

Overcoming Power Asymmetry in Humanitarian Negotiations with Armed Groups

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Abstract

Humanitarian actors seeking to offer assistance and protection to civilians in many contemporary conflicts negotiate access with armed groups from a position of weakness. They consequently concede many of their demands, compromising humanitarian operations and principles, and leaving millions of vulnerable civilians beyond reach. Using a structural analysis of the negotiation process in many recent humanitarian crises this article demonstrates the basis of this marked power asymmetry and challenges the assumption in much of the literature that this power imbalance is immutable. Humanitarian negotiators have access to a range of tactics that can alter the structure of the negotiation to reach more favorable outcomes. This article argues that these strategies have proved effective in many recent negotiations, but also carry significant risks to humanitarian actors and to the civilians they seek to assist.

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Keywords

humanitarian – negotiation – conflict – armed groups – non-state actors – power asymmetry

Gaining access and protecting civilians affected by armed conflict is among the greatest challenges facing humanitarian actors today.^{1,2} Negotiating this access with non-state armed actors – referred to here as armed groups – is critical for humanitarian operations. But humanitarians enter these negotiations from a position of weakness. They have little of value to trade and are constrained in their bargaining strategy by humanitarian principles. They often adopt “crude and unsophisticated bargaining techniques” (Cutts 1999b: 45), relying on tenets of international law that carry little weight with their interlocutors. Moreover, humanitarian actors lack weapons and control no territory (Herrero 2014; Mancini-Griffoli & Picot 2004: 30), putting them at a distinct disadvantage with respect to the armed groups with whom they seek to negotiate. As one negotiator describes the challenge, humanitarians are “dealt a weak hand from a stacked deck” (Minear 2007: 15).

Due to this power asymmetry humanitarian actors are regularly forced to concede some or all of their demands. They may forego access to one group of civilians in exchange for gaining access to another, or they may succumb to pressure to provide assistance that is strategically advantageous to certain armed groups. Such negotiations all too often result in poor, compromise deals for humanitarian actors (Cutts 1999b: 44). Avruch (2004: 397) describes the choices they face as the “ethically precarious options of negotiating how many sacks of rice a warlord takes for allowing the convoy through.” Such concessions are regularly forced upon humanitarian negotiators, but may compromise the very principles on which humanitarian action is based (Mc Hugh & Singh 2013). These trade-offs – that are implicit in many other types of negotiation – form what Mancini-Griffoli and Picot (2004) call an *operational paradox* in which humanitarian actors are forced to negotiate the non-negotiable;

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- 1 A version of this article was presented at the 6th International Biennial on Negotiation (16–18 November 2016) at the Novancia Business School, Paris, France. The paper was awarded Young Researcher Prize, first place.
 - 2 The former Secretary-General of the United Nations notes in a 2015 report to the Security Council, “regular and sustained humanitarian access remains a key challenge in many armed conflicts. Access is a prerequisite for effective humanitarian action” (United Nations 2015: 13, emphasis added).

that is, the principles on which their very identity is founded (Brooks 2015).³ Humanitarians may alternatively withdraw from negotiations entirely when proposed trade-offs become too costly, or they may avoid negotiating at all. But these latter choices are essentially “self-defeating” for humanitarian actors whose ultimate purpose is to reach civilians affected by crisis.

Nevertheless, humanitarian agencies frequently negotiate access successfully with armed groups. But the process of humanitarian negotiation is under-documented.⁴ Despite the growing prominence of humanitarian negotiations in relief operations (Glaser 2005), there has been no systematic analysis of the phenomenon as a sub-field of negotiation theory. Moreover, negotiation theorists are yet to draw linkages between their scholarship and the practice of humanitarian negotiation itself. The literature on humanitarian negotiations has seen little theoretical development in the field and consists largely of case studies often recorded by humanitarians directly involved in the negotiations (Cutts 1999a; Jackson 2014a; Richardson 2000) and policy guidance (Mancini-Griffoli & Picot 2004; Mc Hugh & Bessler 2006) that leave largely unanswered the question of how humanitarian actors can attain more favorable outcomes without making costly concessions.⁵

The Argument

The beginnings of a theory to overcoming the power asymmetry in humanitarian negotiations between humanitarian actors and armed groups can be found in understanding the origins of this power imbalance. This structural analytical approach distinguishes between the raw power resources of an actor – aggregate structural power – and the elements of power which impact the negotiation directly – the issue-specific structural power (Habeeb 1988). As Zartman (1991) notes, power is not derived from the distribution of resources, rather, it is the means through which the negotiating parties change the positions of their counterparts.

Employing a structural analysis as a conceptual framework through which to understand the process of humanitarian negotiation is attractive for two key

3 Indeed, Glaser questions the applicability of the term ‘negotiation’ to the phenomenon under investigation here, on the grounds that the rules and principles of international law are by definition non-negotiable (Glaser 2005).

4 Grace describes “a dearth of scholarship and analysis” (Grace 2015: 2).

5 Indeed, Cutts (1999a: 1) observes with respect to Bosnia, “little research has been carried out on the way humanitarian access was negotiated with the warring parties.”

reasons. First, it allows one to research the implications of power and test the presumption of a weak bargaining position. In particular, it offers a framework to understand the ways in which humanitarians overcome their structural disadvantages to reach more favorable outcomes. Second, the focus of structural analysis on power dynamics and the factors that affect the structure of a negotiation allows one to analyze humanitarian negotiations where limited information is available, as is usually the case.

The Structure

The contribution of this article to negotiation theory begins the process of developing a model through which power asymmetry can be reduced (or overcome) so that a more favorable agreement can be attained by humanitarian negotiators. The first section of this paper employs a structural analytical approach to humanitarian negotiation to highlight those elements of power that disadvantage humanitarian actors, drawing on examples from various cases throughout the existing literature over more than 25 years of practice. Through these cases five key factors are identified as forming the basis of this power asymmetry; the process of humanitarian negotiation itself; competing notions of fairness between humanitarian actors and armed groups; the limits of international law in regulating ongoing conflict; the primacy of political and security considerations over humanitarian concerns; and the weak alternatives available to humanitarian actors outside the negotiation process.

