



Humanitarian Negotiation: Observations from Recent Experience

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Executive Summary

During the last twenty years, the United Nations, the Red Cross Movement and non-governmental organisations (NGOs) have had to increasingly utilise negotiation to ensure access and the provision of humanitarian assistance to those in need. Current trends of increasing international and intrastate conflict are likely to continue and thus negotiated access will remain an important issue. After a number of years of experience with such negotiation it may now be time to take stock of the lessons learned.

This review has been based on field experience of humanitarian negotiations and on a rapid review of relevant literature. It highlights areas where common principles and issues have become clear in the negotiation process and, as a result, where a common approach and practice have evolved. It then examines areas where constraints have been encountered requiring reflection and analysis and areas where improvements may be needed. The paper finally outlines initial steps to strengthen capacity for humanitarian negotiation in the future.

I. Introduction

During the last decade, the context for humanitarian assistance and negotiation has altered. The number of conflicts has increased globally and conflicts within states now outnumber those between states.² The greater availability of small arms has often increased the number of people directly involved in conflict and also rapidly accelerated the speed with which people have been affected when conflict occurs. The visibility of conflict has also increased as the world receives more information from the international media, the local press and the Internet. There are also more actors involved in humanitarian assistance and therefore in the negotiations required to achieve any humanitarian objective.

Throughout the late 1980s and '90s, there has been an increasing number of situations where UN agencies, NGOs and others have been called on to negotiate with belligerents in order to obtain access to people in need and to provide them with assistance. The scope of this assistance has also expanded substantially to include, in some instances, the provision of public services. The ability and skills of negotiators to engage the belligerents in a dialogue on humanitarian issues have therefore become essential issues, their negotiating skills have determined the scope of humanitarian assistance and the degree of protection to large numbers of people.

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² Uppsala University (2001). "During the period 1989–98 there were 108 armed conflicts ... in 73 different locations.... Of the 108 armed conflicts during the period 1989–98, only seven were interstate conflicts."

It seems clear that these trends will continue. It is thus essential that the humanitarian community takes stock of recent experience and begins to draw on some of the lessons learned. This paper is an initial effort to outline some of the trends that have developed in humanitarian negotiations and examine a number of the steps required to strengthen the work.

II. Common Ground

A Clear purpose

Although humanitarian negotiations have had a number of objectives, they have all sought to ensure access and assistance to those in need. Early examples in the 1980s included the attempts to create what were called 'zones of peace' or 'days of tranquillity'. In these cases, humanitarian agencies (notably UNICEF, The World Health Organization and others in Lebanon and El Salvador) have negotiated a temporarily halt in existing conflicts in order to carry out specific humanitarian tasks, such as child immunisation. Although these cases of negotiated humanitarian access were heralded as new precedents, in reality they built on the historic work of the International Committee of the Red Cross (ICRC) and the existing body of international humanitarian law³.

In several more recent cases, humanitarian negotiation has focused on efforts to build on these previous examples and to apply the principle of humanitarian truce to reach and assist specific populations in acute need. Recent examples would include the national immunisation days for polio vaccination recently in DRC, Afghanistan, Sudan, and Angola or the protection of refugees and the internally displaced (IDPs). In other countries, the primary objective of negotiation was the broad expansion of humanitarian space' in war-torn countries to ensure universal access of traditional survival and assistance services (Rwanda, Sierra Leone, Sri Lanka, etc.). In a few examples (most notably Afghanistan), the international community has attempted, together, to ensure the respect of human rights, focusing on the right to the basic public services such as education and primary health care. Finally, there have also been an increasing number of instances where negotiation was required to ensure the security of those assisting to provide these services.

Taken together, this diverse experience in humanitarian negotiation has begun to highlight a number of common issues that will be developed more fully below. Some of these characteristics represent the inherent strength of the humanitarian positions. Others reflect a limited experience base and differing priorities among the many actors involved in providing assistance.

A Strong Foundation

Most humanitarian negotiations have a firm foundation in international humanitarian and human rights law as articulated and agreed in international conventions and declarations, such as the Geneva Conventions and their Additional Protocols and in the Universal Declaration of Human Rights and Covenants. The legitimacy of humanitarian negotiation lies in the supremacy and clarity of these principles and in their near universal acceptance. This strength has also been augmented through the

³ See Common Article 3 Para 2 to the four Geneva Conventions and Article 18 of Additional Protocol II.

authority of consistent practice over the years, and as confirmed by repeated Security Council and General Assembly resolutions.

