, but it will seldom make an agreement watertight.

SUMMARY PART ONE

In this part we examined the following points.

- 1 Humanitarian access, assistance and protection as key objectives of a humanitarian negotiation and the three different levels of humanitarian negotiation: strategic; operational; and frontline.
- 2 The main features that distinguish a humanitarian negotiation from other types of negotiation. These include: war and the personal risk that humanitarians run when negotiating; the frequent rejection humanitarians face; the obstacles to successful agreements; the fear and high degree of risk prevalent in humanitarian environments; the 360 degree nature of humanitarian negotiations; the lack of a common negotiating culture; and the asymmetry in terms of power and knowledge that can often prevent humanitarians and their counterparts from building an effective working relationship.
- 3 The key elements of good practice in the area of humanitarian negotiation, including:
 - focusing on substance, relationships, process and results;
 - paying attention to analysis, strategy, face-to-face and follow-through;
 - trying to bring together the interests, not positions, of the two negotiating parties and maximising leverage;
 - viewing negotiation as a continuous process, not limited in time;
 - negotiating as a team – carefully aligned with all parts of your organisation;
 - being complementary with the negotiations of other agencies; and
 - creating successful agreements that meet the needs of protected persons, can be implemented, is sustainable and helps to build good relationships for future negotiations.

NOTES

- 1 *Statement of Under-Secretary-General Jan Egeland at the Open Meeting of the Security Council on the Protection of Civilians in Armed Conflict*, 9 December 2003, p. 7.
- 2 *Ibid.*, p. 1.
- 3 For a good definition of humanitarian access, see Bonwick, Andrew. *Humanitarian Access – How can Humanitarian Assistance be Safeguarded in Conflict?* Speaking Notes, Wilton Park Conference on the Protection of Civilians in Armed Conflict, 25–29 November 2002.
- 4 ICRC, *Discover the ICRC*. Geneva: ICRC, 2001, pp. 28–29.
- 5 Giosi, Sylvie. *Strengthening Protection in War: A Search for Professional Standards*. Geneva: ICRC, 2001, p. 19.
- 6 For a detailed definition of protection see Slim, Hugo and Eguren, Luis Enrique. *Humanitarian Protection. A Guidance Booklet*. London: ALNAP, 2004, pp. 21–30.
- 7 Lewicki, Roy, Litterer, Joseph and Minton, John. *Negotiation*. Second Edition. Burr Ridge, IL: Irwin, 1992, p. 24.
- 8 Negotiation theorists Roger Fisher and William Ury refer to ‘fallbacks’ as BATNAs (Best Alternative to a Negotiated Agreement). See Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In*. Second Edition. New York: Penguin, 1991.
- 9 The basics of principled negotiation are explained by the founders of this approach, Roger Fisher and William Ury, in *Getting to Yes: Negotiating Agreement Without Giving In*. *Op. cit.*
- 10 For a good description of compromise and win–lose negotiations see Lewicki, Roy, Litterer, Joseph and Minton, John. *Negotiation*. *Op. cit.*, Chapters 2 and 3.
- 11 See: Lewicki, Roy, Litterer, Joseph and Minton, John. *Negotiation*. *Op. cit.*; and Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In*. *Op. cit.*
- 12 See Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In*. *Op. cit.*, pp. 3–14.
- 13 Rubin, J.Z. and Brown, B.R. *The Social Psychology of Bargaining and Negotiation*. New York: Academy Press, 1975, p. 25.
- 14 Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In*. *Op. cit.*, p. 13.
- 15 *Ibid.*
- 16 See, for example, Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In*. *Op. cit.*, pp. 40–55. For more information on interests and positions see Chapters 4 and 6 of this handbook.



2

ANALYSIS

THE FIRST PHASE in any negotiation is in many ways the most important. Good preparation is critical to a successful negotiation. The analysis phase allows you to take a closer look at the negotiation scenario that you face. Careful assessment helps you evaluate how difficult it will be to reach a successful agreement and provides the basis for a suitable negotiation strategy.

Any pre-negotiation analysis includes four activities.

- Define your objectives, including positions, bottom lines and interests.
- Select appropriate counterparts who have the power to deliver what you need.
- Gauge how compatible the interests of you and your counterparts are.
- Determine the leverage available to you to understand how likely you are to influence your counterparts.



CHAPTER 4 DEFINING YOUR NEGOTIATION OBJECTIVES

The first and perhaps most important task during the analytical stage is to set clear negotiation objectives. The latter define *what you want* as a result of the negotiation. For humanitarians, negotiation objectives will always reflect the needs of the affected population.

Experienced negotiators all say that having clear objectives and then communicating them effectively is crucial to achieving good results. If you are confident about what you want, you are less likely to make concessions and reach an agreement that is not in the favour of the population you are trying to assist. And, of course, having clear objectives from the start will also provide a benchmark against which to evaluate the eventual success of any negotiations.

Experienced humanitarians stress the importance of setting objectives as the first step in any negotiation:

“ We often forget that defining our objectives is the basis for any negotiation. Our objectives determine our choice of counterparts, the negotiation strategy we will adopt and the arguments we will make.”

(Aid worker reflecting on experiences in Eastern Europe and the Horn of Africa)

Clarity about objectives and your own room for manoeuvre also help your counterparts determine what they can realistically expect from you. This is important, because in many situations, those on the other side of the table may make extreme demands that your organisational mandate or mission would never allow you to fulfil and which can effectively derail the talks early on. For example, a frontline negotiator told us that being clear about her organisation’s goals and abilities greatly facilitated her negotiations by setting reasonable boundaries for them. She made it clear that her organisation could help collect and transport luggage that refugees had left at the side of the road but that it would not be able to

pick up and deliver tools for the construction of a new road. Stating her limits clearly made for faster, realistic negotiations with the government about the use of her organisation's trucking fleet.

Positions, Bottom Lines and Interests

Negotiation specialists and practitioners divide objectives into positions, bottom lines and interests. Understanding these various elements and using them to design your strategy is vitally important as you examine your own objectives and attempt to read those of your counterparts.

Positions

A position is a specific statement summarising what you would like to achieve with the negotiation. For example:

"I want to carry out monitoring visits to 15 villages in the district in which groups of IDPs have recently arrived."

Usually, negotiators take deliberately extreme positions, especially when making opening offers. They hope that starting out high will guarantee them their expected outcome, which may be slightly lower than the initial offer.

Bottom Lines

Bottom lines define the worst acceptable outcome for you if you fail to achieve your position. They represent a final offer before you walk away from the table.

Having an explicit bottom line shields you from being pressured into an extremely unfavourable agreement. In this sense, bottom lines serve as a sort of risk management device for negotiators. Working out a bottom line helps you to understand which aspects of an agreement you are willing to concede on if the negotiation becomes very difficult. In the examples above, you may be flexible on the total number of villages visited, but may definitely want to visit villages A, B, and C, because this is where the internally displaced have suffered the most abuse.

Be ready not simply to concede to a bottom line but to demand something in return for any concession. For instance, you may agree only to monitor villages A, B and C on condition that your counterpart agrees to more regular, scheduled visits. In other words, you will trade *fewer* villages for *more* visits.

Consider these recommendations on bottom lines from two experienced humanitarian negotiators:

“ Before conducting a negotiation, it is important to know:

- On what we are willing to make concessions and in exchange for what;
- What concessions we are willing to make for nothing if the situation becomes very unfavourable; and
- On what we will never make any concession, even at the risk of letting the entire negotiation process break down. For a negotiation to succeed, one must be ready to let it break down.”

(Aid worker sharing experiences in Eastern Europe and the Horn of Africa)

“ Often we fail to decide the point beyond which we will not go beforehand. But if we do not know our bottom line right from the start, we run the risk that during the negotiation, we will be exploited and lose our credibility. We will accept an agreement for the sake of an agreement but afterwards will realise that we did not really achieve our objectives. It seems essential to me that negotiators know what they can accept and what they cannot accept.”

(Aid worker reflecting on experiences in South Asia)

Interests

Interests are the deeper needs that both sides in a negotiation are trying to satisfy in accordance with the various positions they articulate publicly. Depending on the level of trust between the negotiators, these interests may not always be expressed openly, but they nevertheless motivate any position that a negotiation party may take. Several interests can feed into a single position. Negotiator X, for example, may want to obtain access to the villages of district Z in order to perform monitoring visits. This position may be motivated by his agency's moral interest in helping people in need or a legal interest in protecting the human rights of IDPs in the villages. Humanitarians are primarily responsible for representing the needs of the affected population and such people's best interests should always be the overriding impera-

tive for any humanitarian objective. But, realistically, negotiator X may also be representing other individual or institutional interests in any negotiation. For example, he/she may also have an interest in executing the mandate of his/her organisation or in enhancing its reputation. On top of this, negotiator X may have an individual interest in advancing his/her career.

The same is true for the other party. A counterpart may endorse a repatriation programme for unaccompanied minors in the area of his/her control. This position could be motivated by his/her desire no longer to bear responsibility for the welfare of these children.

Box 3: The Three Elements of a Negotiation Objective

It is useful to think about positions, bottom lines and interests in the following way.

- **Positions** – what you say you want
- **Bottom lines** – the least you are willing to accept
- **Interests** – why you want what you say

Interests are usually the broadest element of an objective. Often, several interests lie beneath a single position or bottom line. Keeping these elements separate will permit the holding of more creative discussions and lead to more effective agreements. See Chapter 6 for more information on how interests can help you achieve mutually satisfactory agreements.

How to Define Objectives

When defining objectives, humanitarians formulate specific positions and bottom lines while always being conscious of the underlying interests. In general, humanitarians say that their positions and bottom lines adhere to the following three basic points:

- they meet the needs of the affected population;
- they are compatible with your organisational mandate or mission; and
- they complement the aims of other humanitarian bodies.

Positions and bottom lines are never best developed in isolation. Make time to discuss them with colleagues in the field, at headquarters, and in other organisations. Actively seek the advice of local employees in your organisation. They usually know the political situation and personalities in their country better than you and may be more familiar with potential counterparts. The holding of a full discussion within your organisation will be an invaluable experience that will generate much good advice, while preventing duplication of effort.

In-house consensus on objectives is crucial. If your positions and bottom lines are not consistent with those of your colleagues, any agreement that you reach is unlikely to be implemented. Your inability to honour an agreement will severely damage your credibility and reduce the chances of future dialogue.

An open dialogue with members of other organisations will allow you to benefit from their experience and possibly even to engage in mutually reinforcing negotiations.

An aid worker reflecting on experiences in West Africa stressed the importance of in-house and inter-agency coordination:

“It is crucial to keep in mind that we have a mandate. [When defining their objectives] humanitarians must remember that they represent organisations which have very specific missions and that these organisations also have obligations towards other agencies.”

Prioritising Your Objectives

Negotiators are likely to have several objectives for each negotiation. It is important to prioritise some of them. Having too many goals can make your position unclear and allow demands to be dismissed as vague or excessive. It may help to organise your objectives around the aspects of process, relationship and substance.

- **Process and relationship** Effective procedures for the holding of meetings and making contact, as well as a minimum level of trust, are preconditions for any substantive, results-oriented discussion with your counterpart. If you feel that these factors are not yet well established, work on them first, as they will be easier to agree on

than substantive questions. Smaller process objectives like venue, ground rules, participants and shared field visits can, for example, be agreed and met relatively easily. Agreement on these points can sometimes work quickly in helping to create an effective working relationship.

- **Substance** Prioritising the substance of any discussions means that you will have to make a judgement call between your priorities and the receptiveness of your counterpart to a particular issue. Substance can be prioritised either by *sequencing* and *linkage*.

Sequencing means that you set aside the hardest topics until last. Sometimes such a deferral is fatal to a negotiation – a potential agreement unravels at the last moment when negotiators finally get around to addressing the truly difficult questions.

Linkage requires the making of similar judgement calls. While it is useful to link some topics, others are best kept apart. In a refugee situation, for instance, you may make it clear that you will only discuss future repatriation programmes with a reluctant host government if it simultaneously discusses and addresses the immediate security needs of refugees. But while linkage can work well in some cases, it can also backfire, resulting in failure on counts. And, of course, if you introduce this tactic into a negotiation it can also be used against you later.

as unachievable objectives. At a given moment it may be wiser to suspend your efforts with respect to certain demands and to concentrate instead on what you can definitely secure. But no objective that concerns people's lives and protection should be abandoned completely. Always keep coming back to it to test the waters again or try to find a way of approaching the same problem through another channel.

- **Hidden objectives** Sometimes it is tempting to try to conceal some of your real objectives from the other party if you believe that it is unlikely to agree with them. For instance, if your counterpart has constantly denied incidents of rape in IDP camps and blocked your efforts to work with women on this issue, there may be nothing to be gained by continuing your discussions on the abuse of female IDPs. Instead, it might be better to focus on another objective that may have some degree of overlap with your problematic objective. Negotiate instead for a public health programme in the IDP camps, which would allow close contact with women, without having to spell out their personal protection as one of the key aims. Pursuing hidden objectives may be useful but it has to be done very carefully in order not to create suspicion and distrust in the mind of your counterpart and hence endanger all of your programmes and the safety of personnel.

- **Negotiating for imposed objectives** Sometimes humanitarians find themselves defending objectives with which they do not agree. These can be goals set by your superiors, donors, or multilateral bodies like the UN. In such a situation, you may feel inclined to distance yourself from these objectives during the negotiation, especially if you feel that the other party is resistant to them. For example, you may argue:

"Well, I know this is a bad idea, but my boss is really keen on it, so I have to tell you ..."

While this may allow you to build or maintain a good relationship with your counterpart, it can also backfire. You may lose your credibility if you overuse this argument, since your interlocutor will either think you are weak (because you cannot convince your boss of what is actually right) or a manipulator (because you try to exploit your good relationship with him/her to please your boss).

Box 4: Common Problems When Defining Objectives

The following list outlines common problems when defining objectives and suggests possible solutions.

- **Changing objectives** It is likely that your objectives will alter over time depending on changes in the conflict, in the international situation and in your own organisation. In particular, objectives often change in prolonged negotiations that take place over several months or even years. Changing objectives is not a problem in itself as long as you remain clear about what your objectives are at any given moment.

- **Unrealistic or unachievable objectives** Sometimes some subjects may just not be worth negotiating and must be recognised

Checklist for Defining Your Objectives

- Are you clear about your positions, bottom lines and interests?
- Are your objectives aligned in-house, are they compatible with your mandate and mission, and do they complement those of other organisations?
- Have you prioritised your objectives? It may be useful to write down your objectives in order of importance, as this will help you to become fully aware of them.
- Share your objectives with your colleagues and superiors.
- Are you prepared to use hidden objectives and have you decided on how to manage the risks that this may involve?
- Are you continuing to revisit and review apparently impossible objectives?

CHAPTER 5 IDENTIFYING THE RIGHT COUNTERPART

Talking to the right person is one of the key factors for ensuring the success of any negotiation. If the opposite number is highly resistant to humanitarian values, has little implementation power and does not get along with you on a personal level, negotiations are unlikely to produce useful results.

Before starting any negotiation, skilled negotiators always assess which person in a particular conflict will be their most appropriate counterpart – the person most likely to deliver what they want. Often, humanitarians do not get to negotiate directly with top-level counterparts – the ultimate decision-makers in a government or armed group. Instead, they have to reach them by negotiating with others. And even then, humanitarians normally do not enjoy the luxury of choosing their opposite numbers in a negotiation. This means that, in most cases, the person in front of you is not your definitive negotiation partner but your intermediary. You will usually need to convince the ultimate decision-makers *through*, or sometimes *despite*, your negotiating counterpart.

But in all situations, it is crucial to understand how, and if, the person in front of you can help you to achieve your objectives by looking at the following factors.

Who is the Right Counterpart?

Receptiveness to Humanitarian Values

Ideally, it is best to negotiate with people whose interests are compatible with your own, so that a mutually satisfactory agreement is more likely. Assess how receptive your counterparts are to humanitarian values by performing research and by taking the time to get to know them (also see Chapter 6).

Implementation Power

Implementation power is a primary determinant for the success of any negotiation. No matter how sympathetic he/she is, if your counterpart lacks the power, authority and capacity to garner institutional support for your agreement, the agreement will be void in practice or will constantly have to be re-negotiated. Safe passage at checkpoints is a notorious case

in point. Often, you may agree with a high-level authority on free passage for humanitarian vehicles. But at certain checkpoints, guards who oppose the humanitarian presence and the higher authority that had given you permission to pass may block your trucks.

A quick way of assessing the implementation power of your counterpart is to gauge his or her power in four key areas.

- **Power to do something** – the actual capacity to implement what has been agreed. For instance, being able to grant access to an IDP population or to provide a fleet of trucks.
- **Power over other people** – the authority to give instructions. For example, the seniority to command people within and outside of his or her immediate geographical sector or ministry.
- **Power through other people** – being able to profit from a dense network of friends and colleagues in government who greatly admire, listen to and cooperate with him/her. For instance, someone who may not hold a senior position but has significant moral authority across a wide constituency.
- **Power from a very specific source** – being able to make or shape decisions due to holding a powerful position in the national hierarchy or a unique advisory post. This might be someone with little influence over constituencies or little official authority but who enjoys exceptional access to power through being a guru or confidant or spouse of a leader.

But, remember, power changes. Changes to the political situation or local command structures may suddenly increase or decrease the implementation power of your counterpart. As a humanitarian with experience in South Asia put it:

“You need to position yourself widely because you never know who will be in power in a month from now.”

It is important always to maintain as broad and diverse a range of counterparts or potential counterparts as possible.

Personal Rapport

The way you relate to, or *click* with, your counterpart on a personal level is obviously important. Negotiations are likely to yield better results if you both get on well. It is thus crucial always to introduce yourself, so that

your counterpart can get a sense of who you are. For example, say who you work for, how long you have been in the country, whether you are married and have children. This can be done briefly and concisely. It is not necessary to expect your counterpart to do the same. In fact, it may be a sign of increasing trust, if he/she starts sharing information about him or herself at a later date.

The following three factors are likely to shape relations between humanitarians and their counterparts.

- **Culture** There is, of course, no general rule as to what impact elements like nationality, religion, group identity, gender and age will have on your negotiation. But, as seen in Box 5, many humanitarians report them as being highly significant depending on a given context. It is essential to judge which social and cultural factors have positive or negative ramifications in your own setting.

An aid worker reflecting on experiences in South-West Asia pointed out the advantages and disadvantages that gender can have during negotiations:

“Being a woman can be a factor that both facilitates and blocks a negotiation. In certain countries where men are highly sensitive to female charms, there may be a greater readiness to listen to a woman than a man. With a man, you tend to arrive at difficult moments in the discussion sooner. With a woman negotiator, there will be more distance and an issue can be discussed in a more roundabout but no less effective way.”

- **Personal conflict styles** Negotiation theorists distinguish between four attitudes, or styles, with which individuals approach conflict: avoiding; attacking; yielding; and collaborating.¹ These styles are often part of our basic character or the product of our education. Be aware which of these come most naturally to you and gauge how this fits with the attitude of your opposite number. Although we instinctively adopt a style we can be trained to adopt all four.
- **Personality types** Psychologists employ numerous distinctions when it comes to personality types, but the one feature that is likely to influence a negotiation most is the extent to which the

other party is predictable. It will be much easier to negotiate with someone whose next move can be anticipated than with a highly manipulative or unpredictable character. Understanding certain characteristics of a counterpart's personality helps in anticipating what they will do next.

Box 5: Examples of How Culture and Social Roles Can Influence a Negotiation

Example 1

In a country in Southeast Europe, weapons were found in the assistance packages that a humanitarian organisation delivered to affected civilians in an area occupied by rebels. The government ordered the organisation to leave the country. The organisation decided to send one of its national employees to the government to negotiate a continued presence. According to this employee, the members of the government perceived him as much more trustworthy than his international colleagues. They repeatedly asked him to confirm that he was a patriot and that his allegiance had not been bought by international humanitarian organisations. Having convinced them of his loyalty and given other reasons for the presence of the weapons, the government eventually agreed that the organisation could stay.

Example 2

During the civil war in the same country, members of an armed group continuously asked to negotiate with international staff only. They were afraid that national employees would be too partial or have divided loyalties.

Example 3

A national employee in Southeast Europe described high staff turnover as the real factor accounting for the difference in the quality of

negotiating relationships that national and international staff are able to develop with counterparts.