The second section of this article identifies a number of tactics and maneuvers available to humanitarian negotiators to redress the power imbalance. These findings both complement and enhance the existing literature on asymmetric negotiations, and include the following tactics: persuasion, commitment, coalition-forming, reputation and fairness (or justice), mobilizing third-party support, and strengthened alternatives. As shall be demonstrated, each of these approaches carries risks for both humanitarian actors and the civilians they seek to assist.

The Definition

Much of the literature on humanitarian negotiation sees the phenomenon as a process of concessions and convergence, or in Glaser's language, a "dynamic bartering process" (2005). Yet these conceptualizations preclude an analysis of the potential for mutual value-creation from the process, and neglect the

dynamic extra-negotiatory tactics that often define the outcome of such negotiations. For the purposes of this article, humanitarian negotiations are therefore understood as: “A process through which humanitarian actors seek to secure agreement from parties to a conflict for the provision of principled humanitarian assistance and protection to civilians facing humanitarian need.” The extent to which humanitarian negotiations are considered successful is therefore contingent on the changes it elicits in the behavior of armed groups towards civilians, humanitarian personnel, and humanitarian operations.

The above definition of humanitarian negotiation has two primary components. First, the process must involve both humanitarian actors and parties to the conflict. Second, the objectives of the process must be to secure humanitarian access and protection for affected civilians. Humanitarian access consists of both the ability of humanitarian actors to reach populations in need as well as the ability of those populations to make use of critical assistance and services (Office for the Coordination of Humanitarian Affairs 2010). Principled humanitarian action is assistance that is provided in accordance with the principles of *humanity*, *impartiality*, *neutrality*,⁶ and *independence*.⁷ These principles are grounded in international humanitarian law (IHL),⁸ provide the ethical foundations for humanitarian operations, and form the basis from which humanitarian actors are legitimized as the “neutral third party on the battlefield” (Rieff 2002: 69).

The Stacked Deck of Humanitarian Negotiations

Throughout the literature structural power is assumed to be heavily weighted in favor of armed groups during humanitarian negotiations. In his case study of negotiations in Bosnia throughout the 1990s, for example, Cutts (1999a: 10, 13) observes, “UNHCR officials on the ground generally found themselves negotiating with the warring parties from positions of considerable weakness,” and as a consequence, “met with little success at the negotiating table.” Indeed, in their seminal handbook on humanitarian negotiations, Mancini-Griffoli and Picot (2004: 11–12) identify this weak negotiating position as one of three laws or dilemmas that characterize their practice. The literature on humanitarian

6 A/RES/46/182 (1991).

7 A/RES/58/144 (2004).

8 Geneva Convention IV, Articles 17, 23, and 59; Additional Protocol I, Article 70; and Additional Protocol II, Article 18.

negotiations suggests this weak bargaining position of humanitarian negotiators is attributable to five key issues discussed below.

The Process

The process of negotiating access is itself weighted against humanitarian interests in a number of respects. First, the safety of humanitarian negotiators and the communities they seek to assist is usually in the hands of their negotiation counterparts (Cutts 1999a, b). Humanitarian actors consequently require security guarantees from the very parties to the conflict with whom they are negotiating, placing them at a distinct disadvantage. It also constrains the strategies available to humanitarians as escalation tactics, aggressive behavior, or withdrawal from the negotiation may place humanitarian personnel in jeopardy.

Second, time within the process of negotiation can work against humanitarian actors. Humanitarian negotiators frequently have limited time with which to prepare when armed conflict breaks out, and they may consequently have an incomplete understanding of their negotiation counterpart or the environment in which they are seeking to work (Toole 2001). It is humanitarians who require agreement to operate, whereas armed groups require little over the short-term that humanitarians can provide. Even when armed groups look to humanitarians to enhance their own legitimacy or to deliver relief supplies to their constituents, time pressures are likely to be more pronounced for humanitarians. As the scale of needs grow, humanitarian actors will come under increasing pressure – from their headquarters, the media, as well as driven by their own desire to provide assistance – to make concessions and concede demands that may not have seemed appropriate at the start of the process. Thus, the perceived value of the alternatives available to humanitarian actors declines rapidly in an ongoing conflict, placing them at a distinct structural disadvantage.

Given the nature of humanitarian operations – high-stress and insecure environments, a rapid build-up of capacity, reliance on skilled international personnel – staff tend to rotate rapidly, undermining negotiations (Cutts 1999b: 43–44). This third factor limits the development of trust between negotiators (Morris 2007: 359), and frequently leads to a loss of institutional memory among humanitarian actors. It also limits the extent to which humanitarian negotiators become culturally competent, adapting to the tactics and accommodating the interests of their counterparts (Avruch 2004). When negotiators or management change frequently, there is a risk that armed groups will be able to re-negotiate points on which agreement had previously been reached (Cutts 1999a; Richardson 2000). Humanitarians may also be inconsistent in their positions and messaging, thus undermining negotiations (Jackson 2014a).

A fourth processual factor that prejudices the negotiation against humanitarians is the shifting of alliances and fortunes on the battlefield. Months or years of negotiation can come undone when one group loses territory or leadership changes annul past agreements, as occurred in Afghanistan in the early 1990s.⁹ Even identifying the relevant negotiating party can prove challenging, as was the case in the Democratic Republic of the Congo (DRC) in the early 2000s (Pottier 2006: 166–167) and Afghanistan in 1992 when regime collapse led to shifting alliances and confusion (Donini 2007: 155–156; Crombé & Hofman 2011). And the disconnect between senior leadership and field commanders,¹⁰ or between political and military leaders, can further undermine humanitarian negotiations.¹¹

Competing Notions of Fairness

Related to process is the issue of competing notions of fairness (or justice) between humanitarian actors and armed groups. Unlike other types of negotiation that entail a discrete conclusion – such as hostage or business negotiations – the outcome of the humanitarian variety must be maintained over time – often over many years.¹² As such, negotiated outcomes must be durable. Trust and fairness thus become fundamental components of humanitarian negotiation that limit the tactics and options available to humanitarian

9 Donini (2007: 156) observes, “The Taliban’s predecessors had accepted humanitarian actors as relatively neutral and impartial players. Assistance was not a factor in the war or something they should fight over. For the Taliban, however, the targeting of civilians and the denial of access and humanitarian assistance become integral parts of their war strategy.”