The Geneva Conventions govern states engaged in international conflict and, under Common Article 3⁴, include provision for non-states parties to be held accountable for their respect of a minimum humanitarian standard. Additional Protocols I and II to the Geneva Conventions go further by outlining the requirement for protection of civilians and for the delivery of relief, including during internal conflicts and the application to non-state parties involved in such conflicts. The Geneva Conventions and Additional Protocols are thus clear in assigning responsibility for assistance and protection of non-combatants to the belligerents themselves. This has been essential to humanitarian negotiations with state parties and has also led to the development of specific ‘ground rules,’ targeted at non-state parties such as in the cases of Operation Lifeline Sudan and Liberia.

The principle of respect for universal human rights has a long history⁵. The initial documentation and codification of these rights, however, can be traced to the mid-twentieth century with the adoption of the Universal Declaration of Human Rights. The coming into force of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights decades later provided a real basis for international human rights law. Widespread ratification of the two Covenants has formed the basis of human rights law, its implementation and monitoring mechanisms.

The principles of *universality*, *indivisibility* and *non-discrimination* in human rights have been particularly important as applied to the context of humanitarian access and assistance. Under the Covenants, states are held responsible for ensuring all rights to all people. In addition, “[s]tates are also held responsible for violence and violations committed by private actors in their territories if there are grounds to infer that these private actors are acting on behalf of or with the complicity of the state. State tolerance of, or acquiescence in, violations by non-state actors may also trigger state responsibility”⁶. This latter responsibility has been particularly important in the context of humanitarian negotiation.

The Moral High Ground

The foundation built on international humanitarian and human rights law lends strength to the negotiation process. It has also led humanitarian negotiators and actors to a belief in the moral imperative and universal acceptance of their mission. However, this belief may also be a weakness in negotiations. The belief that one party is legally and morally correct leaves little room to manoeuvre or for the development of options. This approach typically results in both sides becoming more rigid during the negotiation as they discuss positions rather than interests and options⁷.

⁴ For a clear overview of the provisions of the Geneva Conventions and the Optional Protocols see the ICRC website:

<http://www.icrc.org/icrceng.nsf/5845147e46836989c12561740044a4f7/26674b4e54f4953341256237003a3ae0?OpenDocument>

⁵ For a succinct overview see O’Neill, (1999) Chapter 1. For more specific details see also ICRC Website (<http://www.icrc.org>).

⁶ O’Neill, (1999) p.12.

⁷ See Fisher et al (1991) for a discussion of negotiation from positions and from interests.

This firm belief in a moral imperative has sometimes led to blockage in negotiations for the UN. For example, in Afghanistan, the Taliban clearly did not share the same degree of commitment to universal human rights, despite a global consensus. In addition, some of the Taliban's short-term goals and interests (e.g. winning the war in the North or the clear priority placed on boys' and university education rather than universal access to education) demonstrated priorities that could not be reconciled with a human rights approach. As a consequence, negotiation of numerous issues was very difficult and made little headway. Humanitarian programmes in Afghanistan were then suspended and later limited to support basic survival needs of the population.

In other cases (as in Sudan, DRC, Myanmar, Rwanda, and Angola) a party to the negotiation may accept human rights principles and then routinely ignore their application or deny any evidence of violation. In such cases, positioning from 'the moral high ground' may be correct and justified, but may be of little practical use in humanitarian negotiations.

Negotiation at its most basic is about give and take, finding or creating options that define a 'win/win situation' for all parties engaged in the process. This is indeed difficult when the core strategy of one party relies on convincing the other side that 'our win' is 'their win.' The UN has tended to look to conditionality, or 'carrot and stick' approaches, to promote change in difficult cases. However, such approaches are ethically questionable when they restrict aid to populations in dire need in order to obtain concessions from the authorities. Conditional strategies have also been difficult to implement since the UN controls only part of the international assistance effort, sharing this role with NGOs, the Red Cross Movement and, increasingly, state actors. To be effective, conditionality requires clear definition and application, as well as a united agreement on the rapid application of sanctions for non-compliance – both are usually very difficult to achieve.