“The international will leave the country and may never see these counterparts again, but we will remain here and must therefore pay much more attention to the relationships we establish.”

Example 4

When negotiating humanitarian assistance with a certain military commander, an international humanitarian worker in Eastern Congo always used to take a young female member of the national team with her. This young woman was able to appeal to, and convince, the commander in an emotional way, while also knowing how to keep the distance that this kind of highly personalised approach required. In contrast, when discussing sexual violence against women with the same commander, the negotiator always took a 'very macho' national male staff member with her who could speak 'man-to-man' with the commander.

Example 5

“I once went with another female colleague to negotiate with a general who welcomed us with the words: 'Well, this is excellent, two lovely ladies. I have finished my working day and now we will be able to move on to more pleasant matters.' So, the negotiation got off to a very bad start. During the discussions it was almost impossible for us to be taken seriously. The general also had a series of gadgets on his desks including small toy soldiers that, if wound up, started walking while shooting with machine guns. His great delight during the 45 minutes of our negotiation was to turn the key of these little soldiers and make them advance towards us with their machine guns pointed while he burst out laughing. He gave us no chance of entering into a serious discussion. Had we been men, the discussions would have taken a very different turn.”

(Aid worker sharing an experience in Central America)

There are two types of counterparts who may not be very helpful.

Powerless Counterparts

Humanitarians can find themselves negotiating with someone who is relatively powerless, and admits it, or with someone who pretends to have power but does not. In such situations, a well-intentioned counterpart may point you towards somebody else, someone further up the hierarchy, or in a different department. By contrast, a pretender may be too afraid of losing face and thus continue to string you along. If this is the case, look for ways to go around them. Knock on additional doors and diversify your contacts until you identify people who have real power. But be careful not to offend a first contact. He or she may become more powerful one day or could spoil your wider efforts now.

Phoney Counterparts

Sometimes, particularly resistant authorities will deliberately set you up with phoney counterparts – negotiators who are told to take your time and energy but are instructed to stall you with charm, evasion or obstinacy. If you have the feeling that you are running up against a brick wall in this way, try to find a way around it, diplomatically or forcefully. But take the hostility and obstruction seriously. Use your wider network to uncover the precise origin of, and the motive for, such obstruction, so as to understand it and to address it appropriately.

How to Identify the Right Counterpart

Whether you are able to choose a counterpart or have them forced on you, it is essential to know as much about them as possible. This involves important research to identify and understand your opposite number (the person with whom you will negotiate) and their relationship with your ultimate counterpart (the person you most need to influence). All of this will help you to appreciate the kind of person you are dealing with and the extent of their power.

Gather Information

Find out as much as possible about your negotiating counterparts as well as about the group of individuals that surrounds them. They will probably be doing the same with respect to you. The following sources and contacts should prove useful.

- Books, newspapers and the Internet.
- Experts like academics, journalists and diplomats.
- Colleagues who have negotiated with your counterpart before.
- Employees of other humanitarian organisations who have had contact with your counterpart.
- Any possible contact you can make who knows the person or is aware of their reputation – such as people in the street, taxi drivers, hotel owners, waiting staff or people under the person's command.

Analyse Your Information

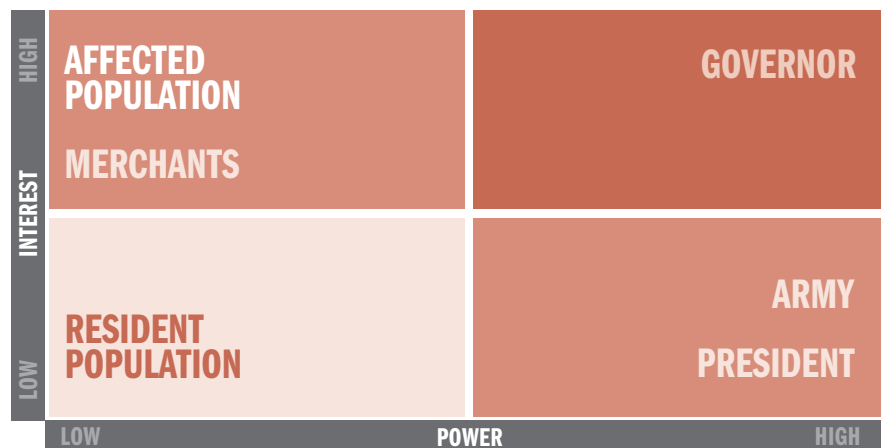
Ask yourself the following questions about each of your counterparts.

- What role do they play in the overall conflict?
- What relationships do they have with other key individuals and groupings?
- What is their conflict style? Are they antagonistic, or do they collaborate?
- What is the hierarchy (official and unofficial) among the various people with whom you are dealing? Who influences whom?
- What kind of attitude do they have towards humanitarian values/international law/your institution/you as a person/the specific subject matter you want to discuss with them?
- At which level are they placed? How much and what kind of responsibility do they have? Is the substance you are discussing with them part of their mandate?
- Do their employees hold them in high esteem? Are their orders taken seriously? Are they feared?

Map Your Findings

Putting together a *stakeholder map* is a good way of helping you to establish who you should approach. Such a map helps you to understand which of your possible counterparts has the most interest in your negotiation objectives and the most power to help you realise them. The diagram below shows an example of a generic stakeholder map.

Ideal counterparts are listed in the top right corner of the matrix (high interest and high power). Negotiators can also draw a more detailed



version of this map that shows more nuanced levels of power and interest. A more detailed stakeholder map can also indicate who the counterparts know and have the strongest connections with and who, therefore, can be approached to influence them. See Annexe III for an example. Stakeholder maps can be regularly updated, as negotiators learn more about their counterparts and the conflict.

Pre-negotiations

It is rare that negotiators will go straight into direct talks. Instead, they are likely to have one or more preliminary meetings. These pre-negotiation discussions allow negotiators to get to know their counterparts and to find out whether they are as receptive and have as much implementation power as your research suggests.

Box 6: Common Problems When Identifying Counterparts

- **Changing counterparts** Dramatic or subtle changes in the conflict may suddenly transform the receptiveness, availability, implementation power and even personal attributes of your counterparts. In an extreme case, your most powerful counterpart may, overnight, become an insignificant actor. From one day to another, you may be faced with a whole new team of potential counterparts. This will require renewed research and counterpart identification.

- **Knowledge and time constraints** International employees will have limited time to unearth information on counterparts and to learn how to move within the dense web of actors in a given country. They will have to depend even more, therefore, on the information that national colleagues and other contacts can provide.

What if Your Counterpart is not Accessible?

You may find yourself in a situation where the most powerful potential counterpart is not possible to reach in person. Most often this will be because the individual does not want to see you, does not trust you or is simply too senior.

Negotiating Through a Third Party

When access to your counterpart is denied, it is important not to spoil your chances of making direct contact with him/her by pestering him/her inappropriately. The best way to convince a counterpart of your good faith, honesty, trustworthiness and significance is to have someone who can testify on your behalf.

According to a *Wolof* proverb from Senegal, 'the soap cannot wash itself'. Just as the soap needs an external element against which to be rubbed, you need a third person that can highlight your qualities and underline your credibility. As an intermediary, this person will facilitate indirect discussions and mollify possible differences between you and your counterpart.

How to Choose an Intermediary?

Stakeholder mapping should reveal a series of key people who are close to your counterpart. If not, it may be useful to think about recruiting more informal friends or common acquaintances as middlemen.

Whoever you select, it is vital that their identity or capacity does not damage the image of independence and impartiality that you are trying to project. It is often because such people are difficult to find that humanitarians cannot outsource negotiations. The person must be able to put the needs of victims first. National employees in your organisation may sometimes be well placed to do this, but be careful not to expose them and their families to new dangers in the process. As a general rule, it is recommended that you choose an intermediary who is viewed in a friendly, not hostile, light by your counterpart.

Checklist for Identifying Counterparts

- Have you gathered together, analysed and mapped enough information to identify several appropriate negotiation partners?
- Have you tested your counterpart's receptivity to humanitarian values, his/her implementation power and the personal rapport that you can expect to develop with him/her during pre-negotiation talks?
- Have you considered using an intermediary to approach your counterpart?

CHAPTER 6 MEASURING COMPATIBILITY

Two important steps in preparing for your negotiation are now complete. You should now know what your negotiation objectives are and with whom you need to deal in order to achieve them. However, this is not yet enough to develop a successful negotiation strategy.

The next key step in any analysis is to assess the other party's interests, positions and objectives and to determine how compatible they are with your own and how much leverage you have to make up any difference. Judging this well is important, as it will reveal how confrontational any negotiation strategy needs to be. If there is no compatibility and little leverage, you will find yourself in a win-lose situation and you will be forced to adopt a rather hard-line and coercive approach. By contrast, high compatibility and strong leverage will allow you to be less adversarial. These strategies will be developed more in Chapter 8.

What are the Interests of the Other Party?

Use the information already gathered to examine carefully the objectives of the other party and to identify the interests that underlie his/her position and, if it is obvious already, his/her bottom-line.

How to Identify Their Position

Positions are often easy to determine because parties will usually state explicitly what they are. They are concrete offers, demands or limits that they specify early on. For example: *"we cannot permit you to enter that area"* or *"we need food too"*.

How to Detect Their Bottom Line

Bottom lines are more difficult to spot. Some parties may stipulate explicitly what they are, while others may keep them secret in order to achieve better outcomes. Usually, one can detect bottom lines by making a very low probing offer (or a very high initial demand) and signalling that one is not able to offer more (or accept less). For instance, when buying a carpet at a bazaar, you may initially offer to pay a very small amount for it. The shopkeeper's reaction will be indicative of how close this offer is to

his/her bottom line. However, humanitarians should be careful using this technique when their counterparts are not very receptive to humanitarian values. They may simply quit the talks if they find the probing offer unacceptable.

How to Recognise Their Interests

Interests are the most important things to identify, since they are the ultimate motive for negotiating and thus inform any final decisions that negotiators make. However, interests are also the most difficult things to read. They are often not stated explicitly. Sometimes they may even remain obscure to the party who is motivated by them. Conflict theorists distinguish between interests, such as desire for recognition, economic gain, personal advancement or military victory, and more basic needs, which are essential for survival, including physiological needs and personal security needs.²

The other party will, therefore, have a multiplicity of interests, some personal and some shaped by the organisations and social groups they belong to or the wider groups that surround and influence them. Any negotiating is also likely to reflect the conflicting interests that always exist within any group whether it is a government, armed entity or an affected community. And, of course, there will often be a mismatch between the interests of civilian populations and those of a government or armed group. For example, hungry people in a war zone may greatly welcome and desire the arrival of food trucks, whereas government officials will want to deny them access because they do not want humanitarians to see the military preparations they are making in the area, particularly forced conscription of young men. In many negotiations, people will be trying hard to hide their real interests because they know they will be unacceptable to those on the other side of the table.

Discerning people's needs and interests requires real empathy for the situation of the other party, as well as good information on what they are doing. As a civilian in West Africa observed:

“Humanitarians have to abandon their shell of regulations and get under the skin of those who are in front of them. They must be receptive ... and put aside their prejudices.”

Asking yourself the following questions may help you to stand in their shoes.

- Why can they not agree to our position?
- What position would satisfy them and why?
- What consequences will they face as a result of accepting our position?
 - Will they lose political support?
 - Will they incur economic damage?
 - Will they be forced to defy some of their moral values?
 - Will they be militarily disadvantaged?
- Who will criticise and condemn their acceptance of our position and why?

How Compatible are the Interests of the Parties?

Being clear on the other parties' interests enables negotiators to judge how compatible they are with their own. Understanding compatibility requires that you compare your own interests as identified in step one of the analytical phase with those of your interlocutor and that you identify possible points of convergence. The more compatible your interests are the more likely that you will reach a successful agreement.

Measuring compatibility is an important step in every humanitarian negotiation:

“It always seemed very important to me to listen to the counterparts and understand their state of mind; that means – before entering the negotiation – to evaluate and try to clearly understand their interests and the room for manoeuvre that we have given them ... always keeping in mind that we have interests. Very often, their interests and ours are completely opposite or contradictory. Sometimes they do not differ significantly, sometimes very much and sometimes dramatically so. But I have never been in a situation in which our interests and theirs coincided exactly. We always have to ask ourselves what the opposite party wants and what we want. Where do we position ourselves in comparison to them? What are the initial points of convergence where we can meet?”

(Aid worker sharing experiences from Central America)

Compatible interests are not necessarily identical interests. Although both parties may well share some interests, they may also have divergent interests that can be dovetailed creatively. Remember the example of the orange, where the two parties have divergent interests: one wants the juice, the other the peel. These divergent interests are compatible; both sides are satisfied: the orange can be grated and squeezed.

Time, understanding of your opposite number, and flexibility to develop mutually satisfactory options are essential factors in increasing the compatibility of interests, but humanitarians often have can rarely draw on all of these factors. It may only be possible to get a clear sense of how much compatibility exists when negotiations are already underway. Especially when dealing with a group of counterparts that has diverging or contradictory interests, compatibility may be difficult to measure. Nonetheless, it is crucial to think about and shape a middle ground where the interests of both parties may overlap and meet.

Using Interests to Achieve Principled Agreements

Investing time and energy in thinking about compatibility and overlap may help you to come to a principled agreement. As discussed in Chapter 2, ideal agreements can often not be concluded through win-lose or compromise negotiations. In a win-lose negotiation, humanitarians and civilians may end up as total losers and in a compromise situation – humanitarians usually have to make concessions that remain have tragic ramifications for some people.

Some humanitarian negotiators think that compromises are inevitable:

“It is important that we create compromise situations. If we only demand concessions from the other side, we will not go very far.”

(Aid worker talking about experiences in Southeast Europe)

In their classic negotiation manual *Getting to Yes: Negotiating Agreement Without Giving In*, Roger Fisher and William Ury show how these imperfect scenarios can be transformed into a principled negotiation that makes it possible to conclude wise agreements that offer maximum satisfaction to both parties.

Put simply, Fisher and Ury claim that most win-lose or compromise negotiators neglect interest analysis and focus too much on positions. Since positions are narrower than interests they hinder the design of creative agreements that would satisfy both parties. Instead, negotiators are advised to concentrate on interests, rather than positions, and to develop as many options as possible for agreements that would satisfy both parties until a wise and effective solution can be identified that requires neither to compromise.

Table 3 illustrates how, in a humanitarian environment, an apparent win-lose outcome could be transformed into a principled and mutually satisfactory agreement.

Table 3 Transforming Win-Lose into Compromise or Principled Agreements

| | YOU | THEY |
|---------------------------------------|--|---|
| POSITION | “I would like to carry out an assessment in three villages in your district.” | “I do not want you to visit these villages” |
| OPTIONS FOR WIN-LOSE OUTCOMES | You visit the villages. [Win] You do not visit the villages. [Lose] | |
| INTERESTS | “I am concerned about reports that IDP women living in these villages have been gravely abused and are now destitute with their children.” | “I would not like humanitarians to interfere with the military exercises currently taking place in the area.” |
| OPTIONS FOR PRINCIPLED OUTCOME | The assessment is conducted two days later (mutually satisfactory without compromise) | |

It would be ideal, if every win-lose negotiation could be transformed into a principled situation by looking at interests. Both parties would always feel like winners and never have to make compromises. In humanitarian scenarios, though, this will often not be possible. The interests of the negotiating parties are often highly irreconcilable and there are few options for principled outcomes. Although humanitarians should always try to achieve a principled agreement they must remain aware of the ethical risks involved.

Negotiating for humanitarian access, assistance or protection should not enable or even encourage interlocutors to fight wars or to engage in a

campaign of genocide. The fact is that interest compatibility may be very low in humanitarian environments, forcing humanitarians to adopt more hard-line and adversarial approaches to negotiation.

Box 7: How to Use Interests to Create Compromise Solutions

According to Fisher and Ury, one can build on interests either by trading differing interests or by turning shared interests into common goals.³ Below are two examples in which their ideas are applied in a humanitarian context.

Example 1: Trading Interests

You want to assess the situation in an area where a group of IDPs has fled after a government offensive. These people are members of a different ethnic group to the armed entity that controls the area. The latter has a keen interest in increasing its international credibility but has no capacity to assist the IDPs. You may work together on the protection of the IDPs, agreeing that you can visit all villages in the area, while also agreeing a public declaration of principles with the rebel group that formalises its commitment to international humanitarian law.

Example 2: Common Goal

Armed incursions across a border into refugee camps and villages under the authority of your counterpart is endangering refugees and the host population and escalating inter-group conflict in the region. Both of you agree that something should be done to prevent the raids and to protect refugee and civilian populations. Your different primary interests in national security and humanitarian protection mean that you can share a common goal of increased protection for people along the border.

Managing Perceptions

Every experienced negotiator knows that each side's perception of the other is enormously significant in any negotiation. If one side decides

that it has nothing in common with the other and refuses to see things differently then the negotiation is in big trouble. In certain situations, interests are actually quite compatible, yet, nonetheless, both sides can maintain a strong impression that an unbridgeable divide separates their objectives.

If it becomes obvious that you face a problem based on perception rather than reality, you need to find out why and communicate effectively to alter the view of your counterpart. Problems of perception usually arise out of misunderstanding, prejudice or history.

Unclear Interests

There may be occasions when each side's objectives are misinterpreted because they were not communicated clearly enough. Widespread rumours may often cloud the way the parties interpret each other's objectives. As a humanitarian explained when talking about experiences in West Africa:

"In every negotiation, there are communication problems. In our case, negotiating for the integration of refugees into a remote village, information about our plans penetrated only very slowly amongst the host population, which led to the spread of rumours. For example, there were rumours that the refugees destroyed villages. This made the population even more reticent. It was also a population with very low levels of education. Communication is very important. Your objectives must be sufficiently clear and transparent. If our counterparts understand our objectives well, their suspicion weakens."

History

In any negotiation, your view of one another may be affected by past events. Your predecessors may have had bad experiences negotiating with a given individual, while he or she may have been disappointed with the programmes that your organisation carried out. Such experiences can lead people to assume that both sides are fundamentally incompatible with no common interests. A military representative in West Africa, for example, was deeply disappointed by humanitarians who had allowed armed refugees into the territory under his control. He concluded that 'all humanitarians are intelligence agents of the other side', and stressed that he would not deal with them again. Gathering as much information as

possible on past negotiations with your counterparts beforehand will help you to appreciate the image that they have of humanitarians and the points that you need to challenge.

Checklist for Measuring Compatibility

- Can you identify your counterparts' positions and bottom lines?
- Have you performed analysed their interests in-depth?
- Do you have a sense of how compatible your interests are and hence what the chances are to reach a principled agreement?
- Are you sure that your counterpart has a clear idea about your negotiation objectives, especially your interests? Is there anything you can do to communicate them more clearly?
- Are you aware of any historical, cultural or personal factors that may lead your counterpart to perceive you in way that is different from how you would like to be viewed?

CHAPTER 7 ASSESSING YOUR LEVERAGE

After setting objectives, identifying the right counterparts, analysing their interests and exploring levels of compatibility and overlap, the final step is to assess the leverage that you will have in the negotiation.

Leverage is the power you have to influence the other party. The higher your leverage, the more likely you are to reach an agreement that is in your favour. The analytical phase enables you to get a sense of the levers at your disposal and the risks and opportunities associated with each.

Humanitarians can rely on several types of leverage. The first and most obvious type is incentives and threats.

Incentives and Threats

Humanitarian action is typically characterised as having five main modes: persuasion; denunciation; substitution; support; and mobilisation.⁴ Beneath each lies a specific source of power that humanitarians can utilise either as an incentive or a threat in order to increase their influence when negotiating for respect of international law. For example, humanitarians may be able to offer their counterparts possibilities to better support the people they are responsible for or they may threaten to heighten diplomatic pressure.

Which mechanism is employed depends to some degree on the organisation that the humanitarian represents. A UN agency, for instance, may, in some instances, be reluctant to use the media for the purpose of public denunciation, but it may well have a significant network of state allies and a fair amount of humanitarian expertise that strengthen its leverage. By contrast, Human Rights Watch will have significant media power but few material goods to help counterparts assist members of the affected population. During the analytical phase, you should spend time on, and give careful thought to, each incentive and threat available to you and understand which will appeal most to your counterparts.

One caveat about threats: experienced negotiators and negotiation theorists generally do not encourage their use because of the high risk that they may prove counterproductive and increase levels of antagonism. Instead they recommend that you rely on incentives.

