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Humanitarian Negotiations & Humanitarian Principles

*The interaction between humanitarian negotiations for access and organizations' ability to
adhere to humanitarian principles*

By Gabriela Gil

Spring 2019

SIT Switzerland: Global Health and Development Policy

Brown University

Health & Human Biology

Abstract

Aim: To examine how do humanitarian organizations apply, or fail to apply, the humanitarian principles through humanitarian negotiations in modern conflict settings.

Methods: A literature review identified relevant peer-reviewed and grey literature on international humanitarian norms and law, the landscape of modern conflict, and existing guidelines on humanitarian negotiations. Five semi-structured interviews were conducted with experts in humanitarian negotiations chosen on the basis of their relevant background. A coded analysis of these interviews was conducted to identify major themes and subthemes in responses.

Background: Multiple international mechanisms outline the humanitarian principles of humanity, impartiality, neutrality and independence and States, non-State armed groups (NSAGs), and organizations' responsibilities to uphold these principles. Negotiations are essential to upholding these principles. While limited existing guidelines on the process of negotiations, modern conflicts with a growing number of NSAGs render negotiations, and upholding the humanitarian principles, increasingly complex.

Discussion: The criminalization of negotiators, lack of understanding between negotiators, and a lack of consensus across the humanitarian sector pose a very real danger to the operationalization of humanitarian principles in their original conceptions. However, successful humanitarian negotiations are only feasible with the ideas surrounding the principles because 1) perceptions of upholding the principles results in increased legitimacy for humanitarian organizations, and 2) the principles are essential as dynamic ethical guidelines when making compromises.

Conclusion: The current operationalization of the humanitarian principles is not one of measurable outcomes, but rather, it is one of rhetoric, of engraining the concepts behind the principles – that all humans have the right to dignified life regardless of who they are and where they live – in the values and practices of all stakeholders in humanitarian negotiations.

Acknowledgements

This research was possible due to the support of the researcher's peers in the SIT Switzerland: Global Health and Development Policy program. Thank you, in addition, to Dr. Adam Levine and Professor Nina Tannenwald of Brown University for being the sources of inspiration for the researcher's passion for this topic.

Lastly, thank you to all those who agreed to be interviewed for this project. Your availability and willingness to discuss this complex issue made this research possible.

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Introduction

On October 3, 2015, an airstrike in Kunduz, Afghanistan destroyed a trauma center run by Doctors Without Borders (MSF) and killed forty-two people, including at least 14 MSF staff and 24 patients.¹ Following the attack, MSF ceased all activity in the area, and thousands of Afghans that relied on their facilities lost access to direly needed healthcare.² Here, MSF was unable to secure and guarantee the safety of its personnel and was, therefore, required to leave the zone of conflict despite its mandate to provide medical aid to all those most in-need.³ In the Somali conflict, the majority of international organizations were removed from areas controlled by insurgent group Al Shabaab because of their unwillingness to pay taxes imposed by the group, leaving thousands of non-combatants in these areas without access to the medical care these organizations were providing.⁴ In these cases, humanitarian action was impeded to the detriment of thousands. Indeed, humanitarian action, including that conducted by MSF, is understood as actions taken to save lives, alleviate suffering, and maintain human dignity during and in the aftermath of crises.⁵ In its very essence, the goals of humanitarian action are to provide aid to those most in need regardless of an individual's characteristics or location.

Humanitarian action is defined by the International Red Cross and Red Crescent Code of Conduct through the concepts of humanity, neutrality, impartiality and independence.⁶ In order

¹ Shereena Qazi, "Military Blunders Continue after MSF Kunduz Bombing," *Al Jazeera*, October 4, 2014, <https://www.aljazeera.com/news/2017/10/military-blunders-continue-msf-kunduz-bombing-171004063710439.html>.

² Mark Schneider, "Dealing with Disaster in Afghanistan," *Boston Globe*, October 3, 2015, sec. Opinion, <https://www.bostonglobe.com/opinion/2015/10/02/dealing-with-disaster-afghanistan/P4XT3Qaitu5tui7eHP8izK/story.html>.

³ Schneider.

⁴ Sorcha O'Callaghan and Jane Backhurst, "Principles in Action in Somalia," *Principles in Action* (British Red Cross, 2013), https://www.icrc.org/en/download/file/19007/irc_97_1-2-9.pdf.

⁵ J. Brian Atwood, "Towards Better Humanitarian Donorship; 12 Lessons from DAC Peer Reviews" (OECD, 2012), <https://www.oecd.org/dac/peer-reviews/12lessons.pdf>.

⁶ "The Fundamental Principles of the International Red Cross and Red Crescent Movement," Publication, International Committee of the Red Cross, December 1, 2015, <https://www.icrc.org/en/publication/0513-fundamental-principles-red-cross-and-red-crescent>.

to achieve these humanitarian principles, it is essential for humanitarian organizations to access and interact with the people most in need in order to distribute their resources without restrictions and interference. Any obstruction of access inherently means that aid being provided cannot be provided impartially—on the basis of need alone—but rather that it is being distributed based on political will. Humanitarian organizations’ ability to adhere to these principles is ultimately dependent on an organization’s ability to negotiate with parties in power to gain access to the civilians at risk, a process referred to as “humanitarian negotiations.” For the purposes of this paper, humanitarian negotiations are defined as interactions and transactions “with parties to a conflict and other relevant actors aimed at establishing the presence of humanitarian agencies in conflict environments, ensuring their access to vulnerable groups, and facilitating the delivery of assistance and protection activities.”⁷

With humanitarian emergencies becoming increasingly protracted and growing in numbers, humanitarian negotiations conducted by key organizations, like Médecins Sans Frontières (MSF) and the International Committee of the Red Cross (ICRC), are more important than ever. As humanitarian practitioners often describe, field hospitals and humanitarian teams must be positioned both near the zones of conflict and disaster and far enough away to maintain the safety of those at the site.⁸ Negotiations determine who has access to the emergency care that is needed in situations where health care systems have broken down. Such negotiations play a pivotal role in an organization’s ability to provide humanitarian medical care and are, therefore, important components of global health. In a world where the location and respect of field hospitals must be negotiated with warring sides and access to aid is often subjected to the

⁷ “Field Manual on Frontline Humanitarian Negotiation” (The Centre of Competence on Humanitarian Negotiation, December 2018), <https://frontline-negotiations.org/wp-content/uploads/2018/12/CCHN-Field-Manual.pdf>.

⁸ Adam Levine, “Libya; Human Security and Humanitarian Response” (March, 2018).

interests of those in power, critics of humanitarian organizations argue that the principles of impartiality, neutrality and independence are “part of [the] nostalgic past.”⁹ In these contexts, the practical application of the principles must therefore come into question.

When negotiations, both for access and safety, fail, an organization may be forced to withdraw completely, and entire populations may be left without access to health care and other services that enable their right to the highest attainable level of health.¹⁰ To prevent these complete obstructions, humanitarian groups find themselves balancing between a desire to uphold the neutrality and independence principles that define their work and the need to make practical concessions to gain access. Taking a critical lens to the application of the principles will ensure that future tools of humanitarian negotiations are built upon a greater understanding of the realities of humanitarian action. Therefore, this research paper will utilize the lens of humanitarian negotiations to answer the following research question: How do humanitarian organizations apply, or fail to apply, the humanitarian principles in negotiations for access in modern conflict settings? It aims to answer this question by examining how the challenges faced by humanitarian negotiators in modern conflicts can be understood in relation to the operationalization of humanitarian principles.

To achieve the aforementioned objective, this paper will first outline existing available literature to understand the current state of humanitarian negotiations and international humanitarian law. This section will provide a contextual background into 1) international humanitarian norms as they are currently understood, 2) the landscape of modern conflict in which humanitarian negotiations are conducted, and 3) existing literature into the process of

⁹ Cheryl Benard, “Afghanistan Without Doctors,” *Wall Street Journal*, August 12, 2004, sec. Commentary (US), <https://www.wsj.com/articles/SB109226493235689243>.

¹⁰ Claire Magone, Michael Neuman, and Fabrice Weissman, *Humanitarian Negotiations Revealed: The MSF Experience* (Oxford University Press, 2012).

negotiations. Then, applying the findings of the qualitative interviews conducted with key experts with examples from past cases, the paper will outline how the practical application of humanitarian principles interact with humanitarian negotiations and the challenges faced by negotiators in the field.