Urgent and dramatic stakes

Humanitarian assistance routinely calls for rapid response. This was clear in Eastern Zaire in 1996, when several hundred thousand people were cut off from support. It was equally clear in southern Sudan, East Timor and Sierra Leone, where lives were at stake due to the shifting borders of conflict, as well as in Afghanistan and Burundi where the UN and others were pushed to a point where they felt they could no longer concede to repeated violation of human rights. Humanitarian negotiation is therefore called for when there is blockage in this urgently needed assistance and when there is perceived urgency and lives are in the balance.

In most cases, this urgency has meant that the UN and others have felt they had to move forward quickly to negotiate, frequently with inadequate planning, preparation and review of the 'other side.' Ad hoc preparations have been the norm, and consultations to discuss detailed strategies or to build consensus with key stakeholders have frequently been limited.

Commercial negotiators usually spend months preparing and researching their target companies. Political negotiators often specialise in specific geographic areas for a lifetime, and have a thorough grounding in the history and political economy of the

regions and countries. Both groups are usually adept in the mechanics of negotiation techniques.

Humanitarian negotiators, in contrast, often proceed with limited time to read even basic information about their counterparts, with relatively scant understanding of the political issues underlying their positions, and often with limited knowledge of the sources of power and support for the belligerents. One might say that it is precisely where reflection, contact and preparation are most needed, that they are most often neglected.

Humanitarian negotiators as interested parties

In most high-level commercial and political negotiations, the parties are careful to call for mediation – third party (and presumably neutral) assistance to mediate differences between the two parties or to find a compromise settlement that has beneficial outcomes for both parties. Mediation allows for the creation of distance between the direct interests of the parties and the negotiation process itself. However, in most cases of humanitarian negotiations, the UN and NGOs have generally negotiated directly as interested parties with limited manoeuvring capacity.

Although humanitarian actors are negotiating ostensibly “on behalf of their beneficiaries,” they are also negotiating for themselves – their principles, their programmes and the interests of their institution. In addition, negotiations involving the UN include a broader set of objectives and political issues. These issues are often central to the outcome of the negotiation and are often heavily influenced by the positions of donor governments. Since the humanitarian community is made up of numerous UN agencies and NGOs, each with a distinct mandate, it has thus often been difficult to obtain clear agreement on the principles, objectives and modalities of the negotiation process.

Belligerents have realised this fractured approach and have taken advantage of it to weaken both the negotiation process and the implementation of agreements reached. In response, the UN has tried to work through consensus agreements, such as the Strategic Frameworks for Afghanistan and Sierra Leone. In some ways, this approach parallels negotiations conducted by trade unions where the union structure serves to pull together its members to ‘speak with one voice.’ However, the structure of the humanitarian community, with its diverse accountabilities and roles, is probably ill suited to such an approach, particularly when the political apparatus of the UN becomes a dominant player in the process.

Centrality of the negotiator’s role and experience

At least two groups of individuals have been actively involved in the negotiation of humanitarian access and assistance. The first consists of a relatively small group of experienced professional humanitarian actors. These individuals usually participate in highly visible negotiations, linked to a combination of international interests, strategic goals and high-level political stakeholders. These negotiators often have long-term experience in humanitarian and diplomatic circles.

Given the growing number of cases and the simultaneous nature of current conflicts, there is increasingly a second group involved in humanitarian negotiation. These individuals are called on to negotiate primarily based on the geographic and

programmatic proximity they bring to the work. They are often local or country-level heads of agencies and NGOs and are involved in responding to the conflict at hand on a daily basis. In short, they are confronted with the situation and its urgency and must negotiate on behalf of their agencies and others.

Humanitarian negotiators from both groups have usually been provided limited support from the humanitarian agencies and the international community. Those negotiating have been asked to move forward on highly sensitive, urgent issues, often with limited knowledge, inadequately clear and sometimes conflicting objectives, and very little backstopping or networking to support them in their negotiation work. Humanitarian negotiators have generally relied heavily on their personal knowledge and experience and their own sense of what is required to move forward.

