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**Manual on Humanitarian Negotiation with Armed Groups**

**Working Draft**

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The current working draft of the Negotiation Manual is the result of ongoing inter-agency discussions. The manual is a product of the activities on protection of civilians. Its primary objective is to provide a practical guide for humanitarian, development and human rights practitioners for their negotiations with none-state armed groups. The final manual will provide a general framework for agencies that they may wish to consider/build on for the purposes of their own negotiation policies and field guidance.

At this stage the working draft of the Manual is introduced/presented to the IASC-WG to inform the Working Group of the process and the expected outcome. We plan to present the further developed final draft version of this Manual to the June meeting of the IASC-WG in Geneva on 22/23 June 2005 for IASC endorsement.

**Proposed Actions by the IASC WG members:**

- Take note and provide feedback on the Manual

Prepared by: OCHA, March 2005

# Humanitarian Negotiations With Armed Groups

A Manual for Practitioners



OCHA  
UNITED NATIONS

March 2005

*WORKING DRAFT 3/8*  
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*Negotiation with armed groups --*

- ⇒ *to ensure provision of assistance and protection to vulnerable groups;*
- ⇒ *to safeguard humanitarian space; and*
- ⇒ *to improve respect for international law*

*-- is a humanitarian necessity!*

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Produced by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) in collaboration with member agencies of the Inter-Agency Standing Committee (IASC) Informal Working Group established to consider aspects of humanitarian negotiations with armed groups.

*For more information, contact:*

Manuel Bessler  
Office for the Coordination of Humanitarian Affairs  
Policy Development and Studies Branch (PDSB)  
United Nations, Room S-1869  
New York, NY 10017  
Phone: +1 (212) 963-1249  
Fax: +1 (917) 367-5274  
Email: [bessler@un.org](mailto:bessler@un.org)

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## Summary

*[Author's Note: This section will be completed once the text for the main body of the manual has been finalized. It is envisioned that this will be a 2-page summary of the main points of the document.]*



# 1 Introduction & Objectives

## 1.1 Humanitarian Engagement and Negotiation with Armed Groups

To effectively undertake their work, UN humanitarian, development and human rights workers must interact with a diverse range of stakeholders – including national governments, inter-governmental institutions (e.g. EU, ECOWAS), and non-state actors such as non-governmental organizations (NGOs), rebel groups, and the private sector. Depending on the context and intended outcomes, **engagement** with these different actors can take several forms, including: advocacy-, negotiation-, mediation- and liaison interactions. These different types of engagement generally share some common elements of process and objectives.

As one form of engagement, **negotiation** is defined as a process of communication and relationship building undertaken with the objective of arriving at an agreed outcome around a particular set of issues, in situations where the parties are not in complete accord on those issues to begin with.

Negotiation therefore seeks to reconcile differences in perspectives, positions or interests to reach outcomes that no individual party could achieve independently. Successful negotiations result in outcomes that all parties agree to abide by or implement. Such an agreed outcome can be informal (e.g. verbal agreement to facilitate access) or formal (e.g. a written agreement / Memorandum of Understanding).

Moreover, negotiation is sometimes described as a process of influencing individuals or groups through joint decision-making. It requires the consent of all parties to participate in the process.

**Humanitarian negotiations** are defined here as negotiations undertaken by civilians engaged in managing, coordinating and providing humanitarian assistance and protection for the purposes of: (i) ensuring the provision of protection and humanitarian assistance to vulnerable populations; (ii) preserving humanitarian space; and (iii) promoting better respect for international humanitarian- and human rights law.<sup>1</sup> As a means of achieving these objectives, negotiation is a humanitarian necessity!

This manual provides guidance on humanitarian negotiations with **non-state armed groups** (referred to throughout this manual simply as **armed groups**), defined as groups that: have the potential to employ arms in the use of force to achieve political, ideological or economic objectives; are not within the formal military structures of states, state-alliances or intergovernmental organizations; and are not under the control of the state(s) in which they operate.<sup>2,3</sup> A more detailed characterization of armed groups is provided in Section 2.3 of this manual.

### Purposes of Humanitarian Negotiations:

- to ensure provision of protection and assistance to vulnerable groups;
- to preserve humanitarian space;
- to promote respect for international law.

<sup>1</sup> The term "humanitarian space" is defined to mean "a conducive humanitarian operating environment." See: UN Office for the Coordination of Humanitarian Affairs (OCHA), *Glossary of Humanitarian Terms in Relation to the Protection Of Civilians In Armed Conflict* (New York: United Nations, 2003). Another definition is given as: "scope for neutral and impartial humanitarian action in the midst of conflict." See: Meinrad Studer, "The ICRC and Civil-Military Relations in Armed Conflict," *International Review of the Red Cross* 83 No. 842 (June 2001) : 367-391.

<sup>2</sup> This working definition of armed group draws on that defined in the OCHA Glossary of Humanitarian Terms (2003): "Armed Group: An armed non-state actor engaged in conflict and distinct from a governmental force, whose structure may range from that of a militia to rebel bandits."



The guidance contained in this manual is also applicable to humanitarian negotiations with armed groups that employ terror tactics -- that is, those tactics intended to provoke a state of terror among a population or to coerce a government or international organization to take- or abstain from a particular course of action.<sup>4</sup>

Because of their exclusively humanitarian character, humanitarian negotiations do not in any way confer legitimacy or recognition upon armed groups, nor do they mean that the humanitarian negotiators necessarily support or agree with the views or perspectives of an armed group.

*Humanitarian negotiations do not in any way confer legitimacy or recognition upon armed groups*

Humanitarian negotiations with armed groups stand apart from other types of negotiation (such as negotiation between two private corporations) for several reasons:

1. the stakes are high: in many cases a successfully-negotiated outcome can result directly in lives saved;
2. there exists a *de facto* power imbalance between the negotiating parties;
3. the motivations, objectives and operational 'cultures' of the parties contrast sharply;
4. ensuring commitment to and implementation of an agreed outcome may be difficult because of the less formal organizational and command structures of many armed groups; potential limitations in the capacity of the armed group to ensure implementation; and the fact that many armed groups develop perceptions of immunity from accountability for their actions;
5. the operating environment for humanitarian agencies generally imposes acute time and communication constraints on negotiations with armed groups.

The unique characteristics of humanitarian negotiations necessitate a targeted and nuanced approach to these types of negotiations. This manual prepares the reader for such an approach.

## 1.2 Changing Operating Environment for Humanitarian Agencies

Since the early 1990s, humanitarian agencies have experienced increased exposure to situations in which they must negotiate with armed groups. This is due primarily to the changing nature of the operating environment in which humanitarian action is undertaken. Some aspects of the changing operating environment that are relevant to humanitarian negotiations with armed groups include the following:

**First**, contemporary conflicts take place predominantly within states rather than between them, with the result that one or more parties to a conflict are now more likely to be armed groups.<sup>5</sup>

<sup>3</sup> The use of force by some armed groups may extend beyond that that actually requires weapons (e.g. sexual violence), however, the difference (by definition) between an armed group and another type of unarmed group is the ability of the former to employ weapons in their use of force.

<sup>4</sup> There is not yet an internationally agreed and recognized definition of "terrorism". The description used in this manual is drawn from UN General Assembly resolution 51/210 of 17 December 1996 [ "...criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes..." ], and the Report of the UN High-level Panel on Threats, Challenges and Change, 2004 (Para. 164(d)) [ "any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act" ].

<sup>5</sup> In the twelve-year period from 1990 to 2001, there were 57 major armed conflicts (exhibiting at least 1,000 battle-related deaths per year) in the world, of which all but three were internal. Source: Mikael Eriksson, Ed. *States in Armed Conflict 2001* (Uppsala: Department of Peace and Conflict Resolution, Uppsala University, 2002).



Humanitarian agencies responding to complex emergencies resulting from these conflicts (or other underlying conditions) are thus more likely to encounter armed groups in their work.<sup>6</sup>

**Second**, an evolving body of military doctrine on Peace Operations (also called Peace Support Operations) being developed by key military forces (individual states, state-alliances such as NATO, and UN peacekeeping operations), and the involvement of military forces in operations other than war -- including relief operations -- has increased the complexities of interactions between humanitarian and military actors. The engagement of military forces in relief operations and so-called "hearts and minds" operations to win local support blurs the distinction between humanitarian and military actors, thereby eroding and constricting humanitarian space. This fading distinction has placed increased emphasis on the need for humanitarian actors to negotiate for a safe and secure operating environment for humanitarian action.

**Third**, in recent years there has been a trend towards the direct targeting of humanitarian and development workers in conflict zones and in some situations of post-conflict transition. For example, in Afghanistan there was an average of 13 armed attacks on aid workers per month for the first five months of 2004, compared to an average of 8.8 attacks over the first five months of the preceding year.<sup>7</sup> In this environment, there is an increased need to negotiate with all parties to a conflict (including armed groups) to ensure the safety and security of humanitarian operations and staff, as well as the civilians they assist.

**Fourth**, in light of experiences during the 1990s, there has been a move towards a more integrated approach to UN peace operations, which has seen the roles and work of UN humanitarian agencies included/integrated (to varying degrees depending on the mission) under the overall administrative and decision-making structure of a UN mission (e.g. UN missions in Liberia, Democratic Republic of the Congo and Burundi).<sup>8</sup> The issue of integrated UN peacekeeping missions is an evolving one, but clearly these types of missions impose new opportunities and challenges for humanitarian agencies as they try to maintain their impartial and neutral working environment to carry out their mandate. In integrated missions, humanitarian, military and/or political negotiations may be ongoing in parallel.

Ensuring coherence across these different negotiations poses a particular challenge that must be addressed because all of the negotiations will have an impact on the success or failure of the mission. Section 2.5 presents guidance for coordination of negotiations among humanitarian actors and dealing with UN political and humanitarian negotiations.

### 1.3 Background and Objectives

The increased need for humanitarian agencies to negotiate with armed groups has been reflected in successive Reports of the UN Secretary-General on the Protection of Civilians in Armed Conflict since 1999. These reports have highlighted the importance of negotiations with parties to a conflict to ensure access to, and protection of, vulnerable groups.<sup>9</sup> In particular, the

<sup>6</sup> A complex emergency, as defined by the IASC, is: "A humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing United Nations country program."

<sup>7</sup> Source: Afghan NGO Security Office (ANSO) and British Agencies Afghanistan Group (GROU) Monthly Update, June 2004. Quoted in: Gerard Mc Hugh and Lola Gostelow, *Provincial Reconstruction Teams and Humanitarian-Military Relations in Afghanistan* (London: Save the Children UK, 2004).

<sup>8</sup> This move towards a more integrated approach to mission planning and execution within the UN system has its origins in the *Report of the Panel on United Nations Peace Operations* ("The Brahimi Report") (A/55/305) of 21 August 2000, and in subsequent reports of the UN Secretary-General on implementation of the Report's findings and recommendations (for example, *Report of the Secretary-General on the implementation of the Report of the Panel on United Nations Peace Operations*, UN Doc. Ref. A/55/502, 20 October 2000).

<sup>9</sup> Reports of the Secretary General on the Protection of Civilians in Armed Conflict were published in 1999 (UN document reference S/1999/957), 2001 (S/2001/331), 2002 (S/2002/1300), and 2004 (S/2004/431). Reports available at: <http://ochaonline.un.org>





2001 Report of the Secretary-General on the Protection of Civilians in Armed Conflict identified the need for a structured, consistent approach to humanitarian negotiations with armed groups. In that report the UN Secretary-General stated that he had requested the Inter-Agency Standing Committee (IASC) to,

*"... develop a manual for access negotiations and strategies, including benchmarks for the engagement and disengagement of aid agencies, demands of conditionality, clearance procedures, needs assessments, and other principles outlined in the present report [on the Protection of Civilians in Armed Conflict]."*<sup>10</sup>

In response to the request of the Secretary-General, the IASC set up an Informal Working Group -- consisting of OCHA, OHCHR, UNHCR, UNICEF, UNDP, WHO and WFP -- to oversee the development of a manual on humanitarian negotiations, and initial research and consultations began in 2002.

This manual builds on that prior research and process of consultation, and also on field experiences of UN agencies, to provide a practical guide for UN humanitarian, development and human rights workers to guide and enhance their negotiations with non-state armed groups. It is intended that more consistent and effective negotiations with armed groups will assist in securing agreed outcomes that improve humanitarian conditions of those in need.

**Objective of this manual:**

*to provide a practical guide for UN humanitarian, development and human rights workers to enhance their negotiations with non-state armed groups.*

Furthermore, this manual is intended for use by humanitarian-, development and human rights organizations (for example, during pre-deployment training sessions) and by individuals tasked with conducting humanitarian negotiations with armed groups.

The process of drafting this manual was coordinated by OCHA's Policy Development and Studies Branch (New York), working in close collaboration with member agencies of the IASC Informal Working Group. OCHA's Policy Development and Studies Branch acts as a focal point for provision of support and advice on humanitarian negotiation with armed groups for particular inquiries or contexts, as and when requested. The relevant contact information is provided on the inside front cover of this manual.

## 1.4 Organization of this Manual

The following sections address five key aspects of humanitarian negotiations with armed groups. Chapter 2 examines the motivations and partners for humanitarian negotiations -- the "why" and "who" of these negotiations. Chapter 3 describes how humanitarian principles and policies frame the negotiations for humanitarian actors, and how they can guide the process of negotiation.

Chapter 4 provides practical guidance for those tasked with undertaking humanitarian negotiations across three phases of negotiation: Phase I - Preparation; Phase II - Seeking Agreement; and Phase III - Implementation. Chapter 5 explores additional considerations related to negotiation on specific issues. The body of the manual concludes with the implications of negotiation and follow-up to negotiation in Chapter 6. Examples from field experiences are included as short case studies throughout the manual.

<sup>10</sup> United Nations Security Council, *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, UN Doc. S/2001/331 (New York: United Nations, 30 March 2001) : paragraph 26.



Supplemental material is provided in two annexes to this manual: Annex I provides a worksheet to 'map' the characteristics of armed groups; Annex II includes a select listing of additional resources on humanitarian negotiations with armed groups.

## **1.5 Humanitarian Negotiations and Staff Security Policies, Procedures**

As with any type of humanitarian activity which increases the exposure of humanitarian workers to armed groups, humanitarian negotiations must be carried out within the framework of existing institutional security policies and procedures.

The guidance provided in this manual is not intended to supplant or circumvent existing security policies and guidelines. At all stages of humanitarian negotiations (Preparation; Seeking Agreement; and Implementation) humanitarian organizations must consult with designated security officials (UN/other) and must ensure that the operational aspects of the negotiations (e.g. travel to meet with members of an armed group) are conducted in accordance with the relevant security procedures.

In situations where security procedures require interaction with one party to a conflict (for example, requesting through-transit from a host government to an area controlled by an armed group), these interactions should be undertaken in a transparent and open manner such that they will be less likely to foster perceptions among armed groups of bias and lack of impartiality on the part of humanitarian organizations.



## 2 Humanitarian Negotiations: Motivations and Partners

### 2.1 Overview

This chapter addresses the "why" and "who" of humanitarian negotiation with armed groups: the "why" of humanitarian negotiations involves being clear about the reasons for negotiating, and how these motivations impact the process of negotiation.