Methodology

This research was conducted through a qualitative, two-pronged approach that included a literature review on the state of humanitarian negotiations and the thematic analysis of formal, semi-structured interviews with key opinion leaders and expert practitioners. To identify current and relevant literature pertaining to this topic, online databases were perused using variations of key search terms. Google Scholar and PubMed were searched for available literature associated with humanitarian principles and negotiations for medical missions. Different combinations of the following key search terms were used: “humanitarian negotiation”, “medical mission”, “humanitarian principles”, “negotiations”, “non-state actors”, and “modern conflict”. The search criteria was limited to the past twenty years because much of the most recent research conducted on the topic has been done on currently on-going conflicts and is not publically available. In a similar fashion, the websites of relevant organizations, such as the ICRC, Geneva Call and MSF websites, were searched to locate relevant grey literature, providing insight into the current landscape of their humanitarian negotiations and relationships with Non-State Armed Groups (NSAGs). It must be noted that publicly available literature examining humanitarian principles in practice and the outcomes of humanitarian negotiations is largely restricted due to security and confidentiality concerns and due to ethical restrictions of conducting controlled field studies on these issues. Consequently, the literature review was segmented to three components related to existing mechanisms upholding humanitarian principles, the context of modern conflict, and

understandings of humanitarian negotiation. Within these segments, I identified both peer-reviewed and grey literature deemed relevant through their abstract and title.

The bulk of this analysis was produced through the qualitative thematic analysis of interview with five experts and former practitioners. These interviewees were identified on the basis of their level of experience with the subject matter through their authorship in relevant literature or involvement with highly relevant organizations and were recruited to the study through a form of convenience sampling based on their availability (Appendix I). The interviewees include Mr. Rob Grace, a Senior Associate at the Harvard Humanitarian Initiative (HHI) and PhD candidate at Brown University's Watson Institute for International and Public Affairs, who is heavily involved in the Advanced Training Program on Humanitarian Action (ATHA) and has published extensively on the matter of respect for humanitarian norms and laws.¹¹ Likewise, Ms. Naïma Weibel's current role as Humanitarian Negotiation Support Specialist at the Center of Competence on Humanitarian Negotiations (CCHN) involves extensive research into the experiences of humanitarian negotiators and positions her with unique insight into much of the negotiation materials produced by the CCHN.¹² Dr. André Picot has over 30 years of experience in humanitarian issues, including more than 16 years working as an educator in the humanitarian communication and protection sector.¹³ He was first identified as the author of the manual *Humanitarian Negotiation: A Handbook for Securing Access, Protection, and Assistance for Civilians in Armed Conflicts*, which, along with the UNOCHA guidebook published along the same time, is a cornerstone document for humanitarian

¹¹ "Rob Grace | Harvard Humanitarian Initiative," accessed April 18, 2019, /people/rob-grace.

¹² "Naïma Weibel | LinkedIn," accessed April 18, 2019, https://www.linkedin.com/in/naimaweibel/?locale=en_US.

¹³ "André Picot," September 23, 2014, <https://www.cerahgeneve.ch/cerah/faculty-staff/academics/andre-picot>.

negotiations.¹⁴ When looking at humanitarian principles and international humanitarian law, the ICRC's role cannot be understated, and insights from the perspective of this organization are essential to a thorough understanding of the topic. Dr. Hugo Slim is well equipped to provide these insights as the Head of Policy at the ICRC, with over 35 years of academic and practitioner experience behind him.¹⁵ Similarly, Ms. Elisabeth Decrey Warner, former Executive President and Co-Founder of Geneva Call, has unparalleled experience in negotiations with NSAGs through her work with Geneva Call, whose mission is to increase the commitment of armed actors to international humanitarian principles.¹⁶

In formal, face-to-face interviews (with the exception of Rob Grace with whom a formal Skype interview was conducted), all interviewees were asked a series of standardized pre-determined questions, with additional addendums made in response to the answers each provided (Appendix II). In addition, each of the interviewee had additional pre-determined questions that were specific to their professional background (Appendix II). Transcribed notes from the interview responses were gathered. Relevant sub-themes and relevant quotes were extracted in relation to emerging themes pertaining to the research question through qualitative coding of the transcribed notes. Due to the time restrictions of this project and the corresponding convenience sampling methodology used, it must be noted that there is a potential for biased results due to a small interview sample. However, throughout the course of the interviews, some level of data saturation was achieved, which suggests a high level of validity, which is reinforced through the triangulation of the interview findings with past research produced by other sources.

¹⁴ Deborah Mancini-Griffoli and André Picot, "Humanitarian Negotiation: A Handbook for Securing Access, Assistance and Protection for Civilians in Armed Conflict" (Centre for Humanitarian Dialogue, October 2004), <http://www.hdcentre.org/wp-content/uploads/2016/07/Humanitarian-Negotiationn-A-handbook-October-2004.pdf>.

¹⁵ "Hugo Slim," Humanitarian Law & Policy Blog, accessed April 18, 2019, <https://blogs.icrc.org/law-and-policy/contributor/hugo-slim/>.

¹⁶ "Interview with Elisabeth Decrey Warner, Executive President of Geneva Call," *Geneva Call* (blog), August 29, 2017, <https://genevacall.org/interview-elisabeth-decrey-warner-executive-president-geneva-call-2/>.

As with any research that involves qualitative interviews, ethical concerns regarding confidentiality and informed consent must be considered. However, the interviewees provided both written consent in the form of affirmative email responses and oral consent during the interviews when the aim and purpose of the interview was explained. The interviewees were informed that the recordings taken and transcriptions would be destroyed following the submission of this paper and that they have the right to withdraw their consent at any time. Furthermore, any quote incorporated into the body of this text that may be linked to the person being interviewed was confirmed and approved for inclusion by the interviewee in question. Additionally, as leading experts in the field of humanitarian negotiations who were being interviewed on the topic of their expertise, there are no repercussions expected from the disclosure of the interviewees' names and professional history since it aligns with work they are already publicly known for. No other potential ethical considerations are expected to arise from the methodology described above.

Background

Humanitarian Principles in Norms, Law, and Values

Humanity, neutrality, impartiality, and independence are central to humanitarian action aiming to save and ameliorate the lives of those with the greatest need. First proposed upon the founding of the International Committee of the Red Cross, they are now engrained in the mandate and code of conduct of humanitarian organizations worldwide. The International Red Cross and Red Crescent Code of Conduct defines the aforementioned principles within the humanitarian sector. This code of conduct dictates that “human suffering must be addressed wherever it is found” (Humanity), that humanitarian actors must “not take sides in hostilities or engage in controversies of a political, racial, religious, or ideological nature” (Neutrality) and “be

autonomous from the political, economic, military, or other objectives that any actor may hold [in] areas where humanitarian action is being implemented” (Independence), and that humanitarian action “must be carried out on the basis of need alone” with no distinction or arbitrary prioritization (Impartiality).¹⁷ The ICRC highlights three further principles fundamental to its National Societies: Voluntary Service, Unity, and Universality, as the foundational values of the primary four principles, as depicted in Pictet’s Pyramid (Figure 1).¹⁸ Moreover, the UN General Assembly resolution 46/182 states that UN humanitarian assistance is to be “provided in accordance with the Principles of humanity, neutrality, and impartiality.”¹⁹ Notably, in this case, independence is excluded since UN humanitarian missions, as with other aspects of the multilateral organization, rely on member States funding and, therefore, cannot claim the full

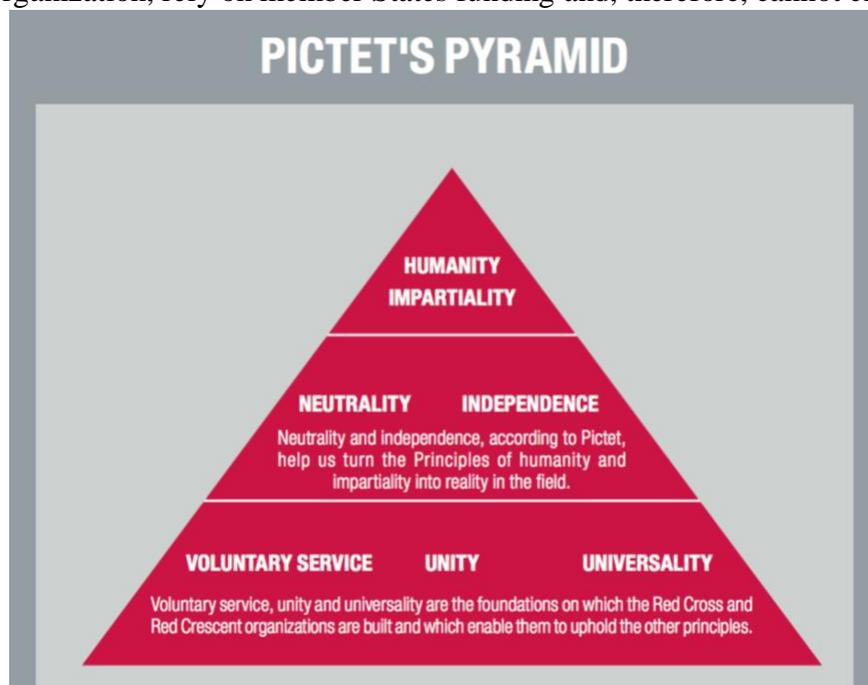


Figure 1 Pictet's Pyramid as found in the ICRC's Fundamental Principles

¹⁷ Simon Bagshaw, “OCHA on Message: Humanitarian Principles” (UNOCHA, June 2012), https://www.unocha.org/sites/dms/Documents/OOM-humanitarianprinciples_eng_June12.pdf.