Focus on process rather than outcome

A primary objective of humanitarian negotiation is to obtain access to people in need over a period of time. This implies establishing a relationship with parties to a conflict in order to ensure a process through which protection, access, service delivery and coverage for affected populations can be assured. Humanitarian negotiators have most often explicitly stressed that they are not involved in the resolution of the underlying political issues at the heart of a conflict. They have thus accepted that humanitarian access is a half-best solution to the resolution of conflict – accepting that the conflict will continue while insisting that those in need receive protection and assistance.

By comparison, political and commercial negotiations are about conclusions. Companies seek to arrive at ‘a deal,’ which substantially changes either a portion or the entire make-up of each of the parties. Peace negotiations, even those involving protracted discussions, also focus on resolution of underlying differences and the end point: cessation of hostilities, peace and reconstruction.

Humanitarian negotiation cannot be undertaken in the same way as political or commercial negotiations – intensive, outcome-driven processes. Rather humanitarian negotiations must encourage the building of a long-term relationship that will remain at the core of the implementation of the agreements. This implies that predictability, trust, personal contact, cultural sensitivity and sometimes deference are even more critical assets in humanitarian negotiation.

This process approach is also a reflection of the historic roots of humanitarian assistance and is a result of the nature of current conflicts. It also results from the firm belief that those in need should be reached regardless of their location or allegiances. Humanitarian actors have acknowledged that they cannot alter the larger picture and therefore accept that they will most likely need to re-negotiate access as factions, situations and boundaries change. In terms of the negotiation process, however, humanitarian negotiators are thus working against the clock, ultimately to ensure live-saving protection, while tacitly acknowledging that the political manoeuvring going on ‘outside’ the negotiation process will alter the parameters and perhaps even the key actors in the relationship they have established.

In some cases of prolonged conflict (perhaps most notably Operation Lifeline Sudan) the United Nations has explicitly recognised this difficulty. Negotiators have then

tried to take into account rapidly changing information on security, shifting conflict boundaries and the changing make-up of specific armed factions. Standing technical working groups have sometimes been established (e.g. TCHA for OLS) to review conditions and to ensure that agreed humanitarian objectives can be achieved.

Finally, one key lesson from the difficulties encountered by humanitarian agencies during the Great Lakes crisis of 1990s is that humanitarian action cannot substitute for the resolution of political issues, the two processes must go hand-in-hand. As a result, there have been greater efforts to harmonise the political aspects of UN sponsored negotiation (often led by a Special Representative or Envoy of the Secretary-General) with the ongoing humanitarian concerns and agreements. For humanitarian negotiators, this will require flexibility in the negotiation process as they strive to ensure a continuation of apolitical and neutral assistance without jeopardising or being co-opted by the political process.

III. Constraints to Humanitarian Negotiation

Recent experience with humanitarian negotiation has raised a number of constraints that require additional reflection and work. These include several difficult philosophic, ethical or moral issues surrounding humanitarian action and thus negotiation for it. There is an expanding body of literature and direct field experience about each issue. However, there is as yet no coherent or systematic method for assuring that the experience base feeds research, analysis and eventual practice. Nor have all of these issues been integrated into conflict prevention and humanitarian negotiation frameworks.

Why negotiate the non-negotiable?

Given the solid legal foundation for humanitarian access and assistance, one could easily ask why we are negotiating if negotiation means a 'give and take.' In a strict sense, States Parties and other belligerents should respect the fundamental right of civilians to have access to assistance and protection. In turn, the organisations providing assistance must show neutrality, impartiality and non-interference.

However, warring parties have increasingly ignored their obligations under international human rights and humanitarian law. Humanitarian agencies have also been increasingly accused of "taking sides" and "fuelling the war" through their assistance to those in need, including allowing the deviation of that assistance to armed personnel (particularly in E. Zaire in 1994-95, Sudan, and later in the Democratic Republic of Congo). The question for the negotiator is thus, how to negotiate from this clear universally accepted 'legal and moral high ground' when it is blatantly rejected, ignored or simply misused. The negotiators must also take into account that in many instances where humanitarian negotiation is required, the social, political and legal structures to enforce respect for the principles are marginal. We are therefore seeking to negotiate compliance and implementation where commitment, incentives and enforcement mechanisms are either weak or absent. As a result, the 'universal moral high ground' is often reduced to individual, country specific issues of compliance.

What do we negotiate?