Below we discuss the different incentives and threats available to humanitarians and examine some of the disadvantages.

Quiet Advocacy (Persuasion)

Humanitarian law, human rights law and refugee law legitimise humanitarian action. In cases where counterparts fail to fulfil the obligations set out in these standards, humanitarians can try to persuade them to take action of their own free will to end the violations. Recognition by counterparts of international legal standards and their willingness to adhere to them can constitute a '*powerful humanitarian lever*'.⁵ Counterparts may take their international legal commitments seriously, either because they are impelled by the formal recognition that this may afford them within the international community, or because they feel are concerned about the prospect of international isolation or condemnation and, in applicable cases, even criminal prosecution. Many humanitarians, however, feel that international legal authority is not a very effective source of power, especially in difficult negotiations, when counterparts lack political will or are reluctant to acknowledge international standards.

Loud Advocacy (Denunciation)

A more effective lever is usually use of the media, particularly public and official reporting of violations. Denunciation and targeted long-term advocacy campaigns may often put counterparts under pressure with respect to maintaining their international image and avoiding action being taken against them by states and multilateral bodies. But the application of media pressure can easily backfire and thus has to be handled very delicately in humanitarian negotiation situations. Often media representatives have their own idea of what they want to report and thus convey a message that is different from the one you wanted to communicate. This can cause irrevocable damage to a humanitarian negotiation; once a wrong message has been publicised, it is almost impossible to take it back.

Material Assistance (Substitute)

The aid items that humanitarians distribute can often serve as a key asset in the negotiations. Counterparts may often be interested in material assistance because it can help them secure popular support; civilians are interested in it because it can save their lives. Using aid items as a lever in a negotiation, though, can pose some ethical problems. Especially in

day-to-day frontline negotiations, it can prove fatal to negotiate your way by distributing sacks of flowers just for the sake of getting a commitment. You will soon tarnish your reputation and, even more gravely, you will put the reputation of other humanitarian agencies on the line.

Professional Expertise (Support)

Aid agencies provide specific professional services based on their technical, agricultural or medical expertise. The availability of these services and the possibility of working with humanitarians in a strategic partnership can often encourage counterparts to cooperate with humanitarians and to agree to some of their objectives.

Allies (Mobilisation)

Many humanitarians say that rallying allies around their cause has often proved a very useful way of influencing their counterparts. Allies can be other states, multilateral bodies, such as regional organisations or the UN, international bodies, NGOs, important public figures, the media or any other group that has some bearing on counterparts' decisions. Allies can speak in favour of humanitarians and convince counterparts to accept their demands and proposals. Allies can also implement threats. For example, humanitarians may appeal to governments to introduce sanctions against counterparts or to isolate them diplomatically.

There are two main risks associated with employing allies. First, the neutrality and independence of humanitarians can be called into question if they work too closely with non-humanitarian bodies. Even if it is only by chance that powerful regional or international actors have adopted the same position as a humanitarian organisation, the latter is likely to be suspected of having collaborated covertly with them. In more extreme cases, humanitarians may run the risk of being co-opted by their ally, either consciously or unconsciously. All of this could severely damage the reputation of their organisation and of all other humanitarian actors and will provide counterparts with a good excuse not to work with humanitarians. It is important, therefore, always to keep the political agenda and interests of your ally in mind.

The second danger manifests itself when allies put too much pressure on your counterparts. This may evoke strong counter-reactions that make further negotiation impossible. A humanitarian worker with experience in Southeast Europe told us, for example, that, at some point, his counterparts felt bullied and put against a wall by the diplomatic allies of humanitar-

ians and refused to enter into any further talks. Working with allies thus requires careful thought and preparation. More details on how to gather allies are supplied in Chapter 10.

Humanitarians often search for allies in order to be able to influence counterparts:

“We try to involve a maximum number of organisations which we know are active in the area and interested in the problem. We then also look for allies within the community with which we would like to work – this might be the prefecture or the police commissioner. We are always looking for allies.”

(Humanitarian talking about his experience in West Africa)

Threat of Withdrawal

If negotiations are very difficult, humanitarians may threaten to terminate certain programmes or to withdraw from the country altogether in an effort to get their counterparts to agree to their demands. To be credible, though, humanitarians must execute their threats, a move that may leave the affected population without assistance. This is why many humanitarians recommend never issuing such threats without having given careful thought to the consequences, and being willing to accept them. An aid worker with experience in South Asia told us, for example:

“I would never threaten to withdraw. Because once you leave, how are you going to come back? In most cases, you need to come back in order to satisfy humanitarian needs, but if you say you are going to leave, you put the advantage in their hands.”

As with all other form of coercion, threats of withdrawal are likely to backfire and escalate the situation, rather than help you to meet your objective.

In many humanitarian situations, the incentives and threats listed above will only yield limited results. Often, humanitarians feel that they are not in a position to propose incentives or to issue threats. Their counterparts control the territory that and the people who humanitarians would like to assist or protect and hence they can deny access. Also, counterparts may frequently show a willingness to use force against humanitarians, making

the latter feel extremely vulnerable and powerless. Finally, counterparts may often simply not be attracted by humanitarian incentives or put off by humanitarian threats.

Given the limits of humanitarian power, it is even more important to consider alternative sources of leverage, such as fallbacks, credibility and a good sense of timing. Although these are less specific to humanitarian environments, one should not underestimate the impact that they can have on interlocutors.

Fallbacks

If they are good, fallbacks will enable you to keep your footing during the push and shove of negotiations. Thinking about the fallbacks available to both parties is one of the most effective ways of increasing your leverage.

Fallbacks determine what you are going to do if you fail to reach an agreement or if the other side asks you for concessions that you are not willing to make. For example, you have been trying to persuade the Minister of Defence for several months to allow your organisation to deliver food to a group of rebels assembled in a demobilisation camp, but the Minister insists that the troops have to remain in isolation as long as demobilisation is ongoing. However, you know that the Minister of the Interior and a significant number of parliamentarians support your request and are willing to back you. These people are your fallback in case the Minister of Defence does not change his or her position.

How do fallbacks provide leverage? Knowing what you are going to do if no agreement is reached gives greater confidence. You are likely to present your position with more conviction and composure. More important, the other party may realise that you are not afraid to suspend talks and pursue your interests without it, which, in certain situations where interdependence is high, will put it under pressure to reach an agreement. It is important, therefore, to spend time developing fallbacks.

Leverage can also be gained by knowing the fallbacks of the other party. If it has weak fallbacks, it will not want to break off the negotiations and may even be more willing to make concessions. But if it has a very attractive fallback, you will need to convince it that its fallback is not as attractive as it thinks. Where you both have attractive fallbacks it may not be worth negotiating.⁶ As a humanitarian, though, you may often find it difficult to develop viable fallbacks.

There are dangers associated with fallbacks. If they depend on others – supportive governments or allies within the authority concerned – fallbacks always run the risk of widening the conflict and the negotiations drawing in more actors. Sometimes conflicts need to be widened to be resolved. At other times, widening a conflict can necessitate changing its terms. What was central to your negotiation may suddenly become peripheral in a conflict between your fallback group and that of your counterpart. You may move from being an active protagonist to being the grass between two fighting elephants. Once again, good judgement is required.

Credibility and Consistency

Many negotiators agree that one of the best ways to win people over is to act consistently, so that they can always trust that you will do what you say. Consistency bestows significant credibility and means that people tend to deal with you. Credibility as a negotiator emerges from consistency in three key respects.

- Ensuring that counterparts understand what your organization can do and what your limits are. Do not raise expectations that you cannot live up to.
- Keeping your word. People want to be able to rely on you, so keep your promises. Do not make promises that you cannot keep and do not make threats if you are not willing to implement them.
- Being careful with bluffs. You only need to be found to be bluffing once and your entire credibility is lost. Bluffing may be most effective in one-off negotiations with a person whom you know you will never see again, but it is not advisable in long-term negotiating relationships.

Humanitarians often point out the importance of setting realistic expectations:

“Humanitarians should never promise anything, especially not potential positive effects that they cannot control, because

in political environments nothing is certain. They should never generate illusions.”

(Aid worker reflecting on experiences in South Asia)

And counterparts appreciate consistent behaviour:

“We have very good memories of the negotiations with one staff member of a humanitarian organisation. He was a man of his word and we knew that if he said something, he would do it.”

(Civil servant in Southeast Europe)

Box 8: Negotiating by Example to Gain Credibility

Sometimes the best way to argue your case is by doing yourself what you are asking others to do. At a terrible moment in an African famine, tens of thousands of refugees experienced a misguided food aid distribution of imported yellow maize when they had been used to eating white maize since childhood. They had only heard of yellow maize in the context of something used as cattle fodder in Europe and did not imagine that humans could also eat it. From the start of the distribution the refugees became frightened and angry and refused to accept it. Understandably, perhaps, they had doubts similar to those a French person might have if asked to eat pig food. Aid workers tried to calm the situation by saying that:

“The colour difference isn’t serious, the maize is the same.”

But reasoned argument did not help. Aid workers only managed to restore people’s confidence by eating the maize themselves in front of a row of trusted representatives of the refugee community.

Timing

Timing has a crucial impact on every negotiation and often influences leverage.

Time Pressure

Humanitarians will often be negotiating under significant time pressure on behalf of people caught in extreme circumstances. They have to initiate operations as swiftly as possible to save lives. At such moments, their counterparts may often try to force them to make concessions that, usually, they would not make. It will often be easier for humanitarians to influence the negotiation process if they do not feel under pressure to have to commit to something. When assessing their leverage, negotiators try to gauge whether they still have a lot of time to reach an agreement (high leverage) or whether they are under pressure to conclude an agreement as quickly as possible (low leverage).

Frequency of Contact

Leverage will also depend on how often you can meet with the other party. Whether there is more or less leverage in a one off encounter than in a long-term negotiation process is not always clear. On the one hand, you could enjoy more leverage when you know that you will never see your counterpart again. You may be able to make threats and put pressure on him/her that you would not have dared to if the long-term relationship between you was important. On the other hand, you could have more leverage during prolonged and repeated negotiations, since you can assume that your counterpart has a sustained interest in negotiating with you. This may be because his/her fallbacks are weak or because the trust he/she has in you is very strong – both indicate that your leverage is high. Either way, the analytical phase helps you to think through and assess how much leverage you possess to influence your counterparts.

Ripe Moments

If the timing of a negotiation is not right, you will have limited leverage. More than most, humanitarians may often be forced to negotiate when the moment is not ripe. But it is a hard call as to whether to wait for a better moment when faced with the immediate prospect of a starving population. The competitive nature of the humanitarian environment – with other agencies on your heels – can also pressurise staff into starting negotiations too quickly or too early.

In conflict and negotiation theory, ripe moments arise when both parties have an incentive to negotiate because they have reached a *mutually hurting stalemate* or are presented with *mutually enticing opportunities*.⁷ In other words, they have nothing to lose or everything to gain from negotiating a deal. For instance, there may be a change in the local government and the new chief of the district is eager to attract popular support and thus is willing to engage with you. At the same time, you have just arrived in the country and are keen to start operations. The trick during the analytical phase is to recognise these moments that provide you with maximum leverage and to exploit them.

Checklist for Assessing Leverage

- Identify the sources of humanitarian power that are likely to provide you with leverage over your counterpart and think carefully about the risks and opportunities that each presents with respect to the success of your negotiation.
- Develop good fallbacks and discuss them with your colleagues.
- Understand what makes you credible in the eyes of your counterpart.
- Try to get a sense of how well you can control time within the negotiation.

SUMMARY PART TWO

In summary, the analytical phase of a negotiation involves the following steps.

- 1 Defining clear negotiation objectives and distinguishing between positions, bottom lines and interests.
- 2 Identifying counterparts who are open to these objectives, have implementation power and with whom a good working relationship can be established.
- 3 Measuring how compatible these objectives are with those of the other side and trying to maximise the degree of compatibility by identifying possibilities for mutually satisfactory agreements.
- 4 Assessing how much and what kind of leverage – in the form of incentives or threats, fallbacks, credibility and control of timing – is available to influence the counterpart.

NOTES

- 1 Lewicki, Roy, Litterer, Joseph and Minton, John. *Negotiation. Op. cit.*, p. 10.
- 2 See, for example, Burton, John. *Conflict: Human Needs*. London: Macmillan, 1990, p. 91.
- 3 Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In. Op. cit.*, pp. 70–76.
- 4 Bonard, Paul. *Modes of Action used by Humanitarian Players: Criteria for Operational Complementarity*. Geneva: ICRC, 1999.
- 5 *Ibid.*, p. 19.
- 6 Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In. Op. cit.*, pp. 70–76.
- 7 Zartman, I. William. *Preventive Negotiation: Avoiding Conflict Escalation*. New York: Rowman and Littlefield, 2001, p. 4.



3 STRATEGY

THE SECOND PHASE of planning a negotiation involves devising a good strategy. Strategy is the overall plan of action to achieve the negotiation objectives defined during the analytical stage.¹ Five key activities are usually involved in the strategy phase.

- Planning options to maximise compatibility.
- Activating levers and forming a negotiation team to maximise leverage.
- Identifying the starting point and defining the basic approach that needs to be adopted during the negotiation.
- Choosing the right tactics for this approach.
- Preparing strong arguments.



CHAPTER 8 MAXIMISING COMPATIBILITY: PLANNING OPTIONS

In the analytical phase, we defined compatibility as the distance between the interests of the two parties to the negotiation. The smaller this distance, the more likely that they will reach a mutually satisfactory agreement. In the early strategy phase, you can work on increasing compatibility in order to pave the way for smoother negotiations. The most effective way of increasing compatibility is to consider as many options as possible before meeting the other party.

Options are basically possible negotiation scenario outcomes from which you and your interlocutor will be able to choose. Rarely is there only one possible agreement that will satisfy your interests. The more diverse options that you can present, the more likely it is that you will be happy with the result. If you sense that you may soon face a stalemate in your negotiation, it can be helpful to put another option on the table. Furthermore, the reaction of your interlocutor to the various options that you propose will give you a sense of what his/her true interests are and possibly what his/her bottom line is. This will allow you to further increase the level of compatibility. One of the key tasks during the strategic phase is to identify diverse options in collaboration with your negotiating team.

How to Create Options

To come up with options, you need to think flexibly and creatively. Consider all of the different possibilities that might satisfy your own interests and those of your counterpart. The following recommendations by Fisher and Ury may help you to construct a list of different options. We have illustrated their suggestions with a humanitarian example.²

- **Look through the eyes of others** How would somebody else deal with the problem at hand? For example, you may be trying to set up safe water points in a village to protect women from rape and abduction, but the community leaders do not agree to the locations you propose. Do not simply insist on your proposals but actively seek the views of others regarding alternative sites. Can water points be established in other places and meet the needs of all

groups? What would a social worker or anthropologist say about the impact of new sites on community dynamics? What would another organisation do? What do the women and children think?

- **Tone down the agreement** If the community leaders do not agree to the location of your water points, will they at least agree to the principle that people need safe water sites? Will they agree to discuss the problem with somebody who is a protection or water specialist? Will they reach a provisional agreement with you that can serve as the basis for future negotiations?
- **Alter the scope of the agreement** Could you agree to set up one safe water point first, and see how well it fulfils its purpose before establishing others? Could you agree to set up all water points but only for a limited period, and then decide whether to provide more? Could you agree to pilot water points in a certain area? Could you initially reach an agreement with a smaller group of village leaders and enter into a wider agreement with others later?

Working out options together with your counterparts by *brainstorming* can be very productive and help to establish a good rapport.³ But bare in mind that brainstorming is a very Western practice. Others may misunderstand its purpose and may see it as manipulation of some kind. It may also be difficult to include in a meaningful way groups that are often perceived as less powerful, such as women and children. Nevertheless, if you decide to hold a joint brainstorming session, make sure that your counterparts distinguish it clearly from the official, on-the-record negotiation sessions.

Whether your counterparts accept or reject the options that you put forward depends to a great extent on how you present them. It is important to demonstrate very clearly to the other side how each option will help it to satisfy its interest. An attractive set of options can help you to be convincing.

Checklist for Planning Options

- Have you brainstormed with your team or your counterpart to come up with as many possible scenarios as possible?
- Have you asked yourself how someone else would look at the problem; can the strength or the scope of the agreement be altered?
- Have you considered brainstorming options together with your counterpart?
- You may want to consider writing down or illustrating your options in order to understand them better and to visualise them.

CHAPTER 9 MAXIMISING LEVERAGE: ACTIVATING YOUR LEVERS

The analytical phase served to identify the sources of power that negotiators can draw on. In the early stage of developing the strategy, it is important to use these levers so that you can be employed in the actual face-to-face negotiation.

Incentives and Threats

Activating incentives and threats is often a complex and long-term process. It would go beyond the scope of this manual to describe the detailed steps that have to be taken to mobilise all available humanitarian levers. Table 4 simply summarises each possible lever and lists some basic

Table 4 Steps Necessary for the Activation of Humanitarian Levers

| HUMANITARIAN LEVER | ACTIVATION |
|---|--|
| QUIET ADVOCACY USING INTERNATIONAL LAW | <ul style="list-style-type: none"> • Identify applicable treaties • Look into possibilities for legal investigation and prosecution |
| LOUD ADVOCACY USING THE MEDIA | <ul style="list-style-type: none"> • Identify national and international media outlets that exert the most influence over your counterpart • Start making contact with these bodies, ensuring that all staff members are aware of the message you want to convey |
| ASSISTANCE/EXPERTISE | <ul style="list-style-type: none"> • Draw up realistic scenarios to show the conditions that will exist depending on whether aid/services are provided or not, so that you can offer credible incentives or make credible threats |
| ALLIES | <ul style="list-style-type: none"> • Identify actors that have an interest in your region or sector and that enjoy influence over your counterpart • Consider all possible allies, including actors at the international, regional, national and local levels, other humanitarian organisations and private enterprises • Start engaging with these entities, while always keeping in mind that they will have their own political interests and agenda; distance yourself if necessary |

actions that have to be taken to activate them. For more information, we recommend referring to the guidelines that your organisation provides.

But, given that the effectiveness of these humanitarian levers is likely to be limited, it is important that you also spend time mobilising alternative sources of power.

Activating Alternative Sources of Power

Developing Fallbacks

Negotiation theorists recommend implementing the measures set out below.⁴

- **Invent possible fallbacks by asking ‘How else could I reach my objective?’** This requires creative thinking and flexibility. Who else could you approach with your request? Could you discuss the matter with your counterpart’s superior? Could you ask a person in a different department or someone with a different function? Who would be open to your request and has the power to help you satisfy it? What other methods are there to meet your demands? Who else could distribute the assistance for you? If you cannot reach the population in need, can they reach you?
- **Research and develop the most promising ideas** If you think that the Minister of the Interior may be more open to your request than the Minister of Aid Cooperation, then start a dialogue with him/her. Introduce yourself; inform him/her about your objectives and talk about the specific problems that you are facing. Ask as many questions as possible about his/her interests and implementation power to get a sense of whether he/she could really be of assistance to you. Try to obtain a concrete offer from the Minister. If you think that some influential religious leaders may also be helpful, start the same process with them. With concrete alternatives to hand, it will be much easier to decide whether it is worth continuing to negotiate with the Minister of Aid Cooperation.

Once alternative ways of meeting your objectives are clear, a judgement is required on whether it is wise to reveal your fallback to your original counterpart. If you have a strong fallback, it may be worth revealing some of its specifics, or even showing the entire proposal. If your fallback is weak, however, it may be best to hide it, so that an aspect of your leverage remains mysterious.⁵

Improving Your Credibility

When planning your negotiation, you should identify some confidence-building measures that can be introduced to heighten your credibility. For example, is there a way to increase the other party's understanding of your objectives so as to dispel any perception of mixed motives? How can you make sure that they have the right expectations of what you can do? Is there any information that you could pass on to them – directly or indirectly – to make them believe you more? Are there third parties that could speak convincingly in your favour? Is there a possibility to conduct field visits together?

Gaining Control Over Time

As already explained in Chapter 7, significant leverage can be gained by avoiding time pressure and by being able to identify when a good moment has arrived or even by creating a better moment should the timing of your negotiation not be perfect.