10 A formal agreement committing to allow humanitarian access was signed by the leadership of key armed groups in Bosnia in 1993, but “had little effect on the local military and civilian leadership and even less on those at the check-points” (Morris 2007: 362).

11 In Afghanistan, Jackson and Giustozzi describe the Taliban as a movement with a weak center. Consequently, “even a directive from the Taliban leadership issued in print will rarely be clear-cut and is subject to varying interpretations” (Jackson and Giustozzi 2012: 16). They further note, “despite the [positive] picture painted by Taliban leaders, field commanders ... generally exhibited more restrictive attitudes towards aid agencies and even greater suspicion of them” (Jackson & Giustozzi 2012: 17). Similarly in Gaza, Galli notes that political leadership in Hamas’s ministries had little influence over its paramilitaries (2013).

12 Richardson documents 10 years of negotiations between humanitarian actors and government and rebel forces in Angola (2000). Similarly, the account of Crombé and Hofman of the negotiations of one aid group in Afghanistan spans over thirty years (2011). Indeed, most contemporary conflict has become protracted and entrenched, and this is likely the norm within which humanitarian actors must now operate (von Einsiedel et al. 2014).

actors. Undue pressure or strategies that result in outcomes perceived to be too heavily-weighted in favor of humanitarian interests are unlikely to be upheld over time by armed groups in control of territory.

The concept of justice in a negotiation can be understood as procedural or distributive justice (Young 1991; Albin 2015) – that is, in terms of the process or end-state. The literature suggests armed groups tend to view fairness in the latter sense; in terms of the outcome and its impact on their own interests. Humanitarians, however, are wedded to a procedural concept of justice that is grounded in IHL and humanitarian principles. Assistance should accordingly be provided on the basis of needs that are independently assessed (the principle of humanity). Civilians facing more acute needs must consequently receive a higher proportion of assistance than those with lesser needs. But this introduces problems for negotiators, particularly when humanitarian needs are more pronounced among the constituents of one party to the conflict.

In negotiations taking place in Bosnia, for example, Serb forces claimed that relative population sizes should be the basis on which to allocate humanitarian assistance between Serb and Muslim populations. This position was likely more than an obstructionist tactic as it was “in keeping with the socialist traditions to which people were accustomed” (Cutts 1999a: 15), or may have been both tactical as well as an authentic position.¹³ Bosnian Serb forces, in particular, engaged in what Morris (2007: 256–257) describes as *linkages*, “offering or agreeing to local concessions that in effect conditioned assistance to one side on meeting the political demands of the other.” Such demands by armed groups led to humanitarian organizations having to provide assistance along population lines, with little regard for needs, claims Cutts (1999a)¹⁴ – although Morris (2007: 364–365) maintains that assistance throughout the Bosnian operation was calculated predominantly on the basis of needs.

Negotiations in Angola with the rebel movement *União Nacional para a Independência Total de Angola* (UNITA) took a similar turn when UNITA demanded an even share of relief between their own territory and that held by government forces, despite humanitarian needs being far more pronounced in the latter. Negotiators were unable to reconcile these competing notions of fairness, and talks eventually broke down (Richardson 2000).

13 Albin (2015: 52) suggests that “common and effective uses of justice arguments are probably partly tactical and partly authentic.”

14 Thirty percent of all humanitarian food deliveries went to Bosnian Serb areas, reflecting Serb demands that were based on pre-war figures in which Serb populations made up 30 per cent of the total population of Bosnia. Humanitarian needs were, however, far greater in non-Serb areas (Cutts 1999b: 44).

The Limits of International Law

IHL seeks to regulate the conduct of hostilities. It provides the legal basis from which humanitarian agencies claim their right to access vulnerable civilians. The Geneva Conventions and their Additional Protocols establish a right on behalf of conflict-affected civilians to receive assistance, and IHL prohibits the arbitrary denial of such assistance to civilians in need, mandating that humanitarian personnel be protected and respected (Bouchet-Saulnier 2002). Similarly, under the Rome Statute of the International Criminal Court (ICC 1998), access denial can constitute a war crime within international armed conflict.¹⁵

Despite these formal international legal provisions, humanitarian assistance and personnel remain highly vulnerable to parties to the conflict for three key reasons. First, no prosecution on the grounds of constraining access has yet been attempted by the ICC, meaning the legal powers it does pose do little to deter access constraints (Wynn-Pope 2016). Second, with most armed groups operating in non-international armed conflict (NIAC), the Rome Statute's prohibition on arbitrary access denial in international armed conflict does not apply. Third, the provisions within international law are far more proscriptive towards states than towards non-state actors (Bailes & Nord 2010: 449). And whilst regulation in NIAC of armed groups has progressed over recent years, accountability for breaches of IHL has not kept pace (Mastorodimos 2016: 112).

The international legal regime's attitude towards access by armed groups is therefore immature and underdeveloped. Moreover, there are few effective compliance mechanisms with which to pressure armed groups to live up to their obligations under IHL. The UN has established tribunals and sanctions regimes to address more grave violations of IHL. These efforts have led to greater sensitivity among some armed groups around their conduct, but the extent to which violations of international law persist in contemporary armed conflict is testament to the limited impact of such initiatives. Further, resorting to legal pressures can encourage armed groups to offer only symbolic support for humanitarian assistance and protection initiatives, whilst still acting as a quiet spoiler (Glaser 2005: 10). The legal basis on which humanitarians negotiate therefore carries little weight in most contemporary armed conflicts,¹⁶ and indeed, most negotiators concede that in reality the law is rarely invoked in most negotiation processes (Maurer 2013).

15 Article 8(2)(b)(xxv).

16 The President of the ICRC, Peter Maurer notes, "field-tested organizations know from experience that ethical or legal arguments are of limited use in the midst of battlefields (Maurer 2013: 6).

Competing Interests

The outcome of humanitarian negotiations is often subject to competing interests. These consist of tensions between humanitarian actors and armed groups, among different humanitarian actors, and between humanitarian concerns and broader geo-political and strategic interests.