¹⁸ ICRC, “The Fundamental Principles of the International Red Cross and Red Crescent Movement: Ethics and Tools for Humanitarian Action” (International Federation of Red Cross and Red Crescent Societies; International Committee of the Red Cross, November 2015), <https://ifrc-media.org/interactive/wp-content/uploads/2015/12/FP-brochure-2015.pdf>.

¹⁹ “A/RES/46/182. Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations,” accessed April 20, 2019, <https://www.un.org/documents/ga/res/46/a46r182.htm>.

autonomy required by this principle. For this paper, the humanitarian principles will specifically refer to the four engrained in the Code of Conduct as being the most widely applicable to humanitarian action.

With over 492 organizations that have, in theory at least, stated their commitment to these four primary principles by signing the Code of Conduct, their importance is undeniable.²⁰ UNOCHA's fundamental humanitarian guide notes that these principles "govern humanitarian actors' conduct."²¹ However, in order to uphold these standards, stakeholders in a conflict must acknowledge and protect organizations' right to provide impartial, independent, and neutral aid to non- and ex-combatants. Therein lies the importance of International Humanitarian Law (IHL), which aims to regulate the actions of actors in armed conflict. The primary bodies of IHL, the 1949 Geneva Conventions and Additional Protocols I and II, describe the expectations by which all signatories must adhere to.²² Under these laws, also known as the laws of war, civilians and bystanders in zones of armed conflict hold the right to impartial medical care and combatants have the duty to respect this right. Indeed, the first Geneva Convention, titled the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, was the first international attempt to codify the concepts of neutrality and impartiality in humanitarian action.²³ With each subsequent Convention and Additional Protocol, the responsibility of States to respect the humanitarian principles were further solidified into international customary law.²⁴

²⁰ Bagshaw, "OCHA on Message: Humanitarian Principles."

²¹ Bagshaw.

²² "The Geneva Conventions of 1949 and Their Additional Protocols," March 8, 2016, <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>.

²³ ICRC, "Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field," 2016, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>.

²⁴ "The Geneva Conventions of 1949 and Their Additional Protocols."

As with many ideological concepts engrained in customary law, adherence to these principles is challenging to measure, and therefore, much of the literature identified primarily focuses on understanding perceptions of these principles by various stakeholders in humanitarian settings, from international humanitarian organizations to Non-State Armed Groups (NSAGs) and State military officials, rather than evaluating their implementation. In aiming to examine the perceptions of NGO activities by NSAGs and communities in the North Kivu area of the Democratic Republic of Congo (DRC), Maxwell, with the support of Geneva Call, conducted 69 interviews and 10 focus groups with various members of these groups.²⁵ Through these qualitative methods, they found that despite false narratives of NSAGs' disdain for humanitarian principles, the notions of neutrality, impartiality, and independence "matter deeply" to NSAGs and local communities when presented through grounded scenarios.²⁶

While the Code of Conduct has humanitarian organizations as signatories, bodies of IHL serve as a means through which States may acknowledge their responsibility to respect humanitarian actors upholding the humanitarian principles. However, non-state actors in armed conflict may not be signatories to these Conventions due to their lack of, or contested, sovereignty despite being active participants in conflict. There are noted attempts to fill this gap in the codification of humanitarian principles, including by Geneva-based organization, Geneva Call. Geneva Call's implementation of its Deeds of Commitment involves getting the commitment of NSAGs to adhere to the measures described within it and providing support to the NSAGs to respect their commitments.²⁷ Each Deed of Commitment refers to a specific

²⁵ Patrick Maxwell and Geneva Call, "Negotiation of Humanitarian Access in North Kivu: The Perception of Armed Non-State Actors, Communities, and Humanitarians," March 20, 2019, https://genevacall.org/wp-content/uploads/2019/03/GC-Negotiation-of-humanitarian-access-in-NK_EN_A4.pdf.

²⁶ Maxwell and Geneva Call.

²⁷ "What We Do," *Geneva Call* (blog), accessed April 23, 2019, <https://genevacall.org/what-we-do/>.

component of international humanitarian law, such as the prohibited use of anti-personnel mines, respecting the rights of the child, the matter of gender-based violence in conflict, and, most recently, the protection of medical missions.²⁸ These international Deeds are intended to reflect the Conventions States are signatories to.

Modern Conflict

These conceptions of humanitarian principles as formulated by institutional norms and international customary law are increasingly important in the landscape of modern conflict. In a report on a 2017 conference regarding “Non-State Actors and the Changing Nature of Conflict,” Von Einsiedel et al. (2017) highlighted that despite an early decline, the past decade has seen almost a tripling of minor and major internal conflicts.²⁹ Furthermore, an analysis of conflict patterns between 1946 and 2015 conducted by the RAND corporation projected that between 2016 and 2040 “intrastate conflict will continue to be the main form of conflict incidence.”³⁰ These conflicts are not only appearing to replace the prevalence of interstate conflicts that preceded the end of the Cold War, they “are becoming more intractable.”³¹ In some states, humanitarian presence has been evident for multiple decades, solidifying their roles in these conflict-ridden communities.³² In addition, Cunningham et al.’s systematic analysis of the actors of these post-Cold War conflicts noted that while little systematic data is collected on non-state actors of intrastate conflicts, the networks of NSAGs must be more closely examined as patterns

²⁸ “Deed of Commitment,” *Geneva Call* (blog), accessed April 23, 2019, <https://genevacall.org/how-we-work/deed-of-commitment/>; Elisabeth Warner, Elisabeth Warner at the Geneva Center for Security Policy, interview by Gabriela Gil, In Person, March 14, 2019.

²⁹ Sebastian von Einsiedel et al., “Civil War Trends and the Changing Nature of Armed Conflict,” *United Nations University Centre for Policy Research* 10 (March 2017), https://i.unu.edu/media/cpr.unu.edu/attachment/2534/OC_10-CivilWarTrendsandChangingNatureofArmedConflict-05-2017.pdf.

³⁰ Thomas S. Szayna, *Conflict Trends and Conflict Drivers: An Empirical Assessment of Historical Conflict Patterns and Future Conflict Projections* (Santa Monica, CA: RAND, 2017).

³¹ Szayna.

³² Magone, Neuman, and Weissman, *Humanitarian Negotiations Revealed*.

of conflict grow to include a greater number of actors.³³ For example, in the conflicts in the DRC, the ICRC interacted with 40 *different* armed groups, going beyond traditional conceptions of conflict between two States or even between just two distinct actors.³⁴ For this reason, this paper will primarily focus on humanitarian negotiations as conducted between international humanitarian organizations and non-State actors in armed conflict, rather than States.³⁵

Beyond the sheer multiplication of actors in conflict that blur the lines between combatants and non-combatants, the increasing complexity of armed conflict has increased the danger faced by humanitarian actors, particularly medical humanitarians. In 2017 documentary, *The New Barbarianism*, Dr. J. Stephen Morrison, the Senior Vice President at the Center for Strategic and International Studies, is quoted saying “there is a new barbarianism [demonstrated] by states and non-state actors [...] actively preying on health professionals and humanitarian workers.”³⁶ To support this statement, the Humanitarian Outcomes project maintains an up-to-date total of humanitarian workers, including medical professionals, who have fallen victim to armed attacks in these conflict settings.³⁷ Between 1997 and April 2018, this number comes to 4478 victims as a result of 2406 incidents of violence.³⁸ These attacks come hand-in-hand with an increasing distrust in the humanitarian motives of assistance. In findings from field work in Afghanistan in 2006, Shannon noted that NGOs “legitimacy and their ability to act impartially,

³³ David E. Cunningham, Kristian Skrede Gleditsch, and Idean Salehyan, “Non-State Actors in Civil Wars: A New Dataset,” *Conflict Management and Peace Science* 30, no. 5 (November 2013): 516–31, <https://doi.org/10.1177/0738894213499673>.

³⁴ ICRC, “The Fundamental Principles of the International Red Cross and Red Crescent Movement: Ethics and Tools for Humanitarian Action.”

³⁵ William Carter and Katherine Haver, “Humanitarian Access Negotiations with Non-State Armed Groups,” October 2016, 41.

³⁶ Center for Strategic & International Studies, *The New Barbarianism*, accessed April 20, 2019, <https://www.youtube.com/watch?v=U2d9cat4FWg>.

³⁷ “The Aid Worker Security Database, 1997-Present | The Aid Worker Security Database,” accessed April 20, 2019, <https://aidworkersecurity.org/incidents>.