Building on the working definition of armed groups presented in the introduction of his manual (Section 1.1), this chapter looks in more detail at the characteristics of these groups (the "who"), how those characteristics can shape the approach to negotiation, and the type of information that humanitarian workers should know about armed groups before they enter into negotiations with them.

### 2.2 Being Clear About Reasons for Negotiating

Since negotiation is but one form of engagement with armed groups (see Section 1.1), humanitarian organizations need to be clear about why they are entering into negotiations with these groups. It may be that some other type of interaction (perhaps an advocacy or liaison relationship) may in some cases be more appropriate.

For humanitarian actors, the overall objective of humanitarian negotiations should be to secure the cooperation of an armed group in reaching an agreed outcome or understanding that will facilitate or enhance humanitarian action.

Once it is clear that the intended objective of negotiation justifies the interaction, the actual process itself can provide additional, collateral reasons for negotiation:

- The process of negotiation can build trust and confidence between the parties, which can in turn result in humanitarian benefits separate from the actual substance of the negotiations.
- The process of negotiation can have a multiplier effect in terms of involving armed groups in a wider dialogue that may bring additional benefits (for example, the humanitarian negotiations may assist in resolving the underlying causes of the conflict). However, humanitarian negotiations must never be used as a substitute for political negotiations.

In some cases, the *process* of negotiation can take on a life of its own, overshadowing the purpose of the negotiations. For humanitarian negotiations it is crucial to keep the objectives of the negotiations clearly in sight, while ensuring that the process of negotiation stands the best chance of achieving those objectives.

#### The Substance of the Negotiations

The provision of humanitarian **assistance** to those in need and the provision and promotion of **protection** for vulnerable groups represent two interconnected dimensions of humanitarian action.<sup>11</sup> Humanitarian negotiations can be undertaken in pursuit of a number of goals spanning these two dimensions of humanitarian action:

<sup>11</sup> A growing consensus has emerged within the humanitarian community on the need to better integrate protection and assistance as two dimensions of humanitarian action. For example, in its Policy Paper on Protection of Internally Displaced Persons, the Inter-Agency Standing Committee (IASC) recognized the need to "integrate protection features into operational response and remedial action." See: Inter-Agency Standing Committee (IASC), *Protection of Internally Displaced Persons*, IASC Policy Paper (New York: IASC, 1999).



- **To secure humanitarian access** to reach those in need;
- **To seek agreement on ground rules** for activities and behavior of humanitarian actors and armed groups;
- **To secure agreement on operational mechanisms** to facilitate direct provision of assistance to those in need (especially in areas under the control or influence of armed groups);
- To agree on rules and behavior of belligerents that will improve the **protection of civilians** in areas under the control or influence of armed groups, in accordance with **international humanitarian law and international human rights law**;
- **To safeguard humanitarian security** -- a term used here to encapsulate the various aspects of physical and psychological safety of both humanitarian staff and beneficiaries;
- **To secure the release of persons being held by armed groups against their will** (including humanitarian workers held hostage and civilians detained by the group);
- **To secure agreement on special protection areas or periods** (for example, to secure agreement on conducting immunizations over a particular period of days);

Examples of humanitarian negotiations undertaken on some of these issues, and the different approaches to negotiation they may involve, are provided in Chapter 5.

Case Study: Impact of the Process of Humanitarian Negotiations on Armed Groups' Engagement in Political Dialogue

*In July 2004 the UK NGO Conciliation Resources hosted a workshop on "Engaging Armed Groups in Peace Processes," which included participants from armed groups, official and unofficial mediators in peace processes, donor governments and academics.*

*One theme of the discussion focused on the impact of engagement on humanitarian issues on the broader process of engagement in political dialogue. Some of the main points captured in that discussion were:<sup>12</sup>*

*→ humanitarian negotiation can shed light on a group's willingness and ability to negotiate more generally and can serve as a confidence building measure;*

*→ Investment in the success of negotiated humanitarian outcomes might give an armed group a greater stake in not returning to conflict;*

*→ "Engagement on humanitarian questions potentially creates the "political cover" for talks to spill over into more political issues, thus easing the armed groups into the peace process."*

*→ "intermediaries and armed groups should think proactively about the possible positive impact humanitarian engagement could have in the process of political engagement."*

*However, notwithstanding the perspectives on humanitarian negotiations being used as "political cover" captured in these discussions, humanitarian negotiations must remain separate from political negotiations; must retain a distinct humanitarian purpose and identity; and must not be used as a substitute for political negotiations.*

<sup>12</sup> Conciliation Resources, *Engaging Armed Groups in Peace Processes*. Joint analysis workshop report (London: Conciliation Resources' Accord Programme, July 2004).



## Knowing When to Adopt a More Cautious Approach to Negotiation

In all cases of negotiation with armed groups, humanitarian organizations must carefully balance the expected outcomes against the possible consequences of negotiation (described in Section 6.2). In certain cases, conditions may dictate that humanitarian staff should approach negotiations more cautiously, or perhaps should not negotiate at all with certain groups.

The circumstances in which humanitarian practitioners may need to take a more cautious approach to negotiations with armed groups include the following:

- When there is a likelihood that negotiations could negatively impact humanitarian conditions or jeopardize the security of the beneficiaries: Armed groups may sometimes use their ability to exert force against civilian populations as a bargaining tool during negotiations. Humanitarian negotiators must be aware of this potential from the outset. In addition, negotiations that are undertaken poorly, especially multi-party negotiations, can in some cases actually exacerbate disputes between opposing armed groups, and may therefore lead to a worsening of humanitarian and security conditions.
- When the humanitarian negotiations can put the lives of the armed group interlocutors at risk: Identification of the armed group's negotiators can in some instances place them at risk of being targeted (physically or by indirect sanction on a particular population group e.g. the village home to the armed group representative(s)) by the group's adversaries. Targeting of armed group interlocutors as a result of their participation in humanitarian negotiations can in turn result in increased security risks for the humanitarian negotiators, and potential termination of the negotiations.
- When armed groups attempt to use humanitarian negotiations to enhance their perceived legitimacy: Armed groups may seek to use humanitarian negotiations to enhance their positioning in other interactions (e.g. with political actors), and to misuse these negotiations as a vehicle for supporting their claims of legitimacy. In case of doubts in this regard, humanitarian negotiators should request a demonstration of commitment from the armed group before- or during negotiations.
- When armed groups are believed to be playing several humanitarian actors off against each other for their own gain: Armed groups may attempt to enter into separate negotiations with different humanitarian agencies, in an effort to leverage their position and fragment the humanitarian community. This reinforces the need for humanitarian agencies to adopt a coordinated or collective approach to humanitarian negotiations.
- When the armed group attaches conditions for the implementation of an agreement that could adversely affect the civilian population: Humanitarian negotiators should not enter into agreements with armed groups when such agreements have conditions attached that may adversely affect the humanitarian circumstances of others.

## 2.3 Characteristics of Armed Groups

A working definition of non-state armed groups was provided in Section 1.1 of this manual. Table 1 elaborates on the key characteristics of armed groups captured in that definition, and identifies what those characteristics mean for humanitarian negotiations with such groups.



<b>Characteristics of Armed groups: They ...</b>	<b>What humanitarian negotiators need to be aware of based on these characteristics:</b>
Have the potential to employ arms in the use of force for political, ideological, or economic objectives;	<p>→ Humanitarian negotiations do not infer any legal status, legitimacy or recognition to the armed group;</p> <p>→ Humanitarian negotiators should explore the driving motivations and interests behind the actions of the armed group (see below);</p> <p>→ Humanitarian negotiations do not in any way dilute accountability of the armed group for past/current/future actions, especially in cases where armed groups act outside the norms of international law (Section 3.3);</p>
Have a group identity, and act in pursuit of their objectives as a <i>group</i> ;	<p>→ Individual members of an armed group will always have their own 'agendas', however an armed <i>group</i> (different from a group of armed individuals) shares some common history, aspirations, objectives, or needs that are attributes of the <i>group</i>;</p> <p>→ Members of an armed group will be strongly influenced by group conformity pressures such as depersonalization of victims; perceptions of impunity; moral disengagement and obedience to group authority;<sup>13</sup></p>
Are not within the formal military structures of states, state-alliances or intergovernmental organizations;	<p>→ This characteristic of non-state armed groups has important implications for enforcing accountability for the actions of members of the group. The 'extra-state' status of armed groups means that the applicable legal provisions relating to the duties and obligations of these groups under international law may differ from the duties and obligations of states, and for certain provisions there remains some legal uncertainty as to the extent that those provisions apply to armed groups; (see Section 3.3 below).</p>
Are not under the control of the state(s) in which they operate	<p>→ Armed groups may not be under the control of the state(s) in which they operate, but they may receive direct or indirect support of the host government or other states, or may be provided with safe haven in certain countries;</p> <p>→ Humanitarian negotiators need to be aware of the potential for influencing parties that support armed groups. Hence there may be other counterparts for humanitarian engagement (including negotiation) beyond the initial targeted armed group;</p>
Are subject to a chain of command (formal or informal)	<p>→ This is an important attribute of armed groups, because it means (at least in theory) that there is some degree of centralized command and control, however limited, over the actions of group members. When this centralized command structure breaks down, it can no longer be considered to be one armed group, and humanitarian negotiators may have to identify interlocutors within several factions of the same group;</p> <p>→ When a chain of command (however limited) is functioning, it increases the likelihood that lower-ranking members of the group will respect the undertakings and agreed outcomes negotiated by and with their leaders;</p> <p>→ In implementing an outcome agreed with the leaders of an armed group, humanitarian workers should attempt to identify the local chain of command to increase the likelihood that any agreed outcome will be respected and implemented by lower-ranking members of the group;</p> <p>→ Humanitarian negotiators should communicate their expectations that an agreed outcome will be respected by all members of the group.</p>

**Table 1 - Characteristics of armed groups and what they mean for humanitarian negotiators**

<sup>13</sup> For more information on group conformity and the actions of combatants, see: Daniel Munoz-Rojas and Jean-Jacques Frésard, *The Roots of Behaviour in War: Understanding and Preventing IHL Violations* (Geneva: International Committee of the Red Cross, October 2004).



Case Study: Encouraging communicating through chain of command

In Sierra Leone during 1999/2000 the UN World Food Program (WFP) found that in many cases it could not be taken for granted that political-/armed group leaders had communicated the existence, scope or objectives of any negotiated agreement to local-level commanders and members of the group. One approach used to bridge this communication gap was 'sensitization' of members of the group on the ground by influential armed group commanders:

"As a way to reduce the lack of communication between official leaders of armed groups and their local commanders, and ensure that access would be given on the ground, major international food distributions led by WFP were preceded by a sensitization of the forces on the ground carried out by influential RUF commanders."<sup>14</sup>

## 2.4 Learning About the Armed Group(s)

In a negotiation setting, each party is a partner in the process. Humanitarian practitioners may not wish to consider representatives from armed groups as "partners", *per se*, but since the objective of the negotiation is to arrive at an outcome that no one party could achieve independently, each party must view the other as having a shared role and responsibility in reaching such an agreed outcome.

Finding out as much as possible about the motivations, interests and needs of the other party can greatly assist negotiators in securing better outcomes. In this regard, a little preparation goes a long way. Each armed group is different, but consideration of the following general characteristics of armed groups can increase the efficiency of the negotiations as well as the desired outcomes and means for implementing/monitoring them: (a) motivations; (b) structure; (c) principles of action; (d) interests; (e) constituency; (f) needs; (g) ethno-cultural dimensions; (h) control of population and territory.

These characteristics of armed groups are presented in a 'Worksheet' provided in Annex I to this manual. This worksheet can be used by humanitarian negotiators to prepare for negotiations with an armed group. In addition, the following observations and questions can assist humanitarian negotiators in finding out more about their negotiating partners.

### **Motivations**

What was the original motivation for the formation, behavior and conduct of the armed group, and for using armed force (rather than pursuing other means)?

In terms of founding motivations, armed groups generally fall into two categories: they can be *reactionary* (reacting to some situation, or something that members of the groups experienced or with which they identify), or *opportunistic*, meaning that they seized on a political or economic opportunity to enhance their own positions.

The motivations underlying the formation and activities of the armed group may in some cases be carried over into the armed group's negotiating strategy. Knowing more about these driving motivations can help humanitarian negotiators prepare the negotiation and anticipate the choices and decisions that the armed group may make prior to-, during- or following negotiations.

<sup>14</sup> World Food Programme (WFP), *Review of WFP Experience in Securing Humanitarian Access: Compilation of Past Practice*, 2000.



**Structure**

What are the current motivations of the armed group?

It may be possible to identify current motivations of the group from statements/interviews by the group's leader(s) or representatives. The group's motivations and objectives may have changed over time. Humanitarian negotiators should not assume that the group's stated motivations are shared among all group members.

What is the organizational and leadership structure of the armed group? Does it have a single leader; a group of leaders; changing membership?

The organization's leadership structure has implications for the ability to secure commitment and implementation from the leadership to any agreed outcome of negotiations. Is the structure of the armed group hierarchical or 'flat'? Armed groups with several hierarchical layers in their organizational structure may require that proposals developed during negotiations be elevated through successive levels for a decision. The stability of the leadership (have there been recent changes in leadership?) will also have implications for the sustainability and implementation of any agreed outcome of negotiations.

What is the power structure of the armed group? Are there coalitions and alliances between and within groups?

Identifying the locus of power within the armed group will assist in identifying the appropriate interlocutors with whom to negotiate, and the extent to which the armed group interlocutors can 'deliver' on their commitments during negotiations.

What is the level of autonomy among regional/local sub-commanders? Is there a regional command structure, or is it 'cell'-like?

If regional- or local-level field commanders of the armed group act with high levels of autonomy (from the leadership), these commanders may decide not to honor the outcome agreed with the group's leadership, or may indeed seek to negotiate further for local implementation. Humanitarian negotiators may need to enter into these additional local-level negotiations to ensure local implementation.

**Principles of Action**

Just as humanitarian negotiators are guided by core principles (see Section 3.2), so too will armed groups be guided to some degree by their principles of action.

The principles of action of armed groups will most likely be very different from the humanitarian principles guiding humanitarian actors: armed groups may be guided by principles of guerrilla warfare; religious, ideological, political or cultural principles (e.g. retribution for dishonoring a clan/tribe); or purely economic interests. For example, the Lord's Resistance Army (LRA) armed group is guided by the vision of the group's leader, Joseph Kony, to establish a government based on the biblical Ten Commandments.

Humanitarian negotiators don't have to agree with the principles of action of the armed group but learning more about, and understanding, these guiding





principles can improve the likelihood of a successful negotiation.

**Interests**

*What are the group's interests ... in general, and in the context of a specific negotiation?*

To learn more about the interests of an armed group, humanitarian negotiators should, first and foremost, ask! Too often, humanitarian negotiators enter the interaction with pre-conceived notions of the group's interests.

At the same time, humanitarian negotiators need to be aware of the potential for armed groups to miss-state their interests as part of their negotiation strategy. In all cases, a small amount of time invested in preparing for the negotiations -- for example, by looking at previous statements from the groups' leaders -- will shed light on their interests.

