

Negotiating Humanitarian Access: Guidance for Humanitarian Negotiators

July 2017

Conflict Dynamics International's Access Brief series provides topical guidance on policy and practice to humanitarian practitioners in their efforts to secure and sustain humanitarian access in situations of armed conflict.

1 Introduction

The effectiveness of humanitarian action hinges on access: access by humanitarians to people in need, and by people in need to essential goods and services. Negotiation is one of the most important enablers of access, particularly in situations of armed conflict. Humanitarian practitioners participating in Conflict Dynamics International-supported access and negotiation workshops since 2014 have identified “negotiation and relationship-building” as the key to enabling humanitarian access more often than any other factor. Yet humanitarians frequently approach negotiations—even front-line negotiations with influential actors—in an ad hoc and unstructured way, often without adequate guidance, policies, training, or support.^{1,2}

This Access Brief provides guidance for humanitarian negotiators based on Conflict Dynamics’ Model for Humanitarian Negotiations. The recently updated model draws on more than a decade of experience in conducting, researching, and providing training on humanitarian negotiations. The brief is targeted to humanitarian practitioners who are engaged or intend to engage in negotiations, especially direct negotiations, with those who control or influence access. Its objective is to assist humanitarians in maximizing their potential to secure and sustain humanitarian access through negotiations. This brief does not explore the characteristics of crisis environments nor the internal dynamics of humanitarian organizations that create both opportunities and challenges for humanitarian negotiations; a growing body of research is increasingly analyzing such factors, particularly those that constrain negotiations.³ Rather, this brief presents methodological guidance that humanitarians can use in their efforts to negotiate access and ultimately help meet peoples’ needs.

2 Uniqueness of humanitarian negotiations

Humanitarian negotiations are undertaken by civilians engaged in managing, coordinating and providing humanitarian assistance and protection for the purposes of: ensuring the provision of humanitarian assistance and protection to vulnerable populations; preserving humanitarian space; and promoting respect for international law.⁴

Humanitarian negotiations derive their uniqueness, in part, from their grounding in humanitarian principles and the particular backing of international norms and laws, as further explained in the next section. Humanitarian negotiations are also characterized by: high stakes (often dealing with situations of life and death); contextual fluidity; multiple stakeholders; divergent interests and motivations, as well as power imbalances between negotiating counterparts; a complex set of risks including security, fiduciary, and reputational; competition for valued contacts and negotiating space; and cultural and language barriers. The complexity of humanitarian contexts also demands that humanitarians conduct negotiations with a range of diverse stakeholders including State actors, non-State armed groups, communities, civil society, donors, other humanitarians, and even personnel within their own organization. These realities make humanitarian negotiations uniquely challenging and necessitate clear and robust organizational policies, capacities, and approaches.

3 A model for humanitarian negotiations

The model presented in this brief encapsulates Conflict Dynamics’ structured approach to humanitarian negotiations. The model incorporates: (1) four elements that **frame** humanitarian negotiations, (2) four **key contributors** to successful negotiations, and (3) the **three phases** of negotiations. Conflict Dynamics’ approach has evolved through years of experience and research while drawing upon established theoretical and practical guidance.^{5,6}

1 Jackson, Ashley. “Humanitarian negotiations with armed non-state actors: key lessons from Afghanistan, Sudan and Somalia.” Overseas Development Institute, 2014.

2 Carter, William and Haver, Katherine. “Humanitarian access negotiations with non-state armed groups. Internal guidance gaps and emerging good practice.” Resource Paper from the Secure Access in Volatile Environments (SAVE) research programme. Humanitarian Outcomes, 2016.

3 Carter, William and Haver, Katherine. “What It Takes: Principled pragmatism to enable access and quality humanitarian aid in insecure environments.” report from the Secure Access in Volatile Environments research programme. Humanitarian Outcomes, 2016.

4 McHugh, Gerard and Bessler, Manuel. “Humanitarian Negotiations with Armed Groups: A Manual for Practitioners.” United Nations, 2006.

5 Ibid.

6 This model also incorporates aspects of the ‘interest-based’ approach to negotiations, popularized by Robert Fisher, William Ury, and Bruce Patton’s “Getting to Yes: Negotiating Agreement Without Giving In,” 1983. It also includes elements of “responsible negotiation,” as presented in Alain Lempereur’s, “Respon-

Framing humanitarian negotiations

The four elements that frame and guide humanitarian negotiations, inform ethical decision-making, and help negotiators define the limits of what can be agreed, are: **humanitarian principles**, the **international normative framework (INF)**, **organizational policies and values**, and **national laws and cultural norms**. These elements are visually displayed as the frame at the outer edge of the model in Figure 1 and are further discussed below.