³⁸ “The Aid Worker Security Database, 1997-Present | The Aid Worker Security Database.”

be perceived as neutral and to maintain their independence have become increasingly constrained” following the September 11, 2001 attacks in the US.³⁹ On the basis of the qualitative interviews conducted with 26 NGO actors, Shannon found that these actors had experienced worsening security situations and struggled to differentiate themselves from the political actors of the post-9/11 conflict.⁴⁰ These findings are reiterated by the ICRC, reporting that in this new era, the ‘war on terror’ has changed the way humanitarian action is carried out because of polarized ideologies and the increased prevalence of non-conventional methods of warfare.⁴¹

It is clear that despite the existence of standards related to upholding humanitarian principles, the enforcement mechanisms for these norms are insufficient to ensure an organization’s ability to provide impartial aid without external interference or threat when modern conflict settings threaten perceptions of the principles.⁴² As one ICRC report noted, beyond flagrant attacks on humanitarian workers, “the rules of IHL governing humanitarian access to populations in need [are] routinely disregarded by the parties to the conflict [...], leaving millions of residents in desperate need of food, water and health services.”⁴³ Therefore, it is the role of humanitarian negotiators to engage with the warring parties, both State and non-State, and “remind, affirm, encourage, convince, persuade and pressurize all parties [...] to agree on humanitarian action.”⁴⁴

³⁹ Róisín Shannon, “Playing with Principles in an Era of Securitized Aid: Negotiating Humanitarian Space in Post-9/11 Afghanistan,” *Progress in Development Studies* 9, no. 1 (January 1, 2009): 15–36, <https://doi.org/10.1177/146499340800900103>.

⁴⁰ Shannon.

⁴¹ ICRC, “The Fundamental Principles of the International Red Cross and Red Crescent Movement: Ethics and Tools for Humanitarian Action.”

⁴² Gabriela Gil, “Victimizing Healthcare” (May 8, 2018).

⁴³ Claudia McGoldrick, “The State of Conflicts Today: Can Humanitarian Action Adapt?,” *International Review of the Red Cross* 97, no. 900 (December 2015): 1179–1208, <https://doi.org/10.1017/S181638311600028X>.

⁴⁴ Deborah Mancini-Griffoli and André Picot, “Humanitarian Negotiation.”

Current State of Humanitarian Negotiations

The need for humanitarian negotiations is clear with the modern trend of protracted, multi-party conflicts that continually normalize restrictions of access and attacks on humanitarian medical facilities.⁴⁵ These negotiations are the means by which the presence of humanitarian organizations is permitted within a party's territory.⁴⁶ Indeed, in an analysis of ongoing crises in Myanmar, DRC, Lebanon, and Pakistan, the Commission of the European Communities found that in all cases, access and security in affected areas obstructed humanitarian impact.⁴⁷ Specifically in DRC, the researchers noted that lack of access affected organizations' capacity to adequately respond to demonstrated need, thereby inhibiting the humanitarian norm of impartiality.⁴⁸ Just as these cases demonstrated circumstances in which negotiations for access were obstructed or failed, *Humanitarian Negotiations Revealed: The MSF Experience*, a book published by Doctors Without Borders (MSF) recounting the experiences of MSF staff with humanitarian negotiations, highlights how the ability of MSF to access areas of crisis is directly attributable to "repeated transactions with local and international political and military forces."⁴⁹

Existing publications do not deny the existence of compromises that arise from humanitarian negotiations but rather attempt to produce a better guide for negotiators and better define institutional red lines. In a handbook produced in October 2004, Mancini-Griffoli and Picot note that the experiences of humanitarian workers demonstrate "a difficult operational

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⁴⁶ Kelly-Kate S Pease, *Human Rights and Humanitarian Diplomacy: Negotiating for Human Rights Protection and Humanitarian Access*, 2016.

⁴⁷ "Report on Responses to Crises - DRC, Pakistan, Lebanon and Burma/Myanmar - Accompanying the Communication from the Commission to the European Parliament and the Council" (Brussels: Commission of the European Communities, June 13, 2007), <http://ec.europa.eu/transparency/regdoc/rep/2/2007/EN/2-2007-781-EN-1-0.Pdf>.

⁴⁸ "Report on Responses to Crises - DRC, Pakistan, Lebanon, and Burma/Myanmar."

⁴⁹ Magone, Neuman, and Weissman, *Humanitarian Negotiations Revealed*.

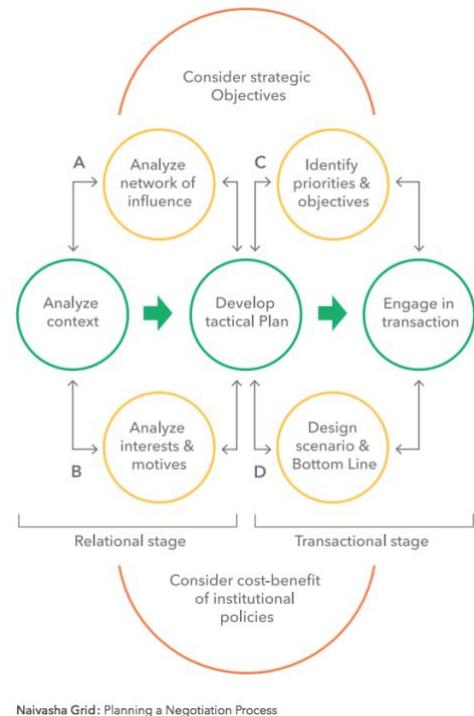
paradox” in which gaining access to spaces where people are most in need leads to “inevitably negotiating in practice that which is non-negotiable in principle.”⁵⁰ This guide is only one of multiple handbooks that have been produced for humanitarian negotiations, including one published by UNOCHA shortly after that by Mancini-

Griffoli and Picot and one created by the Center for Competence in Humanitarian Negotiations (CCHN).⁵¹ The latter produced a field manual in December 2018 based on the experiences of practitioners interviewed by the Center’s researchers, in which the negotiation process is outlined through the Naivasha Grid (Figure 2).⁵² This grid

is the most current attempt at demonstrating the process by which humanitarian negotiators optimally plan and implement negotiations, and it notably includes the designation of bottom lines beyond which negotiations cannot occur. The notion of negotiation itself inherently

implies the generation of concessions between two or more disagreeing parties. However,

Magone et al. note in the introduction of *Humanitarian Negotiations Revealed* that “if [...] MSF cannot hope ‘to reduce the number of deaths, the suffering and the frequency of incapacitating handicaps within groups of people who are usually poorly served by public health systems,’ then



Naivasha Grid: Planning a Negotiation Process

Figure 2 Naivasha Grid, Produced by the CCHN for their field manual on humanitarian negotiations

⁵⁰ Deborah Mancini-Griffoli and André Picot, “Humanitarian Negotiation.”

⁵¹ Gerard Hugh and Manuel Bessler, “Humanitarian Negotiations with Armed Groups; A Manual for Practitioners” (United Nations Office for the Coordination of Humanitarian Affairs, 2006), <https://www.unocha.org/sites/unocha/files/HumanitarianNegotiationswArmedGroupsManual.pdf>; “CCHN Field Manual on Frontline Humanitarian Negotiation,” *Frontline Negotiations* (blog), December 2018, <https://frontline-negotiations.org/field-manual/>.

⁵² “CCHN Field Manual on Frontline Humanitarian Negotiation.”

the compromises [MSF] agrees to are neither justifiable nor acceptable.”⁵³ Consequently, any research on the matter of humanitarian negotiations, including this paper, do not attempt to negate the fact that compromises on the principles are inherent in these practices, but rather, strive to better understand where and how the limits of these compromises are set.

Findings

Through a thematic analysis of the formal, semi-structured interviews conducted, two overarching thematic groups became evident: 1) The barriers to upholding principles in negotiations, and 2) The importance of principles in negotiations, particularly as a means of addressing the barriers identified by interviewees. Under these two larger themes, several subthemes were identified (Figure 3).

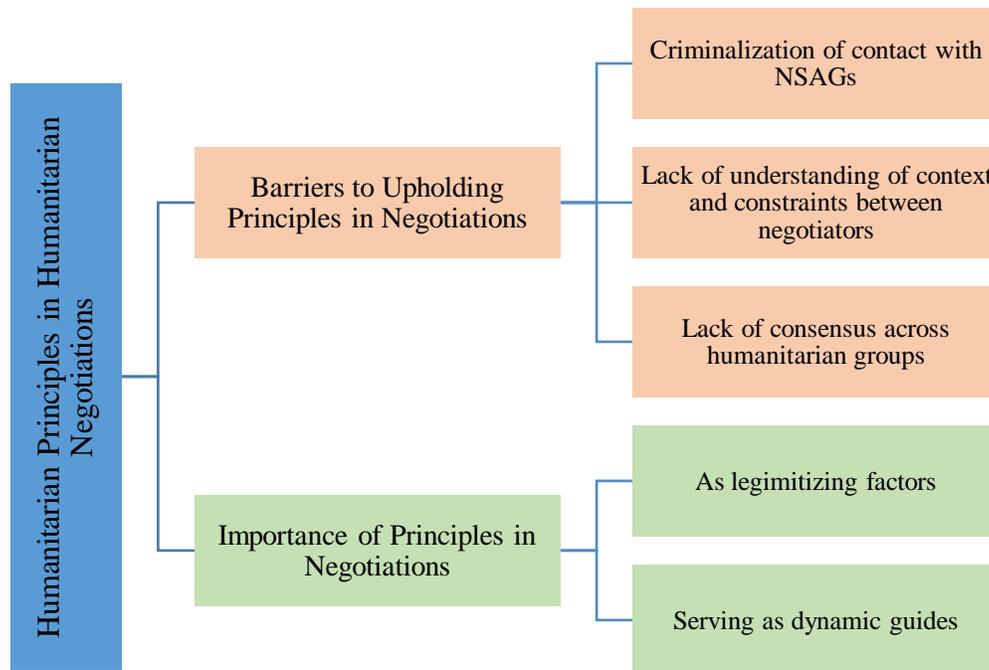


Figure 3 Thematic Breakdown of Interview Findings

Among barriers to effective humanitarian negotiations, all the interviewees noted that the criminalization of contact with Non-State Armed Groups and a gap in the understanding of the

