Briefing Note:
Frontline Negotiations with Non-State Armed Groups

by Rob Grace

Introduction

The current state of armed conflict differs greatly from when the first Geneva Convention was adopted in 1864. Indeed, the first significant “test” of the Geneva Convention of 1864 was the Austro-Prussia War of 1866, a conflict that lasted just over two months. In contrast, in the 21st century, the world is rife with protracted conflicts, many of which are non-international in character. The proliferation of protracted non-international armed conflicts (NIACs) has particularly defined the post-Cold War era, and as a result, during the past two decades, non-state armed groups (NSAGs) have become increasingly significant actors with which humanitarian practitioners must perpetually engage in the field.

Aiming to assist in framing professional discussions related to frontline humanitarian negotiations with NSAGs, this document offers a brief overview of relevant academic and policy literature. This document is divided into three sections. Section I describes scholarly approaches to devising a typology of NSAGs and offers comments on the scope of humanitarian engagement with NSAGs. Section II discusses several key challenges that humanitarian practitioners have faced when negotiating with NSAGs. Section III offers concluding remarks about professional discussions on these issues moving forward.

I. Engaging with Non-State Armed Groups: Issues of Definition and Typology

The umbrella term “non-state armed group” can encompass a wide array of different types of organizational entities. As two scholars write about this definitional difficulty:


A definition of non-state armed actors has proven difficult owing to their many types and characteristics. Generally speaking, non-state armed groups are defined as distinctive organizations that are (i) willing and capable to use violence for pursuing their objectives and (ii) not integrated into formalized state institutions such as regular armies, presidential guards, police, or special forces. They, therefore, (iii) possess a certain degree of autonomy with regard to politics, military operations, resources, and infrastructure. They may, however, be supported or instrumentalized by state actors either secretly or openly, as happens often with militias, paramilitaries, mercenaries, or private military companies.  

Despite the commonalities mentioned above (willingness and capability to use violence; separation from formal state institutions; and political, military, and resource autonomy), NSAGs differ from one another in various ways, including organizational structure, funding sources, degree of international political support, military and political strength, and capacity to deal with detainees. What are the implications of these differences? A typology devised by one scholar aims to explain the likelihood that a NSAG will survive according to two factors: 1) whether the NSAG has a governmental safe haven, and 2) how the NSAG is organized (centralized, decentralized, or fragmented). A table outlining a model for the relationship between these variables appears below:

<table>
<thead>
<tr>
<th>Safe haven</th>
<th>Centralization</th>
<th>Decentralization</th>
<th>Fragmentation</th>
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<tbody>
<tr>
<td>Good chance of survival</td>
<td>Poor chance of survival</td>
<td>Poor chance of survival</td>
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<tr>
<td>Poor chance of survival</td>
<td>Good chance of survival</td>
<td>Poor chance of survival</td>
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<tr>
<td>No safe haven</td>
<td>Poor chance of survival</td>
<td>Good chance of survival</td>
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To elaborate, this model is based on the notion that “[c]entralized organizations are much more capable than non-centralized ones of taking the strategic initiative, and they have other advantages once they can operate without the intrusive intervention of rivals.” A centralized NSAG that also has a safe haven “can also transmit information from where it is produced to where it is needed, can accumulate knowledge, and can centralize training with less fear of serious interruption.” Meanwhile, decentralized NSAGs “are more resilient than centralized ones in hostile environments because their different components are more autonomous and less dependent on co-ordination. They are not as vulnerable as centralized organizations are to short-cuts such as decapitation or sophisticated strategies that aim to isolate the organization because the rank and file are both fairly independent and well ensconced within the social structure.”