Figure 1. Model for humanitarian negotiations



1. Humanitarian principles

Humanitarian negotiations are carried out on the basis of four core humanitarian principles: humanity, impartiality, neutrality, and independence. Working consistently in accordance with the principles provides a foundation for humanitarian negotiations by making humanitarian actors and action recognizable and distinct. The principles guide negotiations by clarifying the motives and purpose of humanitarian work, and by helping negotiators determine what they can agree to or not.

Operationalizing the principles can be challenging. Remaining principled in negotiations requires a keen awareness of how the conditions imposed by negotiating counterparts or available options may compromise one or more principle. For example, humanitarian negotiators must look at how imposed conditions, such as payment, avoidance of certain areas, or demands to employ certain staff would impact their organization's ability to act in accordance with the humanitarian principles.

To preserve the integrity of principled humanitarian negotiations and minimize the influence of political interests upon them, humanitarian negotiations must be conducted separately from political negotiations.

2. The international normative framework (INF)

Humanitarian negotiations have a unique foundation in international law and policy that many other forms of engagement do not. This includes strong normative and legal backing for humanitarians to engage with all parties to conflict, regardless of the party's characteristics or designation, for the purposes of negotiating access.⁷ The United Nations Security Council, for example, "recognizes the need for consistent engagement by humanitarian agencies with all parties to armed conflict for humanitarian purposes..."⁸ International laws also define the rights and obligations of humanitarians as well as parties to conflict related to humanitarian access, and may at times incentivize counterparts to negotiate with humanitarians seeking access.

Understanding and drawing on provisions of the INF can bolster efforts to negotiate humanitarian access. Parties to conflict interested in (the appearance of) upholding international humanitarian law (IHL), for example, may be motivated to "allow and facilitate...humanitarian relief for civilians in need."⁹ (See In Focus, below.) However, negotiators must remain sensitive to the degree to which their counterpart may or may not be receptive to the language and concepts contained in the INF. Making direct reference to international laws during negotiations may be perceived as a threat. Negotiating counterparts may also not acknowledge the relevance of international laws or may even stand in ideological opposition to them. In many situations, negotiators will find more currency in exploring the overlap between the INF and laws, norms, or values more relevant to the context and negotiating counterpart. Translating provisions of the INF into more locally-acceptable language and concepts can be an effective way of negotiating.

7 This includes parties designated by certain States as "terrorist entities."

8 United Nations Security Council, *Statement by the President of the Security Council*, S/PRST/2013/2 (12 February 2013).

9 International Committee of the Red Cross. "Customary International Humanitarian Law." 2005. Rule 55.

IN FOCUS**Using the INF as leverage in access negotiations in Afghanistan**

In 2016, an international nongovernmental organization (NGO) seeking to expand humanitarian access in Baghlan province, Afghanistan entered into negotiations with armed opposition leaders. The opposition was open to the NGO moving into its area of control and granted security assurances. Government military, intelligence, and security services were more reticent to allow humanitarian agencies to operate in opposition areas. At one point a police commander unofficially stated, “You know we lost 70 men there this year, and now you want to support them?” Officially, senior government security authorities indicated that because they were charged with the NGO’s security and could not guarantee its safety in opposition areas, they would not authorize travel to those areas. This created a stalemate during which the NGO reviewed its options and possible negotiations tactics. The NGO decided that it would refer to IHL in a subsequent meeting with the security authorities. In the meeting, the NGO expressed appreciation for the authorities’ concern for their safety while indicating that it had made security arrangements with the opposition for the time it would be in their territory. The NGO then informed the authorities that it would have to report any reason for not being able to access the opposition-controlled area and that obstructing access to areas where humanitarian needs are high would likely be viewed as a breach of IHL. The following morning the security director called the NGO and stated that if the NGO took responsibility for its own security they would authorize the movement and sign a letter to facilitate passage through government checkpoints.