⁵³ Magone, Neuman, and Weissman, *Humanitarian Negotiations Revealed*.

context and stakeholders of a negotiation were significant challenges that hindered the purest application of humanitarian principles. A lack of consensus on the operationalization of the principles across humanitarian actors was also an issue that was brought up by four of the five interviewees. It is interesting to note that while some of these trends arose from the question “What do you think the biggest challenges faced by humanitarian negotiators now?”, which was asked to all interviewees, many were mentioned by the interviewees prior to this question. The high level of concordance between interviewees of different backgrounds suggests that these findings are reflective of a reality across the sector.

Throughout the interviews, the importance of the humanitarian principles could not be underscored. Slim, Picot, and Warner, all of the interviewees with close professional ties to international humanitarian organizations (Appendix I), made reference to the use of humanitarian principles as legitimizing factors for humanitarian organizations that strengthen their ability to negotiate with armed groups. When asked point-blank whether or not they believed that humanitarian negotiations were compatible with the humanitarian principles (Question 3 of Appendix II), all interviewees said that they did believe them to be. When asked to elaborate, all but one noted that the principles should be used as a guide for negotiators, to be adapted to suit the constraints of a situation.

Discussion

This study examines how the challenges and practice of humanitarian negotiations in modern conflict settings influence the operationalization of humanitarian principles. Overwhelmingly, current knowledge surrounding the relationship between humanitarian principles and negotiations focuses on perceptions of the various stakeholders as to the importance of the principles and how the principles have been abandoned or upheld in past

experiences. Very little attention has been given on how humanitarian negotiators make use of the existing rhetoric of the humanitarian principles. Moreover, qualitative interviews conducted with five leading experts suggest that while barriers to humanitarian negotiations with all actors in a conflict pose a very real danger to the operationalization of humanitarian principles in their original conceptions, successful humanitarian negotiations are only feasible with the ideas surrounding the principles.

Criminalization of Humanitarian Negotiators

The humanitarian principle of impartiality demands that humanitarian actors have access to non-combatants throughout a conflict zone, and in order to do so, they must be able to negotiate for said access with all parties in power.⁵⁴ Their right to do so is engrained in the international humanitarian laws described above, which demand that States respect and allow these organizations to contact all parties. Hugo Slim, Director of Policy for the ICRC, noted that the ICRC “negotiate[s] with anyone because we have a mandate with IHL and the Geneva Conventions that States recognize that we are able to offer our services to all parties in conflict, and that includes non-State parties to conflict.”⁵⁵ This practice of negotiating with all sides is not unique to the ICRC, but it is also theoretically practiced by all organizations signatories to the Code of Conduct, with the aspects of the Geneva Convention that guarantee the right to negotiate with all being reiterated by multiple interviewees.⁵⁶

However, in focusing on modern conflict, the implications of the ‘war on terror’ triggered by the attacks of 11 September 2001 on American soil have altered the way in which

⁵⁴ ICRC, “The Fundamental Principles of the International Red Cross and Red Crescent Movement: Ethics and Tools for Humanitarian Action.”

⁵⁵ Hugo Slim, Hugo Slim at the International Committee of the Red Cross, interview by Gabriela Gil, In Person, April 16, 2019.

⁵⁶ Bagshaw, “OCHA on Message: Humanitarian Principles.”

humanitarian organizations are able to conduct their negotiations. One retrospective case study of the evolution of the Afghan war between 1979 to 2011 noted that “the political and military hurricane that followed” the 9/11 attacks drastically changed the way humanitarian action was conducted in the region.⁵⁷ In the post-9/11 era, international and national legislation focused on the ‘war on terror,’ and in doing so, it inadvertently criminalized contact with non-State actors even though this contact is essential to upholding the humanitarian principles.⁵⁸ Warner emphatically stated this to be the greatest challenge faced by humanitarian negotiators in current conflicts because “all the legislation [...] doesn’t provide exemptions for humanitarian workers.”⁵⁹ Similarly, a review of key challenges faced in humanitarian negotiations noted that such counter-terror legislation rendered negotiations with NSAGs one of the four biggest challenges faced by negotiators.⁶⁰ With Picot’s over 30 years of practical experience, he recalls a time when humanitarian conduct dictated that “negotiation was a bad word” because of the idea that should not negotiate on human suffering, seeing it as a clear violation of the principle of humanity.⁶¹ While he now believes that this negative connotation has shifted within the humanitarian sector itself, other interviewees noted that negotiations with non-State actors specifically were still largely looked down upon by external forces.

The conceptualization of negotiations with non-State actors seems to have shifted to demonstrating a supposed lack of neutrality from the perspective of State actors, with the

⁵⁷ Antonio Donini, “Between a Rock and a Hard Place: Integration or Independence of Humanitarian Action?,” *International Review of the Red Cross* 93, no. 881 (March 2011): 141–57, <https://doi.org/10.1017/S1816383110000639>.

⁵⁸ ICRC, “The Fundamental Principles of the International Red Cross and Red Crescent Movement: Ethics and Tools for Humanitarian Action.”

⁵⁹ Warner, Elisabeth Warner at the Geneva Center for Security Policy.

⁶⁰ Rob Grace, “Humanitarian Negotiation: Key Challenges and Lessons Learned in an Emerging Field,” Advanced Training Program on Humanitarian Action, 2015, http://atha.se/presentations/negotiation/I_challenges_a_negotiating.html.

⁶¹ André Picot, André Picot at the CERAH, interview by Gabriela Gil, In Person, April 11, 2019.

criminalization of these negotiations as a harmful response to these perceptions. Consequently, even if an organization were to conduct its actions adhering to the principles to the best of its capacity, forces beyond the organizations and NSAGs constrain the ability of aid to be distributed impartially. MSF's *Humanitarian Negotiations Revealed: The MSF Experience* provides two clear examples of the impact these restrictive legislations have on an organization's ability to adhere to the principle of impartiality.⁶² In Somalia, protracted conflict between the Ethiopian government and the Ogaden National Liberation Front (ONLF) escalated in 2007. During this year, both the ICRC and MSF were kicked out of the Somali region by government forces.⁶³ Through public statements, the government condemned "any contact with the insurgents [...] as a sign of political partiality," accused both organizations separately of supporting the ONLF, and obstructed their ability to provide much needed care in the region.⁶⁴ Likewise, in Northwestern Pakistan, similar counter-insurgency priorities held by national and international forces determined where MSF could work, leading to "a significant lack in the delivery of assistance, particularly to those communities considered as having links to 'terrorists'."⁶⁵ In addition to restricting the access of organizations giving direct assistance, it also has an impact on organizations, like Geneva Call, that work with NSAGs to educate them on IHL and encourage their respect of the humanitarian principles, with arrest warrants issued for individuals who have direct contact with some of the groups they have worked with.⁶⁶

Beyond this criminalization serving to directly block an organization's ability to negotiate with NSAGs and access civilians in contested areas, counter-terror legislation also

⁶² Magone, Neuman, and Weissman, *Humanitarian Negotiations Revealed*.

⁶³ Magone, Neuman, and Weissman.

⁶⁴ Magone, Neuman, and Weissman.

⁶⁵ Magone, Neuman, and Weissman.

⁶⁶ Warner, Elisabeth Warner at the Geneva Center for Security Policy.

obfuscates organizations' internal policies and capacities for these negotiations. Carter and Haver's 2016 study aimed to provide an overview of good practices in humanitarian negotiations applied interviews and surveys with over 242 practitioners working in Afghanistan, South Sudan, Somalia, and Syria over the course of three years.⁶⁷ They found that humanitarian presence in NSAG-controlled areas was significantly lower than in the government areas of these countries and that organizational capacities were "generally sub-optimal" for negotiating with NSAGs.⁶⁸ Carter and Haver attributed these lapses in part because of an ambiguity surrounding whether NSAG-related negotiations were acceptable or authorized and noted that terrorist designations of NSAGs "seemed to feed an organization's fear of being viewed as politically tainted by working 'on the other side'."⁶⁹

In the interviews, one optimistic glimpse into the future on this issue was provided by Slim in reference to the Security Council resolution 2462.⁷⁰ The Security Council resolution 2462, adopted on March 28, 2019, reiterated States' obligations under international law within the context of their counter-terrorism measures.⁷¹ In particular, Article 24 reads:

*The Security Council "urges States, when designing and applying measures to counter the financing of terrorism, to take into account the potential effect of those measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law."*⁷²

⁶⁷ Carter and Haver, "Humanitarian Access Negotiations with Non-State Armed Groups."