A second set of issues reflects the two basic components of humanitarian action: assistance and protection. These two elements are at the heart of most international

humanitarian action and one or both are thus at the centre of negotiation for humanitarian access and assistance. The Humanitarianism and War Project at Brown University approaches humanitarian action as encompassing (1) the delivery of relief and other life-saving and life-supporting assistance, and (2) the protection of basic human rights, which include the right to life as well as to food and shelter.”⁸

Few today would argue against the necessity of these two elements. However, a more traditional view of humanitarian action focuses more narrowly on the need for humanitarian assistance and is more likely to be accepted by belligerents. The renewed human rights approach of the UN and others in the late 1990s focuses more firmly on the latter, protection of human rights.⁹

For the negotiator the distinction is important. A recent analysis of humanitarian action notes that, “if there is an agreement about what it means to take a principled approach, it is firstly that humanitarian action should promote respect for rights, including the right to assistance, and secondly that it should not undermine those rights.”¹⁰ In this view, humanitarian negotiation is about the protection of human rights one of which is the right to assistance.

This increasingly accepted view underlines the importance of a clearly defined negotiation objective. For the negotiator, it is often difficult to negotiate the delivery of medical supplies, food or water to those in need. To integrate negotiation for these services into overarching human rights discourse creates additional difficulties and can open the door to political manoeuvring. In addition, parties to a conflict will frequently have difficulty accepting that humanitarian assistance is one of many recognised universal human rights that must all be realised.

To Advocate or negotiate?

The growing acceptance of a human-rights approach has entailed wide-scale implementation of programmes for human rights advocacy and education, including those focused specifically on disadvantaged or discriminated groups. These programmes represent one of the greatest advances in human rights advocacy and have led to fuller realisation of human rights in many parts of the world. However, such programmes have often also muddied the waters of humanitarian negotiation.

The failure to define the objective of humanitarian negotiation clearly has frequently led to confusion between negotiation for humanitarian action and more general advocacy for human rights. Advocacy serves primarily to transmit information and educate in order to convince a group of people to behave in a specific manner, e.g. to uphold and promote the tenants of accepted human rights instruments. Advocacy work includes daily or routine meetings, discussions, public information campaigns and often public recrimination to foster change. As an example, Amnesty International may well mount an advocacy campaign to stop torture. Likewise

⁸ Frohardt et al (1999), p. vii.

⁹ Certainly the UN as a whole has re-emphasised the importance of human rights to its Charter. The more recent work of the High Commissioner for Human Rights to move to universal ratification and implementation, the priorities of the Secretary-General and the focus of the Millennium Assembly are clear indications of this trend. However, at times, parts of the UN systems (notably UNHCR in the late 1980s and early 1990s) have been blamed for giving inadequate attention to protection in favour of assistance and support, for example, to encourage the return of refugees to their country of origin.

¹⁰ Leader (2000), p. 45.

UNICEF advocates nationally and internationally for the right to basic education with particular attention to increasing the participation of girls. Advocacy is a powerful tool, especially when it manages to galvanise large-scale public opinion to promote change.

For the humanitarian negotiator it is important to distinguish advocacy from negotiation, particularly with respect to human rights. Advocacy is generally concerned with broad principles; e.g. human rights awareness and realisation, an end to the torture, the right to education or the importance of girls education. Negotiation is necessarily concerned with specifics, e.g. negotiating access to health services in a given area, the release of prisoners, the availability of education to specific groups, or specific protection measures required for the internally displaced.

Inadequate distinction between advocacy positions and negotiation objectives has frequently led to difficulties during negotiation. Thus, for example, the UN found itself negotiating the right of girls to education in Afghanistan. From this 'moral high ground' there was no real negotiation possible, although continued advocacy was essential. However, negotiation was necessary to make progress on the specific steps required to move towards the realisation of this basic right. As a result, the negotiated agreement with the Taliban focussed on the concrete, albeit minimal steps in a direction towards the universal right.

The negotiation objective in this case was undoubtedly too broad. It was clearly not possible to sweep away decades of discrimination against women and girls through a two-week negotiation process. It was possible to outline some initial steps towards the realisation of a basic human right, while recognising that continued advocacy and negotiation would be required. However, inadequate clarity at the onset of the negotiation opened the UN to severe criticism for having ignored its human rights principle.

Can we be truly neutral?

