

**HUMANITARIAN &
DEVELOPMENT
PROGRAMME**

**HUMANITARIAN NEGOTIATION
IN INTERNATIONAL NGOS:
What are the limitations of humanitarian
negotiation for international NGOs? What can
they do to become more effective?**

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HUMANITARIAN AFFAIRS THINK TANK



Modern' humanitarian aid was born in response to war, and its actions in areas of armed conflict has continued to evolve and adapt in accordance with global geopolitics and its direct impact in the field. The last few decades have seen many changes on an international level that have played a major role in the evolution of this type of aid.

THE COMPLEXITY OF HUMANITARIAN ACTION IN PLACES OF ARMED CONFLICT

If the intervention of international NGOs in the context of war has become so complex today, it is primarily due to changes in the typologies of armed conflicts. Where International Humanitarian Law (IHL) defines two forms of armed conflict with 'international armed conflicts' and 'non-international armed conflicts', the end of the Cold War and decolonisation¹ in particular have progressively led to the majority of armed conflicts to be of a domestic nature². One of the main consequences has been the creation of non-state armed groups, as well as an array of stakeholders in the field with political, economic or religious demands; which can sometimes be very diverse and complicate the tasks of humanitarian aid workers. Included in these non-state armed groups are a number of entities that have emerged in recent decades, belonging to the radical Islamist movement, turning into jihadist organisations willing to fight Western countries and their allies. The semi-declared war between jihadist organisations and Western powers has created new problems that further complicate the intervention of humanitarian actors in unstable environments. It is first off the counter-insurgency strategy implemented by the United States in Afghanistan, then in Iraq, and also partly employed by other countries in other contexts (e.g. France in Mali), which has exacerbated the negative image of humanitarian aid workers held by these non-state armed groups. The confusion created by the direct or indirect involvement of military, political or private players in helping affected populations - both in approach and objectives -, only adds to the mistrust of non-armed groups and these affected populations.

Therefore, coupled with the willingness of jihadists to attack any Western symbol, it is ultimately the relative immunity that humanitarian actors could have benefited from that has finally crumbled and increased the security risks for NGOs (according to some figures³, it seems that the proportion of incidents on humanitarian workers has not increased, yet it is nonetheless indisputable that the threat in terms of kidnappings and assassinations of Western NGO workers has evolved and increased). In addition, many of these groups were added to the long list of organisations listed as terrorists by the Americans, European countries and the European Union. As a result, legislation and measures in place to fight terrorism in these countries have become even more stringent, and have in turn strongly impacted NGOs' abilities to work in territories controlled by these organisations; for example by narrowing the criteria for more funding by

¹ Decolonisation that has led to the emergence of claims of identity, feelings of humiliation (historical or political), or profound social inequalities.

² It should be remembered, however, that the complexity of current armed conflicts often makes their classification difficult or even impossible.

³ Refer to these databases listing incidents involving humanitarian organizations: Aid Worker Data Base or Sindy

some donors and constantly putting red tape over any organisation that might even, unintentionally, provide assistance to these organisations.

Beyond the spread of these unofficial groups in a rapidly changing environment, relations with these states have also deteriorated since the 2000s. This deterioration is due to, on one hand, the empowerment of developing countries with their former colonisers and Western countries in general; and on the other, due to the political positions taken by these same Western governments towards Southern countries. Now, political and military authorities of countries in which international humanitarian organisations are intervening no longer hesitate to announce and exhibit their national sovereignty, by being increasingly demanding with foreign NGOs and using them as a means of political and diplomatic pressure.

All these changes have therefore greatly weakened humanitarian intervention in zones of armed conflict, and thus rendered the action of aid workers deeply complex.

HUMANITARIAN NEGOTIATIONS AND THE SCOPE OF INTERNATIONAL NGOS

To deal with this complexity and to be able to provide assistance to as many people affected by armed conflicts as possible, international NGOs should carry out 'humanitarian negotiations'. Whilst it is true that international NGOs have a fair amount of experience in negotiating with countries, most of them are still discovering what humanitarian negotiations with non-state groups consist of, as and when conflicts arise.

Humanitarian Negotiations: Objectives and Features

Humanitarian negotiations can be defined as negotiations conducted by professional humanitarian workers (United Nations Agencies, Red Cross and Red Crescent Movement organisations, national and international NGOs) in places of armed conflict with a state, a national or international army and non-state armed groups. The aim of these negotiations is to open and maintain humanitarian access to conduct needs assessments and deliver assistance and protection to vulnerable populations.