⁶⁸ Carter and Haver.

⁶⁹ Carter and Haver.

⁷⁰ Slim, Hugo Slim at the International Committee of the Red Cross.

⁷¹ "United Nations Security Council Resolution 2462 (2019)," S/RES/2462 (2019) § (2019), [https://undocs.org/S/RES/2462\(2019\)](https://undocs.org/S/RES/2462(2019)).

⁷² United Nations Security Council Resolution 2462 (2019).

With such recent resolutions on this issue, it is clear that there is possibly a renewed recognition on humanitarian organizations need to openly negotiate with NSAGs regardless of their ‘terrorist’ designation. In order to be able to provide humanitarian aid on the basis of need alone, organizations must have access to non-combatants regardless of where they are located, and the restrictions on who they may negotiate with for said access that are currently in place pose external and internal barriers to upholding the humanitarian principle of impartiality.

Lack of Understanding Between Negotiators

The need to better understand the perspectives of all stakeholders in negotiations is emphasized in the findings of the interviews conducted, a trend that has likewise been identified through reports of practitioner experiences. This need is reflected at every stage of the negotiation process, from the creation of the Conventions and Deeds of Commitment to the actual discussions in the field. As described above in the section *Humanitarian Principles in Norms, Laws, and Values*, international humanitarian laws codify States’ responsibilities surrounding humanitarian principles and were largely created in the eras of international conflicts between States. Consequently, even the manner in which humanitarian principles are transcribed into the rules of war fails to take into account the unique status of NSAGs. Even with organizations like Geneva Call that attempt to fill this gap with their Deeds of Commitment (DoC), Warner notes that “the comments of non-State actors are the last step in the elaboration of the [DoC] process, but I think this is essential because there are sometimes important pragmatic aspects that have not been considered.”⁷³ She describes how the expectations put up by international humanitarian law can be seen as unrealistic by NSAGs that work with different, and often more limited, set of resources than governmental forces, and thus,

⁷³ Warner, Elisabeth Warner at the Geneva Center for Security Policy.

negotiations for greater respect of these laws must take into account their unique constraints to increase the potential for consensus.⁷⁴

Furthermore, a very recent study conducted by Grace, which is currently in the process of publication, utilizes interviews with 53 humanitarian practitioners to examine the discourse around humanitarian negotiations and humanitarian principles.⁷⁵ Grace found that in translating humanitarian norms, the interviewees noted incidences in which there were disconnects between local ideologies and the conceptions of the principles used by international organizations, where humanitarian notions of how the most vulnerable should be reached do not align well with local perspectives.⁷⁶ Of the examples provided is one in which the notion of impartiality—providing aid based on need alone—did not match the “socialist approach” of communities in the Kurdish area the practitioner worked in, which renders negotiations on the basis of internationally-held humanitarian principles difficult and ineffective.⁷⁷ As Slim described, “the biggest challenge [negotiators] face is people they are negotiating with that reject or disagree with humanitarian ideas.”⁷⁸ In comparison, Warner proposed that humanitarian ideas themselves were more widely held than believed, as evidenced by the willingness she had witnessed in NSAGs to prescribe to DoCs, but that the perceived disconnect lies with cultural discordance between interlocutors.⁷⁹

Regardless of the source of the dissonance between humanitarian workers and the interlocutors they negotiate with, a majority of the interviewees noted believing that a greater effort must be made to understand the constraints and perceptions of other stakeholders in the negotiations. Without doing so, humanitarian negotiators are unable to negotiate for access

⁷⁴ Warner.

⁷⁵ Rob Grace, “Humanitarian Negotiation with Parties to Armed Conflict: The Role of Laws and Principles in the Discourse” (2019).

⁷⁶ Grace.

⁷⁷ Grace.

⁷⁸ Slim, Hugo Slim at the International Committee of the Red Cross.

⁷⁹ Warner, Elisabeth Warner at the Geneva Center for Security Policy.

effectively because of their inability to accurately frame the fundamental humanitarian principles through locally-held values. Picot largely emphasized the need to examine the perspectives of all stakeholders, describing a past study he had conducted that found the stark extent to which different parties in humanitarian negotiations failed to accurately understand the approaches of others. He put it best in saying, “[negotiators] all think that it is very easy for the other side, and [they] don’t realize the constraints that the other sides work with. It shows the importance of interviewing and understanding the stories of both sides.”⁸⁰ Supporting this sentiment is the fact that the analysis of negotiating counterparts has been integrated into the CCHN Field Manual on Frontline Negotiations, with the Naivasha Grid’s relational stage largely focusing on contextual components that must be closely examined in preparation for negotiations (Figure 2).⁸¹ In explaining the process by which negotiations occur, Weibel remarked that interlocutors must understand the context of their negotiation through strong and systematic context analysis that enables them to understand their counterpart’s perspective.⁸² For interlocutors to effectively operationalize humanitarian principles for negotiations, knowing how the principles interact with the cultural context on the ground where the negotiations are taking place and how to speak about them through shared rhetoric is essential.

Beyond helping create a common ideological language for negotiations, seeking to better understand all stakeholders in negotiations can serve to help humanitarians better identify with whom the negotiations should be conducted. Multiple interviewees noted that organizations frequently rely on members of the local communities or NSAGs who volunteer to act as negotiators or declare themselves to be the gatekeepers of access with the NGOs. However, a

⁸⁰ Picot, André Picot at the CERAH.

⁸¹ “CCHN Field Manual on Frontline Humanitarian Negotiation.”

⁸² Naïma Weibel, Naïma Weibel at the Centre for Competence on Humanitarian Negotiations, interview by Gabriela Gil, In Person, April 5, 2019.

recurrent trend in interviews was the potentially misconstrued ability of these interlocutors to actually guarantee access to a civilian population and the challenge surrounding identifying the correct individuals with whom to negotiate. For example, in the spring of 2009, MSF began negotiating with members of NSAGs in Afghanistan, and “right from their first discussions, these new interlocutors made clear to MSF that its earlier contacts were not legitimate representatives of their group. [...] The two groups [represented by the new interlocutors] were partner organizations, but they had distinct constituencies and interests.”⁸³ Having gained a better understanding of the context they were working in, MSF then began engaging the two groups separately with more success.⁸⁴ Ultimately, in order to negotiate for access effectively, one must speak to the right person and frame the humanitarian principles in the right terms, which is difficult to do without a full understanding of the social and cultural context of the conflict.

Lack of Consensus Across Humanitarians

Many of the interviewees spoke about their engagement with education measures in which their respective organizations were building awareness of international humanitarian laws and humanitarian principles in NSAGs and communities with the goal of building a shared terminology essential to negotiations. However, three of the interviewees noted a lack of consensus within the humanitarian sector itself on the application of the humanitarian principles on negotiations, noting the multiple understandings of the principles hinder the ability of negotiators to generate a common rhetoric in the field. As Grace aptly described, “each humanitarian organization has its own interpretation of how to operationalize the humanitarian principles in a responsible way.”⁸⁵ Likewise, in his book, *Humanitarian Ethics: A Guide to the*

⁸³ Magone, Neuman, and Weissman, *Humanitarian Negotiations Revealed*.

⁸⁴ Magone, Neuman, and Weissman.

⁸⁵ Rob Grace, Rob Grace at the Harvard Humanitarian Initiative and Watson Institute of International and Public Affairs, interview by Gabriela Gil, Via Skype, April 3, 2019.

Morality of Aid in War and Disaster, Slim places a critical lens on the ethics of humanitarian action and identifies the lack of a “precise and unanimous definition” of humanitarianism as a problem for adherence to the humanitarian principles.⁸⁶ Negotiation practices in any field being strongest when defining concepts are agreed upon, and this is particularly true for the humanitarian sector where negotiations go hand-in-hand with campaigns of raising awareness on these fundamental ideals.⁸⁷

The very concepts of the humanitarian principles, which are engrained in the mandate of many humanitarian organizations, do not translate uniformly amongst practitioners in the field and at various levels of humanitarian leadership. Through interviews conducted with NGOs working in Afghanistan, Shannon found that perspectives on the application of humanitarian principles differed across NGOs “depending on whether they defined activities as humanitarian or development.”⁸⁸ This lack of consensus is particularly detrimental for the overall legitimacy of the humanitarian field as “playing with terms, labels and definitions can have direct practical and political outcomes and can be configured in the service of particular ideologies.”⁸⁹ While these conclusions rely on information gathered in Afghanistan specifically, it is likely that the findings would be similar in other conflict settings. For example, in a similar interview and focus group-based study conducted in North Kivu, DRC, Geneva Call reports that less than half of all the NGO representatives interviewed, less than two thirds of those from NGOs with purely humanitarian mandates, could name all four of the humanitarian principles.⁹⁰ Likewise, they

⁸⁶ Hugo Slim, *Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster* (Oxford University Press, 2015),

https://books.google.ch/books?id=jndeCwAAQBAJ&dq=andre+picot+humanitarian&source=gbs_navlinks_s.