Humanitarian actors certainly have much to gain from the process of humanitarian negotiation, but their interests can diverge significantly from the armed groups with whom they must reach agreement. Successful negotiations require *interdependence* between parties – that is, the belief by both potential parties that they can benefit from reaching a negotiated agreement. Many armed groups perceive some benefit to their own interests related either to their legitimacy and international standing, or their desire to assist the populations under their control.¹⁷ Negotiations are unlikely to take place if such interdependence is low or absent, however, except where they are an end in themselves, such as fostering international legitimacy or easing pressure from third parties. Negotiations over humanitarian access in Bosnia, in particular, were conditioned by low interdependence. Morris (2007: 261) notes, “the central reality remained that the aim of the humanitarian operation ran counter to the interests of those who had the power to obstruct it.” Nevertheless, these negotiations intermittently yielded positive outcomes for humanitarian actors and the populations they were seeking to serve for some of the reasons explored in the following section.

These negotiations can also be undermined by competing interests *among* humanitarian actors, building on Putnam’s concept of a two-level game (1988) – that is, the notion that international negotiations take place both domestically to generate support and internationally in search of agreement. The humanitarian system is characterized by independent actors and a diffusion of power. Achieving coherence – let alone coordination – in humanitarian negotiation is consequently a challenge for negotiators. In Bosnia the United Nations High Commissioner for Refugees (UNHCR) was the lead agency through which most other humanitarian actors worked. UNHCR also led the negotiation process throughout the conflict. Yet even with this centralized structure competing priorities became apparent among humanitarians, and internal divisions undermined their negotiating position. As Cutts (1999a: 23) observes, “those responsible for negotiating humanitarian access with the warring parties often contradicted and undermined each other.” Similarly, in triadic negotiations

17 This was the case for UNITA in the early 1990s, but the Angolan rebel movement became increasingly unconcerned by their public image or the welfare of Angolan civilians, and were therefore less sensitive to criticism and denunciation over time (Richardson 2000).

between the United Nations, the Sudanese government, and the armed opposition movement, the Sudan People's Liberation Army, the lack of coordination among humanitarian actors "was a major factor in weakening the humanitarian community's negotiating position," claims Hyder (2007: 245). And Galli (2013: 18) notes that despite the recognition among humanitarian actors of the need for a common policy covering negotiations with Hamas, "the varying positions of different organizations" proved too significant for agreement to be reached.

Divisions are also seen within humanitarian agencies themselves. Agencies can be internally divided when staff have differing political allegiances or are from different ethnic groups, leading to inconsistency and confusion in negotiations (Cutts 1999b: 44). Large agencies can also have multiple mandates, meaning they may have responsibilities for development and peace-building work as well as running humanitarian operations. And these different mandates often compete with one another (Duffield 2001). In Angola Richardson observes, humanitarian negotiations were used as a trust-building measure between parties to the conflict in an attempt to bolster a national peace process. Actors involved in humanitarian operations were often the same as those involved in the peace process, and the two became blurred in the eyes of parties to the conflict. As prospects for peace broke down, these linkages between humanitarian assistance and the peace process undermined humanitarian negotiations (Richardson 2000).

More prevalent is the absorption of humanitarian issues into broader political concerns. Whilst the rhetoric and language of humanitarianism is employed by a range of political and security actors during armed conflict, its central interests are frequently subsumed by other concerns (Fassin 2010). Minear (2007: 14) notes, "the relatively low ranking of humanitarian priorities, especially when high-level issues of national security and state survival are at stake, places humanitarian interests at a decided disadvantage." Again, this can be seen in Angola where the Special Representative to the Secretary-General was tasked with conducting both political and humanitarian negotiations, "but in practice, was completely occupied with trying to mediate an end to the fighting" (Richardson 2000: 9). Cutts (1999a: 25) similarly claims in Bosnia; "it was clear that for both the warring parties and the international community in general, the importance of ensuring humanitarian access always remained subordinate to political and strategic considerations."¹⁸ Further, the invasion of Afghanistan during the early 2000s saw humanitarian action co-opted by

18 Morris (2007: 358 & 267, respectively) similarly laments the tainting of humanitarian action by military and political action, and notes that "the humanitarian operation was

political and security interests. The United Nations Assistance Mission in Afghanistan (UNAMA) was the test case for a new strategic model that saw politics and aid integrated into the same structure, “with politics firmly in the driving seat” (Crombé & Hofman 2011: 52). As Hyder (2007: 243) notes with respect to humanitarian negotiations in Sudan “there exists ... a hierarchy of intent, and humanitarian concerns are seldom at the top.”

Weak Alternatives

Humanitarians generally enter negotiations out of necessity; they require access to an area under the control of an armed group in which civilians are facing severe humanitarian needs. But negotiating with armed groups carries risks to the safety of staff, to their humanitarian identity, and can also carry legal risks (Mackintosh & Duplat 2013). Many agencies are consequently reluctant to engage in direct negotiation with armed groups. Humanitarians have two alternatives to negotiating with parties to the conflict; they can employ alternative modalities for delivering humanitarian assistance that do not require permission from armed groups, or they can withdraw and offer no assistance to those affected.

If humanitarians believe the costs of negotiation are too high they may withdraw and wait for contextual changes that open new opportunities. Withdrawal, however, runs counter to the philosophy of humanitarian agencies; that is, offering succor to civilians affected by armed conflict. As Minear (2007: 18) writes, “the withdrawal of humanitarian operations can represent a victory for principle or a defeat for the agencies and their needy clientele.” Yet, withdrawal may not even be an option in some contexts. In Bosnia humanitarian agencies were denied their fallback position and forced to resume negotiations when their decision to suspend operations was overridden by the United Nations Secretary-General.¹⁹ Withdrawal is thus a last resort – if indeed it is an option at all – and is consequently a further point of weakness for humanitarians.

Even in contexts in which withdrawal may be technically feasible, ethical constraints can bind humanitarian actors to unpalatable agreements. A medical humanitarian NGO operating in Myanmar, for example, was forced to

at times simultaneously a vehicle for and subordinated to the political concerns of [involved] governments.”

- 19 UNHCR – the lead coordinating agency for all humanitarian activities in the country – suspended operations in Bosnia in early 1993, but the decision was immediately overturned by the Secretary-General, and operations resumed within days (Cutts 1999a: 5).

accept increasingly arduous constraints on their operations for fear that withdrawal would lead to the deaths of hundreds of existing patients who relied upon them for ongoing treatment (Terry 2011: 120).