**Constituency**

*Does the armed group claim a legitimate constituency?*

Armed groups may profess to act on behalf of a particular group (e.g. ethnic group, tribe), when in many cases the group has no basis for claiming a mandate from the purported constituents.

Humanitarian negotiators should be aware of the potential for the armed group to use the process of negotiations as a means of exerting further control over their stated constituency. Humanitarian negotiators should therefore establish and maintain separate lines of communication with *bona fide* community and civil society leaders from within the population that may be under the control of the armed group (e.g. tribal elders; women's committees; religious leaders).

**Needs**

*What are the needs of the armed groups?*

Needs are not the same as interests. An armed group may express an interest in achieving a certain outcome, but it will also have organizational, resource- and identity-related needs to satisfy throughout the negotiation process and beyond. In some cases, these needs may be reduced to the needs of the person negotiating on behalf of the armed group. Is he/she using the negotiations purely to bolster his/her position within the organization?

Humanitarian negotiators must be attuned to the potential for the existential or functional needs (e.g. financial needs) of the armed group, as an organization, to strongly influence the negotiation strategy of the group.

**Cultural and Ethnic Dimensions**

*Are there certain cultural, religious or ethnic characteristics of the armed group that may influence the armed group's strategy/approach?*

Humanitarian negotiators should consider how cultural, religious or ethnic characteristics of an armed group might influence the group's strategy, commitment to implementation and/or conduct.

In this regard, local knowledge of the culture and the population from which the armed group is drawn can be invaluable. There may be traditional 'warrior' or 'hunter' identifications with being a member of an armed group, or the group



**Control of Population and Territory**

may state that it is acting legitimately in accordance with the religious beliefs/traditions of its members.

*What is the extent of control exerted by the armed group over a given population or territory?*

Armed groups may claim more extensive control over populations or territories than is actually the case. In the case of negotiations related to protection of civilians in a particular area or delivery of assistance to a particular population group, humanitarian negotiators should assess the actual level of control exerted by the armed group prior to entering into negotiations.

Once again, humanitarian negotiators must make it clear to their counterparts during the negotiations that any discussion of de facto population/territorial control does not represent recognition or legitimization of that authority.

In addition to these characteristics of the armed group, the **negotiating history of the group** can provide valuable information on the group's strategy, objectives and commitment to the negotiations. Hence, humanitarian negotiators should investigate previous negotiations with the group. The easiest way to do this may be to gain the perspectives of previous interlocutors (even if they were not negotiators) with the armed group.

## **2.5 Humanitarian Partners in Negotiations**

In addition to learning more about the armed group(s) participating in the negotiations, humanitarian agencies must be cognizant of the motivations, needs and interests of other parties on the 'humanitarian' side. This is especially true when humanitarian negotiators come from different organizations. Each humanitarian negotiator brings a different perspective to the table and therefore it is critical for humanitarian negotiators to arrive at a common understanding of motivations, desired outcomes and alternatives to negotiation before entering into the process with the armed group.

The following points should be taken into consideration in multi-agency negotiations with armed groups:

- Among the humanitarian parties to the negotiations, **one or more lead negotiators should be identified** who should act as the primary representative(s) of humanitarian agencies, to ensure that the humanitarian community in a specific context speaks with one voice. In addition to a lead negotiator, it is useful to identify an alternate person to lead the interactions to ensure continuity and consistency throughout the negotiation process.
- In situations where humanitarian negotiations are undertaken by a civilian representative whose areas of responsibility extend beyond purely humanitarian issues (for example, if a Special Representative with overall authority over an integrated UN mission were also to lead humanitarian negotiations), the **humanitarian negotiations and their underlying humanitarian objectives should remain distinct from political- and other negotiations**. Political negotiations should not incorporate humanitarian provisions that are contingent on political actions or agreements. In this regard, the negotiating party should include a



prominent member from the humanitarian community such that the humanitarian nature and objectives of the negotiations can be demonstrated and maintained (e.g. UN Humanitarian Coordinator, or head of a humanitarian country program).

- Before entering into collective negotiations with an armed group, humanitarian agencies (and especially those within the UN system) must **agree on the process and intended outcomes of the negotiation** ... and must agree to abide by any agreed outcome negotiated by a designated representative from the humanitarian community.
- For humanitarian agencies outside the UN system, the UN can play an important role in involving those humanitarian actors in the process of negotiations. Getting early 'buy in' from a broad range of humanitarian agencies will assist in securing commitment from these agencies to any agreed outcome with the armed group.

Case Study: Confusion, but then clarification, of UN political and humanitarian roles in Angola

*There was no clear strategy for negotiating humanitarian access in Angola in the months immediately following the resumption of fighting between UNITA and government forces in September 1992. This renewed fighting followed rejection by UNITA of the September 1992 election outcome.*

*In response to worsening humanitarian conditions, the UN Security Council passed resolution 811 (12 March 1993) which called on parties to the conflict to allow unimpeded access to those in need, and mandated the SRSG to "coordinate humanitarian assistance with the resources at her disposal." This resolution provided the mandate for the SRSG to conduct humanitarian negotiations, at a time when she was also facilitating political negotiations. Concerns about this linkage between political and humanitarian negotiations lead the Department of Humanitarian Affairs to set up a Humanitarian Assistance Coordination Unit (UCAH) in April 1993.*

*UCAH's mandate included negotiation of humanitarian access and protection of humanitarian space. The UN Humanitarian Coordinator directing UCAH drew up an Emergency Relief Plan (ERP) for humanitarian assistance, to which both parties to the conflict subsequently agreed, if only in principle.*

*By establishing itself as a distinct humanitarian entity, thereby severing the linkages between political and humanitarian negotiations, UCAH played a central role in negotiations with the Government of Angola and UNITA on humanitarian issues, and worked to maintain a neutral and impartial posture by referring issues of a political nature to the SRSG.<sup>15</sup>*

<sup>15</sup> This case study is drawn from: Anna Richardson, *Negotiation Humanitarian Access in Angola: 1990 – 2000*, New Issues in Refugee Research, #18 (Geneva: UNHCR, June 2000).



## 3 Framing the Negotiations

### 3.1 Overview

Humanitarian principles, humanitarian policies and international law provide a framework and source of guidance for humanitarian negotiations with armed groups. They can be potent tools for humanitarian negotiators to: (i) define boundaries within which to seek agreement; (ii) assist in generating options for consideration during negotiations; (iii) provide reference benchmarks for evaluation of options and monitoring implementation; (iv) frame the legal obligations of armed groups; and (v) provide incentives to armed groups to negotiate.

This chapter briefly reviews humanitarian principles, humanitarian policies, and relevant provisions of international law, and suggests practical ways in which they can guide humanitarian negotiations with armed groups.

### 3.2 Humanitarian Principles Underlying Negotiations With Armed Groups

Humanitarian negotiations are a tool to enable, facilitate and sustain humanitarian action, and therefore they must be undertaken in accordance with the three core principles of humanity, neutrality and impartiality that underpin all humanitarian action (Box 1).<sup>16</sup>

**Humanity:** Human suffering must be addressed wherever it is found, with particular attention to the most vulnerable in the population, such as children, women and the elderly. The dignity and rights of all victims must be respected and protected.

**Neutrality:** Humanitarian assistance must be provided without engaging in hostilities or taking sides in controversies of a political, religious or ideological nature.

**Impartiality:** Humanitarian assistance must be provided without discriminating as to ethnic origin, gender, nationality, political opinions, race or religion. Relief of the suffering must be guided solely by needs and priority must be given to the most urgent cases of distress.

#### **Box 1 - Fundamental principles of humanitarian action**

These three fundamental principles have their origins in operational humanitarian practice (especially that of the Red Cross Movement), and have been embedded in four main elements of international law: the United Nations Charter; International Humanitarian Law; the Universal Declaration of Human Rights; and customary international law. These principles have also been incorporated into voluntary codes of conduct and organizational mission statements guiding humanitarian agencies and donors.<sup>17</sup>

<sup>16</sup> The guiding principles of humanity, neutrality and impartiality were adopted by the United Nations General Assembly in resolution 46/182 (19 December 1991).

<sup>17</sup> See, for example: International Red Cross Movement and NGOs, *The Code of Conduct of the International Red Cross Movement and Non-Governmental Organisations in Disaster Relief* (1994). Available through the Steering Committee for Humanitarian Response (SCHR).



Additional principles complimenting these three core tenets of humanitarian action include: Dignity; Respect for Culture and Custom; Do No/Less Harm; Operational Independence; Sustainability; Participation; Accountability; Transparency; and Prevention.<sup>18</sup>

Using Humanitarian Principles to Frame Humanitarian Negotiations

Humanitarian principles help to frame humanitarian negotiations in three ways, by:

1. providing a source of guidance for humanitarian negotiators on **how** negotiations should be undertaken;
2. defining boundaries within which to seek agreement (they set limits to **what** humanitarian actors can commit to during negotiations); and
3. providing a set of criteria for **developing options** for consideration by the negotiating parties.

Based on these three modalities, Table 2 suggests ways in which the humanitarian principles mentioned above can be used to guide the actions of humanitarian negotiators.

**Table 2 - Humanitarian principles and what they mean for humanitarian negotiations**

Humanitarian principle	What this means for humanitarian negotiations ...
<i>Core Humanitarian Principles</i>	
<b>Humanity</b>	→ Humanitarian negotiators should clearly communicate to the armed group the paramount interest of their organization(s) as being to alleviate human suffering; → Armed groups that have limited or no knowledge of the motivations and objectives driving humanitarian action may be suspicious of the motives of humanitarian actors. They may believe that assistance is being provided to opposing groups, or that all the assistance should go to their group, rather than to civilians that are most in need;
<b>Neutrality</b>	→ Humanitarian negotiations should never endorse, or be perceived to endorse, a particular political aspiration or objective of the armed group; → Negotiation does not mean acceptance, and humanitarian negotiators must make clear that by entering into negotiations they are not endorsing- or according any recognition to the armed group;
<b>Impartiality</b>	→ Humanitarian negotiators must not enter into an agreement with the armed group that would constrain humanitarian action such that it is no longer delivered on the basis of need alone; → Humanitarian negotiators cannot accept conditions that the armed group may wish to impose restricting beneficiaries of assistance and protection to those within certain ethnic-, political- or religious groups;
<i>Additional Principles of Humanitarian Action</i>	
<b>Operational independence</b>	→ Humanitarian negotiators must ensure that humanitarian actors retain operational control and direction of humanitarian activities in any agreed outcome (for example, on issues such as decision-making regarding beneficiaries; modes of assistance etc.);
<b>Participation</b>	→ Wherever possible, the perspectives of the beneficiary population should be incorporated into the substance and process of negotiation;

<sup>18</sup> These principles are drawn from: *The Code of Conduct of the International Red Cross Movement and Non-Governmental Organisations in Disaster Relief* (1999) and OCHA documents on principles and policies for humanitarian engagement.



Humanitarian principle	What this means for humanitarian negotiations ...
Participation (cont...)	→ In many cases, representatives of groups that humanitarian organizations seek to assist may be unable to participate directly in the negotiations, due to logistical constraints; difficulties in identifying legitimate representatives; and security concerns (e.g. possible reprisals by armed group);
Accountability	→ Humanitarian negotiators and their parent organizations are accountable -- to those they seek to assist, and to their governing bodies -- for any outcomes to which they may agree in the course of negotiations;
Transparency	→ Humanitarian negotiations should be undertaken in a transparent manner, with honesty, openness and clarity about the purposes and objectives of the negotiations. By conducting negotiations in an open and transparent manner, humanitarians will be less likely to be perceived as being partial to a particular group.
Do No/Less Harm	→ Humanitarian negotiators should strive to "do no harm" or to minimize the harm that may be inadvertently done simply by humanitarians being present and providing assistance (e.g. where aid is used as an instrument of war by denying access or attacking convoys). To minimize these effects, assistance should be provided in ways that are supportive of recovery and long-term development.  → Humanitarian negotiations, and any agreed outcome between humanitarian organizations and armed groups, should at a minimum not cause harm or result in reduced protection of civilians.
Respect for culture and custom	→ Humanitarian negotiators should strive to understand local customs and traditions to ensure that humanitarian work can be conducted with respect for local values to the extent that they do not conflict with internationally recognized human rights (e.g. some interventions require particular sensitivity to local customs, such as dealing with survivors of rape). (See Section 4.4).

Case Study: Two dimensions of impartiality

**REDUCTION IN PERCEIVED IMPARTIALITY OF WFP IN ANGOLA:** In Angola during 1993/1994, constraints on access by WFP assessment teams to UNITA-controlled areas resulted in a greater percentage of food aid being delivered to government-controlled areas (where WFP had more access). WFP subsequently faced accusations of impartial delivery of assistance in favor of the government-controlled areas. UNITA asserted that these areas were better able to withstand UNITA advances due to the food aid, and this resulted in tensions between UNITA and WFP, which at times manifested itself in blockage of road convoys and incidents of shooting at aid aircraft.<sup>19</sup>

**ARMED GROUP PERCEPTION OF IMPARTIALITY:** In Colombia, the Autodefensas Unidas de Colombia (AUC) armed group has expressed criteria for accepting contacts with humanitarian organizations, which include impartiality, neutrality and confidentiality. This represents a rather unique example of an armed group that is well informed of humanitarian principles and monitors the actions of humanitarian organizations that may wish to engage with the armed group.<sup>20</sup>

<sup>19</sup> Source: World Food Programme (WFP), *Review of WFP Experience in Securing Humanitarian Access: Compilation of Past Practice* (Rome: World Food Program, 22 November 2000).

<sup>20</sup> Centre for Humanitarian Dialogue (CHD), *Humanitarian Engagement with Armed Groups: Colombian Paramilitary* (Geneva: Centre for Humanitarian Dialogue, October 2002).



By providing limits beyond which humanitarian negotiators cannot compromise ("No Pass" limits), humanitarian principles can actually strengthen the position of the humanitarian negotiator, enabling him/her to use the principles to set clear limits to the other parties' demands. For this purpose, humanitarian negotiators can invoke the fundamental principles, and could argue, for example:

*"Our organization cannot agree to distribute the food only to camps under your control, because, as you know, we provide assistance wherever there is need"*

When using humanitarian principles and policies as "No Pass" limits beyond which humanitarian agencies cannot trespass, it is important that humanitarian negotiators communicate these limits in non-threatening language and tone, and clearly communicate the reasons why the organization cannot agree to operate outside these principles.