⁸⁷ Grace, “Humanitarian Negotiation with Parties to Armed Conflict: The Role of Laws and Principles in the Discourse.”

⁸⁸ Shannon, “Playing with Principles in an Era of Securitized Aid.”

⁸⁹ Shannon.

⁹⁰ Maxwell and Geneva Call, “Negotiation of Humanitarian Access in North Kivu: The Perception of Armed Non-State Actors, Communities, and Humanitarians.”

found that even within the same organization, individuals across the organizational hierarchy of the organizations, from the leadership to the field staff, held different understandings of how humanitarian principles should be applied.⁹¹ Moreover, in the findings of a survey of humanitarian anthropologists, Abramowitz, Marten and Panter-Brick identified that the 75 respondents overwhelmingly reported inconsistent integration of the ICRC's seven fundamental principles into the humanitarian operations they were a part of.⁹² Similarly, Crombé and Hofman highlight that despite similar understandings the principles under which they were working, the five sections of MSF that were based in Afghanistan during the conflict were "less consistent in translating [them] into operational terms."⁹³ In coming to a greater consensus, Weibel calls for increased coordination in regards to negotiation issues because of a persistent lack of understanding of different negotiation mechanisms organizations have in place.⁹⁴ Increasing consensus, including the application of inter-agency access negotiations, may benefit the negotiating power of organizations and facilitate the creation of common rhetoric surrounding the principles between negotiators. It, therefore, may improve organizations' ability to advocate for increased integration of the humanitarian principles into these negotiations.

Humanitarian Principles as Legitimizers

As much as the challenges faced by humanitarian negotiators pose barriers to the operationalization of the humanitarian principles in their negotiations, the rhetoric of upholding the principles also play an important role in the ability of organizations to conduct effective

⁹¹ Maxwell and Geneva Call.

⁹² Sharon Abramowitz, Meredith Marten, and Catherine Panter-Brick, "Medical Humanitarianism: Anthropologists Speak Out on Policy and Practice: Medical Humanitarianism: Policy and Practice," *Medical Anthropology Quarterly* 29, no. 1 (March 2015): 1–23, <https://doi.org/10.1111/maq.12139>.

⁹³ Magone, Neuman, and Weissman, *Humanitarian Negotiations Revealed*.

⁹⁴ Weibel, Naïma Weibel at the Centre for Competence on Humanitarian Negotiations.

negotiations. As the Director of Policy, Slim speaks about the ICRC's approach to humanitarian negotiations by stating that:

“[The ICRC] does [negotiations] on the basis of our neutrality, on the basis of our international recognition, and on the confidence and trust that we build up in relationships on a more operational level.”⁹⁵

This sets in the clearest terms how the humanitarian principles, on the level of rhetoric at least, informs the ICRC's ability to conduct humanitarian organizations; it is the legitimacy granted by perceptions of their commitment to the principles that brings their negotiating counterparts to the table and makes it possible for them to advocate for adherence to IHL. While Slim speaks from the perspective of the ICRC itself, others have found this legitimizing factor to be true in the eyes of other stakeholders in humanitarian negotiations. For example, a 2013 study aimed to document challenges and analyze external perceptions of the Somali Red Crescent's work through semi-structured interviews conducted with locals and staff.⁹⁶ O'Callghan and Backhurst found that the Somali Red Crescent's ability to maintain their presence in Mogadishu for over two decades was in large part attributable to their reputation for upholding neutrality.⁹⁷ Because of this reputation, the Somali Red Crescent society was able to maintain a hospital that served over 200,000 people in an area that other organization's had difficulty accessing.⁹⁸ Notably, this group did face some claims of lack of impartiality, but it tackled these criticisms through reference to its presence in all regions of Somalia, a product of negotiations that were brought about by perceptions of its neutrality.⁹⁹ These findings highlight how adherence, or at

⁹⁵ Slim, Hugo Slim at the International Committee of the Red Cross.

⁹⁶ O'Callghan and Backhurst, "Principles in Action in Somalia."

⁹⁷ O'Callghan and Backhurst.

⁹⁸ O'Callghan and Backhurst.

⁹⁹ O'Callghan and Backhurst.

least conceptions of adherence, to one principle can enable organizations to more effectively negotiate for access and, thereby, achieve greater adherence to another of the interrelated four primary principles. The relationship between the principles is also important to note, showing how individual humanitarian principles cannot not be considered in isolation because the relationship between them is more complex and intertwined than perceptions of them as individual pillars of humanitarian action would suggest.

Moreover, the use of one or more of the humanitarian principles as legitimizing factors for the positions of humanitarians is not unique to the ICRC and its National Societies, but it is a phenomenon that is also described in association with the work of MSF, among others. While MSF explicitly states that their ability to work freely and safely is “less about how its principles are understood and more about how its politics are perceived” in descriptions of their negotiation experiences, it can be argued that these two things are indistinguishable from one another.¹⁰⁰ As Grace noted, “humanitarians operate in a political space,” and therefore, one can examine perceptions of neutrality and impartiality as being reflections of the organization’s ability to navigate these political spaces.¹⁰¹ In Afghanistan, for example, MSF had left the country following a 2004 attack that killed several MSF staff, but “the evolution in the dynamics of the conflict and the interests of the various players in Afghanistan [...] grant[ed] it renewed leverage to negotiate access to people caught up in war.”¹⁰² It was the changing political environment and renewed perceptions of its neutrality within the conflict that allowed MSF to engage in negotiations again with all sides of the conflict, hereby better upholding the

¹⁰⁰ Magone, Neuman, and Weissman, *Humanitarian Negotiations Revealed*.

¹⁰¹ Grace, Rob Grace at the Harvard Humanitarian Initiative and Watson Institute of International and Public Affairs.

¹⁰² Magone, Neuman, and Weissman, *Humanitarian Negotiations Revealed*.

humanitarian principles.¹⁰³ Furthermore, as described above, it was the Ethiopian governments' *perception* of MSF's failure to uphold its principle of impartiality that motivated its expulsion from these territories.¹⁰⁴ While one could propose that this may simply have been a guise for other ulterior motives for denying access, it is possible that the teams' access would not have been withdrawn had this perception had been different.

Humanitarian Principles as Dynamic

This last section will discuss how the humanitarian principles, in being operationalized, must remain dynamic as guides rather than absolute measures of success/failure because, although negotiations inherently demand concessions, the principles are still of utmost importance to ethical humanitarian action. In their most literal sense, the principles of impartiality, neutrality and independence as defined by the Fundamental Principles of the International Red Cross and Red Crescent are inflexible and unnegotiable, moral absolutes for humanitarian actors. It is this static outlook that lead Cheryl Benard to write an op-ed criticizing MSF's 2004 decision to leave Afghanistan because of their view of violations committed on their ability to provide impartial care.¹⁰⁵ She noted that these principles are "part of our nostalgic past" and that a steadfast adherence to them would require MSF to "withdraw not just from Afghanistan, but from most of the conflicts of the 21st century."¹⁰⁶

However, all of the interviewees for this study countered this argument with insistence on the continued relevance of the humanitarian principles. Picot noted that the principles "are not only compatible [with negotiations], but they are a must. They are your compass, how you can

¹⁰³ Magone, Neuman, and Weissman.

¹⁰⁴ Magone, Neuman, and Weissman.

¹⁰⁵ Benard, "Afghanistan Without Doctors."

¹⁰⁶ Benard.

make decisions in your negotiations.”¹⁰⁷ Indeed, the principles of neutrality, impartiality, humanity, and independence are repeatedly described as guidelines by all the interviewees, a trend that is supported by the broader findings of other recent studies into the humanitarian sector. For example, from a survey conducted with 75 humanitarian anthropologists, Abramowitz et al. noted the use of the principles as “guiding ethical frameworks,” in this case specific for examining humanitarian conduct.¹⁰⁸ From the findings of 53 semi-structured interviews conducted with senior and mid-level practitioners, Grace concluded that “whether or not humanitarian actors bring IHL and humanitarian principles explicitly into the discourse of negotiations, these laws and principles can play an important role in implicitly framing the discussion.”¹⁰⁹ The concordance in these findings with the repeated notion of the principles as guidelines, not absolutes, suggests that 1) this notion is increasingly prevalent across the humanitarian sector, and 2) this outlook may be the first step to standardizing an understanding of how the humanitarian principles are most effectively operationalized in negotiations.