3. Organizational policies and values

A humanitarian organization’s policies and core values help frame the limits of what negotiators can agree to. These policies and values should reinforce and complement the humanitarian principles and provisions of the INF and may often provide additional and more specific guidance for negotiators. For example, an organization’s security policies help define the type and degree of risk a team can take, which is a crucial aspect of judging whether or not to accept conditions on access imposed by parties to conflict. Human resources policies specify recruitment procedures that may, for example, help negotiators push back on unacceptable hiring restrictions from parties to conflict. Negotiators may also find guidance in an organization’s policies or values when deciding if demands for payments or taxation are acceptable. An organization’s core values such as transparency, universality, accountability to target populations, medical ethics, “do no harm,” and others form the basis for ethical decision-making and guide difficult discussions and choices about what options negotiators can accept or not.

4. National laws and cultural norms

Humanitarian negotiators must consider the laws of host and donor States as well as local cultural norms. This includes, for example, navigating bureaucratic or regulatory procedures that impact humanitarian access. Some local laws or norms could even challenge humanitarian principles or international laws and norms. Humanitarian negotiators must also take into account local cultural and religious norms in determining the types of negotiated options that may or may not be acceptable within the context. For example, family planning or vaccination may be culturally or religiously contentious activities. Cultural and religious norms may also influence how and with whom negotiations should be conducted.

At times, humanitarian negotiators face situations in which the only apparent option(s), or the conditions imposed by negotiating counterparts, fall outside the scope of the framing elements. In other words, the only apparent

way to achieve a negotiated agreement would compromise principles or values or breach policies, norms, or even national laws. Faced with such dilemmas, negotiators must strive to uphold the core humanitarian principles to the fullest extent possible. This involves thoroughly deliberating and discussing, at different levels within the organization, the consequences of certain actions and the possibilities to mitigate negative consequences. For further guidance on working through dilemmas see Conflict Dynamics' *Humanitarian Access in Situations of Armed Conflict: Practitioners' Manual*, pp. 87-109.¹⁰

Key contributors to humanitarian negotiations: ROMP

Investing in **R**elations, exploring **O**ptions, understanding **M**otivations, and reflecting on the negotiation **P**rocess (**ROMP**) are key contributors to successful negotiations. Negotiators who integrate **ROMP** into their approach to negotiations in all phases (see next section) will improve their ability to achieve successful outcomes.

Relations: Building and maintaining good working relationships based on mutual trust with negotiating counterparts and other stakeholders before, during, and after negotiations significantly contributes to successful outcomes.

Practical guidance: To assist the process of developing effective relations: conduct a thorough actor mapping; identify priority actors; build capacity and allocate time to focus on relationships; engage with stakeholders regularly and not only when something is requested or a problem arises; demonstrate your own goodwill, consistency, and reliability.

Options: Humanitarian negotiators can increase the likelihood of negotiating acceptable outcomes by considering and exploring a range of options before and during negotiations, and by considering further options that reinforce commitment and implementation of agreed outcomes. Analyzing the context and the factors and actors influencing access is a key pre-requisite to identifying good options.

Practical guidance: The following steps can guide the identification of options: analyze the context, including factors and actors influencing access; brainstorm potential options that meet the objectives of the negotiations; research the options that the organization or other organizations have implemented, currently or in the past; explore and debate the acceptability of different options in relation to the framing elements;¹¹ be prepared to suggest multiple options during negotiations and be open to considering those that the negotiating counterpart may present.

Motivations: Understanding the motivations, including the interests, desires, and needs of negotiating counterparts, the groups they represent, and other key stakeholders, including people in need of assistance, can help negotiators identify options acceptable to the broadest range of stakeholders.

Practical guidance: Understanding the motivations of the various actors relevant to a humanitarian negotiation requires significant time and analysis. Given the constantly-changing dynamics in conflict settings, it is essential to keep the analytical process active and recurrent. To assist the process, negotiators can: conduct a thorough actor mapping; identify priority actors; ask why actors take certain actions or positions on issues; review an actor's public statements; analyze relations of power and influence between actors; triangulate sources of information about actor motivations; build team capacity and allocate time to work on analyzing actors.

Process: Considering the elements of process such as timing, frequency of meetings, location, negotiating team composition, and language can help create circumstances favorable to successful negotiations. At times, discussing process with the negotiating counterpart may generate momentum and help build relations that can form the basis for negotiating more sensitive core issues. Considering issues of process can also assist negotiators in the

¹⁰ Conflict Dynamics International and Swiss Federal Department of Foreign Affairs (FDFA). "Humanitarian Access in Situations of Armed Conflict: Practitioners' Manual, Version 2." 2014.