In addition to establishing "No Pass" limits to humanitarian negotiations, humanitarian principles provide a basis for developing options to be considered by parties to the negotiations. Continuing with the example above, an option for agreement could be presented as follows:

*"Our organization cannot agree to distribute the food only to camps under your control, because, as you know, we provide assistance wherever there is need [USE PRINCIPLE TO DEFINE BOUNDARY]. What we can do, is to include the civilians in those camps in our needs assessment ... and that will ensure that those most in need in those camps also can be helped." [USE PRINCIPLE TO GUIDE OPTIONS]*

Case Study: Communicating Humanitarian Principles

*"Regarding Burundi, during a first meeting called by the Henry Dunant Center in Geneva in 1999, gathering representatives of the Burundian army, opposition forces and the humanitarian community, it became clear that in order to gain greater access to populations caught up in conflict zones, humanitarian agencies should first explain their roles and mandates. Until then, none of the [warring] parties understood clearly the role or the activities of the humanitarian community or the UN in Burundi. The Burundian army accused the UN of "feeding the rebels", while the opposition forces accused the UN of being too close to the government and for distributing aid only where the government dictated. The opportunity to explain the programmes and assert the neutrality of the international humanitarian community was a key breakthrough in this meeting." (Source: UN World Food Programme)<sup>21</sup>*

### 3.3 Elements of International Law Relevant to Humanitarian Negotiations

In addition to fundamental humanitarian principles, the provisions of international law -- including International Humanitarian Law (IHL), customary international law, International Human Rights Law (IHRL), and The Rome Statute of the International Criminal Court (ICC) -- provide important framing elements for undertaking humanitarian negotiations.<sup>22</sup>

This section briefly reviews elements of international law that are most relevant to humanitarian negotiations with armed groups, and suggests ways in which these legal provisions can guide humanitarian negotiations.

<sup>21</sup> Source: World Food Programme (WFP), *Review of WFP Experience in Securing Humanitarian Access: Compilation of Past Practice*, 2000.

<sup>22</sup> For a practical 'primer' on elements of international law, see: Inter-Agency Standing Committee Task Force on Humanitarian Action and Human Rights, *Frequently Asked Questions on International Humanitarian, Human Rights and Refugee Law in the Context of Armed Conflict* (Geneva: IASC, 2004). Available at: <http://www.humanitarianinfo.org/iasc/>



### International Humanitarian Law (IHL)

International Humanitarian Law is a set of rules, codified in legal instruments, that seeks to restrict the means of armed conflict, and to protect civilians and others who are not, or are no longer, participating in hostilities from the effects of armed conflict.<sup>23</sup> The legal instruments that make up this body of law include (among others): the Hague Conventions of 1907; the four Geneva Conventions of 1949; and the two Protocols Additional to the Geneva Conventions (1977). IHL is based on treaty law i.e. it constitutes agreements between *states*.

International humanitarian law applies to situations of international armed conflict (between two or more states) and non-international armed conflict (within a state, and involving non-state armed groups) and binds all actors to an armed conflict. It lays down rules that are applicable to both state and non-state actors. The provisions of IHL that are most relevant to armed groups (as opposed to states) engaged in conflict are Common Article 3 of the Geneva Conventions of 1949, and Additional Protocol II of 1977.<sup>24</sup>

*"In the case of armed conflict not of an international character occurring in the territory of one of the [Parties to the Four Geneva Conventions] each party to the conflict shall be bound to apply, as a minimum, the following provisions:*

*(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.*

*To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

*(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*

*(b) taking of hostages;*

*(c) outrages upon personal dignity, in particular humiliating and degrading treatment;*

*(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*

*(2) The wounded and sick shall be collected and cared for."*

#### **Box 2 - Common Article 3 of the Four Geneva Conventions of 1949<sup>25</sup>**

Common Article 3 of the Geneva Conventions specifies a number of minimum provisions that each party to the (non-international) armed conflict, including an armed group, is required to uphold (see Box 2). Additional Protocol II (1977) to the Geneva Conventions develops and supplements the provisions of Common Article 3, and applies to armed conflicts which,

<sup>23</sup> For more information, see: International Committee of the Red Cross, *What is International Humanitarian Law?* (ICRC, Geneva, July 2004). Available at: <http://www.icrc.org>

<sup>24</sup> For more information on the applicability of IHL to armed groups, see: Marco Sassoli, *Possible Legal Mechanisms to Improve Compliance by Armed Groups with International Humanitarian Law and International Human Rights Law*. Paper submitted at the Armed Groups Conference, Vancouver, 13-15 November 2003.

<sup>25</sup> Extract from Common Article 3 to all four Geneva Conventions of August 12 1949





*"take place in the territory of a [state signatory to the Protocol] between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory..."*

Additional Protocol II contains provisions relating to humane treatment of those not taking part in hostilities; care of the sick and wounded; and protection of the civilian population.

Common Article 3 and Additional Protocol II therefore define criteria for regulating the means of armed conflict and for protecting civilians in relation to non-state armed groups.

### Customary International Law

Customary international law is the body of rules and norms that emanate from established practice - and the widely-held belief that such practice is warranted as a matter of law. Essentially, customary international law is based on states' practice and their sense of legal obligation.

For example, even if a state is not a signatory to some of the treaties governing conduct of hostilities in international humanitarian law, the established practice of that state may dictate that it does not deliberately target infrastructure essential to survival of civilians (e.g. water treatment plants). Another example of international customary law is the practice of protecting religious and cultural objects during armed conflict.

One of the most salient provisions of customary international law as it relates to situations of armed conflict is the so-called Martens Clause, which appeared in earlier international law treaties and is included in the preamble of Additional Protocol II to the Geneva Conventions of 1949.<sup>26</sup> This Clause states that:

*"...in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience..."*

The implication of this clause and other provisions of international customary law is that the actions of armed groups in times of conflict -- even if not governed explicitly by the more formal treaty law -- are constrained by norms of established practice regarding protection of those not or no longer engaged in hostilities.

### International Human Rights Law (IHRL)

International human rights law is a body of international law made up of international treaties, declarations and covenants that define the universal, interdependent and indivisible entitlements of individuals. These instruments -- including (among others) the Universal Declaration of Human Rights (1948) and the International Covenants on Civil and Political Rights (1966) and on Economic, Social and Cultural Rights (1966) -- define obligations of (primarily) states towards individuals in upholding, fulfilling and ensuring respect for those rights.

As in the case of international humanitarian law, the treaties and covenants that constitute international human rights law are signed and ratified by *states*. While states hold primary responsibility for safeguarding the human rights of populations within their territories, the rights themselves are accorded to individuals. An armed group cannot be a party to the existing human rights treaties/covenants, although individual members of the group can be held accountable for breaches of human rights norms, either under national law, or under

<sup>26</sup> For more information on the origins, legal interpretation and scope of application of the Martens Clause, see: Rupert Ticehurst, "The Martens Clause and the Laws of Armed Conflict," *International Review of the Red Cross* 317 (April 1997) 125--134. Available at: <http://www.icrc.org>



international law when such breaches also constitute crimes against humanity (see section on International Criminal Court below).

International human rights law applies both in peacetime and in times of conflict, although States parties to certain international treaties may exceptionally derogate from certain civil and political rights under strictly defined circumstances (in a state of public emergency, for example). There are nevertheless certain rights that can never be suspended – not even in war. The International Covenant on Civil and Political Rights (ICCPR) provides that the following rights may never be derogated from:

- Right to life (art. 6),
- Prohibition of torture or cruel, inhuman or degrading treatment punishment (art. 7),
- Prohibition of slavery (art. 8, paras.1 and 2),
- Prohibition of imprisonment because of inability to fulfil a contractual obligation (art. 11),
- Prohibition of retroactive application of criminal law (art 15)
- Right to recognition as a person before the law (art. 16), and
- Freedom of thought, conscience and religion (art 18).

Most human rights treaties, among them the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child and its two Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflicts, do not provide for the possibility of derogation at all.

In addition, certain provisions of international human rights law constitute customary law (as discussed above). Consequently, the norms listed below are considered to be binding on all states, regardless of whether the state has explicitly consented to be bound by a certain treaty. These include:

- freedom from slavery;
- freedom from torture and cruel, inhuman or degrading treatment or punishment;
- freedom from arbitrary deprivation of life;
- freedom from arbitrary arrest and detention;
- freedom of thought, conscience and religion;
- presumption of innocence;
- prohibition of executing pregnant women or children;
- prohibition of advocacy of national, racial or religious hatred;
- prohibition of denial to persons of marriageable age the right to marry; and
- prohibition of denial to minorities of the right to enjoy their own culture, profess their own religion, or use their own language.

### The Rome Statute and The International Criminal Court (ICC)

The International Criminal Court (ICC) is the first, permanent, international court established to promote the rule of law and to exercise its jurisdiction *"over persons for the most serious crimes*



of international concern."<sup>27</sup> The Court was established by the Rome Statute of the International Criminal Court on 17 July 1998, which entered into force on 1 July 2002.

The Rome Statute sets out the Court's jurisdiction, structure and functions. The Statute applies to situations of both international and non-international armed conflicts, and for the latter, also to conflicts between armed groups. It expands on the protections afforded to those not participating in a conflict under the four Geneva Conventions of 1949.

The Rome Statute and the International Criminal Court are highly relevant to armed groups participating in conflicts, because:

- The Rome Statute establishes jurisdiction of the ICC over **individual members of an armed group** in situations of **non-international armed conflict**; [Rome Statute, Articles 1, 8(2)(c)-(f)]
- In the context of non-international armed conflicts, The Rome Statute defines "war crimes" to include, "***serious violations of article 3 common to the four Geneva Conventions of 12 August 1949***" [Rome Statute, Article 8(2)(c)] and twelve other specific types of actions;<sup>28</sup> [Article 8(2)(e)]
- The Rome Statute applies to armed conflicts that take place in the territory of a State where there is **protracted** conflict between either "*governmental authorities and organized armed groups* or *between such groups*"; [Rome Statute, Article 8(2)(f)]
- The ICC can exercise its jurisdiction when either (i) the State on the territory of which the conduct occurred is a party to the Rome Statute; OR (ii) the State of which the accused person is a national is a party to the Rome Statute; [Rome Statute, Article 12(2)]
- The Rome Statute provides for **individual criminal responsibility** for members of armed groups for acts that constitute crimes under the Statute; [Rome Statute, Article 25]
- The Rome Statute establishes **criminal responsibility of armed group military commanders** for acts defined as crimes under the Statute committed by their subordinates within the jurisdiction of the ICC [Rome Statute, Article 28].

The Rome Statute and the International Criminal Court can have a powerful deterrent effect on members of an armed group as they can now be held individually accountable for acts they commit that constitute crimes under the provisions of the Statute and within the jurisdiction of the ICC.

However, humanitarian negotiators should be careful not to use, or be seen to use, the International Criminal Court as a threat to armed groups to advance humanitarian negotiations. Humanitarian negotiators need to strike a delicate balance between identifying actions of the armed group that may constitute crimes under the Rome Statute, and being seen to act as agents of the ICC.

<sup>27</sup> Article 1 of the 1998 Rome Statute of the International Criminal Court. For more information on the International Criminal Court, see: <http://www.icc-cpi.int/>

<sup>28</sup> The twelve categories of action covered by Article 8(2)(e) include: (i) attacks against the civilian population; (ii) attacks against buildings etc, using the distinctive emblems of the Geneva Conventions; (iii) attacks against humanitarian and peacekeeping personnel/resources; (iv) attacks against religious, charitable and other types of building; (v) pillaging a town/place; (vi) acts of sexual violence; (vii) conscripting/enlisting children (< 15 years) in armed groups; (viii) forced displacement of civilians; (ix) "Killing or wounding treacherously a combatant adversary"; (x) declaring that no quarter will be given; (xi) subjecting detainees to physical mutilation or medical/scientific experiments; (xii) destroying or seizing the property of the adversary.



Additional Legal Provisions Relevant to Armed Groups

In addition to the provisions of IHL, IHRL and customary international law, there are additional legal provisions and judicial entities of which humanitarian negotiators should be aware in terms of their relevance to the conduct and accountability of armed groups. Some of these provisions/entities are summarized in Table 3.

Legal provision/entity	Observations / What humanitarian negotiators should be aware of ...
Accountability of individual members of armed group for their behavior	→ It is established legal practice that individual members of armed groups can be held accountable for war crimes, crimes against humanity and genocide;
War crimes, crimes against humanity and genocide must be excluded from amnesty provisions and amnesty legislation, regardless of the perpetrator	→ UN Peace Agreements are not permitted to include amnesty provisions for core international crimes. Those who commit or support the commission of war crimes, crimes against humanity or genocide must be held accountable, whether nationally or internationally;
International Criminal Tribunals of Former Yugoslavia (ICTY) and Rwanda (ICTR)	→ These Tribunals have helped to clarify aspects of international law pertaining to the accountability of armed groups, including the criminal liability of those aiding and abetting serious violations of IHL; responsibility of a superior for actions of subordinates; consideration of acts of terror as crimes against humanity; and the concept of territorial occupation in IHL; <sup>29</sup>
Non-judicial reconciliation commissions and quasi-judicial traditional dispute resolution mechanisms	→ "Truth Commissions" or "Truth and Reconciliation Commissions" have been used as non-judicial fora for perpetrators of large-scale violence to acknowledge their actions and for victims to be recognized (e.g. South Africa). Similarly, traditional dispute resolution processes may also be relied on for this purpose (e.g. quasi-judicial Rwandan <i>gacaca</i> );

**Table 3 - Summary of additional legal provisions and entities that are relevant to the conduct and accountability of armed groups**

Using International Law to Frame Humanitarian Negotiations

International law helps to guide humanitarian negotiations by:

1. Defining boundaries within which to seek agreement;
2. Providing reference benchmarks for evaluation of options and monitoring implementation;
3. Framing the legal obligations of armed groups concerning the conduct of hostilities and the protection of civilians;
4. Providing incentives to armed groups to negotiate.

<sup>29</sup> These clarifications to aspects of international law are described in detail in: United Nations Economic and Social Council, Commission on Human Rights. *Promotion and Protection of Human Rights: Fundamental Standards of Humanity*. (Report of the Secretary-General). UN Document ref. E/CN.4/2004/90 25 February 2004.



Defining boundaries within which to seek agreement

- International law helps to set the boundaries within which humanitarian negotiators can work to seek agreement with armed groups. The process and any outcome of humanitarian negotiations must be in coherence with IHL, IHRL and international customary law.
- Even though armed groups cannot be parties to many of the treaty-based elements of international law, humanitarian negotiations should seek to secure agreement on recognition and/or support by the armed group for the principles and spirit underlying international law.

Case Study: Support for International Law in Agreement with SPLM on Ground Rules

*The agreement on 'Ground Rules' for delivery of humanitarian assistance and protection of civilians agreed between Operation Lifeline Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) in 1995 included in the preamble an explicit expression of support for elements of international humanitarian law and international human rights law.<sup>30</sup>*

*"In signing this agreement, we [OLS and SPLM/A] express our support for the following international conventions and their principles, namely:*

- Convention on the Rights of the Child 1989*
- Geneva Conventions of 1949 and the 1977 Protocols additional to the Geneva Conventions."*

Providing reference benchmarks for evaluation of options and monitoring implementation

- International law provides a set of criteria -- independent from both parties to the negotiations -- against which to evaluate options for agreement and implementation of any agreed outcome. For example, the Convention on the Rights of the Child (CRC, 1989) defines the special protections afforded to children over and above those contained in other human rights treaties. These rights, and measures of the degree to which they are being fulfilled (such as the UN Common Country Assessment Indicator Framework), provide reference benchmarks for monitoring implementation of an agreement, for example to facilitate humanitarian access for the purposes of immunizing children in a given area.