However, unlike other types of negotiations, humanitarian negotiations have some special features. Firstly, they bring together parties with fundamentally different interests. Armed groups have political, economic or military objectives, while humanitarian organisations wish to protect and provide the basic needs of affected populations. Thus, humanitarian organisations seek, through these negotiations, to achieve the best humanitarian outcome and serve the best interests of both parties⁴. Secondly, humanitarian negotiations have the advantage of being governed by an international normative framework, consisting of International Humanitarian

⁴ Gerard Mc Hugh & Manuel Bessler, *Humanitarian Negotiations with Armed Groups – A Manual for Practitioners*, United Nations, January 2006, P50.

Law (IHL), International Human Rights Law and International Criminal Justice⁵. Whilst these various areas of international law should be considered a real opportunity for humanitarian actors, due to the support, tools or foundations of negotiation they provide, humanitarian negotiation practitioners have already seen that in practice, this is not always the case. For example, despite the positive impact the IHL may have on armed groups or states seeking legitimacy and international recognition, ultimately, it only has a very limited influence. Indeed, it is easy to claim that, under international humanitarian law, parties involved in conflict have responsibilities in the way they conduct hostilities and treat civilians living in areas under their control. But the reality is often quite different and whether its non-state armed groups⁶ or any states recognised as ‘modern, developed and democratic’⁷, actors in war consistently adhere to International Law.

Observations on the current scope of international NGOs in humanitarian negotiations

If, as we have seen, the objective of the humanitarian negotiations is to open and protect humanitarian access, then it is clear today that international NGOs have relatively limited capacities in domestic negotiation, demonstrated by many examples. This general observation applies to an overwhelming majority of international NGOs, with the exception of Médecins Sans Frontières (MSF), whose ability to work with its own funds allows it to be free from donor or state rules. Indeed, because of its mandate and professional body which seek to maintain functioning hospitals near the front lines, MSF is probably the only international NGO able to gain deeper access to many areas plagued by conflict, and maintain effective programs of assistance to affected populations over the long term.

Taking Syria as an example, it cannot be ignored that in recent years, a number of international NGOs working in northwest Syria in rebel-controlled areas have significantly reduced their activities, due to major problems they have had with the most influential groups of the Syrian opposition. In general, internal organisational difficulties (HR management, corruption) have led to further and bigger difficulties, until all control is lost. Yet, these NGOs were in contact with most of armed groups present in the area for several years. These events have thus shown us that the compromises and agreements that existed between these NGOs and armed groups had no solid foundation, and the negotiating process they had established since their arrival was far from effective. The case of Syria is unfortunately only one of many examples. It must be recognised, however, that in other environments, this type of negotiation without a solid foundation still allows NGOs to maintain their humanitarian access and activities. But as soon as the environment becomes more complex, these shortcomings are paid for quickly, and often

⁵ *Humanitarian Access in Situations of Armed Conflict – Practitioners’ Manual, Version 2*, Swiss Federal Department of Foreign Affairs (FDFA), the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), and Conflict Dynamics International (CDI), December 2014, p25.

⁶ Ashley Jackson & Eleanor Davey, *From the Spanish civil war to Afghanistan: Historical and contemporary reflections on humanitarian engagement with non-state armed groups*, Humanitarian Policy Group, May 2014, p7.

⁷ Here we can refer to the Israeli bombings of civilian populations in Gaza, the US bombings or the Saudi bombing of MSF hospitals, etc)

come at a high cost. For other international NGOs, the problem is totally different, but ultimately the effectiveness of humanitarian aid remains questionable. Indeed, there are a number of other actors who have very limited activities and their impact on affected populations remains minimal. For these NGOs, developing activities on a larger scale means entering into negotiations with non-state armed group, which are often either very reluctant because of the difficulties involved, or are insufficiently prepared.

WHAT ARE THE REASONS FOR AND CONSTRAINTS OF THIS LIMITED CAPACITY? HOW CAN THEY BE REDUCED?

Whilst in most cases, international NGOs are able to develop a certain number of activities, it is quite clear that faced with the initial difficulties, they do not possess the capacity to react and adapt sufficiently to protect their humanitarian access.

The reasons for limited capacity are as numerous as they are diverse, but we will try to group them together and classify them in order to provide a better general understanding, and to be able to highlight some areas of improvement.

A method that is not always tailored

Today, the reality in the field shows us that the methods of humanitarian negotiation used by many international NGOs are lacking in terms of both form and substance.