¹¹ For example, the choice of whether to engage with particular armed groups may challenge an organization's values or principles. In such instances, front-line negotiators should never be left to make the choice without guidance from senior management; a decision must be taken clearly and with appropriate institutional backing to mitigate risk to front-line staff, failure of negotiations, and reputational damage.

follow up phase by clarifying where, when, and with whom future negotiations may occur, how implementation of agreements will be monitored, and how implementation challenges or failures can be addressed.

Practical guidance: To identify and incorporate elements of process negotiators can: consider whether or not multiple engagements with the same interlocutor are possible or likely; plan the location of negotiations and team composition, taking into consideration safety, the possibility of reducing power imbalances, and the degree of desired or necessary formality; ensure that negotiators adequately speak a common language or that reliable interpreters are present; consider how best to present the negotiator or team, including dress, introductory remarks, and decorum; use process as a topic of discussion with negotiating counterparts, which may help build confidence and a basis for the actual negotiations.

Phases of humanitarian negotiations

Negotiators can draw on the **framing elements** and **key contributors** to successful negotiations (ROMP) presented above to structure their approach during each of the three phases of negotiation. Negotiations may not progress through the three phases linearly. The phases and actions within them should be applied to the extent feasible in any situation and, when possible, should be approached in an iterative manner, revisiting, reviewing and adjusting as the negotiation process unfolds.

Phase I: Prepare

Successful humanitarian negotiations begin with thorough preparation, which includes the following actions:

Analyze actors: This can include mapping influential actors and identifying priority individuals with whom to develop working relationships and eventually negotiate. It is also helpful to analyze actor characteristics, including their structure, motivations, influence, constituency, perceptions (by them and of them), and socio-cultural influences. Where possible, drawing on the lessons of humanitarians' past interactions with (priority) actors helps avoid pitfalls and determine the best tactics and approaches.

Set objectives for negotiations: The objective(s) for negotiations should clarify the desired outcome—which must always be ultimately linked to improved humanitarian conditions. Specifying the objective(s) can clarify the options that are available and acceptable. For example, a general objective such as “improving access” is too vague to guide negotiations. A more specific objective that identifies which area and people humanitarians seek access to, the needs of those people, and the activities to pursue can help focus the negotiations.

Plan tactics: Anticipating different potential scenarios, including behaviors negotiating counterparts might display or tactics they might use, can assist in preparing for negotiations. In planning negotiation tactics, it is useful to draw upon the actor analysis (what do you know about the negotiating counterpart?), identify cultural and religious norms, and consider issues of process (as discussed above) such as the location of the negotiation and identity of the lead negotiator. Common negotiating tactics include: focusing on the relationship and issues of personal interest prior to negotiating operational issues; starting negotiations with less contentious issues or issues of process to build common ground and trust; establishing that you represent the organization, while also indicating that you may need to refer to the hierarchy before agreeing to an option; and presenting multiple options (that achieve your objective).

Coordinate: Humanitarian negotiators must also consider with whom it is beneficial, or potentially harmful, to coordinate, as well as the purpose for coordination and how to coordinate. In most cases, coordinated information sharing, at a minimum, can benefit the negotiation process. Negotiators should also consider what form of internal coordination will contribute to the best outcomes.

Explore “red lines”: As negotiators consider various options to present or anticipate during negotiations, it is useful to reflect upon those that may cross an organization’s “red lines” or fall outside the scope of the framing elements (above). For example, if negotiators anticipate that the negotiating counterpart will demand that the organization conduct activities in a specific geographic area, they can consider whether this would be acceptable in relation to the core humanitarian principles and the organization’s values.

Phase II: Conduct

During active negotiations, humanitarian negotiators can improve the chance of a successful outcome through the following actions:

Adapt to the situation: Negotiations rarely take place as envisioned and may also occur spontaneously and unexpectedly. Successful negotiators will adapt and employ different tactics depending on who is present, the physical space, the time allocated, the body and verbal language of the counterpart, and other characteristics of the situation.

Communicate effectively: This includes active listening, which shows respect, helps build trust, and may provide useful information about the counterpart. Appropriate body language, clear and appropriate verbal expression, awareness of cultural sensitivities (such as dress, decorum, and topics for discussion), and a goal of persuading rather than “winning” a negotiation all contribute to effective communication.