Framing the legal obligations of armed groups concerning their conduct of hostilities and the protection of civilians

- The provisions of international humanitarian law that relate to the actions of armed groups in times of non-international armed conflict constitute the legal basis for holding these groups accountable in cases where they fail to fulfill their duties and obligations under international law.
- Humanitarian negotiators should ensure that armed groups are aware of their duties and obligations under international law; In communicating the responsibilities of the armed groups, humanitarian negotiators should take care that this is not perceived

<sup>30</sup> For more information on the OLS-SPLM/A Ground Rules Agreement, and the text of the Agreement itself, see: Mark Bradbury, Nicholas Leader and Kate Mackintosh, *The 'Agreement on Ground Rules' in South Sudan* [Study 3 in: *The Politics of Principle: the principles of humanitarian action in practice*] HPG Report 4 (London: Overseas Development Institute-HPG, March 2000).



by the armed group as a threat. Nonetheless, humanitarian negotiators should not give the impression that by entering into negotiations the group will be absolved or exempt from being held accountable for past, ongoing or future abuses of human rights and breaches of international humanitarian law.

- Humanitarian negotiators frequently feel that they are the 'weak' party in negotiations with armed groups. However, the provisions of international law and the demonstrated willingness of the UN Security Council, international legal courts and tribunals to hold armed groups accountable for their actions can strengthen the position of humanitarian actors during negotiations.

#### Providing incentives to armed groups to negotiate

- Some armed groups may have aspirations to pursue political approaches to achieving their objectives (whether in parallel with- or following an approach based on the use of force). In these cases, armed groups may be more sensitive to the perception of the group among national- and international actors. If an armed group is fighting for territorial autonomy with a view to establishing a state in the future, the group may be more attuned to the need to respect international human rights law (even though they are not a party to any international human rights treaty). For example, in dealing with international aid agencies, the Kosovo Liberation Army (KLA) always portrayed themselves as "freedom fighters" or "liberators". In anticipation of the post-war phase, the KLA was actively working to cultivate a positive image of the group among members of the international community, and therefore had a strong incentive to facilitate humanitarian assistance and abide by international human rights norms.
- Armed groups may perceive compliance with international legal norms as enhancing their credibility and their own perceived legitimacy with internal or external audiences, including their own diasporas.
- Armed groups may fear reduction in economic and/or military support if they are found to be acting in breach of international law.

### 3.4 Translating Principles into Practice: Humanitarian Policies

Humanitarian policies assist in translating and implementing humanitarian principles and legal provisions into an operational setting, generally focusing on a particular area of humanitarian action. Humanitarian policies contextualize the core principles mentioned above, and elaborate options for humanitarian action that adhere to those principles. Two examples of humanitarian policies in particular areas are:

On the issue of **civil-military relations**: IASC Reference Paper on "*Civil-Military Relationship in Complex Emergencies*" (28 June 2004);

On the issue of **internally-displaced persons**: IASC Document: "*Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams*" (2004); and OCHA "*Handbook for Applying the Guiding Principles on Internal Displacement*" (1999);

In general these types of policy documents define the scope of humanitarian operations in a particular area.



Using Humanitarian Policies to Frame Humanitarian Negotiations

While many of the existing humanitarian policy documents do not relate specifically to actions of armed groups, they nonetheless provide a source of options for humanitarian negotiators to consider in undertaking negotiations with armed groups. For example, elements of the guidelines on civil-military relations, that generally relate to official military forces, can also provide useful insight into the limits of interaction with armed groups (as another type of military actor).



Points to Remember -- Framing the Negotiations

→ Humanitarian principles, policies and international law provide a framework and source of guidance for humanitarian negotiations with armed groups;

**HUMANITARIAN PRINCIPLES**

→ Three core humanitarian principles of humanity, neutrality and impartiality; Additional principles: Dignity; Respect for Culture and Custom; Do No/Less Harm; Operational Independence; Sustainability; Participation; Accountability; Transparency; and Prevention;

→ These principles guide humanitarian negotiations by: (1) providing a source of guidance for humanitarian negotiators on how negotiations should be undertaken; (2) defining boundaries within which to seek agreement; and (3) providing a set of criteria for developing options for consideration by the negotiating parties;

→ Must be explained and communicated effectively to the armed group;

**INTERNATIONAL LAW (IHL, IHRL, customary international law)**

→ International Humanitarian Law (IHL) applies to situations of armed conflict (international and non-international); treaty-based IHL: agreements between states;

→ Armed groups are not party to international humanitarian law treaties, however, IHL binds all parties to an armed conflict, state and non-state actors. Common Article 3 of the Geneva Conventions of 1949 specifies a number of minimum provisions that the parties to an internal armed conflict, including armed groups, are required to uphold (see Box 2);

→ International human rights law (IHRL) applies in peacetime as well as in conflict; Defines rights of individuals and duties and obligations of states (primarily) to safeguard and fulfill those rights; International human rights treaties are adopted by states;

→ Customary international law is the body of rules and norms that emanate from established state practice - and the widely-held belief that such practice is warranted as a matter of law;

→ Additional legal provision and entities relevant to armed groups: Accountability of individual members of armed group; International Criminal Tribunals of Former Yugoslavia (ICTY) and Rwanda (ICTR); International Criminal Court (ICC); Non-judicial reconciliation commissions; and quasi-judicial traditional dispute resolution mechanisms (See Table 3, page 27);

→ International law guides humanitarian negotiations by: (1) defining boundaries within which to seek agreement; (2) providing reference benchmarks for evaluation of options and monitoring implementation; (3) framing the legal obligations of armed groups concerning the conduct of hostilities and the protection of civilians; and (4) providing incentives to armed groups to negotiate;

→ Humanitarian negotiators frequently feel that they are the 'weak' party in negotiations with armed groups, however, the provisions of international law can strengthen the position of humanitarian actors in the negotiations;

**HUMANITARIAN POLICIES**

→ Humanitarian policies assist in translating and implementing humanitarian principles and legal provisions into an operational setting, generally focusing on a particular area of humanitarian action (e.g. guidelines on civil-military relations, IDPs);

→ Humanitarian policies can guide humanitarian negotiations by broadening the range of options that parties to the negotiations can consider as a basis for agreement.





## 4 Working Towards More Effective Negotiations

### 4.1 Overview

When humanitarian negotiations with armed groups are planned and carried out in an unstructured or *ad hoc* manner they increase the risk that:

1. these groups will attempt to play off humanitarian actors against each other;
2. the negotiations will result in sub-optimal agreements;
3. the armed group may be less willing to enter into negotiations, and reach agreement, in the future; and, because of these factors,
4. delivery of protection and assistance to those in need will face increased constraints.

The purpose of this manual is to provide a practical guide for UN humanitarian, development and human rights workers to enhance their negotiations with non-state armed groups, as a basis for a more structured, consistent approach to humanitarian negotiations with those groups.

This chapter suggests practical steps for humanitarian organizations to guide their negotiations with armed groups, with the objective of increasing the effectiveness of humanitarian negotiations. More effective negotiations are those that achieve better humanitarian outcomes, optimize the time spent negotiating with armed groups, and build sustainable negotiating relationships with armed groups.

The suggested guidelines are presented across three phases of negotiation: **preparation**, **seeking agreement** and **implementation**. Issues concerning the different modes of negotiation (direct, indirect, written, oral) and inter-cultural aspects of negotiation are explored briefly also. This chapter concludes by suggesting actions that humanitarian negotiators can take if the negotiations break down.

### 4.2 Three Phases of Humanitarian Negotiation: A Step-by-Step Guide

The approach to undertaking humanitarian negotiations with armed groups presented here consists of nine steps, spanning three phases of negotiation: **preparation**; **seeking agreement** and **implementation**. This step-by-step approach is intended to guide humanitarian organizations through the process of humanitarian negotiations. The first phase -- preparation -- is undertaken by the humanitarian negotiators prior to the negotiations themselves, while the second and third phases of negotiation require the participation of both the humanitarian- and armed group parties to the negotiations.

The nine steps are described below, and presented in schematic form in Figure 1.



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## Phase I PREPARATION >>

### Coordinate Approach, Decide on Strategy and Gather Information

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#### 1 : Coordinate Approach With Humanitarian Partners

- Coordinate with humanitarian partners (UN agencies, NGOs etc.) on overall approach to humanitarian negotiations with the armed group(s), including, for example, by pooling the negotiating interests of various UN agencies consistent with their mandates, or agreeing on mutually complementary sectoral negotiations.<sup>31</sup> [Section 2.5, "Humanitarian Partners in Negotiations"]
- Identify by consensus a senior-level, experienced lead negotiator. This will depend also on the approach to be taken: lead negotiating agency, pooling of agency interests, sectoral approach etc.

#### 2 : Decide on Objectives and Strategy

- Clearly identify the reasons for entering into negotiations and the desired outcome(s); Identify whether there are other possible ways to achieve the same outcomes, other than through negotiation. [Section 2.2, "Being Clear About Reasons for Negotiating"]
- Use humanitarian principles, policies and elements of international law outlined in Chapter 3 ("Framing the Negotiations") as the basis for identifying a "bottom line" -- the least favorable option which humanitarian negotiators can still agree to, or the furthest extent of compromise possible -- for reaching agreement;
- Ensure that the various humanitarian and human rights agencies within the UN system have achieved consensus on the objectives of the negotiation.
- Consider possible alternatives to a negotiated agreement that could be pursued in the event that the negotiations are unsuccessful.

#### 3 : Learn About Your Negotiating Partner

- Identify the main representatives/interlocutors from the armed group; If not a member of the senior leadership of the armed group, ensure that the designated interlocutor is a *bona fide* representative of the armed group. Opportunistic local commanders may attempt to leverage their position within the armed group by promoting themselves as representing the senior leadership.
- Learn about the armed group's motivations; structure; principles of action; interests; constituency; needs; cultural and ethnic influences. Assess the level of control exerted by the armed group over a given population/territory. [Section 2.4, "Learning About the Armed Group(s)"]
- Use the worksheet included as an Annex to this manual to summarize the characteristics of the armed group. ["Annex I - Worksheet for Mapping Characteristics of Armed Groups"].

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<sup>31</sup> These suggestions for a coordinated approach to humanitarian negotiations are drawn from the 2001 Report of the UN Secretary-General on the Protection of Civilians in Armed Conflict. United Nations Security Council, *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, UN Document ref. S/2001/331 (New York: United Nations, 30 March 2001).



*"Do not assume that the good assessment of the armed group that you have done in one place is automatically valid in another place, even just 40 or 50 kilometers away. Personalities, agendas and the balance of power within the armed group may change dramatically even over short distances."*

*(Quote from interview with UNICEF staff member)*

### Making Contact / Role of Intermediaries in Contacting the Armed Group

During or following the preparation phase of negotiations, humanitarian organizations will need to initiate contact with the armed group. If contact has already been established for some other types of engagement, then existing modes of communication can be used to express the organization's interest in entering into a dialogue on certain issues.

When there has not been prior contact with the armed group, initial contact can often be best facilitated by intermediaries, especially if the humanitarian organization(s) seeking negotiations are not known to the armed group, or if they do not have a history of operational activities in the country/region. Intermediaries can include church representatives/groups, other humanitarian organizations with existing contacts with the group, community or tribal leaders, or businesspersons.

The use of intermediaries to initiate contact with armed groups as a precursor to humanitarian negotiations should be guided by the following considerations:

- It is important to establish the extent of interactions the intermediary has had with the armed group, and (where possible) the perception of the intermediary in the eyes of the armed group;
- Ideally, the role of the intermediary at this early stage should be to facilitate the process of the negotiations, and not to begin discussions on the substance of the negotiations;
- Intermediate church or community groups from the same religious or ethnic group as the armed group, or from the same region, can often more easily facilitate contact through shared affinities or mutual connections;
- Intermediaries that have had prior interactions with an armed group can be an extremely useful source of knowledge on the armed group and its negotiators.

#### Case Study: Exploring options for initiating contact with LRA in Northern Uganda on a range of humanitarian issues

*Excerpt from interview with UN Under-Secretary General for Humanitarian Affairs, Jan Egeland in November 2003.<sup>32</sup>*

*Q: Do you think that the Lord's Resistance Army (LRA) can be positively engaged in a process that could bring the conflict to a peaceful and permanent conclusion? If LRA leader Joseph Kony is unwilling to negotiate, what then?*

*A: There have been a number of initiatives in recent years and they have not borne fruition, for a variety of reasons, and certainly it is not within my mandate to suggest or initiate new political initiatives. However, through our humanitarian staff, we will try to reach out on humanitarian issues, such as humanitarian access, security for*

<sup>32</sup> UN Integrated Regional Information Network (IRIN) interview with UN Under-Secretary General Jan Egeland in Nairobi, 12 November 2003. <http://www.irinnews.org>



*humanitarian operations and convoys, protection of civilian populations, and demobilization and reintegration of child soldiers. And it remains to be seen which channels we can use to send these messages to the LRA. We are already in full contact with the government. But as for the LRA, it is more difficult. However, we have been speaking to community leaders and others who have regular contact with them.*

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## Phase II SEEKING AGREEMENT >>

### Process, Issues, Options, Outcomes

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The next four steps in the process of negotiation are undertaken during the actual "face-to-face" interactions with the armed group.

#### **4 : Seek Consensus on the Process of Negotiations**

- As a precursor to discussion of issues of substance during the negotiation, seek to build consensus among all parties to the negotiation on how the process of negotiation should unfold. This could include, for example, agreement on the primary and alternate representatives from each party, the location to be used for the negotiations, the number of meetings to be held, enabling conditions for the negotiations (what each party undertakes to do to provide an environment conducive for negotiations).
- Agree on procedures for revising the process during the negotiations.

#### **5 : Identify the Issues**

- Once there is agreement between the parties on the *process* of negotiation, parties to the negotiation should seek to identify and the *substantive issues* to be discussed. Different parties may see the issues very differently. For example, in negotiations to facilitate better participation of girls in the post-primary education system, humanitarian- and human rights organizations may view the issue as one of fulfilling the human rights of the girls, while a particular armed group may view it purely as a cultural or religious issue.
- Focus on the issues to be negotiated, without casting judgment of the armed group's perspectives on the issue.

#### **6 : Develop Options**

- Once the issues to be negotiated (e.g. securing humanitarian access to a refugee camp under the control of the armed group) are agreed upon, the next step is to develop options as the basis for possible agreement. Use humanitarian principles, international law and humanitarian policies to assist in developing options and as criteria for evaluating a number of available options [Chapter 3, "Framing the Negotiations"].
- Humanitarian and armed group partners in the negotiation can develop options jointly by brainstorming ideas and identifying possible outcomes acceptable to both parties.



- Keep in mind that the options being developed should all be 'better' -- in terms of fulfilling the humanitarian objectives of the negotiations -- that the alternatives considered in advance of the negotiations.<sup>33</sup>

### **7 : Work to Seek Agreement on the Option(s) that Best Meet the Humanitarian Objectives**

- Humanitarian negotiations differ from many other types of negotiations because the parties to the negotiations have different core interests to begin with (armed groups want to achieve certain political, economic or military objectives; humanitarian agencies want to protect and assist those in need). Some approaches to negotiation focus on solutions that are the optimal outcome for *both* parties. For humanitarian negotiators, the primary objective of the negotiations must be to arrive at the best humanitarian outcome (not necessarily to get the best outcome to satisfy the interests of both parties).
- Humanitarian negotiators should evaluate the options under consideration during the negotiations using criteria for determining likely humanitarian impact.