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10 This table is modified from A. H. Sinno. Armed groups’ organizational structure and their strategic options. *International Review of the Red Cross* 93 (882): 321.
11 Ibid, 319.
12 Ibid, 320.
13 Ibid, 318.
Scholarly attention has also been paid to the extent of humanitarian engagement with NSAGs. The below figure details various objectives and activities that have necessitated engagement from various types of entities (governments, humanitarian organizations, and development actors, etc.) with non-state actors:

<table>
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<th>Objective</th>
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<tr>
<td>Conflict resolution</td>
<td>Direct/purposeful contact with NSAGs</td>
</tr>
<tr>
<td>Operational services</td>
<td>Indirect contact with NSAGs</td>
</tr>
<tr>
<td>Norm diffusion</td>
<td></td>
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<td>Public policy</td>
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This framework conceptualizes frontline humanitarian negotiation as an activity that occurs during acute conflicts or emergencies, entails the implementation of operational services, and the nature of the engagement “is selective and only with regard to a dispute or an emergency; the armed actors are means to an end, as the services’ main focus is the population.”\(^{15}\) Two other authors concur that “[o]verall, the international community’s engagement with NSAGs has been limited, and often focused more on dialogue about humanitarian access and relief than on protection.”\(^{16}\) Indeed, a recent study of NSAGs that have engaged in dialogue with Geneva Call suggests the need for access negotiations. The study finds, “All of the ANSAs [armed non-state actors] surveyed feel they have a right to regulate humanitarian access. They see themselves as governments in waiting, or as de facto governments of the areas they control. Most have some form of policy or procedure in place, however loosely articulated, to regulate humanitarian access.”\(^{17}\) Furthermore, according to another author, some humanitarian organizations might shy away from engagement on protection issues due to the “fear that wider engagement would prejudice their relations with the NSAG, impede access, endanger staff or compromise principles.”\(^{18}\)

Still, other publications have emphasized various other objectives that engagement with NSAGs has entailed, for example, to “protect civilians” and “facilitate armed groups’ compliance with international

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\(^{17}\) A. Jackson (2016). In Their Own Words: Perceptions of Armed Non-State Actors on Humanitarian Action. Geneva Call, p. 16.

humanitarian law.”

A United Nations Children’s Emergency Fund (UNICEF) policy document articulates various aims of negotiations with NSAGs, those being to: “advocate in favour of and to secure access to populations in need for the provision of assistance;” “secure commitments on goals fulfilling the rights of children in humanitarian emergencies;” “advance accountability for perpetrators of violence against children, and to assist the United Nations Security Council in its work to combat grave violations against children;” “mitigate risks to staff security;” and “pursue UNICEF’s humanitarian mandate in post-conflict situations.”

One scholar notes that the space for engagement on issues of humanitarian protection (in addition to access) can depend on what services the humanitarian organization has to offer that might be beneficial to the NSAG: “Actors that provide material aid enjoy an advantage in engaging NSAGs on protection issues because they can offer them concrete things. Médecins Sans Frontières (MSF), for instance, can provide expert medical assistance and facilities when NSAGs may not be able to. The ICRC [International Committee of the Red Cross] can provide medical assistance and first-aid training; detainee visits; prisoner exchanges; family tracing; and repatriation, which can be used as entry points for IHL [international humanitarian law] dialogue.”

II. Key Challenges

This section discusses five challenges that humanitarian practitioners have faced when engaging in frontline negotiations with NSAGs. They are: 1) navigating engagement with governments alongside negotiations with NSAGs, 2) grappling with negative perceptions that some NSAGs have of humanitarian organizations, 3) the divide that sometimes exists between NSAGs’ interests and the objectives of humanitarian engagement, 4) risks deriving from counter-terrorism regulations that proscribe engagement with certain NSAGs, and 5) the fragmented nature of NSAGs that have a decentralized organizational structure.

A. Navigating Engagement with Governments and NSAGs

The fact that engaging with non-state armed groups is not intended to bestow legitimacy on these entities is widely acknowledged. As an Office for the Coordination of Humanitarian Affairs (OCHA) handbook on humanitarian negotiations states, “Humanitarian negotiations do not infer any legal status, legitimacy or recognition of the armed group.”