Manage difficult behaviors: Negotiators will at times encounter difficult behaviors such as distraction, aggression, dominance, anger, and misrepresentation. Negotiators may react emotionally to such behaviors, which can derail negotiations and generate antagonism. Rather than allowing emotional reactions to negatively impact negotiations, negotiators can attempt to diagnose the motivation behind the counterpart’s behavior, look for opportunities to reframe the discussion, present different options, or suggest reconvening at another time or location. Changing the subject to a less sensitive topic and using the opportunity to build a stronger, more confident relationship between interlocutors can also defuse tension.

Phase III: Follow Up

The final phase is critical to achieving successful outcomes. It includes:

Implementation planning: Clarifying actions, timeframes, and responsibilities can facilitate the implementation of agreements, as can the development of a dispute resolution mechanism.

Implementation monitoring: It is essential to closely monitor the implementation of activities - possibly jointly with other actors - to ensure that agreements are upheld by all parties. Establishing criteria for measuring successful implementation can assist this process.

Reinforce commitment: Reaching an agreement during a negotiation is not always a guarantee that it will be implemented. To reinforce commitment, negotiators can, for example, create a written (possibly signed) record of agreements or publicize agreements. Humanitarians can also reinforce commitment by promptly and faithfully implementing their end of the agreement. Maintaining contact with the negotiating counterpart and continuing to build the relationship helps ensure effective implementation while paving the way for successful future negotiations.

Review and adapt: Humanitarian negotiations are frequently iterative or ongoing. Periodic review of the processes and tactics used helps negotiators identify their most effective techniques and adapt their approaches in future negotiations.

4 Conclusion

Negotiating effectively is one of the best ways to improve humanitarian access. Humanitarians who prioritize and invest in negotiations are more likely to gain access in conflict-affected areas, minimize compromise, and ultimately assist those most in need. Yet humanitarians frequently under-invest in their negotiation approaches and skills. The guidance in this Access Brief will help organizations and individual humanitarians better structure their approach, develop negotiation strategies, provide tips for front-line negotiators, and support staff negotiations trainings. The guidance is most effective when the **framing elements** and **key contributors** (ROMP) to successful humanitarian negotiations inform all phases of the negotiation process.

Authors: Joe Belliveau and Simar Singh

Selected Resources

Conflict Dynamics International (www.cdint.org)

Humanitarian Negotiation Information Portal (www.humanitariannegotiations.org)

Conflict Dynamics International and Swiss Federal Department of Foreign Affairs (FDFA). "Humanitarian Access in Situations of Armed Conflict: Practitioners' Manual, Version 2." 2014. (<http://cdint.org/humanitarian-access.htm>)

Conflict Dynamics International and Swiss Federal Department of Foreign Affairs (FDFA). "Handbook on the International Normative Framework, Version 2." 2014. (<http://cdint.org/humanitarian-access.htm>)

McHugh, Gerard and Bessler, Manuel. "Humanitarian Negotiations with Armed Groups: A Manual for Practitioners." United Nations, 2006. (<https://www.unocha.org/sites/unocha/files/HumanitarianNegotiationswArmedGroupsManual.pdf>)

Carter, William and Haver, Katherine. "Humanitarian access negotiations with non-state armed groups. Internal guidance gaps and emerging good practice," Resource Paper from the Secure Access in Volatile Environments (SAVE) research programme. Humanitarian Outcomes, 2016. (http://www.gppi.net/fileadmin/user_upload/media/pub/2016/SAVE__2016__Humanitarian_access_negotiations_with_non-state_armed_groups.pdf)

Grace, Rob. "Understanding Humanitarian Negotiation: Five Analytical Approaches," Advanced Training on Humanitarian Action (ATHA) White Paper series. ATHA, 2015. (<http://atha.se/thematicbrief/understanding-humanitarian-negotiation-five-analytical-approaches>)

Mission Statement

Conflict Dynamics International is an independent, not-for-profit organization founded to prevent and resolve violent conflict, and to alleviate human suffering resulting from conflicts and other crises around the world.

©2017 Conflict Dynamics International.
All rights reserved.



Conflict Dynamics International

1035 Cambridge Street
Suite 10A
Cambridge, MA 02141
USA

+1 617 661 1066 Phone
+1 617 661 1686 Fax

info@cdint.org
www.cdint.org