The second alternative to negotiated access is to resort to alternative modalities for accessing affected populations. In theory these can include remote management (using local partners on the ground), providing cash assistance rather than relief supplies, conducting cross-line or cross-border missions which bypass the territory of obstructionist groups, or employing air drops. Each of these approaches, however, has serious limitations, and will only work under very strict conditions that are not usually present during contemporary armed conflict. Air drops, for example, still require staff on the ground to ensure they reach the right people and are not misappropriated by parties to the conflict (Giugni 2016). In certain contexts, one or more of these may be viable alternatives that offer humanitarians options outside the negotiation process. But the experience of humanitarian negotiators drawn on above suggests this is rarely the case.

This characteristic lack of alternatives leaves humanitarian actors structurally weaker than their counterparts. As Hopmann (1996: 119) notes in international negotiation,

Those states with more attractive alternatives, and consequently with lower losses associated with the failure of negotiations, are more likely to be influential in claiming a larger share of the value being distributed within negotiations, whereas those states that will suffer more from walking out of negotiations are placed at a bargaining disadvantage and are likely to end up with a smaller share of the benefits from any agreement that may be reached.

Strategies for Overcoming a Weak Negotiating Position

Negotiation literature identifies a number of tactics available to structurally weak states to overcome power asymmetries, beyond resorting to excessive concessions and exorbitant trades. Case studies suggest tactics such as brinkmanship, delaying negotiations, behaving unpredictably, and nuisance tactics can prove effective in changing the power balance of a negotiation (Wriggins 1976). Further, the weaker party can often pick the timing of a negotiation to improve the likelihood of attaining their preferred outcome, and may also adopt a strategy of issue-linking to alter the power asymmetry in their favor (Habeeb 1988; Druckman 1986).

Most of these tactics, however, are not available to humanitarian actors during negotiations with armed groups. Some of these strategies will likely place humanitarians at great risk and undermine the potential for reaching or maintaining agreement. Nuisance and delay tactics are likely to frustrate armed groups, jeopardizing the safety of humanitarians, and may lead to a breakdown of negotiations. Humanitarian actors also have limited options with regard to timing. Whilst they may capitalize on shifts in the context, they routinely face immediate pressure to deliver assistance, and the needs of affected communities grow more severe with time, thereby increasing pressure to offer concessions.

Nevertheless, reflecting the *structuralists' paradox* described by Zartman and Rubin (2000) in which weaker parties are frequently able to negotiate successfully with stronger ones, humanitarian negotiators *are* often successful in negotiating with armed groups. Despite limited theoretical and strategic development in the literature, humanitarian negotiators have adopted a range of effective tactics that can significantly offset the power asymmetries they routinely face. Mancini-Griffoli and Picot (2004) label these tactics *humanitarian levers*; that is, the range of incentives and threats that improve the likelihood of humanitarians realizing their preferred outcome through negotiation.²⁰

Drawing on the limited studies of humanitarian negotiations, some of the tactics (or levers) effectively employed by humanitarian negotiators are discussed below. As shall become clear from the literature, however, each of these tactics carries some degree of risk, and may not be effective in all contexts or over the long-term.

Persuasion

As established above, compliance and enforcement mechanisms within humanitarian law are weak, particularly for armed groups operating in NIAC. Nevertheless, humanitarians regularly have success persuading armed groups that it is in their interests to uphold IHL and consequently to facilitate access (Hofmann 2006). "The art of persuasion must remain the focus of [humanitarians'] ability to negotiate the successful recognition of humanitarian norms" (Slim 2003: 3). Some of the ways in which humanitarians use persuasion in humanitarian negotiation include a careful balance of moral or religious, or legal or prudential arguments, or arguments of reciprocity, using an appropriate vernacular for the context and their counterparts (Slim 2003: 13–18). Indeed,

20 These include persuasion through quiet advocacy, denunciation through public advocacy, substitution through the provision of material assistance, support in the form of professional expertise, the mobilization of allies in support of their negotiation target, and the threat of withdrawal (Mancini-Griffoli & Picot 2004, chapter 7).

Geneva Call, a non-governmental organization established to promote respect for international humanitarian norms among armed groups, claims to have persuaded over 50 armed non-state actors to sign a *Deed of Commitment* that binds them to respect specific humanitarian norms, such as refusing to use landmines or to recruit children into their ranks.

Persuasion has proved particularly effective for those groups concerned about their international image and those seeking legitimacy.²¹ Indeed, in the case of Bosnia in the early 1990s all key factions were seeking international legitimacy, making them more susceptible to influence and persuasion (Morris 2007: 359). Persuasion can also prove effective for armed groups with close ties to the communities to which humanitarian actors are seeking access, and on whose support such groups depend.²² Ultimately, appealing to the interests of armed groups is likely a more effective method of persuasion than reliance on national or international law, or ethics (Galli 2013: 19).

Another element of persuasion is grounded in culture and acceptance and the behavior of humanitarian negotiators. “Taking aid to Ituri’s suffering populations required not only courage,” writes Pottier in his ethnography of roadblock negotiations in the DRC, “but also a cool head, sound perception, assertiveness, skills in cultural sensitivity, and humor” (Pottier 2006: 169). Thus, persuasion can play a role at both the level of the foot soldiers manning roadblocks as well as among the leaders of armed groups, in support of Kerr’s (2010) assertion that persuasion is an under-documented but essential component of the negotiation process.

Commitment and Coalition-forming

Commitment – or willpower and volition – is an established element of power in a negotiation that is often employed effectively by weaker parties (Hopmann 1996). In negotiation terms commitment refers to the degree to which an actor desires their preferred outcome, and can be either positive or negative (Habeeb 1988: 22).

21 See, for example, Hamas in Gaza, where Galli (2013: 17–18) claims their search for international legitimacy tempered their attitude towards humanitarian access.