However, governments often carry this concern nonetheless. For example, in Afghanistan in 2008, the government endeavored to prevent humanitarian organizations from engaging with anti-government armed groups.

Concerns about engaging with NSAGs have also been expressed by the United States, as described by a representative from ICRC:

Donald Rumsfeld wrote a memo to all the departments of defence: anything that the ICRC says or writes to anybody, must be communicated to the Pentagon within 24 hours. They perceive us as a
bigger threat than we are. One problem is the legitimising of non-state actors. They do not understand, we are too small, but we are perhaps bigger than we say we are.24

Concerns about the legitimization of armed groups can impact the entire tenor of humanitarian negotiations, as occurred in Angola:

UCAH [Humanitarian Assistance Coordination Unit] had to be tactful in its dealings with the two parties. The GoA [Government of Angola], having for the first time been elected in the 1992 ballot, insisted that its sovereignty, and UNITA’s [National Union for the Total Independence of Angola] illegitimacy, be reflected in the tone and conduct of the negotiations. However, dealings with UNITA, especially about such serious issues as security for UN [United Nations] flights and staff, had of necessity to be formal in tone. The GoA did not object to UN officials travelling to Huambo for talks with UNITA, but expected to be asked for permission for flights to UNITA territory, and appraised of the contents of their discussions. While the GoA was consulted about plans, UNITA was simply given the choice to say yes or no, without making alterations. This often annoyed UNITA.25

How should humanitarian negotiators grapple with this fundamental aspect of engaging with NSAGs? This question is particularly pertinent because one reason that some armed groups engage with humanitarian organizations is to derive the very form of legitimacy about which governments have expressed concern. This reality is expressed by the following passages:

• “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.”26
• “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.”27
• “[T]he RUF [Revolutionary United Front] leaders attached [importance] to [the] presence [of] aid agencies for the purpose of their own credibility and legitimacy, according to one of the leaders of the RUF: ‘to prove to the world we are not the beast we are held to be.’”28
• “Armed actors may also be more mindful of International Humanitarian Law (IHL) or willing to permit aid agency access in the hope that doing so will earn them greater legitimacy among the international community (as with the Sudan People’s Liberation Movement-North (SPLM-N), for example). Other groups may compel aid agencies to hand over relief items so that they can take credit for their delivery (as with Al Shabaab). There are also instances where armed groups may

27 Ibid, 40.
perceive that it is more beneficial to their interests to attack or expel aid workers than allow them to work safely (as with Al-Shabaab and the Taliban).”

As these passages suggest, humanitarian organizations—and negotiators, specifically—face a conundrum. On the one hand, negotiators must assure governments that engaging with anti-government non-state entities will not confer legitimacy upon these groups. On the other hand, the potential for legitimacy can be one of humanitarian negotiators’ strongest selling points for drawing NSAGs into productive negotiations. As a consequence, humanitarian negotiators find themselves caught between the irreconcilable interests of governments and non-state actors. Indeed, in order to retain access, aid agencies have sometimes avoided activities that could have been viewed with suspicion by the government, even if this choice risked flying in the face of the need to abide by the humanitarian principle of impartiality. This issue arose in the context of Sudan, as one author describes:

The reactions of aid agencies to this situation show some of the tendencies that it is hoped may be addressed through a greater use of historical analysis. Some agencies have agreed to provide aid to government areas even while access to areas under SPLM-N control remains blocked. Many avoid activities the government may see as suspicious or offensive: some have chosen not to provide aid in refugee camps for people from Southern Kordofan and Blue Nile in South Sudan for fear of being perceived by the government of Sudan as supporting the SPLM-N. While SPLM-N frustration with the international community grows and many within the SPLM-N believe that the UN has been infiltrated with government spies, some aid agencies hold out hope that the government can still be persuaded through private advocacy or ‘good behaviour’ on the part of aid agencies.