The most effective way of dealing with time pressure is not to let it affect you, or, if it does affect you, not to reveal this fact to the other party. True, this is easier said than done. The usual advice that experienced negotiators give is to stay calm and to reflect carefully on your negotiation objectives. If the proposed agreement does not fulfil them, there is no need for you to allow yourself to be pressured into signing. Try to identify the source of the time pressure. Is it real? Is it your own sense of urgency? Is it being imposed unwisely on you by your agency? Or is it being imposed on you as part of the strategy of the other party?

Optimal use of time is an essential part of a strong strategy. If you have to rush off quickly to a meeting with a Minister and feel that you have not had enough time to prepare and to discuss the agenda with your team, consider postponing the meeting. It may be preferable to reschedule than to jeopardise an important negotiation. In many cultures, the end of the day is the most appropriate time for dealing with certain problems; good timing can increase your leverage, even if it means that you have to spend the night at the negotiation site.

Finally, thinking strategically about time means being sensitive to ripe moments: catching them when they come and creating them. Negotiation expert Josh Weiss suggests the following ways of helping to generate ripe moments.

- Change negotiators or introduce a mediator to change the dynamics of the negotiation

- Actively look for ways to create new incentives or new reasons to negotiate.
- Discuss with your counterpart the consequences of a failed or interrupted negotiation.
- Secure small but irrevocable commitments, which will serve to re-motivate the parties.⁶

Checklist for Activating Levers

Activating your levers is a long-term and ongoing process.

- Identify the treaties that your counterparts are failing to adhere to and research whether they may face legal prosecution?
- Initiate contact with media bodies and other potential allies.
- Draw up scenarios outlining the consequences of not acting with respect to the provision of aid items or specific technical services.
- Develop strong and viable fallbacks for what you will do in the event that the negotiation fails.
- Come up with some measures that you can take to increase your credibility and to build confidence.
- Think about ways to gain control over time.

CHAPTER 10 MAXIMISING LEVERAGE: FORMING A NEGOTIATION TEAM

Selecting a capable and appropriate negotiating team is an additional way of maximising leverage in the early strategic phase. Many experienced negotiators recommend putting together a strong and diverse group of people with different and apposite skills, knowledge and personalities to help you make a convincing case.

There is a general rule never to negotiate on your own:

“Never see a government official on your own, because you can be exploited. He may lie about what you said. You should always have someone with you to take notes. Never go alone unless you are making a very personal point. Sometimes we have done this. We said to the others ‘Could you leave so we can have a tête-à-tête?’ We did this once, when the minister was very difficult. We asked everyone to leave and said ‘if you cannot do this, we cannot have further discussions and we cannot implement our programme. Please stop talking to us like this.’ And then we brought the others back in again. It worked in that case. But I would never do a negotiation alone. You can complain, object, threaten and say embarrassing things on your own in a tête-à-tête, but never negotiate alone.”

(Aid worker reflecting on experiences in South-West Asia)

Advantages of Negotiating as a Team

A team approach will increase your leverage because it offers the following advantages.

- **Witnesses** When doubts arise about what was actually said during a negotiation, your colleagues will be able to confirm or deny particular claims.
- **Protection from physical threats** When dealing with highly

irrational counterparts, having one or several colleagues by your side may prevent the negotiation from descending into violence and placing you at physical risk.

- **Broader representation of your organisation** Having colleagues with you will enable your counterparts to get a better image of your organisation and may increase their trust in you.
- **Division of tasks and responsibilities according to capacity** Negotiating in a team will make your tasks more manageable and allow you to increase your performance, since you can delegate specific tasks and present a range of characters to the different people you are dealing with.
- **Shadowing** Having one person act as a *shadow* can be a particular advantage of negotiating as a team. The shadow team-mate never plays a direct part in the process. She or he is spared the heat or frustration of the talks but is kept fully informed and acts as an objective and unemotional adviser.

Criteria for Selecting a Team

During the strategic phase, you decide who in your team may be the best person to approach your counterparts. The best person may not always be the most senior – gender, age, knowledge of the context, culture and character may be more significant criteria. In their eighteenth century *Encyclopaedia*, Diderot and D’Alembert give some advice on this topic:

“Look carefully for those whose character fits best the task with which you would like to charge them. Seek for an audacious person to make complaints and reproaches, a soft person to persuade, a subtle person to discover and observe, and a proud person for a somewhat unreasonable or unjust affair.”⁷

Today, it is wise to consider the following the points.

- **Who can best present and explain your objectives?** If discussing specific subject matters, such as the construction of sanitary facilities or the protection of IDPs, it may be worth taking a specialist who can add expertise to your discussions. At the same time, you may want to take someone along whose level of authority is equal to that of your counterpart, so that he/she feels that he/she is on an equal level.

- **Who can best develop a good personal rapport with your counterpart?** Which colleague has the most apt interpersonal skills for the negotiation? Who is a good listener? Who has the most suitable cultural background, conflict style and personality type to appeal to your counterpart? Who shares the same background?
- **Who can best ensure that the negotiation process advances smoothly?** Who are the good facilitators in your team? Who can play a long game well?

Humanitarians often highlight the importance of identifying team members who have the right profile to convince counterparts:

“Only a mature woman (old enough to be their mother) speaking their language was able to make them think about the atrocities that they were committing.”

(Humanitarian reflecting on an experience in Southeast Europe)

Checklist for Forming a Negotiation Team

Have you selected team members who are similar to your counterpart in terms of:

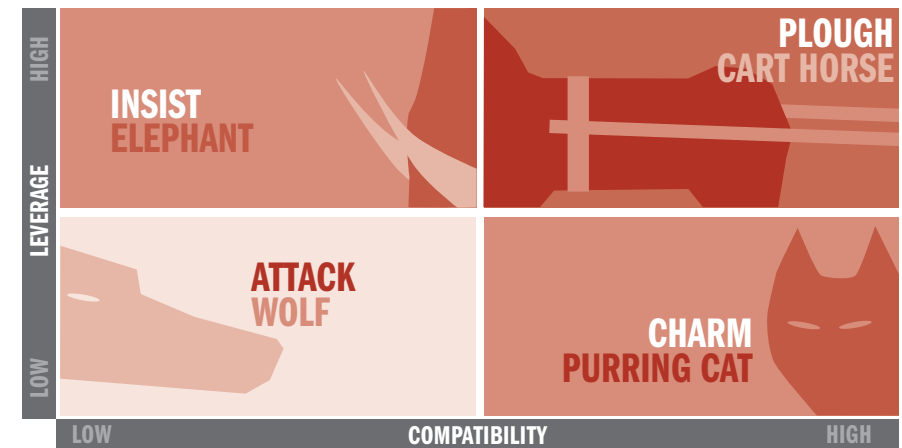
- position;
- expertise;
- cultural background;
- personality type; and
- facilitation skills.

CHAPTER 11 DEFINING YOUR STARTING POINT AND APPROACH

Now that you have worked on compatibility and leverage separately, it is time to put the two together.

The Compatibility and Leverage Matrix (C-L Matrix)

The compatibility and leverage matrix (*C-L Matrix*) helps identify compatibility and how much leverage you have when you start your actual negotiation. Your relative position on this matrix suggests a corresponding approach to adopt when you start discussions with your counterpart. As an aid, we have assigned an animal type to each position that best symbolises that position and the corresponding approach.



If you are in the high leverage–high compatibility square you are doing well! You will probably be able to meet both your interests and those of your counterpart rather easily through a collaborative attitude. We have, therefore, called this approach *plough*, since, like any good *cart horse*, you simply need to keep going, pulling your negotiation forward along clearly

agreed lines, giving equal consideration to substance, relationship and process.

In other situations, compatibility may be high, but you may not have much leverage. Consequently, you will not be able to put much pressure on your counterpart and will have to rely on your charm to keep your opposite number focused, as might a *purring cat*. In this case, your attitude will be soft and you will concentrate more on relationship than on substance and process.

If, instead, you face more conflict, yet enjoy the luxury of leverage. You will need to use the latter to your advantage as much as possible. It is the only way to achieve your objectives. You will need to insist on substance, while being somewhat imposing, as might a determined *elephant*. Your attitude can be either aggressive or collaborative.

The most uncomfortable square to be in is that of low leverage–low compatibility.

In this situation, with little tools at your disposal, you may have little choice but to attack aggressively like a *wolf*, since you have nothing to lose. While trying to employ all possible means, you are likely to rely on substance, relationship and process in equal parts.

Finally, of course, there will be instances when none of these approaches are wise. For example, when a situation is life threatening, it may make more sense to *retreat* and to disengage from the negotiations altogether.

When you tried to maximise compatibility and leverage in the early strategy phase, you were actually trying to get as close as possible to the upper right corner of the matrix. But, in many instances, you are likely to find yourself in a less perfect scenario. This is why it is vital to utilise the right tactics and arguments. The next two chapters will examine tactics and arguments.

Checklist for Defining Your Starting Point and Approach

- Are your interests and those of your counterparts compatible or is there little room for dovetailing?
- How much power are you likely to exercise over your counterpart?
- Depending on your answers to these questions, you will choose an approach that is more or less aggressive and that pays differing levels of attention to substance, relationship or process.

CHAPTER 12 CHOOSING THE RIGHT TACTICS

Tactics are specific behavioural tools or techniques that help to influence the other party.⁸ Negotiators employ a range of tactics. The tactics that you will choose will depend on how much you need to underline substance, relationship or process in your negotiation. Keep in mind that the appropriate mixture is determined by your position in the C-L Matrix.

Substance

The greatest obstacles in any negotiation are often connected to matters of substance. Talks can easily reach deadlock if they follow a single path or continually look at problems in the same way. Successful negotiators are often agile and creative with respect to the way in which they treat the substance of discussion, at every sign of deadlock finding ways to look at facts differently, changing the emphasis in an argument, and making novel offers. The following techniques can be useful in making progress on substance.

Appealing to Reason, Not Feelings

Many negotiation theorists advise shifting the substantive focus of negotiations from subjective to objective matters whenever emotions are rising and threatening to produce a stalemate. Moving the discussion from feelings to facts can present greater opportunities for problem solving.

For instance, you might be negotiating with a member of the Ministry of the Interior about the construction of a road to a remote rural area. You want to build the road because otherwise your trucks cannot reach the inhabitants of this area. Your counterpart resists the construction of this road, but favours another road between two towns. In order to break down emotionally held opinions on the road, you could introduce some objective criteria, such as financial and engineering considerations, to help settle this dispute. What if the road between the towns is more expensive and adds less value to the local economy? What if experts say that the road between the towns is difficult to build because it would have to cross two rivers that flood twice a year?

If handled well, such factual issues can help to stimulate a more informed discussion and provide your counterpart with the opportunity to save face, enabling you to escape potential deadlock.

Introducing such objective criteria is not a panacea. It certainly does not solve a problem outright because, of course, there are still vigorous arguments to be had over the different considerations. In the above example, your counterpart in government may well contend that greater political benefits are to be derived (securing urban votes and increasing his/her party's legitimacy) from the urban road, despite the extra cost and the deprivation of the rural area. But at least the shift from feelings to facts has uncovered some real interests and shown where the negotiation needs to focus. As humanitarians, you are bound to operate on the principle of greatest need and equal treatment and you can now start to solve problems objectively around your competing interests.

Re-framing the Problem

In negotiation theory, *framing* refers to how people define and perceive a problem that exists between them. The way one frames things and the language one employs to talk about them is important, because it determines the attitudes and emotions that people bring to the subject and the actions that they pursue. Good translation and language skills are essential for successful re-framing.

In an insurgency, for example, you may see a government's refusal to allow humanitarian access to an area with high concentrations of IDPs from rebel-held territory as a deliberate violation of international law. The government, however, may view it as an essential part of its strategy to guarantee the survival of the state. Unless you can find a way to re-frame the problem, which doesn't accuse the government or underestimate the threat that the insurgents pose to the state, you are unlikely to reach an agreement without significant leverage. Re-framing the situation so that the problem is perceived as one of hunger and the question of access as a matter of good government might help to nurture a more reasonable discussion.

Sometimes negotiation involves a delicate balance between both using and challenging the other person's framework. Gently adapting a counterpart's language – without necessarily challenging his/her position – can be a very useful way of slightly, but significantly, re-framing a problem to your advantage. For example, serious security problems along a border may be preventing the safe repatriation of refugees to their places

of origin. However, while you are urgently negotiating a postponement to their return, your counterpart in government refuses to acknowledge that there is a security problem and insists that conditions along the border are normal. Are there other terms you could use to describe the same problem, thereby re-framing it? How about telling your counterpart that refugee returns do not seem to be sustainable at the moment because significant numbers of repatriated refugees are returning to the camps in a bad physical condition? Your counterpart may be willing to discuss this problem with you in terms of sustainability, but not in terms of security.

Relationships

A good working relationship can greatly facilitate difficult talks on issues of substance. Successful negotiators know how to develop a personal rapport with their counterparts, a bond that will help them overcome differences of opinion on substance. The following tools and techniques can assist in creating such ties.

Bonding

When you bond with a person, it usually means (loosely speaking) that there is a common sense of affection and obligation that connects you. The strongest bonds are usually forged through shared experience.

In negotiation theory, bonding refers to an incremental relationship that emerges slowly out of chance, attraction and small achievements. It can start when both parties agree on the smallest possible strand of a discussion (for example, an opinion, a shared impression or a joke) and then develops and grows. They will tend to continue bonding around other strands until they reach a mutually satisfactory agreement.

For instance, imagine arriving at a checkpoint where a fierce looking guard stops you from passing through. Explaining the purpose of your mission has no effect. He refuses to let you through and heightens the tension by starting to search your vehicle aggressively. All of a sudden, he discovers a compact disc of reggae music on your backseat. '*You like Reggae?!*' he exclaims. You then start chatting and bonding around reggae and he eventually agrees to let you continue your journey.

Appealing to Super-Ordinate Goals

In psychology, super-ordinate goals are higher common objectives with regard to which two parties agree to cooperate despite lower level

differences. Appealing to such higher-level goals is different from bonding, which may be connected to more mundane things, often not related to the substance of the talks.

Super-ordinate goals are meta-goals that the parties can come together round in order to overcome their differences and which they can use explicitly as a basis for working jointly on a common cause. A classic example would be two groups of English football fans that loathe each other's club teams – Arsenal and Manchester United. These fans insult one another vehemently across the terraces. Later, they travel abroad together, wearing the same colours, to support the national team.

Politicians often use super-ordinate goals to rally people around national unity, and, of course, the sinister construction of super-ordinate nationalist or ethnic identities can be the reason why humanitarians are in a war zone in the first place. But it is often possible to find a good example of a super-ordinate goal or identity that brings you and your counterpart together for a common cause and with a common interest. This might involve you both agreeing that 'these people are all human beings' or recognising common higher level values like 'no-one should ever have to experience this', although such principles may not always be shared, especially in conflict environments that de-humanise enemies. But common goals may also consist of a mutual recognition of more personal and prosaic common interests between a frontline humanitarian and a district governor:

"Let's sort this out as soon as possible so that we can both leave this place and get home to our families."

Process

It will not always be possible to control all aspects of the negotiation process – where, when, with whom, how often it occurs and who sets the agenda. In urgent and unexpected situations, or when the power symmetry is not in your favour – such as rapid onset operations or at hostile checkpoints – you will exercise little influence over the process. Nevertheless, good negotiators always think about how best to use time, space, layout, participants' lists and unexpected opportunities to their advantage.

A great deal of the conflict in any negotiation is often played out in a struggle over process. It may sound ridiculous to outside observers

that international talks often breakdown because of a failure to agree on a venue, the participants' list or the ranking of items on the agenda. In reality, however, a great deal of advantage can be gained by dominating key aspects of the negotiating process, so that what might be considered detail becomes a primary battleground.

Below are some suggestions for managing the negotiation process that might prove helpful.⁹

Applying Time Pressure

If you are not on the receiving end of time pressure, in certain situations, it can be useful to impose deadlines on your counterparts. For example, you may start the negotiation by saying that you will have to leave after one hour because of another obligation. You may also put time pressure on your counterpart by pointing out the consequences if you have not reached agreement by a specific point. However, these techniques should be employed with care. Individuals react very differently to time pressure and your counterpart may feel overly pressured and refuse to engage in further talks. The better you know your counterpart the better will be your judgement call on how much time pressure you can apply wisely.

Choosing the Right Venue

Negotiations can be conducted in several different locations – each with its own advantages.

- **Your place** As the host of the negotiation, you will be able to control the physical environment and create an atmosphere conducive to agreement – perhaps by serving food or drinks. You will also be expected to lead the discussion.
- **Their place** As a visitor, it will be easier for you to walk away from the table if the negotiation takes an unfavourable turn or if you want to apply time pressure.
- **A neutral place** This is a fair option if a visiting party believes that it is at a disadvantage due to the negotiations taking place at the other's venue. In a neutral place, neither side enjoys home advantage. Decisions on all other procedural matters can be reached through mutual consent.
- **Close to the victims** You may also consider holding the negotiation close to the affected population that you are trying to assist or

protect. This will allow you to stress the urgency and the importance of the issue.

Physical comfort will often facilitate negotiations. Clearly, when you are negotiating in open country in extreme temperatures and are craving a cold drink, it may not be as easy to concentrate as in a cool room with good food. However, be aware that things can seem much better than they actually are in a nice place with a beautiful view, tending to make both parties slide easily into idealistic agreements, which lose sight of the realities at the sharp end of the conflict.

Selecting the Participants

When deciding on the number of colleagues who will take part in a negotiation, be sure that the team is at least equal in size to that of your counterpart. Some negotiators like to *gang up*. This certainly puts the team in a more powerful position, but it may also intimidate the other party and prove counterproductive. Nevertheless, remember the risks of negotiating on your own (refer back to Chapter 5).

Seating Arrangements

Seating can be a key issue in your negotiation. It has a power dimension and also determines who has good eye contact with whom. There is both a science and an art to getting it right and to making it work in your favour. Annex IV provides some guidelines on how to manage seating arrangements.

Agendas, Draft Proposals, Minutes and Ground Rules

Leading on other areas of negotiation process can also deliver some important advantages. Whoever is in a position to set the agenda for any talks, submit draft proposals, record meetings or insist on certain ground rules often gains the upper hand in a negotiation.

Try not to become a passive participant in somebody else's process. Instead, actively take the initiative whenever possible by proposing an agenda (prioritising the issues to be covered in the talks), presenting draft proposals or suggesting certain ground rules that could guide the negotiations (for instance, no weapons in the meeting room).

Safety

Negotiating without physical security guarantees will always put you

in a defensive position. If possible, it is clearly preferable to agree with your counterpart that no weapons can be taken into the negotiating room. In many instances, though, you may no choice but to negotiate in the presence of guns. This will, by default, make you the weaker party. In such cases, you should at least request that the weapons be unloaded. Otherwise, staying calm and not provoking your counterpart will be the only effective tactics.

Confidentiality

It is very important to stick to any agreement to hold secret negotiations and hence to keep all relevant information confidential. Even if the disclosure of some data may seem to offer significant advantages – such as widespread public support – vital credibility can be lost and a good negotiating relationship can be compromised by such a breach.

Sometimes, however, humanitarian mandates or a specific negotiation objective may make it impossible to keep some information confidential (for instance, grave human rights violations and mass killings). Humanitarians have to face the familiar dilemma of going public and risking the future of the negotiations.

Formality

The degree of formality accorded to a negotiation can often be a sign of the status and legitimacy of those involved. This is especially true of talks with representatives of rebel groups who are often seeking international recognition. They may insist on a very formal protocol under which written invitations are sent, minutes are taken and reports are prepared. Depending on your organisational mandate or mission, and the ethical risk of granting legitimacy to groups that seriously disrespect international humanitarian law or human rights, you may not always be able to satisfy such requests.

Some More Aggressive Tactics and How to Counter Them

Some tactics are more appropriate than others with respect to a humanitarian negotiation – guilt tripping and blackmail in their raw form may, for example, not be good practice and thus should not be recommended. Nevertheless, it is important to be aware of the more coercive tactics that they may be used against you. Table 5 lists some of them and offers some suggestions on how to counter them.