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## **Phase III IMPLEMENTATION >>**

### **Define Criteria for Implementation, Follow-up**

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#### **8 : Define Criteria for Implementation**

- Once an outcome or solution has been agreed by the humanitarian negotiators and the armed group, negotiations should focus on defining criteria for implementation of the outcome, including: specification of roles (who does what); reference benchmarks against which to measure implementation; and procedures for resolution of disputes arising during the implementation (described in more detail in Section 6.4).

#### **9 : Follow-up: Monitoring and Relationship Building**

- Identify mechanisms to facilitate joint monitoring of implementation.
- Identify process-related actions that will help to maintain communications with the armed group (e.g. regular meetings to review implementation); Build on the relationship developed throughout the process of negotiation;

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<sup>33</sup> The work of Roger Fisher and colleagues identifies the concept of a BATNA or "Best Alternative to a Negotiated Agreement." If a negotiator's BATNA is better than any of the options on the negotiating table, then the best route may be for the negotiator to turn to his/her BATNA. See: Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* 2<sup>nd</sup> Edition (New York: Penguin Books, 1991).

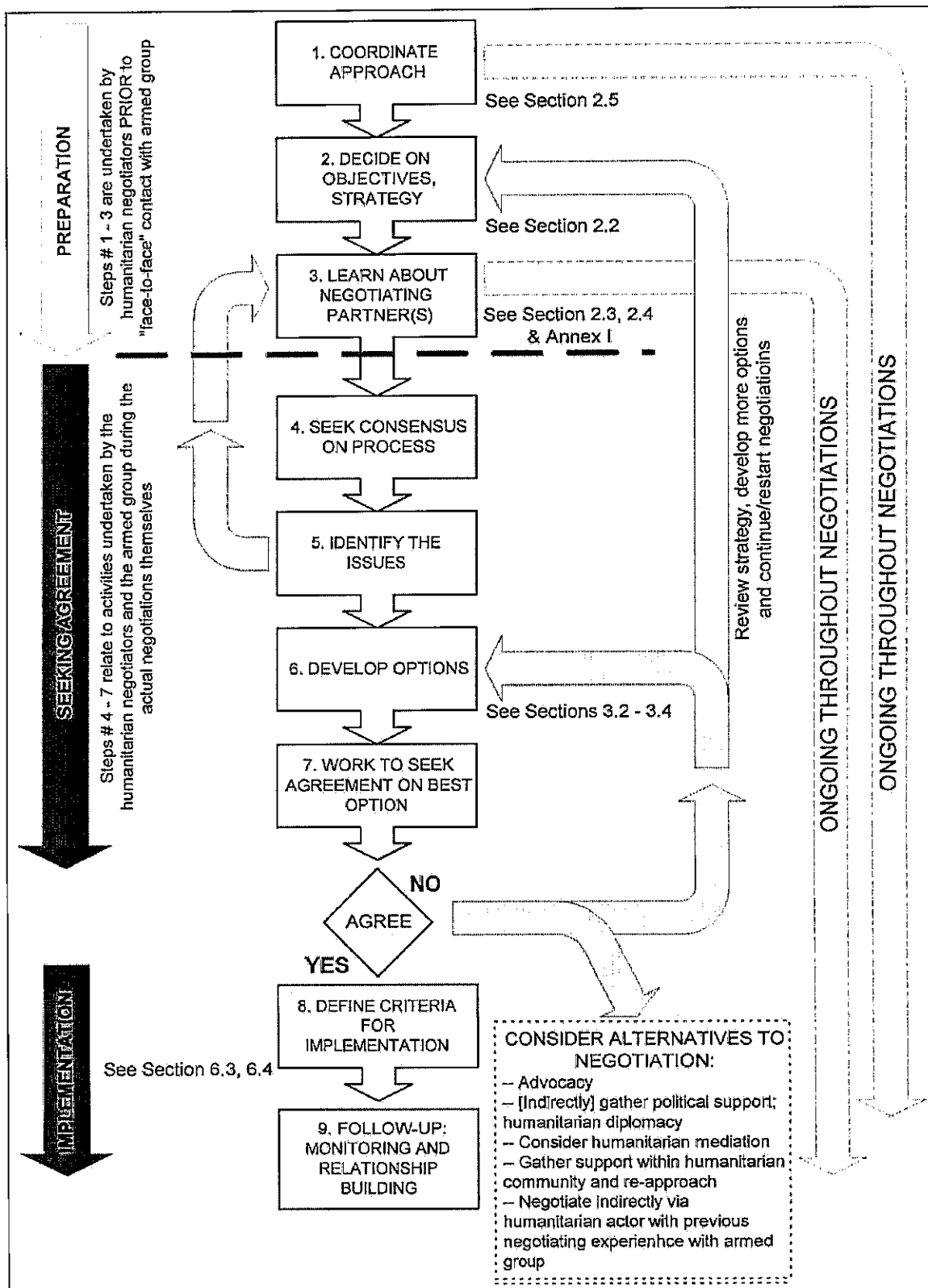


Figure 1 - Summary of 3 phases, 9 steps in humanitarian negotiations



### 4.3 Different Modes of Negotiation: Oral, Written, Direct, Indirect

Each instance of humanitarian negotiations requires consideration of the best approach (direct, indirect) and medium (oral, written) given the particular context.

Humanitarian negotiators should consider the following points in deciding whether to enter into negotiations directly with the armed group or whether to use an intermediary, and further whether to pursue the negotiations through oral or written communications. In many cases, a combination of approaches may be required.

#### Direct versus Indirect Negotiation

- Direct negotiation with the armed group helps to foster personal relationships between negotiators that can assist in building consensus and securing agreement. Direct negotiation can help to build trust and respect between the parties, and a strong relationship can bring personal commitment to ensuring implementation of any agreed outcome. In many instances of negotiation, strong personal relationships can overcome differences on substantive issues.
- Indirect negotiations using a humanitarian intermediary can leverage the negotiating experiences and contacts of that intermediate organization, and can free up resources (personnel, logistics, time) within a delegating humanitarian organization to enable it to focus on other aspects of its humanitarian work.
- In using an intermediate humanitarian negotiator (often called an "agent"), humanitarian organizations must ensure that the intermediary shares the humanitarian motivations, ethos and interests of the delegating organization. Intermediate agents will bring their own personal and organizational interests to the negotiations, and the delegating agency must ensure that its interests are adequately represented in the negotiations.
- Building a relationship with the armed group and maintaining direct control of the negotiating strategy are two of the factors that suggest direct negotiations with armed groups as the approach of choice. Humanitarian organizations may wish to consider entering into indirect humanitarian negotiations when: (1) political- or security-concerns favor indirect negotiations with the armed group; (2) the intermediary humanitarian organization has ongoing negotiations/contacts with the armed groups and can effectively represent the organization's interests; and (3) the intermediary organization has experienced negotiators available to lead the process.

#### Oral and Written Communications

- Humanitarian negotiators can employ a combination of oral and written communications in advance of-, during- and following humanitarian negotiations. While written statements of negotiating process; statements of intent (to negotiate) etc. may be useful tools to keep the process of negotiations 'on track', the benefits of such agreements needs to be balanced with the time investment required to jointly develop them, and to secure agreement on them with the armed group;
- Written communications bring significant added value when it comes to concluding an agreement. Many armed groups will be reluctant to 'sign on' to any written agreement, however, a written agreement has the potential to capture unambiguously the scope and objectives of the agreement; the obligations of each party; and mechanisms for implementation, dispute resolution and enforcement.



- Written agreements can assist in communicating the substance of the agreed outcome to members of the armed group or other armed groups.
- When drafting a written agreement two options present themselves: negotiators can use a "single text" method or can compile a document working from two draft agreements that are developed separately by the parties. Using the "single text" approach, the negotiating parties work on a single text and include their inputs/concerns simultaneously or sequentially. The benefit of a single text method is that it gathers the concerns/provisions of both parties in a single document, and allows both parties to quickly review the provisions suggested by the other party.

Case Study: Benefits of Written Agreement in Somalia

*Although Somali is basically not a written language, and the drafting and signing of agreements is not part of the tradition of the Somali people, humanitarian negotiators did manage in a few cases to have faction leaders sign up to written documents. Referring to those was very useful, particularly concerning the demand for taxes which kept coming back over and over again.*

*(Source: UNICEF)*

#### 4.4 The Role of Culture in Humanitarian Negotiations

In the context of humanitarian negotiations, culture has been defined as *"the socially transmitted values, beliefs and symbols that are more or less shared by members of a social group."*<sup>34</sup> These values, beliefs and symbols, and their expression or utilization, can be powerful influencing factors in humanitarian negotiations.

Some of the facets of culture that can influence humanitarian negotiations with armed groups include:

- Differences in cultural norms regarding social and formal communications and conduct of meetings;
- Differences in cultural perspectives on the substantive issues being considered;
- Cultural precepts that may shape the behavior of negotiating parties (bargaining; honor; commitment to an agreement etc.);
- Cultural views of authority, gender, social standing;
- Disparities between cultural beliefs, customary law and international law.

*"The Taliban are in fact the children of the Afghan countryside. A lot of their cultural and behavioral reflexes - their behavior vis-à-vis women and children, for instance - are in fact archaic elements of a culture very deeply rooted in the society, and this was often overlooked by the Western negotiators."*

*(Quote from interview with UNICEF staff member)*

To mitigate the potential for cultural influences and considerations to complicate humanitarian negotiations with armed groups, humanitarian negotiators should:

<sup>34</sup> Avruch, Kevin, "Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiators," *Harvard Negotiation Law Review* 391 (Spring 2004).





1. Learn about the cultural background of the armed group and armed group negotiator; Do not assume a particular cultural stereotype;
2. Be aware of cultural sensitivities associated with the PROCESS of negotiation; Don't expect the armed group to approach the process of negotiating with the same cultural viewpoint;
3. Identify possible areas of cultural differences that may impact on the SUBSTANCE of the negotiations. This may include, for example, cultural views on the role of women and children in society;
4. Be respectful of the other party's cultural perspective without diminishing your humanitarian argument during the negotiation. Respecting the other party's perspective does not mean that the humanitarian negotiator has to agree with it, or let it override the humanitarian objectives of the negotiations;
5. Identify cultural similarities as a foundation for bridging other cultural differences.

#### 4.5 What to Do if Negotiations Fail to Converge or Break Down

Clearly not all negotiations lead to an agreed outcome. Humanitarian negotiations may fail to converge on a shared perspective or agreed outcome, or may break down completely. This section provides guidance for humanitarian negotiators in such situations.

##### Review Strategy, Confirm Issues and Develop more Options

When the negotiations fail to converge, humanitarian negotiators should re-assess the strategy being used: perhaps a different line of argument is required, or a more forceful expression of the legal obligations of the armed group. Humanitarian negotiators should also confirm with the armed group that the issues have not changed during the negotiations. Development of more options for both parties to consider may also provide new space for agreement.

##### Case Study: Persistence by Operation Lifeline Sudan (OLS) in humanitarian negotiations pays off.

*"In September 1997, for the first time in the history of OLS, both the Government of Sudan and the SPLA agreed, in principle, to allow OLS to access rebel-controlled areas of the Nuba Mountains. However, negotiations on access modalities halted in November. Despite this setback, OLS continued to push both sides to reach agreement on a means for OLS to assess the needs of the populations in the area. The UN was finally able to send an inter-agency assessment team in the Nuba mountains mid-2000."*

(Source: WFP)

##### Keep Open Alternatives on SUBSTANCE

Even before entering into negotiations, humanitarian actors should consider what alternatives are available to their organization in the event that the negotiations are unsuccessful in fulfilling the desired objectives, or collapse completely. These may not be good alternatives, but nonetheless they must be considered.

These are alternate courses of action on the SUBSTANCE of the negotiations (see below for alternatives to PROCESS). For example, if humanitarian access to transit a territory controlled by the armed group cannot be negotiated, could the humanitarian



organization consider use of cargo aircraft instead to deliver assistance to otherwise inaccessible areas?

#### Explore Alternatives to PROCESS

In the event that negotiations with the armed groups collapse, humanitarian negotiators should consider alternative approaches to achieve the desired humanitarian outcome, or to bring about an environment more conducive to successful humanitarian negotiations. These PROCESS alternatives include:

- Working indirectly through UN political representatives to gather political support – in the country, and externally – for the humanitarian negotiations;
- Indirect negotiation through an intermediary humanitarian organization which has had/has previous/ongoing contacts with the armed group;
- Making renewed approaches to more senior leaders in the armed group;
- Gathering broader support for humanitarian negotiations within the humanitarian community in the country/region, and conducting negotiations through a coalition of humanitarian organizations;
- Engaging in public and/or private advocacy efforts to influence the armed group and its supporters.

#### Don't Burn Bridges

When negotiations fail to converge or break down completely, it is important that humanitarian negotiators not make any statements or take other actions that would preclude future negotiations or interactions with the armed group.

#### Try Building on the Process

If the negotiations reach an impasse on the substantive issues being discussed, humanitarian negotiators can suggest changes in the negotiation *process* that may provide some space for additional consideration of the substance by the armed group. Continuing with the process provides additional opportunities for dialogue during which the substantive issues could be resolved.

#### Reinforce Lines of Communication

Even if negotiations threaten to break down completely, humanitarian negotiators should keep open and indeed reinforce lines of communication between the parties. It is precisely when negotiations are not going well, that lines of communication need to be maintained.



Points to Remember -- Working Towards More Effective Negotiations

**NINE STEPS ACROSS THREE PHASES OF NEGOTIATION (Figure 1)**

**PREPARATION >>**

- 1 : Coordinate Approach With Humanitarian Partners
- 2 : Decide on Objectives and Strategy
- 3 : Learn About Your Negotiating Partner

**SEEKING AGREEMENT >>**

- 4 : Seek Consensus on the Process of Negotiations
- 5 : Identify the Issues
- 6 : Develop Options
- 7 : Work to Seek Agreement on the Option(s) that Best Meet the Humanitarian Objectives

**IMPLEMENTATION >>**

- 8 : Define Criteria for Implementation
- 9 : Follow-up: Monitoring and Relationship Building

**MODES OF NEGOTIATION: DIRECT, INDIRECT**

→ Direct negotiation with the armed group helps to foster personal relationships between negotiators that can assist in building consensus and securing agreement; can bring personal commitment to ensuring implementation of any agreed outcome.

→ Indirect negotiations using a humanitarian intermediary can leverage the negotiating experiences and contacts of that intermediate organization, and can free up resources (personnel, logistics, time) within a delegating humanitarian organization to enable it to focus on other aspects of its humanitarian work.

→ Considerations of whether and when to enter into indirect negotiations should include: (1) political- or security- concerns dictate indirect negotiations with the armed group; (2) the intermediary humanitarian organizations has ongoing negotiations/contacts with the armed groups and can effectively represent the organization's interests; and (3) the intermediary organization has experienced negotiators available to lead the process.