22 In Gaza, Galli (2013: 18) notes, humanitarian negotiations held with Hamas were most successful when humanitarian negotiators appealed to their dependence on popular support, which was dependent on allowing in aid. Similarly, Crombé and Hofman (2011: 54) attribute the positive reception one humanitarian medical NGO received from Jihadist groups in Afghanistan during the 1980s to pragmatic considerations; namely, the provision of assistance to the group’s constituency and the subsequent improvements to their image in the eyes of western states.

Commitment can shift the balance of a negotiation in two main ways. First, weaker parties may commit a disproportionate number of resources to a negotiation in which they are deeply resolved, in what Habeeb (1988: 132) terms an “asymmetry of attention.” Thus, while one party may be structurally weaker, their investment in terms of power resources may rival (if not exceed) those of their counterpart, for whom the issue being negotiated is not as critical (Keohane & Nye 2012: 16; Snyder & Diesing 1977: 254–255, 189–195). Public commitment to the Bosnian humanitarian operation by UN leadership, for example, “played a major part in the expansion of UNHCR’s role and reinforced UNHCR’s standing as a negotiator” (Morris 2007: 325).

Second, a weaker party can foster commitment to reach a negotiated agreement in the leadership of their counterpart. As Zartman and Rubin (2000: 266) note, “it is important for the weaker party in a negotiation to determine how committed the leadership of the other side is to reaching an agreement and to find ways to heighten the intensity of that commitment.”

Strong commitment is often linked to coalition-building. Coalitions demonstrate broad commitment to the outcome of a negotiation that can strengthen the relative power of weaker parties, and can help maintain morale and ensure willpower does not wane (Habeeb 1988: 144). Coordinated approaches to negotiation among humanitarian agencies can similarly strengthen their negotiating position and limit the extent to which they are susceptible to being played off against one another, as was the case in Angola (Richardson 2000). Similarly, field-level cooperation in the DRC strengthened the bargaining position of humanitarians at roadblocks, and provided a wider source of information to facilitate access (Pottier 2006). Observations from Afghanistan also support this finding; “strong leadership and coordination seem to be necessary ingredients in successful negotiation,” claims Donini (2007: 170). “The robust UN coordination mechanisms on the ground during Taliban times were effective tools for facilitating assistance and protection activities.”

Further, Jackson concludes following her extensive study of humanitarian negotiations in Afghanistan, Sudan, and Somalia, “coordinated action and advocacy is required to tackle the broader challenges to engagement [with armed groups].” Such coordination facilitates a shared analysis, limits the extent to which agencies can be played off against one another, and enables humanitarian actors to tackle broader issues that impact negotiations, such as counter-terrorism legislation or host-government access restrictions (Jackson 2014a: 4).

Reputations and Fairness

Reputations usually matter to both humanitarian actors and the armed groups with whom they must negotiate. The perception (or reputation) of

humanitarians among armed groups is often negative. They are frequently equated with colonialists (Pottier 2006) or western spies (Jackson 2014b), undermining prospects for negotiation and placing them and the populations they seek to serve at risk. Humanitarian actors therefore require overt demonstrations of fairness and impartiality if they are to negotiate effectively with armed groups.

In the DRC in the early 2000s, for example, humanitarian actors implemented programs that serviced different ethnic groups equally, continually demonstrating commitment to humanitarian principles, and hiring staff from both of the main ethnic groups to demonstrate impartiality (Pottier 2006: 172, 175).²³ In Afghanistan and Somalia humanitarian actors pledged not to spy on the Taliban and Al-Shebaab, and demonstrated their impartiality through effective programming (Jackson 2014b). A medical humanitarian organization, *Médecins Sans Frontières*, took a similar approach in Afghanistan by ensuring operations crossed the country's multiple frontlines, "to earn its reputation and acceptance" (Crombé & Hofman 2011, 55). Further, humanitarian actors in Angola lobbied to separate the humanitarian and the political processes as a demonstration of their operational independence (Richardson 2000: 10).

Indeed, reputations are so fundamental to frontline humanitarian negotiators, claims Slim, that the humanitarian "brand" must be carefully managed and leveraged. Applying principles adopted from marketing theory, Slim (2003: 4) asserts, "the power of humanitarian brands is central in promoting the value of humanitarian norms and in transmitting consistent humanitarian messages at every point of contact."

Similarly, the perception of armed groups by international actors is often negative, undermining their legitimacy and prospective support, but providing possible leverage for humanitarian negotiators. By facilitating access or engaging constructively in negotiations, armed groups may hope to bolster their international standing, as they did in Angola (Richardson 2000) and Bosnia (Morris 2007).

Although International humanitarian law affirms the principle that engagement with armed groups does not confer legitimacy or affect their legal status,²⁴ both armed groups and national governments may see negotiations

23 It should be noted, however, that tensions over the distribution of assistance between ethnic groups are nevertheless thought to have contributed to threats against humanitarian actors that resulted in the suspension of operations by one medical humanitarian organization in 2000, and the murder of six staff from the International Committee of the Red Cross in 2001 (Glaser 2005: 10).

24 See Article 3(2) common to the Four Geneva Conventions, 1949.

differently, believing them to implicitly entail a form of recognition (Maurer 2013: 3). This can lead to opportunities with armed groups, but can also jeopardize the standing of humanitarian actors with the national government, once again reaffirming the importance of reputations.

The reputation and perception of armed groups can equally be undermined by humanitarian negotiators who employ denunciation as a tactic. Public denunciation can shame armed groups into negotiation, as was the case in Gaza with Hamas. Media reports of the militant organization denying access during the 2012 conflict with Israel led to pressure on the group to find a negotiated solution with humanitarians, claims Galli (2013: 19). Similarly, Terry attributes a deliberate policy of self-censorship and a lack of denunciation for the sustained presence of one medical humanitarian NGO in conflict-affected areas of Myanmar (2011). Further, Pottier recounts how the threat of denunciation was effectively employed by one humanitarian official in the DRC:

Militias that refuse access when we are trying to reach a zone they do not control, are told in the clearest of terms: 'If you do not let us pass to reach the other group, we will tell the world. We will tell *your people*.' We are tough with the militias ... I use a language militia leaders understand.²⁵

Denunciation initially proved effective in Angola with UNITA who were shamed into agreement. But as the rebel group became less concerned with international perceptions and their legitimacy among Angolans waned, international condemnation reportedly served only to further alienate UNITA from humanitarian negotiators, eventually leading to a total breakdown in access and placing humanitarian field staff at risk (Richardson 2000).