B. Managing Negative Perceptions

In various contexts, humanitarian professionals have encountered outright hostility from NSAGs. For example, in Afghanistan, “One Taliban fighter claimed he would never allow aid agencies into his area because they all ‘work under the universal powers who drink the blood of Muslims’ and ‘have converted people to Christianity.’” Furthermore, in relation to both Afghanistan and Somalia, “While UN data shows the greatest humanitarian needs in southern Afghanistan and South-Central Somalia, aid agencies are disproportionately concentrated in the more peaceful northern and central parts of Afghanistan and work outside Al-Shabaab areas in South-Central Somalia. This disparity has reinforced resentment and suspicion.”

This hostility can manifest in the intentional targeting of attacks against humanitarian field workers, a risk on which the humanitarian sector has increasingly focused in recent years. Discussing attacks that occurred in Syria Afghanistan, Pakistan, and Sudan, one author states:

Each of these attacks was targeted and intentional. None was a case of ‘wrong place and wrong time’, ‘caught in the cross fire’, or just unlucky. The UN and its agencies, the ICRC and many

32 Ibid.
other humanization organizations are being targeted by NSAGs precisely because they are providing humanitarian aid or protection.\(^{33}\)

The question is how humanitarian negotiators can make any successful negotiating inroads with entities predisposed to distrust humanitarian organizations. In some contexts, as one author notes, success might be difficult, or even impossible, to achieve:

For example, imagine you are operating in a city in which four armed groups of child soldiers are active. You go to the local head of these groups and ask that they be disbanded. The overriding interest of the local leader of the armed groups is to win a war, while the humanitarian concern is to protect children from that war. Finding a creative way to reconcile this conflict of interests that meets both the needs of the children and those of the military commanders may not be possible, or legally and morally unsatisfactory from a humanitarian standpoint.\(^{34}\)

C. The Divide Between NSAGs' Interests and Humanitarian Objectives

A growing body of literature focuses on how norms of IHL can serve the interests of NSAGs. For example, NSAGs that view themselves as “governments in waiting” have an interest in protecting the civilians over whom they aim to govern, and adherence to norms of IHL could have a beneficial public relations effect, feeding into perceptions of a NSAG’s legitimacy, both at the domestic and international levels.\(^{35}\) Additionally, there are also potential reciprocal benefits, in particular, in relation to detainee treatment. One author elaborates:

The treatment of prisoners is the area on which positive reciprocity has the greatest effect. Some armed groups have found that their adversary can be influenced by the way in which they treat their prisoners. If they treat enemies in their hands well, this may lead to improved treatment of their own members in enemy hands. The enemy’s desire to ensure that its own combatants continue to be well treated and the fear of repercussions on public opinion stemming from disparity of treatment have sometimes enabled that objective to be achieved.\(^{36}\)

Conversely, though, this literature acknowledges that NSAGs’ interests and humanitarian objectives do not always align. The author cited above also notes:

Disregard for the rules of IHL may have a number of short-term military advantages. To give some examples, perfidy may make it possible to attack a target that is too well defended for the group to do so otherwise. Protected property (places of worship, hospitals) may be used as a


military position because the enemy will be reluctant to attack it, especially if the international media are keeping a close eye on the conflict. Giving no quarter may help to shatter the resistance of a unit by creating a climate of terror. Pillaging may considerably facilitate a column’s logistics. For a number of commanders of armed groups, freedom of action takes precedence over any other consideration. However, it must be recalled that, in all those cases, the military advantage of not respecting IHL is short-term and rapidly dwindles as soon as the enemy comes up with counter-measures.\textsuperscript{37}

A great deal of evidence also indicates that many NSAGs lack sufficient knowledge of IHL. Indeed, the aforementioned Geneva Call study on perceptions of NSAGs of humanitarian action found that, even NSAGs that expressed a belief in the importance of international norms exhibited substantial gaps in terms of their knowledge of specific IHL rules.\textsuperscript{38} Thus, during frontline negotiations, integrating language of IHL norms into the negotiation discourse might not be an effective negotiation strategy. Furthermore, for groups perceiving that material benefits can be derived from violating IHL norms, efforts during negotiations to frame issues of humanitarian protection in terms of the NSAG’s interests might be similarly ineffective.