**WHAT TO DO IF NEGOTIATIONS FAIL TO CONVERGE OR BREAK DOWN**

- Review Strategy, Confirm Issues and Develop more Options
- Keep Open Alternatives on SUBSTANCE
- Explore Alternatives to PROCESS
- Don't Burn Bridges
- Try Building on the Process
- Reinforce Lines of Communication



## 5 Negotiating on Specific Issues

### 5.1 Overview

*[Author's Note, March 2005: This chapter will be revised and completed based on ongoing and future consultations with member agencies of the IASC Informal Working Group]*

Humanitarian negotiations frequently involve several humanitarian issues in the same round of negotiations. For example, securing humanitarian access, ensuring respect for international law, and establishing ground rules for provision of assistance and protection may all need to be negotiated simultaneously with an armed group.

This chapter supplements the guidance provided in the preceding chapters, by providing additional guidance on specific subject areas of humanitarian negotiation, keeping in mind that individual issues, such as humanitarian access, may be negotiated with an armed group as part of a broader humanitarian agenda.

This chapter describes how the two inter-related dimensions of humanitarian action – assistance and protection – influence humanitarian negotiations, and provides guidance on three specific areas of humanitarian negotiation: (i) ground rules for humanitarian action; (ii) securing humanitarian access; (iii) rules and behavior of belligerents that will improve the protection of civilians, in accordance with international law.

### 5.2 Negotiation and the Two Dimensions of Humanitarian Action

In recent years, the IASC and the United Nations have focused increased attention on the 'duality' of humanitarian assistance and protection, and the need to better integrate these two complementary areas of humanitarian action.<sup>35</sup> The IASC has used the following working definition of protection in recent policy documents:<sup>36</sup>

*"[encompassing] all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. international human rights law, international humanitarian law, and refugee law)."*

While there is recognition of the need to integrate these two dimensions, there is also recognition of the different characteristics of each element:

- Provision of humanitarian **assistance** is viewed as act of substitution on behalf of the host-country government or other authorities, the objective of which is to provide goods and services to meet the core physical, psychological and socio-economic needs of the target group;
- Humanitarian activities focusing on **protection** aim to ensure that the rights of the individual, as specified in international law, are fully respected by those in a position

<sup>35</sup> For example, in relation to Internally Displaced Persons, the IASC acknowledged the importance of "an agreed, comprehensive strategy for linking protection of, and assistance to internally displaced persons," and the IASC identified strategic areas to integrate protection features into operations response. See: Inter-Agency Standing Committee (IASC), Protection of Internally Displaced Persons, IASC Policy Paper (New York: Inter-Agency Standing Committee, 1999). United Nations policy documents have also increasingly highlighted assistance and protection as two dimensions of humanitarian action. See, for example: United Nations General Assembly, Economic and Social Council, Strengthening the Coordination of Emergency Humanitarian Assistance of the United Nations, UN Document Ref. A/58/89 (New York: United Nations, 3 June 2003) : para. 4.

<sup>36</sup> See, for example: Inter-Agency Standing Committee, *Implementing the Collaborative Response to Situations of Internal Displacement. Guidance for UN Humanitarian and/or Resident Coordinators and Country Teams* (Geneva/New York: IASC, September 2004) : Annex 3.



to exert influence or control over the individual (armed group, host government, third-party state etc.).

It is useful to keep these two dimensions of humanitarian actions in mind when approaching humanitarian negotiations, as each of the two components will have implications for the negotiations, such as:

- Because protection focuses on ensuring respect for the rights of the individual in accordance with international law, negotiation on issues of protection will revolve around securing agreement with the armed group to change its behavior such that it is consistent with the group's obligations under international law. In these situations, the humanitarian negotiations have little scope to maneuver or compromise; the boundaries for negotiation are formed by international law;
- In negotiations focusing on issues of provision of humanitarian assistance, operational issues feature more prominently in the negotiations; The humanitarian organization will be the party delivering the assistance and so the objective of the negotiations will often be to secure agreement from the armed group to permit, or at least not obstruct, the provision of assistance.

### 5.3 Ground Rules for Humanitarian Action

Common operational guidelines for provision of humanitarian assistance and protection have been developed and adopted for specific complex emergencies, and have been codified in what are commonly referred to as 'Ground Rules' documents. These types of 'Ground Rules' agreements generally fall into two categories, depending on the intended target audience for the guidelines:

1. 'Ground Rules' for **multiple humanitarian organizations** themselves, or for **humanitarian organizations and host/third-party** national governments. Examples of these types of agreements, include: United Nations Principles of Engagement for Emergency Humanitarian Assistance in the Democratic Republic of the Congo (1998); United Nations Operational Criteria for the Implementation of Humanitarian Assistance Programs in Angola (1999) and the proposed Memorandum of Understanding between the United Nations and the Russian Government (concerning the Republics of Chechnya, Dagestan, and Ingushetia).
2. 'Ground Rules' for **humanitarian organizations and armed groups**. An example of this type of agreement is the agreement between the Sudan People's Liberation Movement/Army (SPLM) and Operation Lifeline Sudan (OLS).

The first category of 'Ground Rules' agreements frequently includes statement of core humanitarian principles and agreements between humanitarian actors, and some of these agreements have identified also the parameters for entering into negotiations with armed groups. The UN Office for the Coordination of Humanitarian Affairs (OCHA) has developed guidance documents to assist UN Country Teams in defining common ground rules for UN activities in specific countries, and to facilitate negotiations with national- and local authorities on acceptance of the principles contained in those ground rules.

The guidance provided in this manual, and in Chapters 2 ("Humanitarian Negotiations: Motivations and Partners") and 3 ("Framing the Negotiations") in particular, can provide useful input for the sections of these ground rules documents dealing with humanitarian negotiations with armed groups.



However, it is the second category of 'Ground Rules' -- those developed and agreed by humanitarian organizations and armed groups -- that is the focus of this section, as these types of agreements frequently involve negotiation between humanitarian agencies and an armed group. Negotiating an agreed set of ground rules with an armed group or groups can provide the basis for subsequent agreement on a range of issues related to provision of humanitarian assistance and protection.

For negotiation of 'Ground Rules' between UN agencies and armed groups, humanitarian agencies should keep in mind the following points:

1. Humanitarian negotiators should be clear about the purpose and scope of any ground rules to be agreed with an armed group;
2. Agreement on ground rules does not infer or accord legitimacy to the armed group;
3. Based on existing guidance (e.g. OCHA guidance mentioned above), humanitarian negotiators can draft an outline of the ground rules prior to negotiations (see below); Humanitarian agencies should take care, however, not to present a completed set of 'Ground Rules' to the armed group as a *fait accompli*.

Previous agreements on ground rules point to a number of elements that should be included in these types of agreement, which generally emerge as written agreements signed by two or more parties. Elements of a ground rules agreement between humanitarian organizations and an armed group or groups could include, for example:

Purpose and Scope: objective of the agreed 'ground rules' | listing of participants/signatories | scope (what do the agreed rules cover?) and duration (are the rules time limited?) | statement of mutual interests

Guiding Instruments: applicable elements of International Humanitarian Law (IHL), International Human Rights Law (IHRL) | statement of recognition for these elements of IHL, IHRL | obligations of parties to the agreement

Humanitarian Principles: statement and recognition of core humanitarian principles | statement of relevant humanitarian policies

Definition of Operational Principles: operating guidelines for issues to be covered by agreement, including some/all of: identification of humanitarian workers, vehicles and property; free passage of humanitarian workers; tolls, rents and taxes;

Implementation: criteria for evaluating and monitoring implementation | obligations of both parties to ensure implementation | the process of implementation (contact groups etc.)

Dispute Resolution: stipulation of dispute resolution mechanisms

## 5.4 Negotiating Humanitarian Access

*[Author's Note: Section to be completed in consultation with member agencies of the IASC]*

## 5.5 Protection of Civilians in Accordance with International Law

*[Author's Note: Section to be completed in consultation with member agencies of the IASC]*



## 6 So You're Negotiating ... Now What?

### 6.1 Overview

Because of the challenges involved in initiating and conducting humanitarian negotiations, getting to the negotiation table and actually having an ongoing dialogue with armed groups are sometimes wrongly viewed as the primary measures of successful negotiations.

Of course, these steps are crucial, however, the primary objective of the negotiations should be to work, over time, towards an agreed outcome that will ensure provision of protection and assistance to those in need; preserve humanitarian space; and promote respect for international law. In pursuit of these objectives, the *process* of negotiation itself can have important 'spin off' effects in terms of building a relationship with the armed group which may assist in fulfilling other humanitarian objectives, separate from those issues being negotiated.

This chapter outlines some issues to be considered by humanitarian negotiators once negotiations are underway or have concluded, including: the implications of humanitarian negotiations with armed groups; commitment to, and enforcement of, any agreed outcome; and defining measures of success.

### 6.2 Possible Implications of Humanitarian Negotiations

In addition to their intended positive humanitarian impacts, humanitarian negotiations can have unintended or unanticipated consequences for humanitarian organizations; the armed groups; and third-party stakeholders (for example: those that the humanitarian actors seek to assist).

Some of these *possible* implications of humanitarian negotiations with armed groups, and suggestions as to how to mitigate these consequences, include:

1. Changes in *perceived* neutrality and impartiality of humanitarian actors engaged in negotiations:

When humanitarian actors enter into negotiations with armed groups it can generate or reinforce a perception of bias and lack of impartiality on the part of the humanitarian organization, held by other armed groups, the host government, and other states.

To mitigate this negative perception, humanitarian actors must clearly communicate the objectives and the scope of the negotiations with armed groups, and must communicate and negotiate with all parties to a given conflict. Humanitarian agencies must make it explicitly clear that the negotiations: (i) are focused solely on humanitarian issues; (ii) are not a substitute for political negotiations; and (iii) do not confer legitimacy or recognition on the armed group.

2. Impacts on humanitarian security:

The very act of entering into negotiations with an armed group can have potentially serious consequences for the security of the negotiators themselves, colleagues in the parent and/or other humanitarian organizations, and the populations the humanitarian actors serve. The security risks associated with humanitarian negotiations should be assessed prior to entering into negotiations, drawing on the experience of qualified field security officers and knowledge of the armed group's tactics and previous approach to negotiating with humanitarian organizations.



Physical security risks can be mitigated to some extent by meeting with the armed group in a neutral location/venue; by requesting security guarantees from the armed group prior to entering into negotiations; and by ensuring that the necessary parties are informed of the humanitarian negotiations (e.g. the host country government should be informed of humanitarian negotiations with armed groups).

3. Third-party influence and 'sanctions' on humanitarian negotiators:

Parties external to the humanitarian negotiations may attempt to exert pressure on the humanitarian organization to limit or cease contacts with armed groups, or may attempt to influence the humanitarian negotiations in pursuit of political objectives. Host country governments, third-party states, and regional organizations, among others, may seek to apply pressure or otherwise sanction the humanitarian organization negotiating with an armed group.

Host country governments may see the contacts between humanitarian organizations and armed groups as legitimizing the armed group, or as according recognition to *de facto* territorial control exerted by the armed group. When some armed groups are labeled as "terrorist" groups by a state or states, there may be added pressure, including potentially legal sanctions through national judicial courts, to refrain from negotiating with the armed group.<sup>37</sup>

Attempts to constrain or limit the scope of action of humanitarian organizations in negotiations with armed groups can be mitigated to some degree by:

- Engaging in parallel advocacy efforts and bilateral humanitarian diplomacy with regional organizations, the host country government, and neighboring states to gain support for the humanitarian negotiations; These efforts may be best undertaken by a political delegate representing the United Nations in the country (e.g. Special Representative of the Secretary-General);
- Ensuring that the objectives and process of negotiating with the armed group are effectively communicated to those actors that may seek to exert pressure to constrain the negotiations;
- Building consensus and support across humanitarian organizations active in the country/region on the need for humanitarian negotiations with an armed group.

Finally, if negotiating with an armed group is deemed a humanitarian necessity, then the designation of that group as a "terrorist" group by some states or institutions should not automatically preclude negotiations with the group.<sup>38</sup> As with negotiations with all armed groups, negotiations with those that employ terror tactics must be focused solely on humanitarian issues and not on the political demands or aspirations of the armed group.

<sup>37</sup> This point was highlighted in the 2004 Report of the UN Secretary-General on the Protection of Civilians in Armed Conflict: *"The designation of certain non-State armed groups as terrorist organizations has had an adverse impact on opportunities for humanitarian negotiations. The prohibition on dialogue with armed groups in Colombia, for example, has resulted in severe restrictions on access to populations in need."* See: United Nations Security Council, *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, UN Document ref. S/2004/431 (New York: United Nations, 28 May 2004) : paragraph 41.

<sup>38</sup> Other criteria for adopting a more cautious approach to humanitarian negotiations with particular groups are outlined in Section 2.2.





### 6.3 After Negotiations: Commitment to the Agreement

When humanitarian negotiations lead to an agreed outcome (can be formal, informal) between the humanitarian organization(s) and the armed group, it is imperative to secure the commitment of the armed group to implementation of that which was agreed. The following points suggest ways in which commitment to implementation of an agreed outcome can be secured or enhanced.

- **Ensuring 'Buy In' and Ownership** -- One of the best ways in which to secure commitment to implementation of an agreed outcome is to ensure that all parties feel a sense of ownership of the final agreement. It is important to get the 'buy in' of all stakeholders, including those that may not be represented directly at the negotiating table. Even during the negotiations, the negotiators should take the time to 'sell' the process and potential agreed outcomes to their organizations and constituencies.
- **Clear Statement of Implementation Roles** -- Any agreement arising from the humanitarian negotiations, be it oral or written, should include clear statement of the roles of each negotiating party, and other third parties, in implementing of the agreement. An armed group will be more likely to commit to an agreement if there is a clearly-identified set of actions for the group in its implementation.
- **Emphasizing Accountability** -- Humanitarian negotiators should not shy away from communicating the legal duties and obligations of the armed group, both during the negotiations and once/if an agreement has been reached. Armed groups may have more commitment to implementing an agreement if they feel that by not doing so they may be help accountable under the relevant legal regimes (See Section 3.3). For example, the written 'Ground Rules' Agreement reached between Operation Lifeline Sudan (OLS) and SPLM/A in 1995 included an explicit statement of "support" for the UN Convention on the Rights of the Child (CRC, 1989) and the Geneva Conventions of 1949. This very recognition of "support" for the Conventions infers recognition of the duties and obligations of the armed group under these legal instruments.
- **Including All Parties in Monitoring of Implementation** -- Armed groups may feel more committed to the implementation of an agreed outcome if they play a role in monitoring implementation of the agreement. Joint monitoring mechanisms can include, for example: regular monitoring meetings between representatives of the armed group and of the humanitarian organizations (at various levels within the respective organizations); planned simultaneous (humanitarian organization - armed group) visits to sites/access routes features in the agreed outcome (e.g. an IDP camp; or a particular village within the area controlled by the armed group).

### 6.4 Enforcement and Dealing with Non-Compliance

Any agreed outcome reached during humanitarian negotiations should include consideration of enforcement of the agreement and dispute resolution mechanisms. Moreover, humanitarian negotiations should consider the options available to their organizations in the event of non-compliance with the agreement on the part of the armed group.