Such denunciatory tactics also backfired during the conflict in Bosnia by undermining trust and jeopardizing negotiations. As Cutts (1999a: 17) observes, "public denunciations ... naturally strained relations with the warring parties concerned, complicating negotiations over access and jeopardizing ongoing assistance programs."

The evidence therefore suggests that reputations matter on all sides. Denunciation can motivate armed groups to return to the negotiation table or encourage them to reach agreements that are more favorable to humanitarian actors than may otherwise be likely. Denunciation, however, also carries little weight with groups unconcerned by their international standing or with little need to be respected by the intended recipients of assistance. Poorly timed

25 Interview with Marcus Sack, head of German Agro Action in Bunia in 2004 (in Pottier 2006: 173).

or repeated denunciation serves to alienate negotiating parties, reducing the prospects for reaching an agreement. Reputations among humanitarian actors also matter greatly. When humanitarians are perceived to be fair and impartial – in terms of both staffing and operations – negotiated outcomes are far better.

Mobilizing Third-Party Support

Another tactic frequently employed by humanitarian negotiators is to mobilize the support of third parties in the negotiation. Humanitarian actors may not have sticks, but others around them do, observes Herrero (2014). Similarly, Minear (2007: 10) notes, “humanitarian institutions have limited muscle. They lack the authority and the capacity to impose economic or military sanctions, although they on occasion recommend their imposition.”

In that case of Myanmar following 2009’s Cyclone Nargis ongoing access denial prompted interested states and the various bodies of the United Nations to consider taking action against the country under the framework of a responsibility to protect (R2P). Simultaneously, the regional body ASEAN (the Association of Southeast Asian Nations) joined the government and United Nations to form the Tripartite Core Group (TPG), tasked with building trust and coordinating the response to the disaster. Whether it was the threat of sanctions and intervention under R2P or the advocacy role of the TPG, third party support resulted in largely successful access negotiations in this instance (Cohen 2009).

The concept of R2P has itself been considered a tool to strengthen the position of humanitarian negotiators. Recognizing that power relations limit the impact of humanitarian negotiations, Radice (2016) goes so far as to situate R2P as a “humanitarian project” that strengthens the negotiating position of humanitarians. But this approach is severely limited in contexts in which agreement is required from armed groups. The doctrine of R2P seeks to ensure that states comply with human rights obligations towards their own citizens. It is not clear, however, that armed groups bear similar responsibilities, meaning that appeals to R2P make little sense in the context of access denial perpetrated by armed groups. Further, Radice’s understanding of humanitarian negotiations appears to focus on preventing the four mass atrocity crimes that preoccupy R2P – namely, genocide, war crimes, crimes against humanity, and ethnic cleansing. The concept therefore has limited utility for humanitarian negotiations aimed at securing access and broader human rights protections from armed groups (Radice 2016).

In Bosnia the United Nations Security Council passed sixteen resolutions calling for parties to the conflict to allow unimpeded access (Cutts 1999a: 3).

More recently, the Security Council has passed at least six resolutions on Syria calling on all parties to facilitate humanitarian access.²⁶ In both contexts the limitations of the Council's power is evident, bringing little change for negotiations or the access environment. Although the Bosnian resolutions initially strengthened the negotiating position of humanitarians, Morris (2007: 360) claims, the Council lost credibility with the main parties to the conflict as its inability to enforce its decisions became apparent. Similarly in Syria, the Secretary-General reports that little has changed in terms of access despite the Council's engagement on the issue.²⁷ In Angola, as reported above, denunciation of UNITA for constraining access by the Security Council led to short-term access gains but undermined negotiations over the long-term (Richardson 2000). There has been little research on the impact of such resolutions and whether they improve prospects for negotiation or undermine the neutrality of humanitarians. Yet, the examples above suggest the impact of the Security Council has been inconsistent, at best.

Changing Alternatives

A final way in which humanitarians have reduced power asymmetry in the negotiation process is to strengthen their alternatives (that is, their security point or Best Alternative to a Negotiated Agreement, BATNA) or to worsen that of their counterparts. This finding is consistent with much negotiation literature that sees alternatives to negotiation as a key source of power (Lax & Sebenius 1985), and an effective strategy of the weak (Hopmann 1996).

In Syria, for example, humanitarians lobbied the Security Council to authorize cross-border relief operations that did not require the approval of parties to the conflict. Legal scholars generally interpret IHL as requiring that humanitarians receive permission from the state in whose territory operations are to be carried out (Gillard 2014). Security Council resolution 2139 (2014) on Syria, however, bypassed this requirement of consent, improving the negotiating position of humanitarians with both the national government and armed groups. A similar initiative has seen pressure on humanitarians to conduct air drops in Syria as an alternative to negotiated access. But these operations come with legal, operational, and ethical challenges for humanitarians, and still require some level of access to be effective (Giugni 2016). Thus, whilst strengthening

26 These include S/2014/427 (2014), S/RES/2139 (2014), S/RES/2165 (2014), S/RES/2175 (2014), S/RES/2191 (2014), and S/RES/2258 (2015).

27 "There has been no improvement in achieving sustained humanitarian access to all people in need within the Syrian Arab Republic," (United Nations 2014, paragraph 22).

the position of humanitarian actors, these initiatives appear to have a limited impact on negotiated outcomes.

In Bosnia and Angola humanitarians improved their short-term access by relying on armed escorts from the respective UN Missions. In both cases, however, this collaboration between the political and humanitarian operations undermined trust and ultimately compromised long-term humanitarian access (Cutts 1999a; Richardson 2000). Such attempts to assert control – that is, the ability to unilaterally achieve more of one's preferred outcomes outside the negotiation process (Habeeb 1988: 22) – and strengthen alternatives have also met with limited success, but merits further research.

Humanitarian negotiators could also adopt strategies to reduce the perceived value of the alternatives available to armed groups. Particularly in situations in which interdependence is low, negotiation strategies can include initiatives to weaken the perceived alternatives of armed groups in an attempt to foster interdependence.