The protection of human rights is closely linked to the issue of neutrality. The ICRC set the tone for humanitarian action with its own principles of impartiality and neutrality. This stance, and more specifically its strict implementation, has often been criticised by other humanitarian organisations as being naïve. However, it has allowed the ICRC to work in contexts where other agencies have not. It has also helped set clear boundaries for intervention as well as milestones to mark where humanitarian assistance may be suspended when minimum conditions for neutral assistance are unmet.

For the larger humanitarian community, however, the issue of neutrality has become more difficult and often a central issue in humanitarian negotiations. Can one be apolitical and neutral and actively promote human rights, which in many contexts involve political agenda? Human rights promotion entails active support for all human rights, everywhere. One must therefore focus on those excluded and on the causes of exclusion. It is clear that many governments and non-state parties to conflict will not perceive such an approach as apolitical or neutral. In addition, recent direct intervention by UN member governments in defining political parameters for humanitarian assistance and alleged cases of infiltration of political actors in

humanitarian assistance delivery have provoked increased questions about the neutrality of assistance.

Conditional humanitarian assistance

Humanitarian negotiation encounters some of its most difficult constraints with respect to the issue of conditionality. The nature of conflict has changed in the 1980s and 1990s, towards a more diverse set of involved State Parties on the one hand and a greater number of internal conflicts involving non-state parties on the other. The difficulties faced by the humanitarian community in the 1990s have also grown and it has become increasingly difficult to separate humanitarian from political concerns. The threat of conditional humanitarian assistance has thus been used in attempts to enforce political change while attaining humanitarian objectives.

Humanitarian assistance has been and will most likely continue to be diverted by belligerents. In many of these cases, the agencies providing assistance have then been blamed for a lack of accountability and control – of abrogating the principle of non-interference in the delivery of assistance.¹¹ In response, both States and non-state entities have repeatedly limited access and thus humanitarian assistance to specific groups, usually claiming that the aid will ‘feed the enemy’ or ‘fuel the conflict.’

On several occasions (e.g. Iraq, Afghanistan, Sudan), the UN and others have responded to such access limitations by imposing conditional terms to the provision of humanitarian assistance. In other situations where humanitarian assistance is a primary link to governments, conditionality has also been utilised in an attempt to express international outrage and to leverage change in cases of blatant violation of human rights.

On the one hand conditionality in humanitarian assistance is a response to reality; belligerents are not respecting international humanitarian law and the international community has not managed to influence their behaviour. The international community has, in essence, run out of options for influence and conditionality represents a final push for compliance – “respond or we will withdraw assistance.”

Such a position is inherently weak. First it weakens considerably the ‘moral high ground’ of the international community. Secondly, the mandate of most humanitarian organisations prevents them from withdrawing in this manner. In addition, conditionality hinges on the moral authority of accepted international humanitarian law, precisely what the belligerents often refuse to recognise.

Conditionality may be imposed in an effort to create political leverage against the policies of the negotiating party; we expect a reaction by the local population against the regime. However, the conflicts of the 1990s have demonstrated that it is precisely in places where we are apt to impose conditionality that the conditions for expression of mass popular opposition are unlikely. As a result, those with the greatest need often suffer disproportionately the effects of the withdrawal of conditional humanitarian assistance.

¹¹ These issues form part of the broader discussion of the neutrality of humanitarian assistance and its link to political goals. For an excellent review of these key issues see Leader (2000).

In other cases, conditionality may be brought to bear in an attempt to create an economic leverage for compliance with international humanitarian and human rights law. Unfortunately, the weight of experience does not support the efficacy of such leverage from humanitarian conditionality (e.g. Iraq, Haiti, and Angola). The impact has been limited on the targeted power structures and often very great on those in need of support through humanitarian assistance.¹²

Negotiation for whom?

Since the late 1980s, more actors have become involved in humanitarian assistance. It has therefore become more difficult to ensure a uniform approach to issues of humanitarian access, assistance and human rights. For the negotiator, it is therefore essential to clarify for whom s/he is negotiating and the degree of consensus that exists on the negotiation objectives.