Table 5 Aggressive Negotiation Tactics and Possible Ways to Counter Them

| TACTICS | DESCRIPTION | POSSIBLE COUNTERMEASURES |
|---------------------|--|---|
| Take it or leave it | Accept their offer in its entirety or do not receive anything at all. | Test their commitment; appeal to their sense of fairness; highlight the advantages of splitting the offer. |
| Hands tied | They say that there is nothing they can do to change the situation because they do not have the authority. | Check the facts and establish whether they are telling the truth. If yes, identify and approach the real authority. |
| Bulldozer/shotgun | They present all issues and use levers in a single session. | Insist on breaking the session up into several meetings dedicated to different issues. |
| Good guy/bad guy | They negotiate as a pair. One of them threatens you and takes a tough line, while the other shows compassion and apologises. | Tell them that you know what they are doing and/or try to drive a wedge between them. |
| Deception | They deliberately conceal facts or their real interests. | Verify the facts; perform an in-depth analysis of interests. |
| Blackmail | They ask for something in exchange or threaten to reveal information that could disgrace you if you do not agree to their offer. | Ignore the tactics; tell them that you know what they are doing; appeal to reason and objective criteria; take a break, if necessary. |
| Guilt trip | They make you feel bad by not agreeing. | |

Checklist for Tactics

- Have you chosen some tactics based on how much importance you give to substance, relationship and process? Below are all of the techniques and tools available.
 - Appeal to reason, not feelings.
 - Re-frame the problem.
 - Bond.
 - Appeal to higher goals.
 - Apply time pressure.
 - Choose the right venue.
 - Select the participants.
 - Seating arrangements.
 - Agenda, draft proposals, minutes and ground rules.
 - Safety.
 - Confidentiality.
 - Formality.
- Are you prepared for the fact that more aggressive tactics may be utilised in the negotiation?

CHAPTER 13 PREPARING YOUR ARGUMENTS

Once all necessary steps have been taken to maximise compatibility and leverage and to define your approach and tactics, strong and appropriate argumentation should be put together to help you influence the other party further and make a compelling humanitarian case. Arguments are the reasons that one side advances to show the other that a specific negotiation outcome is in his/her interest. For example, what reasons can a humanitarian cite to convince a military commander that it is in his/her interest to provide water to a densely populated suburb even though enemy troops are hiding there? The answer, of course, is that there is no single magic argument that will work in every situation. The best arguments will be shaped from a good appreciation of the specific situation and the personalities involved.

This chapter sets out the main humanitarian arguments that can be employed in any given situation to help humanitarians build appropriate arguments for their various negotiations during the strategy phase. It draws on a study carried out by the ICRC in 1997, which examined a range of different arguments developed by delegates around the world.¹⁰

What is the Challenge?

The days when it was enough simply to invoke legal obligations or to fall back on orders received from a superior are long gone, if indeed they ever really existed. Even in the 1930s, the famous ICRC delegate, Marcel Junod, noted that, in the Spanish Civil War, and during the Italian invasion of Abyssinia, it was always necessary to draw on factors other than international law and authority to make a convincing humanitarian argument. Merely evoking the law has never been enough.¹¹

Today, the daily reality of weak nations, incredibly strong states, armed groups, fanaticism, ethnic nationalism, terrorism, violent commercial exploitation and frequently loose chains of command is common to the humanitarian. In such different and difficult settings, how can humanitarians build an argument that is sensitive to context, while, simultaneously, remaining faithful to humanitarian values and principles? This challenge is compounded by the fact that there is often little time to

prepare for negotiations, which may begin at any time, be it at the wheel of a 4x4 vehicle or in the corner of a bar where one's physical security is far from guaranteed. Building a good argument requires strategic thinking, psychological insight, preparation and flexibility.

Different Types of Humanitarian Argument

Every argument used during a negotiation process can be understood to have *objective* elements and *subjective* elements. The former relate to international norms, dispassionate calculations of need and particular agency expertise. The subjective aspects, meanwhile, are those that seek to get under the skin of the actual person in front of you. They speak more to this particular person's needs, interests, beliefs and fears. They are, therefore, more informal, personal and emotional. To be effective, humanitarians need to argue well on both levels.

Objective Arguments

Objective arguments are messages developed on the basis of one's institutional mandate or mission – what it stands for, what it wants, what it can do and what it says. This message will only be clear if the institution has a clear vision of its aims and is consistent in practice. Broadly, there are three types of argument at your disposal.

- **Legal** – arguing for humanitarian protection and assistance on the basis of national and international law.
- **Your organisation's mandate and principles** – the mandate or mission under which your organisation is entitled to engage in humanitarian work and the principles on which you operate.
- **Your organisation's expertise** – the practical added value that your institution can bring to a situation.

Example: An Objective Argument for Assistance

Below is how an ICRC representative might make an objective case to be allowed to participate actively in assisting victims of war.

Key Message

Keep victims alive, reduce their suffering and prevent the consequences of illness, injury or nutritional deficiency from negatively affecting their future.

Legal Argument

Aid activities are governed by the Geneva Conventions (for example, Articles 59 to 62 and 108 to 111 of the Fourth Convention) and the Additional Protocols (for instance, Article 70 Protocol I). In non-international conflicts, activities are also governed by Common Article 3, which states that:

“Persons taking no active part in hostilities ... shall in all circumstances be treated humanely”; and that

“... the wounded and sick shall be collected and cared for.”

Mandate and Principles Argument

The ICRC is empowered to provide these services by virtue of Articles 3 and 9 of the Geneva Conventions, as well as its Statutes. It does so in accordance with its operational principles of impartiality, neutrality and independence.

Expertise Argument

The ICRC brings to its activities extensive knowledge and experience of managing large-scale operations acquired over a number of years (the first ICRC aid mission was launched in 1876 to help victims of a revolt).

Subjective Arguments

The subjective elements of an argument take into account the particular context and the interests and character of the counterpart in front of you at any given moment. Good subjective arguments can be utilised in two main ways. They can be used to get past objective arguments that are obviously not working:

“You may not believe in the Geneva Conventions but surely you can see that your people will benefit from this too.”

At other times, subjective arguments can complement objective arguments and thus be more suitable for the person you are dealing with:

“You have nothing to fear from agreeing to this, as my superior and yours have already agreed to humanitarian access in your area.”

There are six different subjective factors that, usually, can increase the effectiveness of a humanitarian argument:

- fear;
- authority;
- self-interest;
- reflection;
- universal values; and
- culture.

Fear, authority and self-interest are often particularly powerful motivators – particularly if one agrees with Machiavelli’s pessimistic dictum that ‘man [sic] only does good through necessity’. But appealing to the self-interest of military and political personnel is also a difficult line to walk and must be done judiciously. Is it really the role of a humanitarian to point out to his/her opposite number from the military, in a concrete and explicit way, the precise political, military and economic advantages to be gained from humanitarian restraint in a given situation?

A super-ordinate appeal to universal values can work, but it cannot always be relied on. Values that are obvious to you may not be so apparent to others. For example, although nepotism is considered to be a failing in the West, there are many places where it would be unthinkable not to offer preferential treatment to one’s relatives. This means that the universal notion of impartiality is not always the best card with which to lead.

Actively encouraging the other party to think through and reflect on the situation can also sometimes prove to be a creative move. If all goes well they may reach conclusions that are similar to your own.

Table 6 uses the earlier example of depriving a civilian population of water to illustrate the different types of subjective arguments one can make. It also points to the risks inherent in such arguments by indicating what you need to know in order to make such arguments effectively and the kind of moral hazards that might encounter.

Finding the Right Argument

Ideally, humanitarian negotiation will need to draw on a strong combination of objective and subjective elements to make its case effectively. There are four main criteria to which any argument must correspond. The diagram on page 108 visualises these criteria in the form of circles and shows that the perfect argument is to be found at the intersection of them all.

| FACTOR | ARGUMENT | WHAT YOU NEED TO KNOW FIRST | DILEMMAS |
|---------------------|---|--|--|
| FEAR, THREAT | Depriving a civilian population of the basic necessities needed for survival is a war crime and you may be held personally accountable. | Details of international humanitarian law and if there is a genuine possibility that those responsible for these particular violations will be punished. | Your threat runs the risk of creating security problems for humanitarian workers. |
| | We will denounce you to your superiors. | Do their chains of command really work and carry weight? | |
| | We will denounce you to the media. | What influence does the media have in this particular situation and what effect would such a denunciation have on the future activities of humanitarian workers? | Using the media to denounce violations may not be usual practice for your institution, nor in keeping with the confidentiality commitment you have entered into with the authorities concerned. |
| AUTHORITY | Your attitude is unacceptable ... I order you to supply the town. | What influence does your institution have in this situation? | Is this the image you wish to give of yourself or your institution? |
| INTEREST | Lack of water is likely to cause epidemics and you and your troops are likely to suffer too. | The specific strategy the army is going to employ to occupy the town. | Are you providing advice about military strategy that is contrary to your neutrality? |
| | If the civilians are subjected to the same suffering as the rebels, they are likely to sympathise with them. | Has the civilian population already been won over with respect to the cause of the rebels? If not, does the scenario you are developing seem realistic. | |
| REFLECTION | I am aware that your military mission obliges you to arrest the rebels. However, how do you plan to distinguish between combatants and civilians? | Is the distinction between civilians and combatants recognised and valued by your counterpart? | Recognising the very real problems associated with distinguishing between civilians and combatants may lead your counterpart to argue that the use of a much more indiscriminate strategy as being inevitable. |

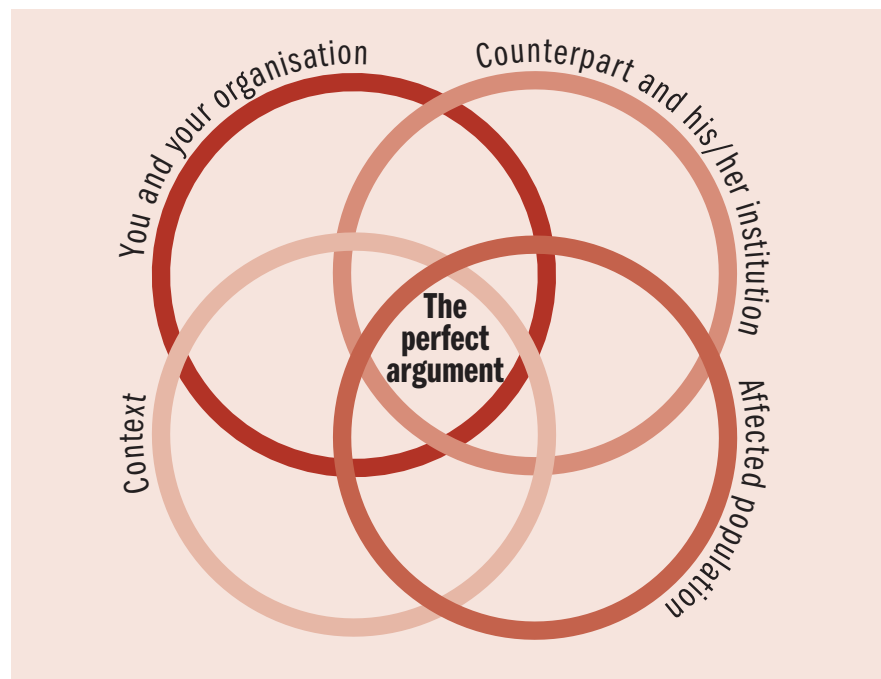
| FACTOR | ARGUMENT | WHAT YOU NEED TO KNOW FIRST | DILEMMAS |
|-------------------------|--|--|--|
| UNIVERSAL VALUES | No-one can accept that civilians be deprived of a commodity as vital as water. How would you feel if your family was in this town? | Is your counterpart the kind of family man/woman who might be sensitive to such an argument? Does your counterpart have family in the town anyway? | Your counterpart may have experienced similar violence against his/her own family and feel that such retaliation is morally right. |
| CULTURE | Your country/your religion states that: "You will not refuse a glass of water even to your worst enemy". | Know the culture(s) of the country. Do not confuse and quote a dictum that is from the country but applicable to a rival group. | What gives you the right to "teach someone their own culture"? A national staff member would be in a better position to do this than an international one. |

First, the right argument will need to be compatible with international law and accurately represent the mandate or mission of your agency. But it should also be the argument that you are most comfortable making, so that you present it with conviction. This point is important. Medics make the most convincing medical arguments; lawyers make the best legal arguments; but atheists or Christians are not usually best suited to making arguments concerning Islam.

Second, the perfect argument will appeal to the diverse interests of your counterpart and his/her personality. For instance, you will put forward different arguments when speaking to a member of the Ministry of Health than when you are speaking to someone who represents a religious group.

Third, a good argument will also take account of the local context, the overall conflict situation and the national cultures.

Fourth, your argument will also appeal to the population you are trying to protect. This is important because its needs are your primary concern and anything you say during your negotiation has to relate to them. In addition, if your argument does not take account of the needs of the affected population, your counterpart may be able to use them against you. He/she may, for example, try to publicise your argument to discredit you, claiming that you are a cynic and scornful of the population.



As the diagram above illustrates, the intersection of the four circles is very small.

The examples in Box 9 illustrate the principles that lie behind the circle diagram. They show how humanitarian workers from different backgrounds use particular arguments when trying to convince a counterpart to respect international humanitarian law and how they were queried by some of their colleagues.

Box 9: Which Arguments are the Most Adequate?

Religious Duty

A humanitarian from South-West Asia repeatedly put the following argument to his counterpart:

“Rules to limit violence in all situations, including times of war, have always existed. These rules are sacred and are found in the Koran.”

Some felt that such an argument came close to proselytising (as opposed to spreading ideals concerning international humanitarian law) and thus wondered whether he was endangering his neutrality as a humanitarian. His response was that, for those combatants who listened to him, there was only one Book and that they felt no need to respect orders coming from profane works like the Geneva Conventions. He also pointed out that expatriates could not employ this type of argument. His white beard, his local origins and his obvious religious belief enabled him to use this type of argument effectively.

Extreme Military Pragmatism

A Cambodian aid worker said that he had often used the argument:

“If you kill a baby and its mother you will already have wasted two bullets, this is not going to make you more effective.”

His colleagues were very surprised by the pragmatic military nature of his argument. He explained that, as a former soldier, he was aware that strict orders are issued not to waste bullets. He also pointed out that, as his country had recently experienced genocide, more general appeals to humanitarian values carry little weight. But does such an argument fit with the beliefs of an impartial and neutral humanitarian organisation? Or does it give the impression of offering military advice, which could sound extremely partisan to opposing forces if they heard it. Depending on one’s judgement, this argument either falls cleverly within the four circles or lies well outside the context circle.

An Argument Too Far?

A Western European aid worker in the Balkans who was given the opportunity to address a military audience described a similar case. He used the following argument to try and improve detention conditions for prisoners:

“By treating your captured prisoners properly, you reduce your enemy’s will to fight.”

While this argument may have made sense to his audience (affected population circle), it seems to stray too far into the realm of military advice (rather than humanitarian argument).

A good argument does not have an indefinite lifespan. While it is not wise to come up with a new argument at every meeting, it is important to gauge the effectiveness of any arguments you use over time and to adapt them as necessary.

Not only is it difficult to make a perfect argument, but often humanitarians only have a fraction of a second in which to frame an argument or response. Yet, a humanitarian's own life and the lives of those he/she is trying to protect rely on a swift and appropriate reply. Hence the importance, once again, of treating humanitarian arguments in a strategic way – be as well prepared as possible.

Good Practice in Developing an Argument

To put the two elements of a good argument together – the objective and the subjective – requires thought and skill. It also requires good teamwork, making sure that they are applied consistently across the entire programme of the agency, and adapting them when necessary.

Any arguments made at the objective level must be based on good knowledge of international legal norms and on clear and precise principles and practices that are adhered to by all staff members within an organisation. It is not enough for humanitarians just to be acquainted with institutional principles. Similarly, everyone needs to know the objectives and priorities that their organisation has set for any programme, so that the right arguments can be developed to satisfy them.

If objective arguments require a certain amount of logical precision, subjective arguments serve as a reminder that negotiation is an art, not a science. There is no single good argument, but rather an almost infinite palette of them. Artistry, insight and adaptation will be required to get your message across in an appropriate way.

Box 10: Planning an Argument

One humanitarian team decided to pay particular attention to the arguments it used:

Prior to each field visit, the team organised a meeting to bring together national and international participants in the mission and drafted a list of possible questions that could be raised by their counterparts. The team then explored and decided on the best answers that could be given, as well as those answers and explanations that should be avoided. This kind of explicit and collaborative work enabled the team:

- to discover better arguments;
- to be consistent in terms of its answers and explanations;
- to avoid contradicting itself from one visit to the next;
- to reduce levels of personal frustration and stress – members now felt sure of what to say; and
- to challenge constructively its own preconceptions/prejudices.

One of the biggest problems the team faced was rapid turnover of international staff – newcomers were not aware of what arguments had already been used or discarded. As a result, the team decided to keep a written record of those arguments that had worked and those that should be avoided and to pass this on to headquarters for wider institutional learning.

Developing good arguments requires a high degree of flexibility and a willingness to re-evaluate one's position and approach constantly. The making of good humanitarian arguments does not always occur spontaneously. It requires preparation. Some people may find that staring down the barrel of a gun at a roadblock suddenly brings out diplomatic talents that they did not know that they possessed, but most of us feel safer and perform better if we have prepared in advance.

Checklist for Preparing an Argument

- Have you thought through the objective and subjective elements of your arguments in advance?
- Are your arguments appropriate given: your organisational mandate or mission and your own personality; your counterpart's institutional objectives and personal background; the wider context; and the needs of the population you are trying to assist?
- Have you involved the necessary personnel in preparing your argument?

SUMMARY PART THREE

In the past few chapters, we have described the six steps involved in devising a good negotiation strategy.

- 1 Taking appropriate steps to maximise compatibility and leverage, as this will increase your chances of reaching a successful agreement. This can be done by:
 - Considering as many options as possible;
 - Activating all available levers. This may involve, for instance, identifying applicable legal treaties and possibilities for investigation and prosecution, contacting the media, approaching your potential allies or drawing up assistance scenarios contingent on the realisation of the negotiation. Special attention should be paid to activating levers like fallbacks, credibility and time; and
 - Forming a negotiation team with the right level of authority and expertise, a suitable cultural background and personality type, and appropriate facilitation skills.
- 2 Finding your starting point on the C-L Matrix and defining your basic approach.
- 3 Choosing the right tools and techniques for your approach that will help you to exercise maximum influence over your counterpart. Among the most important are re-framing, bonding, defining common goals, and effective use of location, time and protocol.
- 4 Preparing effective argumentation that is in line with the humanitarian mandate or mission and the personality of the negotiator, the interests and personality of your counterpart, the negotiation context, and the needs of the affected population.

NOTES

- 1 Strategy in the original Greek sense concerned the art of planning a war. See Lewicki, Roy, Litterer, Joseph and Minton, John. *Negotiation. Op. cit.*, p. 109.
- 2 Fisher, Roger and Ury, William. *Getting to Yes: Negotiating Agreement Without Giving In. Op. cit.*, pp. 69–70.
- 3 *Ibid.*, p. 63.
- 4 See, for example, *ibid.*, pp. 103–106.
- 5 *Ibid.*
- 6 Weiss, Josh. *Module on Negotiation for an Online Training Course*. Topic No. 10. Geneva: Centre for Humanitarian Dialogue, 2001.
- 7 *L'Encyclopédie ou dictionnaire raisonné des sciences des arts et des métiers par une société de gens de lettres*, (translated by the authors). Paris: 1757.
- 8 Tactics are usually defined as “short-term, adaptive moves designed to enact or pursue broader (or higher level) strategies.” See Lewicki, Roy, Litterer, Joseph and Minton, John. *Negotiation. Op. cit.*, p. 110.
- 9 These suggestions are inspired by Teply, Larry. *Legal Negotiations in a Nutshell*. St. Paul, MN: West Publishing, 1992. See Chapter 4 in particular.
- 10 Final Report of the DD/PRO, *Etude sur la Diffusion dans les nouveaux contextes de conflits et de violence interne*. Unpublished. DD/PRO 224/97.
- 11 Junod, Marcel. *Le troisième combattant*. Lausanne: Payot, 1948 (most recent edition 1989).

The image features a light orange background with abstract graphic elements. A large, white, stylized number '4' is positioned on the right side. Overlapping the bottom of the '4' is the text 'FACE-TO-FACE NEGOTIATION' in a bold, dark red, sans-serif font. On the left side, there are several curved, overlapping lines and circles in various shades of orange and red, creating a sense of movement and depth.

4 FACE-TO-FACE NEGOTIATION

HAVING TAKEN CARE of the analysis and strategy, the time inevitably comes when humanitarians have to put them into practice and negotiate face-to-face with counterparts. This part of the handbook looks in more detail at the type of personal rapport that humanitarian negotiators should be trying to develop in such meetings.