First of all, a detailed analysis of the environment, an understanding of armed groups and a discernment of the dynamics are failing. The lacking, and sometimes time-consuming, ability to study and understand these phenomena unmistakably brings many problems that are revealed in the course of the relationship with armed groups, which often have significant consequences. This is seen primarily in the timing of humanitarian negotiation. All too often, international NGOs will begin dialogue with armed groups that are starting new activity in an area. But it is in a sense already too late. Indeed, as the outcome of an assessment is uncertain if the funds are not secured in advance, NGOs tend to postpone interactions with armed groups when a program is being implemented, in order to avoid the conduction of sensitive work when no result is guaranteed. But the on-going humanitarian negotiation process with an armed group is built on the long term, through building a relationship of trust. To do this, it is imperative to start negotiating with an armed group as soon as possible in order to build a solid foundation (even if there is ultimately no activity), and not to be in a situation where a few weeks or months down the line, the NGO will be blamed for its lack of transparency.

Secondly, the inability to be analytical and understanding can have repercussions on the NGO's interactions between hierarchies of the armed group. This could be the encounter of a bad intermediary within the armed group that will not allow the NGO to negotiate properly, as they do not have the power to decide, or will put the organisation in a difficult situation with other more influential leaders who feel they have been disrespected. Another source of difficulty for

the NGO may come from the mishandling of the diverse range of armed groups present in the area. It is important to know the intermediary's predecessor; the dynamics existing between the groups; the way in which the NGO's relationship with this intermediary is perceived by the other armed groups; the power to cause harm or the meaning an armed group can have about something. Finally, lack of knowledge of the fragmented and decentralised system of certain armed groups may result in the questioning or invalidation of an agreement previously passed during a humanitarian negotiation with an intermediary of the same group, but of a different hierarchical level and/or of another area. In order to overcome these various shortcomings, it is necessary for the people in charge of humanitarian negotiations to be trained in this discipline. Training can rely on existing methodologies and tools that can be found in some practitioners' manuals or through the sharing of experiences. This sharing of experiences in humanitarian negotiations should not be done in the same environment, but rather be developed around diverse experiences in different contexts, for which a large number of issues and approaches are cross functional. Finally, it is also imperative that humanitarian negotiations are conducted at several levels (local, regional and national), in order to achieve wider validity and effectiveness. This element can be set up quite well with different levels of negotiators within the NGO.

With regards to current practice, the limitations of the methodologies currently used affect not only the people in charge of conducting these humanitarian negotiations, but also the way they are conducted or the processes carried out. First, it is important to determine whether negotiations can and should be conducted by local, regional, but local language staff, or by an expatriate (the issue of security often comes into play). Local staff is often more involved in the environment and face many pressures. A system with several stakeholders with a range of experiences is often more effective and helps to prevent a single person from fully controlling one component, which is crucial for an NGO's mission. In the case of an expatriate, one has to be mindful that they have some experience of the area and a good knowledge of the local culture to correctly understand the subtleties. On the other hand, far too many negotiations are now based on person-to-person relations between the negotiator and the intermediary, without any real preparation. Negotiations need to be more organisational in order to allow the negotiator to be replaced without questioning the gains already achieved by the organisation. Moreover, it is not a question of meeting an important leader of an armed group for the sole purpose of boasting; the meeting with an actor of this importance must be prepared with well-defined objectives and strategy, and in a relatively equal context that does not make either feel weak. Finally, negotiating processes must be carefully considered. Some NGOs do not hesitate to recruit and pay a person who is close to armed groups to facilitate contact with them and get information. But this kind of process often fools the organisation because the person only sees the financial gain, whereas, as we have already said, long-term negotiation with an armed group must above all be based on a trust. The art - and difficulty - of a negotiator is to find the balance between being on good terms with all the armed groups without being too close.

Ethics and humanitarian principles

The question of respect for ethics and fundamental humanitarian principles (humankind, impartiality, neutrality and independence being major ones) in humanitarian access is a never-

ending debate, which obviously has no response or 'scientific' solution. Yet, it plays a major role in the hesitancy of some organisations of becoming more involved in humanitarian negotiations with armed groups.

It is interesting to note that the Norwegian NGO 'Norwegian Refugee Council (NRC)' explains in one of its risk management documents dedicated to implementing activities in areas where terrorist groups are active, that the concepts of humanity and impartiality provide the foundations for policy action; whilst the concepts of neutrality and independence provide tools to gain consent from the parties of the conflict to facilitate humanitarian access⁸.