However, this shift towards understanding these principles as dynamic guides is a relatively new one and counters humanitarian tradition. Asgary and Lawrence aimed to explore the experiences and perspectives of medical humanitarian workers by conducting 44 qualitative interviews with such practitioners.¹¹⁰ They found that a recurring theme extracted from these interviews was one of “uneasiness over changing humanitarian principles.”¹¹¹ Like the concept of dynamic principles identified through the interviews conducted for this study, Asgary and

¹⁰⁷ Picot, André Picot at the CERAH.

¹⁰⁸ Abramowitz, Marten, and Panter-Brick, “Medical Humanitarianism.”

¹⁰⁹ Grace, “Humanitarian Negotiation with Parties to Armed Conflict: The Role of Laws and Principles in the Discourse.”

¹¹⁰ Ramin Asgary and Katharine Lawrence, “Characteristics, Determinants and Perspectives of Experienced Medical Humanitarians: A Qualitative Approach: Table 1,” *BMJ Open* 4, no. 12 (December 2014): e006460, <https://doi.org/10.1136/bmjopen-2014-006460>.

¹¹¹ Asgary and Lawrence.

Lawrence also noted that these practitioners emphasized the need for “broader” approaches to facilitate access to populations.¹¹² These seemingly contradictory findings of both necessity and unease speak to the internal conflict implicit in the implementation of a dynamic operational understanding of humanitarian principles. When asked about the humanitarian principles in negotiations, Grace responded:

“The principles are compatible [with negotiations] in the sense that they guide where the humanitarian is entering the negotiation space, and they guide what ideal is being aspired to through the negotiation. In a way, however, they seem incompatible because they are, as principles, often going to have concessions made around them, and the process of negotiation is often going to be the process of determining what compromises around those principles you are willing to make.”¹¹³

It is this simultaneous compatibility and incompatibility that makes the dynamism of the principles all the more essential to acknowledge and better understand. Past cases warn against ambiguity, and, as discussed above, the lack of consensus and cohesive understanding of the operationalization of the humanitarian principles is already a prevalent challenge among the humanitarian sector. In her interview, Weibel noted the importance of red lines – limits to negotiations and compromises.¹¹⁴ Consequently, the explicit, acknowledged application of the dynamic humanitarian principles in modern negotiations to set the red lines that Weibel and others highlighted the importance of can serve to address criticisms regarding adherence to these

¹¹² Asgary and Lawrence.

¹¹³ Grace, Rob Grace at the Harvard Humanitarian Initiative and Watson Institute of International and Public Affairs.

¹¹⁴ Weibel, Naima Weibel at the Centre for Competence on Humanitarian Negotiations.

principles and serve to generate a more broadly applicable operationalization of them across the humanitarian sector.

Conclusion

Humanitarian principles are only possible to uphold through thorough humanitarian negotiations with all actors in a conflict, *and* successful humanitarian negotiations are only possible due to the application of the humanitarian principles. Fundamentally, the current operationalization of the humanitarian principles is not one of measurable outcomes, but rather, it is one of rhetoric, of engraining the concepts behind the principles—that all humans have the right to dignified life regardless of who they are and where they live—in the values and practices of all stakeholders in humanitarian negotiations. As aptly described by Dr. Hugo Slim, “we, [humanitarian organizations], don’t control the areas, we can’t insist, and we can’t impose. We need to negotiate.”¹¹⁵ This need demands that internal policies in relation to humanitarian negotiations provide strong, consistent guidance on the use of dialogue surrounding the principles in terms that are understood by all parties to negotiations. In modern conflict, humanitarian negotiations with NSAGs have been routinely criminalized on the basis of non-neutrality, lack of understanding between negotiators have hindered the application of the principles in negotiations with NSAGs, and the humanitarian sector itself remains uncertain about how it should now apply humanitarian principles that seem to be from a different era. These are all challenges to an organization’s ability to adhere to the principles described in the Code of Conduct. At the same time, perceptions of an organization’s adherence to the principles serves to solidify its legitimacy and thereby boost its negotiation leverage, while the rhetoric of humanitarian principles remains essential to guiding interlocutors’ decision-making.

¹¹⁵ Slim, Hugo Slim at the International Committee of the Red Cross.

This study has a number of limitations, including the small sample size that does not account for potential biases, due to the time and resource restrictions under which it was conducted. Furthermore, the majority of this paper relies heavily on theoretical analysis and observational findings, as opposed to experimental findings, because of the ethical considerations that prevent controlled studies to be conducted on the matter of humanitarian negotiations. Because it is highly unethical to manipulate groups' adherence to humanitarian principles in negotiations, one is only able to make observations on the basis of past negotiations and cases, so the question of the findings' ability to translate into current or future conflicts must be considered. However, throughout the study, there was a high level of concordance and data saturation in the findings of the interviews that suggests high levels of validity in these findings. Furthermore, in triangulating themes drawn from these primary findings with existing literature that draw on a wide variety of past conflicts, they are further reinforced, which lends to strengthening the conclusions of this study. While this does not negate the potential limitations present, it does highlight that the impact of these limitations was likely minimal and that the conclusions drawn may be applicable to a wide range of conflicts and negotiations involving non-State armed groups.

Consequently, this study calls an increased level of explicit incorporation of the humanitarian principles into the practices of humanitarian negotiations because the rhetoric that surrounds the principles of neutrality, impartiality, humanity, and independence serves to strengthen an organization's ability to conduct negotiations with their counterparts, particularly if the operationalization of these principles is done on the basis of strong contextual analysis. Furthermore, by strengthening the consensus around and perceived application of humanitarian principles within the sector itself may serve to reduce the impact of counter-terrorism legislation

that hinder organizations' ability to negotiate with NSAGs. Lastly, more research must be done examining the potential measurability of the outcomes of humanitarian negotiations in order to develop a more systematic approach at gathering current data. Doing so will allow organizations to better respond to crises on the ground, counter threats to their impartiality and neutrality, and ensure that they are able to provide medical care and assistance to those most in need.

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Appendix I:*Table 1: Interviewee Characteristics and Professional Roles*

Name of Interviewee	Affiliated Organizations	Positions	Source of expertise	Gender
Elisabeth Decrey Warner	Geneva Call; Geneva Centre for Security Policy	Honorary President; Associate Fellow	Founder of Geneva Call and extensive experience negotiating and working with NSAGs to encourage respect of IHL in a wide variety of conflict settings.	Female
Dr. André Picot	ICRC; CERAH	Former head of mission and deputy head of training for the ICRC; Faculty	30+ years of experience as a practitioner, trainer and researcher in humanitarian negotiations	Male
Dr. Hugo Slim	ICRC	Head of Policy	30+ years of experience as a humanitarian negotiator and researching humanitarian ethics	Male
Rob Grace	Harvard Humanitarian Initiative; The Watson Institute for International and Public Affairs	Senior Associate; PhD candidate	Researcher on humanitarian principles and negotiations. Specific area of focus is on political science mechanisms for IHL adherence.	Male
Naïma Weibel	Centre for Competency on Humanitarian Negotiations	Negotiation Support Specialist	Researcher on negotiation experiences in the field. Assisting in the updating of the CCHN negotiations manual.	Female

Appendix II:

Standardized set of questions asked to all interviewees:

1. For the sake of a little context, can you please give me a brief summary of your experiences with humanitarian negotiations?
2. What do you think are the biggest challenges faced by humanitarian negotiators now?
3. Lastly, do you believe that the humanitarian principles are compatible with humanitarian negotiations within the context of current conflict? Particularly neutrality and impartiality.

Examples of interviewee-specific questions:

For Ms. Elisabeth Warner:

4. Can you speak a little about the Deed of Commitments that attempt to hold non-state actors accountable to IHL? How successful do you think they have been?
5. GenevaCall works primarily with armed non-state actors, why did you set your objective to focus on these actors? Do you find that bringing non-state actors to the negotiations table has been a neglected area of focus?
6. How do non-state actors differ in their relationship with neutrality and impartiality from state actors?

For Dr. Hugo Slim:

7. The ICRC's mandate is focused on promoting the international humanitarian law. Where do you draw the line on compromising the humanitarian principles that make the crux of that law when negotiating for access?
8. Is there a difference in negotiating access for a medical mission over other types of humanitarian programs?

Appendix III:

Reference List of Abbreviations

MSF ~ Doctors Without Borders/Medecins Sans Frontiers

ICRC ~ International Committee for the Red Cross

NSAG ~ Non-State Armed Group

HHI ~ Harvard Humanitarian Initiative

ATHA ~ Advanced Training Program on Humanitarian Action

CCHN ~ Center of Competence on Humanitarian Negotiations

UNOCHA ~ United Nations Office for the Coordination of Humanitarian Affairs

UN ~ United Nations

IHL ~ International Humanitarian Law

DRC ~ Democratic Republic of Congo

DoC ~ Deed of Commitment

NGO ~ Non-Governmental Organizations

ONLF ~ Ogaden National Liberation Front