CHAPTER 14 BUILDING THE RIGHT RELATIONSHIP

The parties that meet during a humanitarian negotiation are the links to their organisation and the interests that they represent. They are the key points of interaction. If they are not compatible to some degree, there will be no scope for dialogue between them. It is essential – no matter who is in front of you – that you find a way of working together. In other words, you need to develop an effective relationship with your counterpart.

Sometimes, the quality of the relationship you forge will inevitably count for nothing if the power behind your counterpart is unchallengeable. A humanitarian talking about experiences in the Middle East and South Asia said, for example:

“In these countries, I knew that regardless of the person who represented our institution, their policies would not change by one iota ... everything had already been decided at the highest level and was unchallengeable.”

Characteristics of a Good Relationship

Experienced negotiators say that creating effective relationships in humanitarian negotiations means not wanting to be liked, but being respected, although one does not necessarily exclude the other. The notion of respect for all human beings – the very humanitarian ideal that we are looking for in our counterparts – also applies in any negotiation, regardless of the opinions that humanitarians may have of their counterparts. The challenge is to create an effective human relationship without slipping into the complicity trap, in which one becomes overly understanding or tolerant of the inhumane policies of the other party.

Roger Fisher and Scott Brown define the optimal negotiating relationship in their excellent study *Getting Together: Building a Relationship that Gets to Yes*.¹ They look at negotiations that took place between the Soviet Union and United States during the Cold War, and examine experiences from the private sector that offer many useful lessons for humanitarian negotiations. On the basis of their research, Fisher and Brown make two main points about negotiation relationships.



- **A good relationship does not mean being in agreement, nor does it mean sharing the same values.** On the contrary, a good relationship is one in which both parties recognise differences yet are able to overcome disagreements on positions and values.
- **The best relationships are able to separate the substance of the talks from the relationship between the negotiators.** A disagreement about substance should not change the relationship, just as a problem within a relationship should not lead negotiators to make concessions on substance. The latter, which are made in an attempt to improve the negotiating relationship, can have significant negative consequences for the outcome of the negotiations. They can distract negotiators from their objectives and sometimes even from the fundamental principles of their institution. Trading substance for an improved relationship can also impact on the way in which a negotiator is perceived. Instead of improving the relationship, concessions on substance often run the risk of making negotiators appear weak and hence they are presented with further demands for concessions. Under these conditions it is difficult to command respect.

In any good relationship, emotions come to the fore and discussions can become extremely difficult and heated at times. This makes it important to be prepared with respect to one's own emotions and those of one's counterpart.

Dealing With Emotions

Managing the Emotions of the Other Party

In any negotiation there is a non-rational or emotional element. In humanitarian negotiations the emotional element can be acute. To ignore the emotional aspect in a situation of armed conflict would be tantamount to denying one's own human condition.

It may often be difficult to understand the uncompromising position taken by, or the indifference of, a counterpart, and it is easy to forget that he/she might also be a victim of the war, that he/she may have family members who have disappeared or been killed. The humanitarian world cannot be neatly divided into victims and counterparts, these two groups often overlap.

“The day when the director of the prison asked us if he too had the right to send a Red Cross message to his son (caught behind the frontline), he realised that the Red Cross could also help him; but above all we realised how much he too had suffered from this war. From that moment on our meetings were far more constructive.”
(Humanitarian reflecting on experiences in the Great Lakes region)

The best way of handling the strong emotions of a counterpart is first to acknowledge them. This may be done by:

- not ignoring him/her;
- talking openly – “I can imagine how difficult this must be for you”;
- apologising for having provoked these feelings, whether out of anger or distress;
- suggesting that you take a break; and,
- calling for a period of silence.

When counterparts get angry, it is generally advisable to let it take its course and not to interrupt the process.

However, emotions that manifest themselves in negotiations may not always be genuine. It is important to gauge the sincerity of someone's anger, distress or concern. Feigned emotions are often used in negotiations to knock the other person off balance or to bring them deliberately to a sudden end.

Managing Your Own Emotions

Difficult negotiations are likely to be an emotional experience for humanitarians, too. One person's emotions often trigger feelings in another. But should a humanitarian show his/her emotions? Whether he/she wants to or not, a person's body language often gives them away, so be aware that emotions will always be apparent to some degree.

Sometimes, though, it may be a positive move to reveal your emotions more deliberately and openly. This may be the case if a humanitarian wants to demonstrate his/her compassion with regard to human suffering, including that of a counterpart. It can also prove positive if the relationship allows a humanitarian to express a genuine sense of frustration and

distress at the other party's position on the substance of the talks. But any emotion is best expressed with respect to the other side. The venting of emotions by humanitarians – a sign of commitment in some parts of the world – can be regarded very badly in cultures that place a high value on composure. In general, you should avoid shouting. Showing emotion may also be more negative to the relationship if, for example, your views are personalised and show the disgust that you feel for a counterpart who may be responsible for various kinds of atrocity.

At other times, it may make good tactical sense for humanitarians to feign emotion in one way or another – to overemphasise anger, concern or indifference – if the moment demands it and if they are good at it. But it is important for people to know their limitations in this area. Everyone is able to control and fake emotions to different degrees. But, if you are being tactical, only use genuine emotions. Otherwise, pass the challenge on to someone whose temperament is better suited to the situation.

A Listening Relationship

If there is a trap that many negotiators fall into all too easily, it is that of talking too much and not listening enough. Although negotiations are often referred to as talks, listening is a critical aspect of the process.

In his book on the art of negotiation,² Raymond Saner cites a study³ that compared the behaviour of talented and experienced negotiators with that of more mediocre negotiators. The single biggest difference between the two was to be found in the level of listening. Experienced negotiators spent an average of 21 per cent of their time in negotiations asking questions and listening to answers, while mediocre negotiators only spent 9.6 per cent of their time doing so.

Many counterparts insist that humanitarians should listen more:

“The most important skill that humanitarian negotiators should have is to be able listen.”

(Civil servant in West Africa)

“We were very dissatisfied with humanitarians, because they simply did not listen. It was just like speaking against a wall.”

(Former armed group representative in Southeast Europe)

So-called *active listening* is an essential negotiating skill and a critical aspect of any successful negotiating relationship. It is best achieved by asking questions and by regularly reiterating and cross-checking what has been said to ensure that you have understood things correctly. Experienced negotiators also recommend taking notes. Writing down what the counterpart is saying even if it has already been said several times can be a sign of respect and can underline the interest that you have in the other side. It can also help to slow down the rhythm of the exchange, giving both parties more time to reflect and prepare.

The advantages of active listening are that it:

- ensures that you are both talking about the same thing;
- allows you to check that you have really understood what your counterpart is saying;
- demonstrates that you are seeking to appreciate the position of your counterpart;
- can highlight the absurdity or irrelevance of your respective positions if they are based on a fundamental misunderstanding; and
- permits you to revisit what has been said at the end of a meeting, which is particularly useful in ensuring that there is agreement and understanding on primary issues.

Those humanitarians and counterparts interviewed for this handbook confirmed the importance of listening and acknowledged that doing it well was a common failing.

An Ethical Relationship

The relationships involved in humanitarian negotiations can raise real moral problems. Typically, these involve judgments about appropriate levels of intimacy, the balance between empathy and sympathy and acceptance of hospitality.

Empathy and its Limits

Many of the humanitarians and counterparts interviewed for this handbook observed that one of the most common mistakes is to assume that both sides to a negotiation relationship have an identical perception of reality. This is seldom the case. Humanitarians and their military or

political counterparts usually see the same war very differently. In order to understand the other side, you need to understand their point of view. This often involves a real act of empathy that tries to imagine their ideology, their experiences, their objectives and their feelings. This is essential if humanitarians are to comprehend how the other party views the negotiation. Good negotiators have to understand everything that could stand in the way of humanitarian proposals.

Empathy is essential, but it must not be allowed to stray too far towards sympathy. Over-identifying with the worldview of a counterpart and becoming sympathetic of it may be the first step towards leniency, co-option and complicity. But many humanitarians find empathy vital because it enables them to put themselves in the shoes of their counterpart, to appreciate his/her expectations and to anticipate his/her reactions. The line between sympathy and empathy is difficult to draw. In many situations, it is enough simply to show respect and have an objective intellectual understanding of a counterpart's reasoning. Heartfelt sympathy is not necessary. It might lead to toleration of the unacceptable positions of your counterpart. At worst, it could result in a form of Stockholm Syndrome, where a humanitarian begins to share the views of the other party in defiance of his/her own humanitarian values.⁴

Box 11: How Far Should You Go When Building Rapport?

Imagine that you live a few streets away from a local warlord. How would you react in the following situations?

- He offers you a drink (local brew) at the end of a meeting.
- He offers you a drink at the beginning of a meeting.
- He invites you to have a drink in a local bar one evening.
- He offers you a companion for the night.

You will obviously refuse the last offer, but it is more difficult to know how to respond to the others. The rules of hospitality vary from one place to another. Maybe the local population, which is wary of you, will be relieved that you are having a drink with its chief. This may solidify your positioning within the local community. If your counterpart is perceived as a torturer, though, your credibility will undoubtedly

suffer. Whether you are a man or a woman may also result in the offer being framed very differently and require different reactions. And, of course, anything you do will require some degree of consistency. You could not be seen to socialise regularly with a counterpart from one group, but not from another.

In many parts of the world, there are numerous examples of humanitarians being forced to drink more than is healthy in order to avoid alienating a counterpart. However, alcohol need not be an essential ingredient of a negotiating relationship. It is worth highlighting the example of an expatriate working in a small locality in the Caucasus who from the start of his mission made it clear that he did not drink. This surprised many of his counterparts, but did not prevent him from enjoying a high level of credibility and respect throughout his mission derived through sheer hard work and other virtues.

A Humorous Relationship

Smiling and laughing about jokes can be important factors in developing a good rapport. In fact, counterparts often deplore the fact that humanitarians are too serious, although this observation may be culturally biased. A military representative in West Africa told us, for example:

“Often, [humanitarians] remain in a professional framework which does not favour a relaxed atmosphere. In fact, in our African context, common jokes can often help to tear down walls of distrust.”

Maintaining a smile and relaxing is not always easy in the midst of a humanitarian crisis, but experienced humanitarians confirm that humour can be a great resource, especially in very tense situations. When making jokes it is, of course, very important to be sensitive and aware and to appeal to the local sense of humour. If you are not sure of how your joke will be received, it is better not to make it. Simply maintaining a smile and a relaxed expression will make a great difference to your personal rapport.

Checklist for the Right Relationship

- Always remember that you do not need to agree with, or share the same values as, your counterpart in order to have a good relationship. Make sure that you distinguish clearly between substance and relationship.
- Acknowledge the emotions of your counterpart without letting yourself be affected by them, especially if they are negative (such as anger and hatred), and know when to show your own emotions while staying true to yourself.
- Concentrate on listening, not talking.
- Analyse and understand your counterpart, even if you do not share or accept his/her objectives.
- Maintain a smile and a sense of humour!

CHAPTER 15 MANAGING CULTURAL DIFFERENCES

If humanitarians have moral differences with many of their counterparts they are likely to have cultural differences with many of them, too. This is especially true for international staff members in any agency.

Many negotiations have been hampered by the failure of a foreign humanitarian to respect a culture's codes of courtesy, including crossing one's legs so that the soles of the feet are visible, giving or taking something with the left hand, broaching the subject before drinking the tea that has been offered, clearing one's plate when one is expected to leave leftovers, and leaving leftovers when one is expected to finish the meal. The sheer number of different behavioural norms is enough to intimidate any expatriate.

It is possible to overstate the role of culture in negotiations. Different aspects of culture can produce common ground, as well as certain characteristics that set us apart. Without trying to conduct an exhaustive analysis, this chapter identifies some key features of culture that you need to keep in mind in any negotiation.

The Vertical and Horizontal Aspects of Culture

There are many definitions of culture. Rather than choosing one of them, it is useful instead to draw on the distinction made by Amin Maalouf between vertical and horizontal culture.⁵ This can serve as a quick frame of reference to help a humanitarian negotiator find his/her bearings during a face-to-face encounter.

Maalouf maintains that no one is the product of a single culture, but, rather, people are a *mélange* of cultural influences. *Vertical heritage* is that which individuals inherit from their ancestors. It is derived from their traditions, their people, their community, their mother tongue and their religion. *Horizontal heritage* is that which is passed on to individuals – knowingly or not – throughout the course of their lives by historical context and contemporaries. It comes from their jobs, the places in which they have lived, their relations, their social class, their education and their academic training.

All too often when people seek to define a person's cultural identity, they have a tendency to overestimate the influence of the vertical to the

detriment of the horizontal. 'He's an Arab Muslim'; 'He's a Dinka'. However, horizontal factors can sometimes make the person in question even more different to the other members of the vertical group to which he/she belongs. For example, a Dinka who has studied in the West may have more in common with a Westerner who studied at the same university than with a Dinka cattle herder born a few hundred kilometres from his/her own native village.

All of us all belong to a multitude of groups. For instance, someone might belong to all of the following groups at the same time: Canadian, women, French-speakers, Catholics, lawyers, Yale university graduates, belly dancers and fly fishers. Hence, he/she has numerous connections across cultures, as well as within one culture.

All of us try to categorise people as soon as we meet them. Categorisation is a key part of how human beings organise reality. That humanitarians will bring preconceived ideas about the cultural identity of their counterparts to the negotiating table is at once unavoidable, useful and dangerous. It is unavoidable because you cannot stop yourself from trying to frame the person with whom you are establishing a relationship. It is useful because by drawing up a provisional image you will later be able to modify it little by little as you get to know the person better. And, finally, it is dangerous because you run the risk, due to a lack of information or curiosity, of sticking to your first impressions, stereotyping and never adapting your view. This can leave you with a false perception of a counterpart, with obvious negative consequences for your negotiation relationship.

Ten Common Areas of Difference

Being conscious of some cultural differences may help you to understand better the social context that informs the views of your counterpart and to negotiate accordingly. When analysing social norms, always try to be respectful, attentive and open to discovering other aspects of your counterpart's culture. There are ten key aspects of which to be aware.⁶

1. Relationship with Authority

Does the society have a primarily horizontal or hierarchical understanding of social relations? Known as the power–distance relationship, this indicates the nature and pattern of power and authority in a given society. Is power and authority held very high up and far away from ordinary people, or is it close to hand and embedded within society at large? Power

and authority, deference, discussion and dissent will inevitably influence how you can negotiate and who with.

2. Male–Female Relationships

What are the respective gender roles in a given society? What power do men and women have with respect to decision-making? How will a mixed team be viewed?

3. Individualism and Collectivism

Some societies are more collective or individualistic than others. Gauging this within a society will help you to decide whether you need to argue in favour of individual rights or whether you would be wiser to emphasise the rights of the group when negotiating for protection and assistance. One of the difficulties with *humanitarian culture* is that it places great stress on the rights of the most vulnerable individuals in line with a principle of impartiality, which requires that humanitarians accord priority to certain people. This can be hard for some societies to understand.

4. Tolerance of Ambiguity

Some societies tolerate higher levels of ambiguity and uncertainty than others. In negotiations, this means that, while some people are quite happy for certain things to remain unclear and to be settled at a later stage, others believe that every minor detail should be resolved during the negotiation. They want every problem to be fixed before they act.

5. Respect for the Rules

Different cultures have different attitudes with regard to rule-related behaviour. For some, rules should always be applied loosely and there should be a significant amount of discretion. For others, such grey areas are intolerable and rules are absolute. Understanding how your counterparts interpret rules is obviously central to any agreement you reach.

6. Time

Many cultures view time very differently. Some treat it very precisely and others very liberally. For some, time is scarce and valuable, while for others it is something that we all have in abundance. As a result, spending time with a counterpart can be perceived both as a sign of respect and of disrespect. You are giving of your time or you are taking up his/her time.

Making someone wait is not always considered impolite. It can either be quite normal or it can be an indication of power. Some time is sacred and should not be encroached on. Choosing the right moment for negotiation should respect this. For example, be sensitive to prayer time, meal times, religious festivals, holidays, anniversaries of certain events and appropriate hours of the day and night.

7. Space and Place

Some places are suitable for negotiation and discussion, some are not. Not all cultures allow people of the opposite sex to mingle in a particular space or to talk behind closed doors. Some space is public and some is private. Appreciating what makes for an appropriate negotiation space will be important.

8. Verbal and Non-Verbal Communication

What can and cannot be said varies from one culture to another. Some things can be agreed but have to remain unspoken. Other things can be verbally agreed but not carried out. The non-verbal signs in any culture also fluctuate and require careful deciphering.

9. Sales Pitch

The way one sells things differs across cultures. For some, a good salesperson/negotiator is someone who argues passionately. For others, to be so passionate suggests a hidden agenda with regard to the subject under negotiation. Offering gifts may or may not be part of a sales pitch. Paying to bring the counterpart to a nice venue is sometimes seen as acceptable. To others it will seem suspicious.

10. Bargaining

Bargaining also varies across culture. In some, it is the vendor who sets the price, while in others it is usually the buyer who makes the first bid. These different traditions will inevitably affect the way that people negotiate and reach agreement.

Building on Cultural Commonalities

A *horizontal* and *vertical* understanding of culture means that no two human beings share exactly the same culture. But it also means that you will almost always have something in common with your counterpart.

Discovering common aspects will often help you bond and re-frame the problem at difficult moments. For example, both of you may live with a family and feel the same kind of affection for some family members; both of you may dream to create a better future for your children; or both of you may have certain expectations of what you would like to achieve in your lives. Such areas of convergence can greatly facilitate your negotiation.

To find out about the other party's education, his/her personal interests, the countries where he/she has lived, the jobs he/she has done and the background of his/her spouse, *inter alia*, will require the investment of some time and energy, but it may well be worth the effort.

Some Western humanitarians may find such enquiries overly personal or indiscreet. But the *horizontal* aspects of a person's culture are often public knowledge and only expatriates are unaware of them. Sometimes, the fact that they are not taken into account can be interpreted by counterparts as a lack of interest in the local situation, and even as a personal insult.

Box 12: Cultural Adaptation

To what extent should you adapt to the prevailing cultural norms of the society in which you are negotiating? Common sense must be your guide here. Depending on how far you go, imitating your counterpart's culture could be seen as a sign of respect or a mark of foolishness. Most host societies expect their visitors to be themselves and also try to accommodate them as a mark of hospitality. This is illustrated by the famous anecdote about a cross-cultural encounter in a sauna.

A young French woman went to spend her holidays with a Finnish family. On the first evening she was invited to have a sauna. She arrived dressed in her bathing suit only to find that her Finnish hosts were completely naked. The next day she came to the sauna naked. Her hosts, however, had all put on their bathing suits!

This type of mishap occurs all too often to culturally earnest humanitarians. However, they are not always aware of it, as the result is not always as obvious as in the sauna scenario. Being attentive to, and respectful of, a culture does not mean mimicking it down to

the last detail. On the contrary, it is important that whatever kind of behaviour you engage in, you remain true to yourself. If the cultural divide seems unbridgeable, an effective way of circumventing it is to include national personnel in your negotiation team.

Every Situation is Different

While this approach to culture can present some common markers and provide a useful approach to people and places, it is vital to view each new situation with fresh eyes and not to fall into the trap of seeing each new mission as the same as the previous one.

In addition to their *vertical* heritage, humanitarians also carry their own *horizontal* heritage. A significant aspect of this is their humanitarian culture and experience gained from various missions. This culture and experience is far from universal. Humanitarians refer openly to experience acquired in previous missions. Many counterparts interviewed for this study told us how much they resented hearing their country being regularly compared to another. A former representative of an armed group in Southeast Asia, for example, said:

“Humanitarians must not compare our country with Northern Ireland or Afghanistan ... they must look at us through a fresh pair of eyes.”

Once again, because of the natural human tendency to categorise, international humanitarians are often most struck by the similarities that exist between countries at war and tend to overlook the differences. According to one aid worker:

“I have worked in a number of countries and I think that in each situation, the only thing that changes is the name of the parties or groups in conflict, on the whole, the problem seems to be the same.”

Such familiarity is reassuring and makes humanitarians feel competent and in control. But for members of the society in crisis, their war is unique. Often, the inexperienced expatriate, in search of legitimacy, starts a sentence with the phrase: *“When I was in Afghanistan ... Liberia ... Bosnia etc.”* As a general rule, this kind of comment is counterproductive and a sure sign that you are being lazy in your analysis.