In most humanitarian crises, the agencies of the UN do not have homogeneous positions. In a general sense, this is probably good at country level; their constituencies are distinct, as are their mandates, operating procedures and accountabilities. However, negotiation for a system such as the United Nations requires consensus or, at least, 'buy-in,' and this has been extremely difficult given the different mandates and approaches of the agencies. Thus, for example, it was particularly difficult in both Afghanistan and Burundi to agree on a definition of "live-saving interventions." The reduction and suspension of some activities in Burundi in 1999, for example, was particularly problematic despite clear, documented human rights violations by the government in its forced displacement and 'regroupement' of hundreds of thousands people and the murder of UN personnel. It is indeed very difficult to push a common view with government or factions when the operating agencies represented do not agree.

The expansion of the NGO community has further compounded this difficulty as has the differing positions of the major international donors. This was particularly evident in Afghanistan, where the UN and specific donors tried to involve NGOs in the humanitarian negotiation process. The NGOs declined to take part and subsequently criticised the UN for inadequately representing their positions and views. It was naïve to believe that the Taliban would treat the NGOs separately from the UN.

Similarly in Sierra Leone, the inter-agency consensus of humanitarian assistance broke down over the issue of military escorts for humanitarian aid. The UN agencies reluctantly agreed to such escorts in cases of extreme security risk. However, several NGOs, however, withdrew their ongoing humanitarian assistance when escorts were required, citing the principles of neutrality, non-discrimination and non-interference. In both Afghanistan and Sierra Leone, the resulting disagreements were utilised by the belligerents to undermine specific agreements reached in the negotiations and thus limit humanitarian assistance.

¹² The recent work on the impact of sanctions in Haiti and Iraq underlines these points. See, for example, Gibbons (1999).

IV. Some Practical Steps Forward

Recognise the growing need

In at least the short-term, it seems clear that conflict will increase. Internal conflicts are likely to continue and, possibly increase in the coming years. The number of non-state parties or factions will probably grow as well, many with even less awareness of human rights and international humanitarian law.

It is therefore clear that the need for humanitarian negotiation will also increase. It is thus in the interest of those working in humanitarian assistance to be more systematic and more professional in the negotiation process. It will be essential to learn from the success and errors of the past, document better what has taken place and link those involved in the negotiation process to support structures and to each other.

Additional work is needed with and by the humanitarian agencies to ensure that more attention is given to humanitarian negotiation. Humanitarian negotiation and the objectives set in each case should not be treated in an ad hoc manner. Agencies and actors need to be proactive in the process. They need to prepare and provide training to those likely to be involved in situation that will require negotiation for access and assistance.

Enhanced knowledge of international humanitarian and human rights law

Except at the highest levels of humanitarian negotiation, those called on to negotiate often had only limited knowledge of international humanitarian and human rights law. Since international pressure on States Parties and other belligerents has its basis in the legally binding nature of international humanitarian and human rights law, a thorough knowledge of the principles of these two areas should be a prerequisite for humanitarian negotiators.

A solid grounding in the framework for humanitarian action is essential to humanitarian negotiation. Training materials on humanitarian principles, human rights and on negotiation should be brought together and made available to those working in the field and the recent initiative by several UN agencies to develop a training manual on humanitarian principles for their staff is an excellent starting point. Specific training in negotiation and on specific aspects of human rights and international humanitarian law may be required to assist those identified as potential negotiators.

Improved strategic planning

In a number of areas noted above, the basis and practice of humanitarian negotiation could be improved quite rapidly. The most obvious starting point would be enhanced work to prepare the ground for negotiation prior to its start through a process of strategic planning¹³. This would entail the definition of clear objectives, a negotiation plan and process strategy in advance. This planning should involve a wide variety of humanitarian actors and donor representatives. Without such involvement it is unlikely that the negotiation process will benefit from 'buy-in' as the process evolves or as eventual agreements take shape.

¹³ For a detailed analysis of key issues in the preparation of humanitarian negotiation see Griffiths, (2000) from which a number of these elements have been taken.

More specifically, preparation for the negotiation process must include the setting of a precise, clear and shared negotiation objective, including minimum conditions for assistance. A detailed, targeted and shared situation and institutional analysis should be undertaken. This analysis should include an overall assessment of the current humanitarian situation and the factors that influence it.

The preparation should examine the key actors involved in the situation. These will include government and faction elements, third party actors and backers, private sector involvement and the role and potential of the press. Humanitarian negotiators often need to understand better the interests behind the various positions taken by these different players, since these interests must be addressed to reach an agreement.