D. Risks Deriving from Counterterrorism Legislation

Additional challenges arise when humanitarian organizations negotiate with entities listed on domestic and/or international terrorist lists. In such instances, engaging with these groups could lead humanitarian organizations to face legal ramifications. Because of this issue, some humanitarian organizations adopted an official policy of cutting off ties with Hamas.\textsuperscript{39} For humanitarian organizations operating in the context of Somalia, this issue has led to the need for “new layers of staffing to oversee administration and monitoring and significantly enlarged operational budgets.”\textsuperscript{40} Another context in which this issue has arisen is Colombia, where “contact with guerrilla groups is prohibited by law.”\textsuperscript{41} In such environments, the overarching dilemma is that laws have been enacted at the national and international levels that seem to criminalize impartial humanitarian action. Overall, this issue has led to an environment of uncertainty about what activities a humanitarian organization may pursue without exposing itself to legal risks.\textsuperscript{42}

\textsuperscript{37} O. Bangerter (2011). Reasons why armed groups choose to respect international humanitarian law or not. International Review of the Red Cross 93 (882): 371.
\textsuperscript{38} A. Jackson (2016). In Their Own Words: Perceptions of Armed Non-State Actors on Humanitarian Action. Geneva Call.
E. Fragmentation of De-Centralized Armed Groups

Existing literature on humanitarian negotiation suggests the importance—as well as the challenges inherent in—assessing and effectively engaging with interlocutors during humanitarian negotiations. Indeed, a successful negotiation often hinges on developing a strategic understanding of the interlocutors’ interests and forging a personal connection with these negotiating partners. According to one author:

Personality assessment is another key judgement that humanitarian negotiators need to make as they seek to persuade people. Understanding what makes a person tick is essential to gauging how best to tick with them. Is your interlocutor essentially a loner or gregarious? Is he or she intrinsically happy or sad? Is she or he driven by power, insecurity, ideals or circumstance? What and who are important to his or her life? What makes them laugh and what makes them angry? Are they trustworthy? Are they sane?33

However, negotiators often must operate in a rapidly evolving on-the-ground environment. Even if a negotiator makes a personal connection with an interlocutor, control of the relevant territory can quickly change hands, meaning that the negotiator will have to begin negotiation efforts anew with a different individual. As one paper states, “NSAGs are often fragmented—for example, it is estimated that between 1,000 and 6,000 NSAGs are operating in Syria. While some, particularly the larger groups, are highly sophisticated, others have little command and control structure or unity of purpose.”44 In such environments, it might also not be clear which interlocutor within the NSAG actually wields decision-making power.

III. Concluding Remarks

How can the humanitarian sector most effectively grapple with the challenges mentioned throughout this document? Much of the literature on humanitarian negotiations mentions barriers that have hindered the professionalization of this field. One policy document mentions that “no common negotiating culture” exists,45 and overall, the humanitarian sector has also been slow to appreciate the important role that negotiations play in the success of humanitarian operations.46 Additionally, the confidential nature of negotiations has evidently served as an impediment to sharing experiences and lessons learned across the sector.

In negotiations with NSAGs, these issues can become magnified. In particular, the aforementioned sensitivities of governments and the legal risks of engaging with NSAGs identified on terrorist lists can further increase the need for confidentiality, thus inhibiting processes of sharing experiences about past professional practices. Indeed, in certain complex environments where sensitive negotiations with NSAGs occurred, frontline negotiators did not even inform superiors within their own organization about ongoing

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negotiation efforts. Nevertheless, given the prevalence of NIACs throughout the world today, and the need to engage with NSAGs on issues such as access and humanitarian protection, it will be important for the particular challenges examined throughout this document to feature prominently in professional discussions about further research efforts on humanitarian negotiation, forging professional networks between negotiators across organizations and contexts, and crafting a body of policy literature that builds on the foundational guidance that already exists.