Box 13: Practical Ways to Deal with Culture

Do’s and don’ts in Rwanda: the national staff of a humanitarian agency in Kigali compiled a brochure entitled *Musungu* (white person) for its international team. Having witnessed the irritating and surprising behaviour of some expatriate humanitarians over many years, the Rwandans decided to put together a list of anecdotes and recommendations for international staff members. This allowed international delegates to take advantage of the experience of their Rwandan colleagues and also set in train a wider debate within the agency about different cultures and the need for mutual respect.

A Sudanese life story: in South Sudan, a number of organisations teamed up with a European ethnologist who had lived in the country for many years and had written at length on South Sudanese culture and society. He took the very positive step of conducting a detailed life-story interview with a young Sudanese man and copying it for international agencies.⁷ This provided them with great insight into the lives and customs of people living in this part of Sudan and into their personal experience of war. Time available to read is often short, but this kind of text is like a novel and speaks more immediately to humanitarian workers than lengthy theoretical treatises.

Checklist for Managing Cultural Differences

- Pay attention to the vertical (inherited) and horizontal (social and context related) cultural elements that influence your negotiation.
- Make sure that you have a good sense of the ten key areas of social norms that inform the behaviour and attitudes of you and your counterpart.
- Be open and sensitive to, and respectful of, every new cultural environment that you enter.

CHAPTER 16 LANGUAGE AND INTERPRETERS

It is rare for everyone taking part in a humanitarian negotiation to be speaking in his or her mother tongue. If you are not speaking in your own language there is always a risk that you will not understand all of the subtleties expressed by your counterpart and that you will experience problems articulating your own ideas. The opposite is also true. Out of respect for your counterparts, always adapt yourself to their level of understanding of the language you are using. Avoid colloquialisms and humanitarian jargon.

If you are not confident of your own command of the language, always use an interpreter. Interpreters may not only translate but also act as a cultural bridge between you and your counterpart. Thus, they can play a very important and also potentially difficult role in the negotiation. You will often find that greater cooperation and trust is forged through an interpreter. The extra time that translation takes has a number of advantages.

- You will have more time to think about and to prepare your arguments.
- You will be able to distance yourself and to note distinctions between rational and emotional reactions.
- You will be forced to be more specific and succinct.
- You will have a partner who may know the situation even better than you, who can support you and act as a sounding board, adviser and memory check.

The downsides are that your meeting is likely to last longer and your counterpart may act differently in the presence of a local interpreter.

Checklist for the Expatriate

The following points may help you in briefing your interpreter and working with him/her to optimal effect.

- Inform your interpreter of the principles of your institution and the goals of your meeting.
- Ask the interpreter whether he/she feels comfortable translating this interview. There may be factors, linked to the conflict or otherwise, which bother him/her, or even put him/her at risk.
- Ask the translator what they know about your counterpart.
- The interpreter should be introduced to your counterpart and be treated with the same respect. Indeed, he/she may already know your counterpart and introduce you to him/her.
- Do not talk too quickly, and keep your sentences short.
- Use a direct style. Do not talk to the interpreter, but to your counterpart, otherwise the interpreter will become the opposite number.
- If the discussion gets unpleasant, remember that it is your interpreter who will bear the brunt of it, and that this is not his/her role.
- If you have doubts about the quality of the translation, reformulate your question, but avoid reprimanding the interpreter in public.
- If you trust your interpreter, do not object to him/her exchanging a few words with your counterpart before and after the meeting in the local language. Your counterpart may tell him/her things that he/she did not want to tell you, but nonetheless wants you to know.
- Analyse the meeting with your interpreter. His/her interpretation may be more accurate than yours.
- Always use your own interpreter rather than one recruited by your counterpart.

Checklist for the Interpreter

- Be honest about your command of the working languages.
- Before the meeting, make sure that you obtain enough information about the negotiations to be conducted so that you know what to expect.
- Do not hesitate to say if you are uncomfortable with the meeting and highlight any ethnic- or clan-related, religious or personal reasons that lead you to fear this meeting. You will be doing the person who has hired you to translate, his/her institution and yourself a favour if you explain your reasons.
- Translate everything that is said accurately, even if it is unpleasant.
- If the expatriate speaks too quickly, interrupt him/her discretely so that you can be sure that you have recorded everything that he/she has said.
- If you exchange a few words with the counterpart in his/her own language, report back on the discussion after the meeting.
- Your impressions of the meeting will be very valuable, so share them.

SUMMARY PART FOUR

In this part, we have looked at the actual exchanges that take place between the negotiating parties and identified some key features that will facilitate a successful outcome.

- 1 Create a viable working relationship based on respect. Do not make concessions on substance simply to maintain a good rapport. Acknowledge emotions and spend more time listening than talking.
- 2 Be aware of cultural specificities, including horizontal and vertical elements. Understand the local interpretation of the ten key areas of social norms.
- 3 Adhere to some basic professional guidelines when working with or as an interpreter.

NOTES

- 1 Fisher, Roger and Brown, Scott. *Getting Together: Building a Relationship that Gets to Yes*. Boston: Houghton Mifflin, 1988.
- 2 Saner, Raymond. *L'art de la négociation: Stratégie, tactique, motivation, compréhension, leadership*. Paris: Chiron, 2003.
- 3 Rackham, N. and Carlisle, J. "The Effective Negotiator." *Journal of European Industrial Training*. 2(6). 1978.
- 4 Stockholm Syndrome refers to a famous incident in 1973 when a train was hijacked by terrorists in Stockholm, Sweden. Many of the hostages were convinced of the validity of the kidnappers' cause to the point of appreciating their abduction and believing that the execution of some even made sense.
- 5 Maalouf, Amin. *Les Identités meurtrières*. Paris: Editions Grasset, 1998, p. 137.
- 6 Slim, Hugo. *Marketing Humanitarian Space: Argument and Method in Humanitarian Persuasion*. Geneva: Centre for Humanitarian Dialogue, 2003, pp. 18–20. Also see Hofstede, Geert. *Cultures and Organisations: Software of the Mind*. New York: McGraw-Hill, 1991.
- 7 Perner, Conradin ("Kwacakworo"). "The Life of Napoleon. Seven Early Years in the Life of Adok Gai, A Boy from Southern Sudan." *Lokichokio*, May–June 1992.



5 FOLLOW- THROUGH

THE PURPOSE OF any humanitarian negotiation is to secure good results for people who are in need of access, assistance and protection. Throughout any negotiation, concentrating on results needs to be as much a priority as concentrating on the detailed matters of substance, relationships and process. During negotiations, humanitarians should constantly be asking themselves:

“Is this negotiation leading to the results we want?”

Subsequently, with an agreement in place, the question should be:

“Is the agreement being implemented and producing the desired results on the ground?”

This part of the manual looks at how to record negotiations as they are going on and how to follow-through on an agreement once they are complete. Both require effective monitoring.

Central to monitoring in both respects is good internal communication, a clear paper trail and a continued relationship with all of the parties, ensuring that any agreement made verbally or in writing is implemented on the ground.



CHAPTER 17 MONITORING ONGOING NEGOTIATIONS

Noting progress in negotiations as they proceed is very important. Producing regular *aides-mémoires*, notes for the file, minutes of meetings and situation reports all help the negotiation team to think aloud, to make sense of what it is doing, to hold the other party to its promises and to inform others in the organisation and beyond of advances that have been made.

Improving Internal Communication

Effective negotiation requires good in-house communication between all levels of your organisation. The right hand must know what the left hand is agreeing to. The left hand must know if the right hand is able to implement the agreement on the ground. Communication between negotiators and operational teams needs to be a two-way process. Field workers must be in a position to explain both to the authorities and the affected population what has been negotiated and agreed. Any changes need to be communicated immediately. All of this requires careful recording and dissemination.

Leaving a Paper Trail

Rapid staff turnover in humanitarian agencies is a constant challenge. Humanitarians seldom spend long in one place, while negotiations can be protracted. Members of the different parties to a dispute watch humanitarians from the same organisation come and go and often remark on the inconsistencies that manifest themselves in their arguments and positions. Newcomers do not know who they are dealing with and what has gone before.

The only way to remedy this state of affairs is to ensure that there is an effective paper trail – records of meetings, arguments and key incidents, for instance. These records need not be long and taxing to put together, but they should be carefully chronicled and archived. Responsibility for recording the minutes should not toile with the person who is conducting

the meeting, but rather with a colleague or a shadow to the negotiations. Minutes should include the following information:

- the date of the meeting;
- family names, first names and functions of the counterparts present;
- family names, first names and functions of the humanitarians present;
- the location of the meeting;
- who asked for the meeting, why and who chose the setting – process;
- matters raised during the meeting and priority accorded to them – substance;
- what was the spirit of the meeting and how did the relationship evolve in relation to previous meetings – relationships;
- successful and unsuccessful arguments – arguments;
- points of agreement and disagreement – results; and
- follow-up required.

Regular monitoring of this kind helps in creating an invaluable record of events, discussions, dates and personalities for future negotiators and those who eventually evaluate the programme. More importantly, and controversially, such records may also contain useful evidence for any national or international criminal inquiry pursued through domestic courts or the International Criminal Court after the conflict. Each agency needs to decide on its own position with respect to allowing organisational records and staff testimonies to be used in such proceedings. Records of negotiations could prove very useful to prosecutors and defendants alike.

Personal Reflection

Finally, minutes and longer *aides-mémoires* or file notes enable members of the negotiating team to reflect and analyse actively. For many people, the opportunity to put things on paper offers the chance to think through what has happened and to assess how it relates to the objectives they set

and the results they desire. Reflection is a critical part of negotiation and helps negotiators to re-evaluate their strategy and to go into the next set of talks with a greater sense of clarity.

CHAPTER 18 MONITORING AN AGREEMENT

Once negotiations have reached an agreement, its implementation needs to be monitored vigorously to guarantee that it yields results and has an impact on people's lives. Wherever possible, details of the monitoring mechanism are included in the treaty text to ensure that all parties are equally committed to follow-through.

Broadly speaking, there are two strategic questions that require monitoring after an agreement is concluded.

- Does the action on the ground correspond to what you agreed on?
- Does the action on the ground fulfil the humanitarian objectives that you set for yourself at the beginning of the negotiation?

If the implementation do not correspond to what was agreed or are not helping to advance the original humanitarian objectives, it may be necessary to revisit the agreement and to restart negotiations.

Monitoring Specific Measures of Success

Chapter 3 outlined the five main characteristics of a good agreement. Any monitoring mechanism needs to seek out indicators that will show progress for each of these criteria.

- It meets the needs of the affected population.
- It can be implemented, highlighting specific obligations and responsibilities.
- It is sustainable.
- It nurtures relationships that will be of value with respect to future negotiations.

These criteria need to be at the heart of any humanitarian agreement. Specific measures with respect to implementation and success need to be built into any agreement. This can be done by setting out key milestones, clearly allocating responsibility and specifying impact targets of some kind that indicate progress with regard to access, assistance and protection for the population concerned – see Box 14 for an example.

Box 14: Monitoring a Food Security Agreement

An international agency had been negotiating with a government to secure permission to provide food and agricultural inputs to a badly affected district in the middle of the country where the government was fighting a well-organized insurgency that enjoyed significant popular support. Government military action had created many thousands of IDPs and significant levels of fear in the district's villages, which discouraged people from working in the fields. After five weeks of negotiation, during which time the government had stepped up its counter-insurgency activities dramatically, a verbal agreement was reached. This was then summarised in a letter of understanding from the agency to the government negotiator, confirming '*good regular access*' for agency vehicles and staff as part of a programme to provide emergency food aid '*to raise immediate nutrition levels*' and seeds and tools to improve '*agricultural preparation*' in time for the rainy season. A government commitment to '*ensure the safety of farmers*' was also acknowledged. The agreement was to take immediate effect.

Although ostensibly concerned with food, this agreement contained important commitments by both sides with respect to access and protection, as well as assistance. However, it did not include specific indicators of success or detailed monitoring mechanisms and the programme got off to a slow start, as government authorities showed little willingness to help implement it. Food convoys were being delayed and permission for the distribution of food in villages and IDP camps was sporadic and frequently postponed. It was also quite clear that agricultural activity for the new planting season was still extremely low. As a result, the agency decided to include a range of specific indicators in three key areas that could be a fair measure of successful implementation of the agreement.

Access – agency staff interpreted '*good regular access*' in quantitative and qualitative terms. Quantitatively, on the basis of numbers of people affected, it set a tonnage target for levels of food aid and agricultural inputs that it thought would have to enter the district each week. Qualitatively, it estimated reasonable trucking times between destinations in order to gauge how much unnecessary down time convoys were experiencing while waiting for government permission at checkpoints and in town centres.

Assistance – agency negotiators chose quantitative measures to indicate the impact of the agreement on people’s lives. The agreement’s commitment to increasing ‘immediate nutrition’ was measured by carrying out regular anthropometric sample surveys in various villages and IDP camps throughout the district. These figures were reported weekly to the parties of the agreement, along with access data.

Protection – with fear and insecurity being the main factors hindering agricultural preparations, agency staff interpreted ‘farmer safety’ in quantitative and qualitative ways. Quantitatively, they collaborated with local Ministry of Agriculture officials to estimate the percentage of land now under cultivation, gauging the increase in proportion to the seed and tools they had distributed and the resulting number of hectares they might reasonably expect to prepare using these inputs. Qualitatively, wherever possible, they questioned villagers and IDPs about their level of fear and how long they were spending in the field each day.

Because these indicators and their specific measures of the agreement’s impact had been introduced, agency negotiators were able to keep talking to their counterparts in government about progress on implementation of the agreement. Increasingly, they were able to agree reasonable, concrete targets for access, assistance and protection with the government negotiators and to monitor advances in implementation of the agreement on the ground.

Who Can Serve as a Monitor?

There are several possibilities regarding who can monitor a humanitarian agreement – each with its own set of advantages and disadvantages.

- You.
- Your counterparts.
- You and your counterparts together.
- An independent third party.
- The affected population.

There is no ideal monitoring combination and the best choice will be determined by what is possible and desirable in a given situation. It is always important, though, to try and find some way of representing the views of the affected population in any monitoring initiative.

Verbal or Written?

In their eighteenth century *Encyclopaedia*, Diderot and D’Alembert observed that:

“As a general rule it is better to negotiate by word of mouth than by the written word. Written words are good when we want to receive a written response or when it is useful to keep copies of what we have said, to produce them at a later date or in another place, or else when we fear being interrupted in mid-flow. On the other hand, when the presence of the person negotiating exudes respect and he is dealing with an inferior, it is far better to talk. It is better still when someone wants us to read in his eyes what he does not want to say.”

The ambivalent role of the written word in eighteenth century negotiations remains just as true in the context of the humanitarian negotiations of the twenty-first century. There is no clear rule as to whether written or verbal agreements are preferable.

Written agreements are normally seen to contain a stronger, more reliable and binding commitment, because they are more official. In many situations, it is also more practical to circulate written documents when briefing others. Two additional advantages of written agreements are derived from the UN’s experience in Afghanistan.¹

- The process of writing increases mutual understanding by requiring that the parties adopt a problem-solving approach as they develop a written text.
- The written product can protect an agreement from other officials in other ministries who may be inclined to breach the terms of a verbal agreement but not a written one.

However, many authorities in a fast-moving war situation are reluctant to commit themselves politically in writing. Plus, it may not be culturally appropriate for them to do so. For example, the Taliban refused to give written permission for certain humanitarian projects out of fear that they

might contravene ideological precepts set by authorities higher up the power ladder of which they were unaware.

But written agreements do not ensure compliance and are not automatically seen as binding. In Afghanistan again, both the Taliban and the UN regularly ignored agreements that had been concluded earlier in written form.² Nor are written agreements necessarily more permanent than verbal ones: they also have to be re-negotiated every time there is a change in events or of key personnel in a ministry.

This all suggests that it is unwise to see written agreements as the final product of a negotiation. It makes more sense to see them as a possible tool that might help you reach a permanent settlement. Certainly, a humanitarian negotiator cannot sit back and relax when he or she has secured a written agreement. But if you do decide to conclude a written agreement, make sure that both you and your counterparts have understood the meaning of the text in its entirety and that there is no fine print that will make it impossible for either party to adhere to the accord.

Language can often aggravate potential misunderstandings. It is essential, therefore, that you and your counterparts agree on the meaning of the terms in the agreement. Work with a mutually trusted interpreter where necessary.

Common Problems During Implementation

Many different factors can hamper implementation of a humanitarian agreement. In some cases, it may be possible to make adjustments to address these problems while the implementation process continues. In other instances, it will be necessary to negotiate anew and reach a better agreement. Good relationships built with counterparts during the previous phase will greatly facilitate any re-negotiations and help to prevent or resolve any implementation problems as they emerge.

Below we examine some of the more typical obstacles that negotiators encounter during the follow-through phase and offer some suggestions on how to address them.³

- **Lack of ownership** This arises when one or more of the parties are essentially disinterested in, or hostile to, the agreement and thus do not feel bound by it. This is usually due to the fact that the agreement ignores or contradicts their real interests or is simply low down on their list of priorities. Sometimes a party may feel that the negotiation process was too one-sided and that it did not

present it with enough opportunities to participate. To remedy this, and to instil a new sense of ownership, it may be necessary to go back to the analytical phase and re-examine the interests of the party carefully and devise a new strategy for reaching an agreement that it can accept. Alternatively, it may be possible to identify new and pressing reasons why they need to own the existing agreement.

- **Waning commitment** A party may start to distance itself from an agreement that it was initially committed to because of a change in interests. Many experienced negotiators say that the most important challenge in the follow-through phase is to keep all of the parties interested in the agreement. If counterparts are losing interest, it may be wise to retrace your steps and to look again at levers, tools and arguments so as to re-stimulate their interest and address their current concerns and fears.
- **Implementation delays** Setbacks during implementation can impact negatively on morale among all of the parties involved and can initiate the start of a breakdown in the process. Delays are not always caused by the negotiating parties themselves; they may be caused by factors that are beyond their control – like the weather, the donor's cash flow, new fighting or slow recruitment. If delays are beginning to dominate the process, it is important to monitor them closely and to understand why they are happening. If the causes are connected to the parties it may be possible to address them and to get back on schedule. If not, it is important to emphasise that it is not the agreement that is at fault, so that all of the parties target their frustration at the right source.
- **Corruption and abuse** In some situations, various parties may try and abuse an agreement and take advantage of the resources that it releases – at the expense of the population that you are trying to assist or protect. This can do great damage to the status of the agreement itself and to your own reputation as a party to it. Hard decisions will be required regarding whether it is possible to stop the abuse or if it is wiser to withdraw from the process. With extrication comes the issue of defining the terms under which re-engagement is possible.
- **Bad management** Bad management is different from corruption, because the abuse that occurs is not necessarily intended. Some-

times certain parties may lack the experience or skills needed to implement the agreement. This may be a difficult failing to address directly without those concerned losing face. But the problem will need to be remedied if the agreement is not to suffer similar damage to its credibility as it would in the event of corruption.

There may well be other factors that endanger the success of a humanitarian agreement. Every attempt needs to be made to anticipate them in advance or to tackle them as soon as they emerge.

SUMMARY PART FIVE

In the final part of the manual, we discussed the key activities involved in successfully monitoring an agreement. Some of the most important are set out below.

- 1 Monitoring ongoing negotiations by: continuously informing colleagues and counterparts of any new developments; keeping written records of the negotiation, creating evidence and enabling successors to take the negotiation history into account when devising their strategy; and taking time to re-evaluate your negotiation strategy.
- 2 Monitoring implementation of an agreement by defining specific indicators of success, choosing the right monitoring mechanism, and addressing possible problems like waning commitment and corruption.

NOTES

- 1 Leader, Nicholas. *Negotiation and Engagement in Afghanistan*. Report prepared for the UN Coordinator's office. Islamabad, May 2001, p. 13.
- 2 *Ibid.*
- 3 The listed problems are taken in part from discussions involving the Centre for Humanitarian Dialogue's Humanitarian Negotiator's Network (HNN) and in part are adapted from: Harris, Peter and Reilly, Ben. *Deep-rooted Conflict: Options for Negotiators*. Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), 1998, pp. 352–367.