The pre-negotiation preparation process should also include a clear analysis of the probability of success in achieving the objective of the negotiation. This analysis should focus on possible progress and the potential threats to such progress. It should determine the likelihood of agreement, the leverage points that exist for negotiation and the measures required to activate them. Preparation of such basic background materials, analysis and strategies would go far to enhance the skill and flexibility of humanitarian negotiators.

Outline clear fallback options

A basic concept in negotiation is the importance of strategizing and planning ones options along with developing an understanding of the opposition's positions and intentions. This enables the negotiator to develop options and scenarios that are acceptable within the framework of the negotiation objective.

Too frequently the pre-negotiation preparation phase of humanitarian negotiation has been inadequate. Without a thorough strategic analysis it is difficult to determine clear, realistic humanitarian objectives and the steps leading to those objectives that might form the basis to develop negotiation options.

Separate Humanitarian Negotiation from Human Rights Advocacy

Individual humanitarian negotiations would be strengthened by clearly separating advocacy from negotiation. In general, the UN should not negotiate the principles of humanitarian action – these are clearly defined in the Geneva Convention and its Additional Protocols. The substance of humanitarian negotiation should be the implementation of these principles and standards given the specific situation and constraints.

Negotiation should focus on the steps required to achieve progress towards these standards and negotiators should be clear that the objective of the negotiation is focused on those steps. Negotiators may use advocacy as a vital tool leading to the negotiation process, for example to help open up new areas for further negotiation. But the negotiation itself will more likely be successful if it remains focused on clear objectives rather than broader advocacy efforts.

Take the time required

Negotiation is about dialogue for better understanding that can lead to consensus and a relationship. It takes time and humanitarian negotiations must allow and plan for that time. As noted, there is often the urgency of the humanitarian crisis – people's

lives are at risk and there is a perceived need to negotiate and act quickly. Humanitarian negotiation has frequently neglected to give adequate time to the negotiation process. In these cases, rapid humanitarian negotiation has often failed to focus on understanding the key interests at stake. This failure has sometimes led to rigid positioning and stalemate.

In addition, one of the key tools of negotiation is time, often in the form of withdrawal or suspension of talks when an impasse is reached. Suspension allows both sides to reassess their objectives, those of the other parties and to consult their constituencies. Humanitarian negotiators have often neglected this essential tool in a desire to find a rapid solution.

In some cases, the donor community has exacerbated this weakness by exerting severe pressure to find a rapid solution. In Afghanistan in 1998, for example, a key donor representative told the negotiation team that there was little time for a solution, perhaps two weeks, and that they could not fail. This attitude and the corresponding time constraints placed tremendous pressure on the team. From a UN perspective there was thus a need for a rapid conclusion to the negotiations, whereas the Taliban were not particularly rushed. The UN would have been in a much stronger position had the team been able to withdraw from the negotiation at a point when progress was impossible. This was not feasible and the negotiations had to adjust their objectives and strategies as a result, undoubtedly weakening the final outcome of the negotiation.

Learn from experience and continued dialogue

Perhaps the most important long-term contribution to strengthening humanitarian negotiation will come from greater attention to the lessons learned in prior negotiations and improved documentation of these experiences. To date, there has been little feedback or debriefing of negotiators once the negotiation is completed. The UN and others generally quickly move on to implementation, as if similar problems were unlikely in the future.

There is a need to develop a network for experience and information exchange and to build a common repository for information that is accessible to and used by many. Utilisation of an Internet-based network of background materials, analysis, ideas, negotiation support and people is one option for enhanced networking and exchange. The development of a global reference and referral system for negotiators and agencies could also be helpful. Such a reference system could provide linkage to individuals, with indexing by competencies such as fields and geographic areas of experience, languages, previous negotiation work experience etc.

Finally additional work should also continue by academics, organisations, and bilateral agencies on the key strategic, legal and moral questions raised in the process of humanitarian negotiation. These questions are long-term in nature and require additional reflection and analysis. It will be essential that this work be done in close association with field personnel to ensure that it reflects the realities of work. Since negotiated access and assistance will remain important for the work of all humanitarian agencies, the strengthening of the practice and the legal and moral base for this work is essential.

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