For many international NGOs, these foundations of humanitarian action serve as a 'sacred foundation' that should not be violated in the context of humanitarian negotiations with armed groups. So are these NGOs too rigid, as reported by certain studies⁹, which argue that it is without respect for these ethics that humanitarian work would no longer have any meaning? In somewhat complicating this great debate, it is important to take a step back and ask ourselves: how far can we go as humanitarian actors? Under what conditions are the results of a humanitarian negotiation with an armed group acceptable?

Each NGO has its own limits and its own 'flexibility' in respecting fundamental humanitarian principles. Focusing on MSF - which, as we have already mentioned, is certainly the most successful NGO in maintaining its humanitarian access through the negotiations -, we see that the approach is somewhat different. In a document titled "Humanitarian Negotiations Revealed - The MSF Experiences", the former president of the organisation, Marie-Pierre Allié, declared: 'Negotiators do not give a universal signal indicating the line that must not be crossed; And MSF must pay attention to the development dynamics of each situation and its own ability to renounce compromises that were only acceptable because they were temporary¹⁰', and 'If, through its actions in a given environment, MSF cannot hope to reduce the number of deaths, suffering and frequency of disabling disabilities in groups of people underserved by public health systems, then compromises are no longer justifiable or acceptable'¹¹. In an even more sensitive environment with an area under the control of a terrorist group, as was the case in northern Syria with the Islamic state, Jean-Hervé Bradol mentioned 'the maintenance of our presence in the city sees the existence of moments in which humanitarian action is possible under the domination of a transnational jihadist organisation, even one as disturbing as ISIL'¹². It is seen through these excerpts that the objective of humanitarian action is always the priority. Whilst this does not mean that respect for fundamental humanitarian principles is being threatened, it may allow MSF more flexibility and thus help to lift the brake that holds other NGOs back.

⁸ *Risk Management Toolkit - In relation to Counterterrorism measures*, Norwegian Refugee Council, December 2015, p1

⁹ Katherine Haver, *Tug of war: Ethical decision-making to enable humanitarian access in high-risk environments*, Humanitarian Practice Network (HPN), November 2016 or Soledad Herrero, *Negotiating humanitarian access: Between a rock and a hard place*, Professionals in Humanitarian Assistance and Protection (PHAP), February 2014

¹⁰ Marie-Pierre Allié, President of MSF France de 2007 à 2013, *Humanitarian Negotiations Revealed - The MSF Experience*, 2011, p5

¹¹ *Ibid.*, p8

¹² Jean-Hervé Bradol, *How humanitarian workers work against Al-Qaeda and the Islamic State*, MSF CRASH, Janvier 2015, p5

Contrary to the methodological aspect of humanitarian negotiations, we will not attempt to settle this difficult debate here, which has already been studied many times. But it is important to remember this disparity between MSF's approach and other international NGOs.

Finally, we will address the publication of some recent and very constructive research conducted by Katherine Haver of the 'Humanitarian Policy Group', within the framework of the 'Secure Access in Volatile Environments' (SAVE) project completed in November 2016. The latter seeks to 1) describe some of the difficult choices and ethical issues facing humanitarian organisations; 2) present a risk management framework model that better reiterates the necessity of the program to allow for more ethical decision-making; and 3) present some promising decision-making practices by enabling organisations to access affected individuals in high-risk situations, and for these people to access the aid¹³. Whilst this type of publication does not provide a pre-conceived response, it explains various routes that can be very useful for choices and decisions that NGOs must make. This type of study is also a valuable source that could be incorporated into an educational program for effective training of practitioners in humanitarian negotiations.

Acceptance and perception

Through a suitable response to the needs of affected populations, the quality of their projects and respect for fundamental humanitarian principles, international NGOs are working to cope with their areas of activity with various actors present. However, even if this acceptance is elicited and reiterated daily within the humanitarian workers' teams, are they well trained in its implementation?

When the scope of acceptance is narrowed only to the negotiation of humanitarian access with armed groups, one of the major aspects of determining whether this daily cross-sectional activity is conducted effectively is to know the perception of these groups towards international NGOs; this is in order to perform more work focused on their shortcomings, and thus train the teams accordingly. It is rather surprising that, despite increased exposure to armed groups, international NGOs ultimately have little or no understanding of the motivations behind these groups to facilitate or hinder humanitarian action.