KEY POINTS

ANALYSIS

1. DEFINE YOUR OBJECTIVES P43

- Distinguish between positions, bottom lines and interests.
- Make sure your objectives correspond to, and are consistent with:
 - the needs of the affected population;
 - your organisational mandate or mission; and
 - the work of other agencies.

2. IDENTIFY THE RIGHT COUNTERPART P51

- Find a counterpart who is receptive to humanitarian values, has implementation power and with whom you can build a good personal rapport.
- Identify the right counterpart by plotting the findings of your research on a *stakeholder map*.
- If your counterpart is inaccessible, consider negotiating through a third party.

3. MEASURE COMPATIBILITY P61

- Identify the other party's positions, bottom lines and interests.
- Compare his/her interests to your own to establish how compatible they are.
- Concentrate on how interests can be reconciled (principled agreements). Techniques that can be employed to reconcile interests include:
 - trading interests; and
 - focussing on common goals.

4. ASSESS YOUR LEVERAGE P69

- Identify which of the following levers you may use to influence your counterpart:
 - quiet advocacy;

- loud advocacy;
- material assistance;
- humanitarian expertise;
- allies, such as other states or multilateral organisations;
- fallbacks;
- credibility; and
- timing.

STRATEGY

5. PLAN OPTIONS TO MAXIMISE COMPATIBILITY P81

- Consider as many options as possible for satisfying your negotiation objectives. Techniques for developing creative options are:
 - looking at the problem through the eyes of your opposite number;
 - modifying the strength of an agreement; and
 - altering the scope of an agreement.

6. ACTIVATE YOUR LEVERS TO MAXIMISE LEVERAGE P84

- Take all steps necessary to activate your humanitarian levers.
- Consider options for expanding your fallbacks, improving your credibility and gaining control over time.

7. FORM A NEGOTIATION TEAM TO MAXIMISE LEVERAGE P88

- Choose a negotiation team that is the same as that of your counterpart in terms of level of authority, expertise, cultural background, personality type, and facilitation skills.
- Consider utilising a *shadow person* to advise your team.

8. DEFINE YOUR STARTING POINT AND APPROACH P91

- Take a step back: identify where you are situated within the compatibility and leverage matrix (C-L Matrix) and adopt an approach that suits your position.

9. CHOOSE THE RIGHT TACTICS P93

- Think about how you will counter some of the other party's more aggressive tactics, such as:
 - take it or leave it;
 - hands tied;
 - bulldozer/shotgun;
 - good guy/bad guy;
 - deception;
 - blackmail; and
 - guilt trip.

10. PREPARE YOUR ARGUMENT P102

- Consider the objective and subjective elements that your argument may contain:
 - Objective elements
 - International law
 - Your organisational mandate or mission
 - Your organisational expertise
 - Subjective elements
 - Fear
 - Authority
 - Self-interest
 - Reflection
 - Universal values
 - Culture
- Make sure your arguments correspond to, and are consistent with:
 - your organisation's mandate or mission and your personality;
 - your counterparts' institution and personality;
 - the larger negotiation context; and
 - the affected population.

FACE-TO-FACE NEGOTIATION

11. BUILD THE RIGHT RELATIONSHIP P117

- Remember that in a good relationship:
 - disagreement is acceptable; and
 - substance and relationship have to be kept separate.
- In order to manage emotions effectively:
 - help your counterpart to express his/her emotions;
 - know when to express your own emotions;
 - focus on listening;
 - distinguish and find the right balance between empathy and sympathy; and
 - build on humour to create a good rapport.

12. MANAGE CULTURAL DIFFERENCES P125

- Be aware of, and respect, the horizontal and vertical aspects of culture and the ten common areas of cultural difference.
- Identify and build on cultural commonalities.

13. LANGUAGE AND INTERPRETERS P132

- Follow some general rules for working with, or as, an interpreter.

FOLLOW-THROUGH

14. MONITOR ONGOING NEGOTIATIONS P139

- Improve internal communications.
- Leave a paper trail.
- Take time for personal reflection.

15. MONITOR AN AGREEMENT P142

- Identify specific measures of success and the right monitoring mechanism to ensure that your agreement produces results and has an impact on the life of the people you are trying to protect.



ANNEXES

ANNEXE I THE METHODOLOGY BEHIND THIS HANDBOOK

The research for this handbook was carried out in collaboration with the International Committee of the Red Cross (ICRC), the United Nations High Commissioner for Refugees (UNHCR), the Graduate Institute for Development Studies in Geneva (IUED) and the pluri-faculty programme for Humanitarian Action in Geneva (ppAH). Financial support came from the Geneva International Academic Network (GIAN), UNCHR and ICRC. The original idea for the study and this handbook emerged from members of the Centre for Humanitarian Dialogue's Humanitarian Negotiators Network (HNN).

Members of the HNN include a range of staff from UN agencies, the ICRC, international and national NGOs. Many of them suggested that we could help to improve and delineate best practice in the field of humanitarian negotiation by amassing different people's experiences and drawing lessons from them. Broadly speaking, this handbook is just that: a collection of diverse practitioner experience and wisdom that we have combined with a study of negotiation theory to produce a practical framework for planning and managing humanitarian negotiations.

The research was, therefore, conducted in two phases: a conceptual phase and an empirical phase. During the conceptual phase, we reviewed some of the current literature on negotiation in other fields, including negotiation theory, psychology and the particular principles of negotiation in the spheres of business, legal practice, politics and human rights. The purpose of this exercise was to find out what generic practical advice was applicable to humanitarians, while also identifying what is particular to humanitarian negotiations and the violent environments that humanitarians find themselves in.

During the empirical phase, we conducted some 60 individual interviews and four focus groups containing approximately ten participants each, including humanitarians and counterparts from governments, armed groups and civilian populations. Although we made a conscious effort to accord equal importance to humanitarians and counterparts, we generally enjoyed easier and more frequent access to humanitarians; this may have affected our analysis.

In order to take account of different political and socio-cultural factors in negotiation, we chose two very different contexts for the field research. One-third of the research was conducted in Côte d'Ivoire, a country that is currently experiencing an intense armed conflict. This allowed us to gain insight into humanitarian negotiations as they happen. Another one-third of the research was completed in Macedonia, a nation going through a post-conflict transition. This allowed us to understand how humanitarian negotiations are perceived with hindsight and also afforded us easier access to previous counterparts from armed opposition groups. The last one-third of our interviews was conducted in Geneva and included representatives of UNHCR and the wider UN system, the ICRC and several international NGOs. In all interviews, people were asked about their current and past negotiation experiences in a way that allowed us to refer draw on experience from a wide range of countries and operational settings.

In selecting interviewees, we made an effort to find a balance between humanitarian staff members working in headquarters and those situated in the field, national and international workers, medium and senior level staff, and women and men. Nonetheless, we gave preference to individuals who we knew had significant negotiation experience. We sought similar diversity in our sample of counterparts, including government representatives, police officers, military staff, checkpoint guards and members of rebel groups. We also paid attention to the gender balance in this sample.

We used two questionnaires: one for humanitarians and one for their interlocutors. The interlocutor questionnaire varied depending on the type of counterpart. For example, when talking to military representatives and police officers we emphasised checkpoints; with civil authorities we put the stress on questions concerning the negotiation protocol, communication or culture; with civilians we explored their perceptions of humanitarians and negotiations with affected communities regarding the distribution of assistance. In Macedonia and Geneva our questionnaires were thematic. In Côte d'Ivoire, where we worked with Dieneba Doumbia of the University of Cocody-Abidjan, and her team of assistants, we decided to use more rigid questionnaires listing questions individually.

Some interviews were conducted formally, others rather informally, allowing interviewees to share personal anecdotes with us. During most of our interviews, we worked in teams of two people. When appropriate and agreed to by the interviewees, we recorded the interviews on tape. The local research team in Côte d'Ivoire transcribed the interviews conducted there verbatim. We agreed to anonymity with everyone we interviewed.

ANNEXE II SPECIFIC EXAMPLES OF OPERATIONAL AND FRONTLINE NEGOTIATIONS

Operational Negotiation: Needs Assessment and Programme Agreements with Affected Civilian Communities

Direct negotiations with an affected civilian population are a common part of humanitarian activity during needs assessments and planning meetings that aim to reach agreement on the way aid is distributed or protection is increased. Atypically, humanitarians often find themselves in a position of strength in such negotiations because they are the ones with the resources and significant decision-making power. The most difficult moments in these negotiations are usually when humanitarians set out what they will not be doing and make hard decisions about the limitations on the distribution of aid, the recruitment of staff and pay. Active listening, expectation management, patient explanation and the use of a skilled interpreter, if necessary, are critical in such negotiations.

In such situations, experienced humanitarian negotiators offer the following advice.

- **Carefully choose your counterparts** When choosing people to negotiate with in a community it is vital to identify individuals who represent the entire affected population and who are seen as legitimate representatives of the population. Although formal leaders among the population (elders, traditional chiefs, local authorities) may be easily accessible and etiquette dictates that you contact them, it is not enough to limit yourself to this group. You also need to talk to others from across the spectrum – with respect to class, gender, age and interests – and to reach out to the most disadvantaged segments of the populations. International staff members need to be especially wary of younger English-speaking members of the community or representatives of Christian minorities who seem to make excellent gatekeepers between you and the community but whose sudden pivotal role and increased power may cause significant intra-group and inter-generational friction within the community.

- **Protecting your negotiating counterparts** Your counterparts may come under enormous pressure from the governing authorities and from within their own community without you knowing it. People may feel that your counterparts did not present all of their needs or that they should have asked for much more assistance. Political and military authorities may think people have told you too much. Protection information can be particularly sensitive in this regard. Your counterparts and others may well tell you that they lack food because the military takes it, that they are not allowed to cultivate their land, or that their fields are mined and their women are harassed by soldiers.

To protect your individual counterparts from such threats, widen your sources of information and avoid being in obvious interviewing mode by talking casually to as many people as possible while carrying out routine activities like building a well or providing medical assistance. Never insist that someone talk to you, and change your opposite number in the community if your counterpart seems reticent. Be discreet and hold informal meetings in private if your counterparts do not object.

- **Manage unrealistic expectations** In places where there is desperate suffering and deep poverty, the presence of rich humanitarian agencies can raise people's expectations enormously and generate bitterness and outright hostility if these expectations are not met. Always think twice about entering an area and engaging people in discussion if, in truth, you are unlikely to work there. Utilise other agency's information where it exists and thereby prevent the assessment fatigue that communities are sometimes forced to endure as a result of a succession of agency visits. If direct assessment seems essential, be careful to explain and reiterate that your resources are limited and targeted using specific criteria, and that you cannot make promises. At the same time, limit the extent to which you intrude on people's lives and infringe on their precious time.

Frontline Negotiation: Crossing a Checkpoint

The crossing of a checkpoint often takes place without incident, but sometimes humanitarians are stopped and required to negotiate their way through. Such frontline negotiations can pose four particular challenges.¹





- **Physical threat** If you or your team's personal safety is at risk, you must protect yourselves even if this involves abandoning your strategy or making concessions that would normally be unacceptable. If your life is in immediate danger, put all other priorities to one side and be ready to react quickly, and rely on the training and guidelines that your organisation has provided for such situations.
- **Lack of control over the negotiation** In such a situation you will often have very little influence. Rarely will you be in a position to choose an adequate negotiation counterpart or control the process. But you must make the most of what you have and control what you can. For example, try to negotiate with the person in charge of the checkpoint rather than with a subordinate. Choose the most auspicious moment to cross the checkpoint. If alcohol use among checkpoint staff is a problem, mitigate it by choosing the most appropriate time of day.
- **Strong emotions** People controlling checkpoints are often under pressure, either from their superiors or because they are concerned about nearby enemy operations. They may be more stressed than you. To minimise the emotions involved it is important that you avoid representing a threat in any form. For instance, only transport persons and materials that are indispensable to the success of your mission and that do not provoke controversy. If you are the target of verbal aggression, always count to eight before replying. Act as transparently and predictably as possible, making eye contact and employing listening skills. Remember that your counterpart's experience of war may be as terrible as that of the population you are trying to assist. Strike the right balance between being self confident and acting within one's rights and appreciating why the guards do not want to let you pass. They may have good reasons, which are also in your interest, but which they cannot inform you of.
- **Bribery** Goods that humanitarians carry are often coveted by checkpoint guards. Although it may be wise to give in to their demands in a life threatening situation, in general it is important not to buy your way across a checkpoint. Doing so can create a dangerous precedent and escalate the risks facing other humanitarian actors. Furthermore, you will be seen to be assisting a party to the conflict, with all the consequences this entails for your impartiality and neutrality. Also refrain from offering personal items, such as cigarettes,

chewing gum or pens, as this will set a precedent and put demands on your humanitarian colleagues that pass through the checkpoint after you. A smile, a handshake and a show of respect will often be the most effective ways to establish human contact and calm a situation.

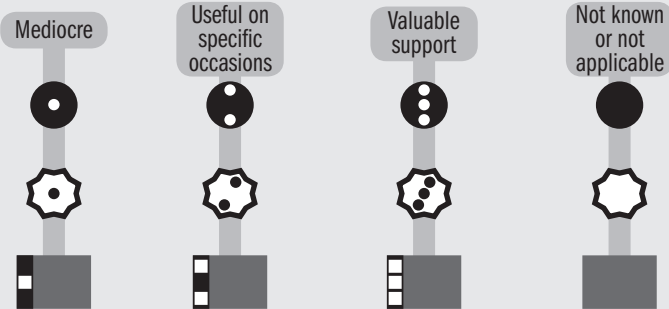
Note

- 1 For a more detailed account of security considerations during humanitarian operations, see Roberts, David Lloyd. *Staying Alive, Safety and Security Guidelines for Humanitarian Volunteers in Conflict Areas*. Geneva: ICRC, 1999.

ANNEXE III DETAILED STAKEHOLDER MAP

-  Private
-  Civil society actors, local NGOs, economic actors
-  International organisations
-  Authorities which exercise power or influence those in power (government authorities, political parties, armed forces, armed groups, etc)

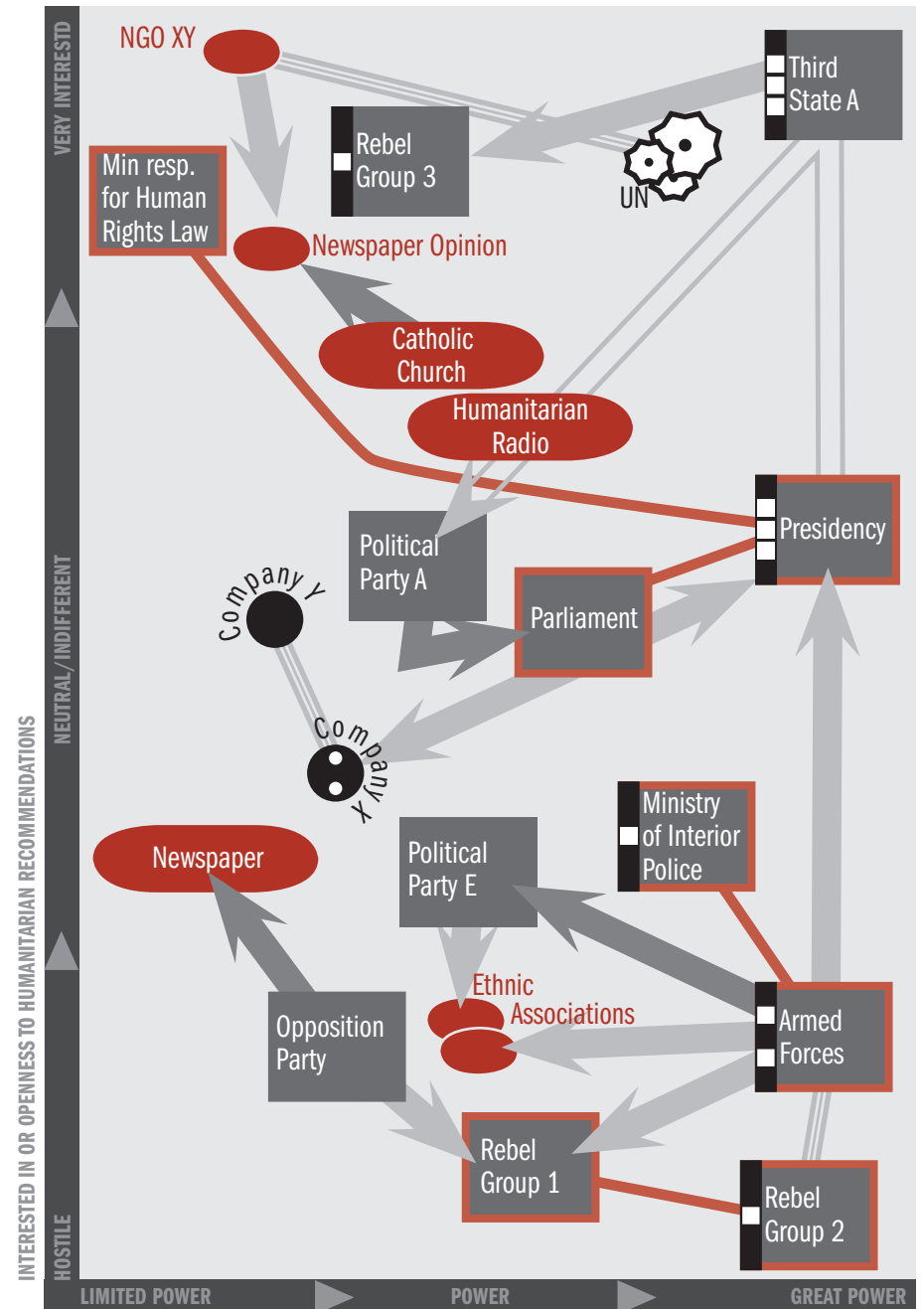
Quality of contacts with your organisation, if any



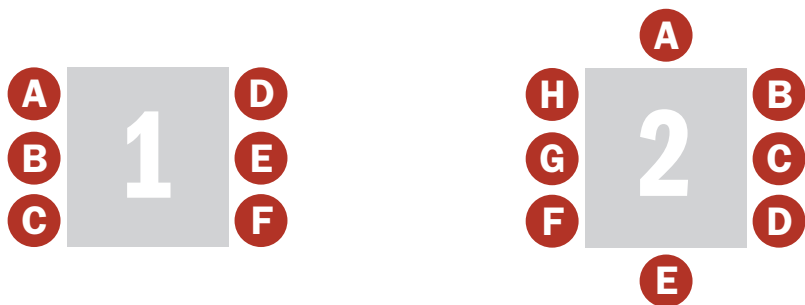
Arrows indicate links between actors



Source: ICRC. *L'Analyse de l'environnement. Schéma d'Analyse*, 2004, p. 25.



ANNEXE IV SEATING ARRANGEMENTS



Neutral Seating

In neutral seating arrangements, each negotiator has an equal view and enjoys equal access to the other negotiators. Such an arrangement usually looks like figure 1.¹

Seating Protocols

In the seating arrangement of figure 2, A, sitting at the head of the table, would be the person with the most authority. According to Larry Teply, power then flows clockwise. This means that H would be the person with the least power. E is seated in a position from which he/she can challenge A directly. Teply points out that parties sitting opposite each other often adopt adversarial approaches. In contrast, parties who sit side-by-side, at an angle to each other, or in an open circle, act more cooperatively.²

The kind of chair that each negotiator is asked to sit on, whether he/she has a name plate, the way in which he/she is represented on this plate (name, job title, etc.) are all matters connected to power and status that must be treated seriously.

Seating protocols can be used to express respect or disrespect for counterparts. Do remember, though, that a clockwise power flow is a Western norm. Other seating protocols will apply in other cultural contexts that you will need to be well aware of.

The Power of a Desk

Many officials will purposely stay seated behind their desk, exuding authority and deliberately putting you at a disadvantage. While they are elevated and guarded by the trappings of their power and status, you will find yourself exposed, usually sitting in a lower seat and often very conscious of the door behind you.

Breaking out of the desk dynamic is something of an art. It can be done by refusing to sit down immediately and, instead, admiring the view from a window or an object on the wall in such a way as to lure your counterpart into joining you. Sometimes, a direct approach can work in which you point out the problem and say that you would prefer to talk together in the chairs in front of the desk or during a walk around the building or its garden.

Notes

- ¹ Graph taken from Teply, Larry. *Legal Negotiations in a Nutshell*. *Op. cit.*, p. 133.
- ² *Ibid.*, p. 135.

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