#### Enforcement

Enforcing the provisions of an agreement reached between humanitarian actors and an armed group can generally be undertaken by coercing or incentivizing the armed group. Humanitarian organizations are not well placed to apply coercive pressure to armed groups to enforce the



provisions of an agreement. However, other third party states, regional organizations or UN peacekeeping/peace-enforcement troops can assist in applying graduated diplomatic/other pressure to ensure that the agreement is enforced.

Through persuasion and persistence, humanitarian organizations can continue negotiating with the armed group on issues related to enforcement of the agreement, highlighting the legal obligations of the armed group, and the accountability mechanisms under international law (See Section 3.3).

### Dispute Resolution Mechanisms

Mechanisms to resolve disputes associated with implementation of an agreement should be identified by the humanitarian organization and the armed group during the negotiations, and should be incorporated into the provisions of any oral or written agreement. As a starting point for resolving disputes, the humanitarian organization(s) and armed group(s) should undertake to document any disputes issues as a starting point for seeking resolution of the issue concerned. Possible dispute resolution mechanisms could include, for example:

- Establishment of an **implementation monitoring commission** to include representatives from the armed group and humanitarian organizations which would consider, and attempt to resolve by consensus, any disputed issues associated with implementation of an agreement.
- Appointment of a **neutral mediator** to assist the parties in resolving disputes.
- Referral of disputed provisions to an **independent, non-binding arbitration mechanism**; A neutral organization not participating in the negotiations could arbitrate on disputed aspects of an agreement. For humanitarian organizations, it would have to be made clear that any solution arising from arbitration would have to be in coherence with the intent of the original agreement, and would further need to satisfy the humanitarian principles, humanitarian policies and elements of international law underlying the agreement and all humanitarian action (See Chapter 3).

### Dealing with Non-Compliance

When an armed group fails to comply with the provisions of an agreement which they undertook to implement, and when enforcement actions fail, the humanitarian organization may need to consider one or more courses of action from a menu of options:

- Enter into a **further series of negotiations** with the armed group to arrive at an agreed outcome which may resolve the issues of non-compliance arising from the original agreement;
- [As in the case of enforcement (see above)] Identify third party states, regional organizations or other actors and engage, directly or indirectly via UN political representatives, in **advocacy and humanitarian diplomacy** to get these actors to apply pressure (diplomatic, other) to the armed group to comply with the agreement.
- If non-compliance with the agreement results in an operating environment which compromises humanitarian security; consider, as a last resort, **suspension of humanitarian activities** until such time as a conducive humanitarian operating environment exists. In such cases, the humanitarian organization should clearly identify the compromised operating environment as the basis for decisions to suspend operations.



## 6.5 Measuring Effectiveness of Humanitarian Negotiations

By measuring the effectiveness of humanitarian negotiations, humanitarian actors can learn lessons from ongoing and past interactions with armed groups, and can better prepare for future negotiations. Self-evaluation by the humanitarian negotiators themselves and their parent organization(s) can highlight what worked, what didn't work, and what could have been done differently.

*Case Study: Humanitarians' Views of Factors Influencing Success/Failure of Negotiations in Angola between 1998 and 2001*

*These factors were identified by humanitarians working in Angola through a series of interviews in Luanda (November and December 2001).<sup>39</sup>*

*Structural Factors → (1) Existence of framework agreements; (2) level of national social engagement and commitment to humanitarian values; (3) institutional (un)certainty; (4) level of international political engagement;*

*Organizational Factors → (1) institutional credibility; (2) organizational mandate; (3) level of institutional autonomy; (4) organizational resources, technical expertise and capacity;*

*Individual Factors → (1) local/cultural knowledge; (2) extent of preparation before negotiations; (3) organizational seniority of humanitarian negotiators; (4) negotiating skill level.*

Very often, humanitarian negotiators will not have the time available to undertake extensive lessons learned studies in the field. However, the following guidance points are intended to assist humanitarian agencies in measuring the effectiveness and success of their negotiations with armed groups, taking into account the time and resource constraints facing humanitarian practitioners:

- Humanitarian negotiators should debrief following each negotiation encounter to assess progress towards achieving the humanitarian objectives that necessitated the negotiations in the first place. Negotiators should assess what approaches worked well, and what could be done differently in future interactions. Is the dialogue converging (e.g. is there agreement on the issues to be negotiated), or diverging?
- Humanitarian negotiators should identify measures of effectiveness for evaluating the humanitarian negotiators: These could include simple measures such as changes in humanitarian access (area/population served) that resulted from the humanitarian negotiations; changed in number of attacks on humanitarian workers that can be attributed to agreements arrived at between humanitarian organizations and armed groups etc.

<sup>39</sup> This case study drawn from: Alex Costy, *Managing the Compromise: Humanitarian Negotiations in Angola, 1998-2001* (Geneva: Centre for Humanitarian Dialogue, January 2002).



## 6.6 Conclusion: The Elements of Humanitarian Negotiation in Practice

The elements of humanitarian negotiations with armed groups presented in this manual provide a template for humanitarian agencies to develop a negotiating strategy and approach targeted to a particular country- or thematic context. Every case of humanitarian negotiations will be different, but the structured elements of the negotiations presented in this manual provide the basis for more consistent and predictable negotiations with armed groups.

The case study presented below captures some of UNICEF's experiences of negotiating with the Liberation Tigers of Tamil Eelam (LTTE) group in Sri Lanka, and serves to review elements of humanitarian negotiation that have been presented in this manual. UNICEF experiences are presented beside the relevant chapter/section headings of the manual.

### Case Study: UNICEF Negotiations with LTTE

*The UNICEF Country and Field Offices in Sri Lanka have engaged with the Liberation Tigers of Tamil Eelam (LTTE) because it is a significant group involved in the 2 decade armed conflict with the Government of Sri Lanka and controlling parts of the war-affected North Eastern provinces of the country. This case study captures aspects of UNICEF's experience of negotiating with the LTTE armed group.*

*Reasons for negotiating (Section 2.2)*

Primacy of humanitarian mission:

→ UNICEF has made it clear to the LTTE that the organization's priority is the protection of children. UNICEF also expressed its neutrality regarding its involvement with the 2 parties to the conflict;

Substantive Issues:

→ Ensuring that the LTTE does not recruit children in their armed forces under the age of 17, as the LTTE committed in 1998 to the Special Representative of the UN Secretary-General on Children and Armed Conflict (SRSG-CAC);

→ Access to populations in LTTE-controlled areas;

→ Negotiation of travel passes and general security issues;

*Learning about the armed group (Section 2.4)*

→ The LTTE has a sophisticated structure, including a political wing and a military wing; UNICEF has solely interacted with the political wing;

→ UNICEF experience highlights the fact that it is important to be cognizant of the power politics that take place within a group, and understand whether or not the person with whom the humanitarian organization is engaging is in a position to make commitments on behalf of the group as a whole;

*Issue of legitimacy (Section 2.4)*

→ The LTTE has been recognized by the government as a group with which it must negotiate peace;

→ UNICEF has always engaged with the LTTE with full knowledge of the Government of Sri Lanka, and with the understanding that this engagement will not confer any additional legitimacy to the group.

*Humanitarian partners in negotiation (Section 2.5)*

→ In the LTTE-controlled area of Vanni, only UNICEF and UNHCR engaged regularly with LTTE from the UN system; but there has been also contacts between the LTTE and other UN agencies.

→ Agency engagement with the LTTE is discussed both at the level of the UN Country Team (monthly) and on a more regular basis bilaterally;

→ Generally, each UN agency in Sri Lanka engages separately based on its own agenda;



<p>Framing the Negotiations (Chapter 3)</p>	<p>→ Neutrality is essential if one is to influence the armed group, as the perception may exist that the UN is on side of the government. → The human rights instruments of the UN Convention on the Rights of the Child (CRC), the Optional Protocol on children and armed conflict to the CRC and commitments made by the LTTE to the SRSG-CAC are the legal standards used by UNICEF Sri Lanka in its negotiations with the LTTE; → <u>Aggressive</u> promotion of international law may generally not be as successful as expected. Many armed groups have not been sensitized to agree with these laws;</p>
<p>Three Phases of negotiation (Section 4.2)</p>	<p><u>Phase II: Seeking Agreement</u> → UNICEF has worked to seek agreement with the LTTE on a number of issues (identified above), and agreements have generally been informal and verbal (see below); → UNICEF representatives have worked with LTTE counterparts to develop options for agreement on particular issues;</p> <p><u>Phase III: Implementation</u> → In 1998, the SRSG-CAC met with the LTTE and secured a statement from the group that it would cease the recruitment of children into their armed forces, allow freedom of movement for the civilian population, and greater freedom for women. UNICEF was responsible for follow-up on this. No specific mechanism was put in place to monitor adherence to the agreement. → Regular and repeated engagement ensures that the group understands not only UNICEF's priorities, but also that UNICEF is working for the good of the communities in areas under their control.</p>
<p>Direct v Indirect Negotiation (Section 4.3)</p>	<p>→ UNICEF has engaged with the LTTE at all levels of the agency; → Direct engagement between the LTTE and the Sri Lanka UNICEF Country Office has been through advocacy, leading to verbal commitments from the LTTE; → Negotiations, agreements and exchanges between UNICEF and LTTE have been purely verbal and informal; → UNICEF has never negotiated indirectly with the LTTE;</p>
<p>Possible implications of negotiations (Section 6.2)</p>	<p>→ <u>Third-party influences</u>: Governments may express concerns about anyone engaging with opposition armed groups, especially the UN, but they can be persuaded that it is in the best interest of affected communities. → <u>Staff Security</u>: National staff may have difficulties remaining neutral, especially if they are members of one of the groups in conflict. They may also be put in situations of insecurity because of their engagement; → UNICEF's negotiations with the LTTE have never prejudiced its ability to engage with the government;</p>
<p>Ensuring commitment (Section 6.3)</p>	<p>→ UNICEF's experience highlights that even in situations where an agreement is reached and commitments have been made between high-level leaders in an armed group and high-level UN personnel, there is never total guarantee that these commitments will not be violated.</p>



Points to Remember

**POSSIBLE IMPLICATIONS OF HUMANITARIAN NEGOTIATIONS**

→ Changes in perceived neutrality and impartiality of humanitarian actors engaged in negotiations; TO MITIGATE: (A) clearly communicate the objectives and the scope of the negotiations with armed groups; (B) communicate and negotiate with all parties to a given conflict.

→ Impacts on humanitarian security; TO MITIGATE: (A) meet with the armed group in a neutral location/venue; (B) request security guarantees from the armed group prior to entering into negotiations; (C) ensure that the necessary parties are informed of the humanitarian negotiations (e.g. the host country government).

→ Third-party influence and 'sanctions' on humanitarian negotiators; TO MITIGATE: (A) engage in parallel advocacy efforts and bilateral humanitarian diplomacy with regional organizations, the host country government, and neighboring states to gain support for the humanitarian negotiations; (B) ensure that the objectives and process of negotiating with the armed group are effectively communicated to those actors that may seek to exert pressure to constrain the negotiations; (C) build consensus and support for humanitarian negotiations across humanitarian organizations.

**COMMITMENT TO THE AGREEMENT**

→ Secure/enhance commitment by: (1) Ensuring 'Buy In' and Ownership; (2) Clear Statement of Implementation Roles; (3) Emphasizing Accountability; and (4) Including All Parties in Monitoring of Implementation (Section 6.3);

**ENFORCEMENT**

→ By incentives or coercion ("carrot and stick")

→ Other actors (states, regional organizations) better placed to apply diplomatic/other pressure to armed group;

→ Humanitarian organizations can continue negotiating on issues of enforcement, attempt to persuade armed group, focusing on accountability of armed group (See Section 3.3).

**DISPUTE RESOLUTION MECHANISMS**

→ Establishment of an implementation monitoring commission; Referral of disputed provisions to an independent non-binding arbitration mechanism; Appointment of a neutral mediator to assist the parties in resolving disputes.

**DEALING WITH NON-COMPLIANCE**

→ Enter into further negotiations with the armed group to arrive at an agreed outcome which may resolve the issues of non-compliance arising from the original agreement;

→ Identify third party states, regional organizations or other actors and engage, directly or indirectly, in advocacy and humanitarian diplomacy to get these actors to apply pressure (diplomatic, other) to the armed group to comply with the agreement.

→ If non-compliance with the agreement results in an operating environment which compromises humanitarian security; consider, as a last resort, suspension of humanitarian activities until such time as a conducive humanitarian operating environment exists.



## Annex I - Worksheet for Mapping Characteristics of Armed Groups

Name of Group:

Armed group negotiator:

Date:

motivations	structure	principles of action	interests	constituency	needs	ethno-cultural dimensions	control of population and territory
Original motivations: -- Economic -- Political -- Religious -- Ideological -- Other	Single leader  Executive committee  Hierarchical or flat	What are the principles of action of the group?  Guerrilla warfare  Economic principles  Ideological principles	What are the group's dominant interests?  Achieving political outcomes  Self-preservation  Economic interests  Personal interests of leaders  Other	Stated constituency?    Other community leaders:  Do community leaders 'endorse' the armed group	Organizational  Resource-related  Identity-related  Needs of individual negotiators	Religious beliefs  Cultural practices (e.g. role of tribal elders, community mediators)  How does the armed group view members of other groups?	Extent of control over: 1) Population  2) Territory  How is control exerted  What is the basis for his control (coercion / legitimate support basis etc.)
Current motivations							
What do leaders say about motivations	Who are central/local leaders to be aware of  Sources of support	Political principles  Religious principles	Do stated interests concur with actions of the group?				



## Annex II - Resources for Negotiation With Armed Groups

Negotiation in General

Negotiation on Particular Issues

Sample Written Agreements with Armed Groups

International Law relevant to Armed Groups

Humanitarian Policy Documents





## Annex III - Glossary of Key Terms

<b>armed groups</b>	groups that have the potential to employ arms in the use of force to achieve political, ideological or economic objectives; are not within the formal military structures of states, state-alliances or intergovernmental organizations; and are not under the control of the state(s) in which they operate.
<b>complex emergency</b>	a humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single and/or ongoing UN country programme. [IASC definition]
<b>humanitarian negotiations</b>	negotiations undertaken by civilians engaged in managing, coordinating and providing humanitarian assistance and protection for the purposes of: (i) ensuring the provision of protection and humanitarian assistance to vulnerable populations; (ii) preserving humanitarian space; and (iii) promoting better respect for international humanitarian- and human rights law.
<b>humanitarian security</b>	physical and psychological safety of both humanitarian staff and beneficiaries [working definition used in this manual]
<b>humanitarian space</b>	a conducive humanitarian operating environment. [OCHA definition]
<b>negotiation</b>	The deliberation which takes place between two or more parties regarding a proposed agreement. In the context of armed conflict, negotiations often relate to permitting humanitarian access, agreeing upon a ceasefire, or establishing peace through a framework agreement or peace accord. [OCHA definition]
<b>protection</b>	[encompassing] all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. international human rights law, international humanitarian law, and refugee law). [working definition used by IASC]