Is it again because of a lack of time dedicated to this problem, or an unawareness of the importance of this aspect, that it is not taken into consideration? The question remains to be answered. Unfortunately, this is a real problem and it is very rare for NGOs to carry out investigations on how they are perceived by armed groups, when their teams work side by side with them every day.

A study published in May 2016, and conducted by the Geneva Call NGO among 19 non-state armed groups in 11 countries between June 2015 and February 2016, intended to analyse the

¹³ Katherine Haver, *Tug of war: Ethical decision-making to enable humanitarian access in high-risk environments*, Secure Access in Volatile Environments (SAVE), November 2016

perception of these groups towards international NGOs¹⁴. First, despite the diversity of groups and environments, it appears that armed groups interviewed understand the purpose of humanitarian assistance (but protective action much less) and the humanitarian principles that support it. Although a large number of armed groups explained that they had helped NGOs, they also reported that they had sometimes blocked or attacked the NGOs because they believed that they were guilty of not being neutral after they were involved in espionage. As recommended in this study, the best way to combat these perceptions is to maintain a long-term relationship with these actors. But once again, it is only by having competent and trained negotiators that these long-term humanitarian negotiations will be productive and provide more security. Allowing NGO negotiators to know this information and vulnerabilities with regards to the way in which they are perceived is an essential matter to be taken into consideration.

Coordination of humanitarian organisations

Finally, the limited capability of international NGOs in humanitarian negotiations lies in the lack of coordination between them. In the context of current armed conflicts, non-state armed groups are in contact and they negotiate with an immense number of humanitarian actors; yet, there is almost no coordination between them. Whilst this lack of co-ordination between international NGOs is relatively easy to understand with UN Agencies (for political reasons) or with religious NGOs, it is unclear between NGOs with similar objectives and which hold the same values. However, lack of confidence and judgement between NGOs is indeed present. NGOs are quite vague when it comes to sensitive subjects, such as negotiation with groups, and each NGO wants to keep their own intermediaries. The fear of seeing an NGO with whom one would have shared contacts with, and suffering the repercussions, is real and also shows incompetence. Nevertheless, coordination between international NGOs would be very useful and would undoubtedly help to develop their capacities in this difficult field, as well as set up a strategy to support one another for better overall effectiveness. Again, more widespread training of humanitarian workers in negotiations with armed groups would undoubtedly reduce this fear of lack of skills, and thus build mutual trust. Further oversight by an experienced and effective actor such as MSF could also have a positive impact on all international NGOs.

CONCLUSION

The main interest of an international NGO in negotiations with states or with non-state armed groups is to achieve the best humanitarian outcome. However, it must be acknowledged that it is impossible to remove the political aspect, as it is important for the NGO intermediaries. Whilst in the 1990s and early 2000s, it was often said that international NGOs were not willing to become more involved in humanitarian negotiations because they viewed the political component as too important and out of their depth, this does not seem to be the case today.

¹⁴ *In Their Words: Perceptions of armed non-State actors on humanitarian action*, Geneva Call, May 2016

Throughout this analysis, we have made a number of observations, first of all showing the complexity of the environments in which international NGOs must operate, and the limitations of their capacities in the field of humanitarian negotiation, before listing the reasons and the restrictions, whilst trying to propose solutions.

Before concluding, it is important to briefly review the situation that demonstrates the complexity of humanitarian action in an area of armed conflict. Contrary to what most studies of humanitarian negotiations point out, this should not be taken as a list of challenges or challenges in the midst of which NGOs must navigate. If international NGOs wish to improve and strengthen themselves in this field, it is essential to begin by considering this state of affairs as uncompromising, rather than as a hindrance, and to use it as grounds for their work.

The solutions proposed to improve the current failings and to remove certain obstacles are based on 3 main objectives: resource development, training, and coordination of NGOs. It is necessary to involve more people in the humanitarian negotiation process, either in the field or at the organisation headquarters, and train them through existing tools and methods or through sharing experiences. The third objective, which concerns the improvement of NGO coordination, can be done automatically once the first two have been established.

To succeed in developing these three areas, the NGO of the 21st century must above all recognise that humanitarian negotiation is one of the major pillars of the success of NGOs in areas of armed conflicts, and that the consequences of bad practice, its semi-implementation, or its implementation on a case-by-case basis, do not enable them to effectively reach affected populations. It is only by implementing the field of humanitarian negotiation as a structural area of the organisation, like the field of security management has become in the past decade, that the NGO of the 21st century will be able to work effectively in these complex and sensitive environments. ■

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