But the importance of alternatives does not end with reaching an agreement. As Lax and Sebenius (1985: 166) note, strong alternatives increase durability; “the enforceability and sustainability of many agreements depend on each party's alternatives to continued adherence.” Thus, humanitarian actors should continuously seek to strengthen their own alternatives (and perhaps weaken those of their counterparts) whenever they operate in armed conflicts. This might include ongoing efforts to strengthen compliance with IHL, strengthening the sanctions regime for violators of international law, and improving alternative modalities for accessing conflict-affected communities, such as cash assistance or air drops.

Potential Risks

Each of the five tactics above has proved successful in some contexts, but each of the tactics also carries risks. Persuasion is perhaps the lowest risk, but is only likely to be effective with armed groups concerned for the welfare of civilians in their territory or those particularly sensitive to their international standing. Commitment and coalition-forming are increasingly being recognized as essential tactics to strengthen the bargaining position of humanitarians, yet divisions within the humanitarian system and a culture of secrecy undermine the extent to which these approaches are embraced in practice. Humanitarians routinely strive to demonstrate their independence and neutrality in the eyes of all actors, an approach that is clearly necessary given the politicized environments in which they operate. Yet distinctions between humanitarian and political or development actors may not be clear for armed groups, meaning humanitarian negotiations often falter because of the actions

of non-humanitarians. This research has also failed to identify avenues for reconciling the competing notions of justice that regularly persist between armed groups and humanitarians. Further, initiatives to strengthen or undermine the standing of armed groups are likely to be high-risk and may jeopardize the safety of humanitarians.

The mobilization of third parties can be highly effective, in particular regional bodies have the potential to play a mediating role. But humanitarian issues can quickly become politicized when such actors are involved, and may be eclipsed by political or security concerns. As well, the introduction of third parties risks turning a dyadic negotiation into a multilateral negotiation with fundamentally different power dynamics that may ultimately undermine humanitarian interests. Finally, initiatives to strengthen alternatives to negotiation generally appear to carry fewer risks and are likely worth pursuing. These alternatives will strengthen the negotiating position of humanitarian actors, but most of these options still require some level of negotiated access to be effective, and so will rarely be a panacea.

Conclusion: In Search of Theory

The outcome of humanitarian negotiations does not always mirror the power asymmetries of the actors involved. Whilst armed groups clearly enjoy a stronger initial bargaining position, the outcome of humanitarian negotiations varies between cases and within cases over time. In Bosnia, for example, Cutts (1999a: 25) concludes that negotiations largely failed to provide assistance to those most in need; “assistance was in fact provided on the basis of *accessibility* rather than on the basis of *needs*.” In contrast, Richardson (2000: 8) observes that following successful negotiations with UNITA, “humanitarian access ceased to be an issue” by 1994. Despite UNITA having lost much of its military strength over the following five years, however, negotiations broke down, and “no relief organizations had any access to UNITA territory” (Richardson 2000: 26).

These two cases both involve power asymmetries that initially favored the armed groups concerned. In the early 1990s access was heavily constrained by Serb forces, yet facilitated by UNITA, despite this power asymmetry. Within the case of Angola, negotiations with UNITA in the early 1990s were successful, but failed in the late 1990s. The explanation of power asymmetry assumed in much of the literature is therefore insufficient to explain the outcome of these negotiations.

Humanitarian negotiation literature suggests an implicit understanding that the outcomes of negotiation are dictated by structural power. Humanitarian

negotiators tend to look to the control of territory and the possession of weapons without analyzing whether these have a bearing on negotiated outcomes. Such assumptions made by humanitarian actors around their inability to reach favorable outcomes during negotiation has frequently discouraged them from engaging in such processes, thus forgoing potential access gains. Little work has been done, however, to analyze the sources of power that directly influence the outcomes of humanitarian negotiation. As Habeeb (1988: 140) notes, “neither side should assume that the state [or actor] with greater aggregate structural power will win the negotiation ... The weak must not lose hope or become discouraged by even a glaring asymmetry.” Indeed, the brief empirical analysis presented above suggests a wide variation in the outcomes of these negotiations that cannot be fully explained by the power dynamics outlined in the literature. It is useful, therefore, to unpack the nature of the power dynamics at play during humanitarian negotiation.

A first step is to separate the power resources of an actor from the ability to translate these resources into influence during negotiation. Habeeb (1988: 18–19), distinguishes between aggregate structural power – that is, the resources, capabilities, and position of each party – and issue-specific structural power – the capability of a negotiating party to move their counterpart toward their preferred position. Whilst aggregate structural power clearly preferences armed groups, as established above, the relative balance of issue-specific structural power is less clear. Humanitarians have access to a range of tactics and strategies that are unavailable to (or are rarely employed by) their negotiating counterparts.

A second step is to analyze the sources of issue-specific structural power available to humanitarians. The application of negotiation theory to the humanitarian domain allows for a better understanding of how humanitarian negotiators can change the power balance in their favor by employing the right *humanitarian levers* at the right times. As outlined above, humanitarians leverage international law for persuasion, they form coalitions and commit strongly to negotiations, build a reputation for effectiveness that is separate from political and military actors whilst demonstrating neutrality and fairness, and they mobilize the support of third parties. They also have the power to positively or negatively affect the perception and legitimacy of armed groups themselves, thus changing the structure of a negotiation. Moreover, humanitarians have the opportunity to learn from decades of practice and refine their strategies, offering a tactical advantage over their counterparts. Increasingly, humanitarians are also able to pursue options outside the negotiation process, thus strengthening their bargaining position and altering the likely outcome of the negotiation in their favor.

Such tactics, however, have the potential to come at a cost to both humanitarian actors and the long-term access they seek. These strategies can endanger the safety of humanitarian personnel, damage their reputation, and undermine their ability to protect vulnerable civilians if not employed with care or at the appropriate time in a negotiation process. Many of the strategies adopted by weak states during international negotiations – such as brinkmanship, delays, and issue-linking – are ill-suited to humanitarian negotiators as they would likely prove counter-productive. The efficacy and ethicality of these approaches urgently demands further study. Research on humanitarian negotiation must move away from simply documenting further cases towards developing empirically-grounded theory that proposes tactics and strategies to improve likely outcomes for humanitarians, and more importantly for conflict-affected civilians in need of assistance.

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